



Federal Communications Commission  
Washington, D.C. 20554

September 28, 2005

**DA 05-2537**

**Released: September 28, 2005**

Media Venture Management, Inc.  
WTXL-TV  
8440 Deerlake Road  
Tallahassee, Florida 32312

Re: Media Venture Management, Inc.  
WTXL-TV, Tallahassee, Florida  
Facility I.D. No. 41065  
File No. BRCT-20040930BHO  
NAL/Acct. No. 0541420017  
FRN: 0002053486

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) pursuant to Section 503(b) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 503(b), under authority delegated to the Chief of the Media Bureau by Section 0.283 of the Commission's Rules (Rules), 47 C.F.R. § 0.283, for willful and repeated violations of the Commission's rule requiring each commercial broadcast station to place in its public inspection file Children's Television Programming Reports and records concerning compliance with commercial limits.

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 amount 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. Accordingly, 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. *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).

Moreover, Section 73.3526 of the Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations.<sup>1</sup> As set

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<sup>1</sup> See 47 C.F.R. § 73.3526.

forth in Section 73.3526(e)(11)(iii) of the Rules, each commercial television broadcast station is required to prepare and place in its public inspection file a Children's Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the educational needs of children. Section 73.3526 of the Rules also requires commercial television stations to file the reports with the Commission and to publicize the existence and location of the reports. Moreover, pursuant to Section 73.3526(e)(11)(ii) of the Rules, each commercial television broadcast station is required to place in its public inspection file on a quarterly basis, records sufficient to allow substantiation of the licensee's certification in its renewal application, of compliance with the children's television commercial limits. Section 73.3526 also requires licensees to place these records and Forms 398 in the public inspection file by the tenth day of the succeeding calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.<sup>2</sup>

On September 30, 2004, you filed a license renewal application (FCC Form 303-S) for station WTXL-TV, Tallahassee, Florida (File No. BRCT-20040930BHO). In response to Section IV, Question 3 of that application, you certify that, during the previous license term, station WTXL-TV, failed to place in its public inspection file at the appropriate times, all of the documentation required by Section 73.3526 of the Commission's Rules. Moreover, in response to Section IV, Question 6, you certify that, during the previous license term, station WTXL-TV failed to file with the Commission several Children's Television Programming Reports. In Exhibit 17 of that application, you indicate that in completing the instant renewal application, the licensee determined that Children's Television Programming Reports for all of 1997 and the first three quarters of 1998 were missing from the station's public inspection file. Further, you state that for the same period, information documenting compliance with the commercial limits on children's programming was also not present in the public file. You report that upon further investigation you discovered that the station's Children's Television Programming Reports for the fourth quarter of 1997 and the first three quarters of 1998 were on the Commission's website and that those were subsequently downloaded, copied and placed in the public file. You state that the licensee has not been able to locate the station's Children's Television Programming Reports for the first three quarters of 1997.

In Exhibit 17, you also state that with respect to the commercial limits for all of 1997 and the first three quarters of 1998, although the licensee is unable to confirm compliance, its best information is that all children's programming aired during this period was originated by ABC. Consequently, you assert, assuming that the network complied with the limits, it is likely that station WTXL-TV did as well.

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<sup>2</sup> See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

In an amendment to the renewal application filed on December 23, 2004, you report that although station personnel could not locate the Children's Television Programming Reports for the first three quarters of 1997, they have been reconstructed, filed and placed in the public inspection file. For this reason, you state, the licensee amends its response to Section IV, Question 6 to "yes", it has filed all of its Children's Television Programming Reports. You also indicate, however, that the response to Section IV, Question 3 remains "no", since the Children's Television Programming Reports were not placed in the public file "at the appropriate time."

Further, you report that the network compensation affidavits indicate that the network provided 9.5 minutes an hour of advertising during children's programming. Further you state that according to the station's former General Sales Manager, station WTXL-TV did not sell station identification/advertisement combinations that year and the network did not make much local commercial time available to the station during children's programming. Therefore, you maintain, the licensee strongly believes that station WTXL-TV complied with the limits on commercial matter during the first three quarters of 1997.

Station WTXL-TV's failure to place in its public inspection file the required documentation constitutes a willful and repeated violation of Sections 73.3526(e)(11)(ii) and 73.3526(e)(11)(iii). While corrective actions may have been taken to prevent future violations, this does not relieve you of the violations which have occurred. *International Broadcasting Corp.*, 19 FCC 2d 793 (1969).

Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>3</sup> In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>4</sup>

*The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to*

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<sup>3</sup> 47 U.S.C. § 503(b).

Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by the Act . . . ." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>4</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17100 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

*Incorporate the Forfeiture Guidelines (Forfeiture Policy Statement)* and Section 1.80 of the Rules establish a base forfeiture amount of \$10,000 for public file violations.<sup>5</sup> In this case, the licensee concedes that the station's Children's Television Programming Reports and records concerning compliance with commercial limits on children's programming for 1997 and the first three quarters of 1998 were missing from the public inspection file. Moreover, it appears that the licensee did not discover these deficiencies until it prepared station WTXL-TV's renewal application. As a result, the public file was not complete for a substantial period of time. Considering the record as a whole, we believe that a \$10,000 forfeiture is appropriate for the violations in this case.

In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 309(k). Section 309(k) provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>6</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>7</sup>

The public inspection file rule serves the critical function of making available to the public important information related to station operations. On balance, however, we find that station WTXL-TV's violation of Section 73.3526 does not constitute a “serious violation” of the Commission's rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse. Further, we find that station WTXL-TV served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.283 and 1.80 of the Commission's Rules,<sup>8</sup> Media Venture Management, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE of ten thousand dollars (\$10,000) for willful and repeated violations of Sections 73.3526 (e)(11)(ii) and 73.3526(e)(11)(iii) of the Commission's Rules as indicated above.<sup>9</sup>

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<sup>5</sup> 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section I. Base Amounts for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17113, Appendix A, Section I.

<sup>6</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

<sup>7</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>8</sup> 47 C.F.R. §§ 0.61, 0.283, and 1.80.

<sup>9</sup> 47 C.F.R. § 73.3526.

IT IS FURTHER ORDERED, That pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice, Media Venture Management, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, and P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under the installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>10</sup>

IT IS FURTHER ORDERED that, a copy of this Notice shall be sent by First Class and Certified Mail, Return Receipt Requested to Media Venture Management, Inc. at the address listed above, and to its counsel, Dorann Bunkin, Esquire, Wiley Rein & Fielding LLP, 1776 K Street, N.W., Washington, D.C. 20006.

Finally, IT IS ORDERED that, the application (File No. BRCT-20040930BHO) of Media Venture Management, Inc. for renewal of license for station WTXL-TV, Tallahassee, Florida, IS GRANTED.

Sincerely,

Donna C. Gregg  
Acting Chief, Media Bureau

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<sup>10</sup> See 47 C.F.R. § 1.1914.