



Federal Communications Commission  
Washington, D.C. 20554

July 28, 2006

**DA 06-1515**  
**Released: July 28, 2006**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Acme Television Licenses of Tennessee, LLC  
WBXX-TV  
2101 East Fourth Street  
Suite 202A  
Santa Ana, California 92705

Re: Acme Television Licenses of Tennessee, LLC  
WBXX-TV, Crossville, Tennessee  
Facility ID No. 72971  
File No. BRCT-20050331AMA

Dear Licensee:

This refers to your license renewal application for station WBXX-TV, Crossville, Tennessee.

In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 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.<sup>1</sup> The commercial limitations became effective on January 1, 1992.<sup>2</sup>

On March 31, 2005, you filed the above-referenced license renewal application for station WBXX-TV. In response to Section IV, Question 5 of that application, you stated that, during the previous license term, WBXX-TV failed to comply with the limitations on commercial matter in

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<sup>1</sup> *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

<sup>2</sup> *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

children's programming specified in Section 73.670 of the Commission's Rules. In Exhibit 19, you indicate that station WBXX-TV violated the children's television commercial limits and policies on eight occasions between February 20, 1999, and November 18, 2003 and describe the corrective measures taken subsequently to prevent future violations. Of those violations, five were 30 seconds in duration, one was 60 seconds in duration, and one was five seconds in duration. You attribute the conventional overages to inadvertence, a technical error in airing a commercial make good, and a technical error by the facility that compiles commercial and promotional content into all the WB Television Network programming and provides uplink services for satellite dissemination to each affiliated station.

The eighth and remaining incident you reported occurred on September 24, 2002, when station WBXX-TV aired a WB Network commercial for the Nintendo GameBoy E-Reader, during the "Pokemon" program. You assert that station WBXX-TV was not warned, and did not know until after broadcast, that the commercial contained a "fleeting, obscured image" of a "Pokemon" game card. You state that, the image, in which only the letters "MON" are visible for just over one second, does not depict any "Pokemon" character. According to your description, the "Pokemon" card appears as three of six cards arranged in the shape of a fan during the display and "Pokemon" is not mentioned in the audio of the commercial. You maintain that it is the licensee's good faith judgment that the program-length commercial policy is inapplicable in this case because there is no likelihood that children would perceive any linkage between the "Pokemon" program and the GameBoy commercial. Further, you contend that the WB Network expressed its belief that the GameBoy commercial does not violate the Commission's rules or policies of the Children's Television Act's commercial time limits. Finally, you opine that this incident does not constitute a commercial overage and that although disclosure is not legally necessary in this case, you are nonetheless reporting it out of an abundance of caution.

As a preliminary matter, we note that Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and programs. S. Rep. No. 227, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess. 24 (1989). Thus, 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."<sup>3</sup> 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.<sup>4</sup>

With respect to the station's broadcast of the commercial for the Nintendo GameBoy E-Reader, although you contend that the "Pokemon" game card appeared for approximately one second during the commercial, it is well established that the determination as to whether a particular

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<sup>3</sup> *Children's Television Programming*, 6 FCC Rcd at 2118.

<sup>4</sup> See, e.g., *Scripps Howard Broadcasting Company (KNXV-TV)*, 12 FCC Rcd 19504, 19505 (MMB 1997) (*Scripps Howard*), *aff'd* 9 FCC Rcd 2547 (MMB 1994).

program is a program-length commercial is not dependent on the duration of the appearance of the program-related product in the commercial announcement. The Commission has stated on numerous occasions that, where a commercial announcement includes a product related to the program in which the commercial is broadcast, then the program is a program-length commercial regardless of the duration of the appearance of the program-related product in the commercial.<sup>5</sup> Moreover, we believe that, in the context of the cognitive abilities of young children, there is the potential for confusion between the Gameboy commercial and the “Pokemon” program regardless whether any “Pokemon” character is depicted given the image of a “Pokemon” game card contained in the commercial and the consequent likelihood that children may associate it with the program. Based on these circumstances, where there is a clear potential for confusion in the minds of young children, the Commission’s program-length policy is applicable.<sup>6</sup>

Regarding the reasons given for some of the conventional overages and the program-length commercial, the fact that they resulted from formats or errors which occurred in the programming supplied by station WBXX-TV’s television network or were inserted into the program by station WBXX-TV’s television network does not relieve WBXX-TV of responsibility for the violations. In this regard, the Commission has consistently held that a licensee’s reliance on a program’s source or producer for compliance with our children’s television rules and policies will not excuse or mitigate violations which do occur.<sup>7</sup> Moreover, the other reasons you cite for the overages, inadvertence and a commercial make good, do not excuse such violations. In this regard, the Commission has repeatedly rejected human error and/or inadvertence as a basis for excusing violations of the children’s television commercial limits.<sup>8</sup> Furthermore, corrective actions may have been taken to prevent subsequent violations of the children’s television rules and policies, but that, too, does not relieve WBXX-TV of liability for the violations which have occurred.<sup>9</sup>

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<sup>5</sup> *UTV of San Francisco, Inc. (KBHK-TV)*, 10 FCC Rcd 10986, 10988 (1995); *see also WPIX, Inc.*, 14 FCC Rcd 9077 (MMB 1999) (commercial for “Spirit of Mickey” home video showing brief image of Donald Duck on cover of video aired during “Quack Pack” program); *Act III Broadcasting License Corp. (WUTV(TV))*, 10 FCC Rcd 4957 (1995), *aff’d*, 13 FCC Rcd 10099 (MMB 1997) (commercial for a fast food restaurant promoting a trip to Disney World as a contest prize contained a brief image of Goofy and aired during the program “Goof Troop”).

<sup>6</sup> *Scripps Howard*, 12 FCC Rcd at 19506.

<sup>7</sup> *See, e.g., Max Television of Syracuse, L.P. (WSYT(TV))*, 10 FCC Rcd 8905 (MMB 1995); *Mt. Mansfield Television, Inc. (WCAX-TV)*, 10 FCC Rcd 8797 (MMB 1995); *Boston Celtics Broadcasting Limited Partnership (WFXT(TV))*, 10 FCC Rcd 6686 (MMB 1995).

<sup>8</sup> *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).

<sup>9</sup> *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 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).

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 WBXX-TV'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.

In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k)(1) of the Communications Act of 1934, as amended (the Act).<sup>10</sup> Section 309(k)(1) 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 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>11</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>12</sup>

On balance, we find that Acme Television Licenses of Tennessee, LLC's violation of Section 73.670 does not constitute “serious violations” 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 WBXX-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, a copy of this Letter shall be sent by First Class and Certified Mail, Return Receipt Requested to Thomas D. Allen, Acme Television Licenses of Tennessee, LLC at the address listed above, and to Rick Ervin, Acme Television, LLC, 6135 S Stratler Street, Murray, Utah 84107.

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<sup>10</sup> 47 U.S.C. § 309(k).

<sup>11</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 *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996, Order*, 11 FCC Rcd 6363 (1996).

<sup>12</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

Finally, IT IS ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the application (File No. BRCT-20050331AMA) of Acme Television Licenses of Tennessee, LLC for renewal of license for station WBXX-TV, Crossville, Tennessee IS HEREBY GRANTED.

Sincerely,

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau