



Federal Communications Commission
Washington, D.C. 20554

DA 04-3456

Released: October 29, 2004

Facility I.D. No. 51567

In reply refer to: 1800E2-KH

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Fox Television Stations, Inc.
Licensee, Station WDCA
c/o Molly Pauker
5151 Wisconsin Avenue, NW
Washington, DC 20016

Dear Licensee:

This refers to your license renewal application for station WDCA, Washington, DC (BRCT-20040527AKL).

In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also reaffirmed and clarified its long-standing policy against "program-length commercials." The Commission defined a "program-length commercial" as "a program associated with a product, in which commercials for that product are aired," and stated that the entire duration of any program-length commercial would be counted as commercial matter for the purpose of the children's television commercial limits. *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). The commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

On May 27, 2004, you filed the above-referenced license renewal application for station WDCA. In response to Section IV, Question 5 of that application, you certify that, during the previous license term, station WDCA failed to comply with the limitations on commercial matter in children's programming specified in Section 73.670 of the Commission's Rules. In Exhibit 19 to that application, you indicate that station WDCA violated the children's television commercial

limits and policies on March 18, 2002 and April 1, 2002, and describe the corrective measures taken subsequently to prevent future violations. You indicate that station WDCA broadcast a cereal commercial containing the character Buzz Lightyear during the “Buzz Lightyear” program. You attribute these two violations to human error on the part of station WDCA’s staff. You also indicate that station WDCA violated the children’s television commercial limits and policies on four occasions prior to the date Fox Television Station Inc. (Fox) acquired station WDCA.

As a preliminary matter, our records confirm that on October 26, 2001, the Commission granted an application to assign the license for station WDCA from Paramount Stations Group of Washington Inc., to Fox Television Stations, Inc. (BALCT-20010808ABD). That assignment transaction was consummated on November 1, 2001. Accordingly, we will not consider the four violations of the children’s television commercial limits reported in station WDCA’s renewal application which occurred prior to Fox’s acquisition of the license for that station.

Fox is clearly responsible, however, for any violations which occurred after November 1, 2001. With respect to those violations, we begin by noting that, Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and programs. S. Rep. No. 227, 101st Cong., 1st Sess. 24 (1989). Thus, in *Children’s Television Programming*, the Commission made it clear that program-length commercials, by their very nature, are extremely serious violations of the children’s television commercial limits, stating that the program-length commercial policy “directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter.”¹ 6 FCC Rcd at 2118. Accordingly, in interpreting and applying the Commission’s policies regarding program-length commercials, we are concerned about and dealing with the cognitive abilities of young children, not adults. See, e.g., *Scripps Howard Broadcasting Company (KNXV-TV)*, 12 FCC Rcd 19504, 19505 (MMB 1997), *aff’d* 9 FCC Rcd 2547 (MMB 1994).

The only reason Fox cites for the violations, human error, does not mitigate or excuse the violations. In fact, the Commission has repeatedly rejected human error as a basis for excusing violations of the children’s television commercial limits. See, e.g. *LeSea Broadcasting Corp. (WHKE(TV))*, 10 FCC Rcd 4977 (MMB 1995); *Buffalo Management Enterprises Corp. (WIVB-TV)*, 10 FCC Rcd 4959 (MMB 1995); *Act III Broadcasting License Corp. (WUTV(TV))*, 10 FCC Rcd 4957 (MMB 1995); *Ramar Communications, Inc. (KJTV(TV))*, 9 FCC Rcd 1831 (MMB 1994). Nor does Fox’s implementation of policies to prevent subsequent violations of the children’s television rules and policies relieve it of liability for the violations which have occurred. See, e.g., *WHP Television, L.P. (WHP-TV)*, 10 FCC Rcd 4979, 4980 (MMB 1995); *Mountain States Broadcasting, Inc. (KMSB-TV)*, 9 FCC Rcd 2545, 2546 (MMB 1994); *R&R*

¹ To avoid being considered a program-length commercial, commercial matter related to a children’s program must be separated from that program “by intervening and unrelated program material.” *Children’s Television Programming (Recon.)*, 6 FCC Rcd at 5099. To prevent confusion, the Commission “specifically note[d] that intervening commercial matter will not suffice as a separation device.” *Id.* at 5099 n.89.

Media Corporation WTWS(TV)), 9 FCC Rcd 1715, 1716 (MMB 1994); *KEVN, Inc. (KEVN-TV)*, 8 FCC Rcd 5077, 5078 (MMB 1993); *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969). However, while we consider any violation of our rules limiting the amount of commercial matter in children's programming to be significant, the violations described in your renewal application appear to have been isolated occurrences. Although we do not rule out more severe sanctions for violations of this nature in the future, we have determined that an admonition is appropriate at this time.

Therefore, based upon the facts and circumstances before us, we ADMONISH you for the violations of the children's television commercial limits rule and policies described in station WDCA's renewal application. We remind you that the Commission expects all commercial television licensees to comply with the limits on commercial matter in children's programming.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau