



Federal Communications Commission
Washington, D.C. 20554

July 28, 2006

DA 06-1517
Released: July 28, 2006

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Fox Television Stations, Inc.
KTXH(TV)
5151 Wisconsin Avenue, N.W.
c/o Molly Pauker, Esq.
Washington, D.C. 20016

Re: Fox Television Stations, Inc.
KTXH(TV), Houston, Texas
Facility ID No. 51569
File No. BRCT-20060403BJA

Dear Licensee:

This refers to your license renewal application for station KTXH(TV), Houston, Texas.

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 its Rules (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 April 3, 2006, you filed the above-referenced license renewal application for station KTXH(TV). In response to Section IV, Question 5 of that application, you certify that, during the previous license term, station KTXH(TV) failed to comply with the limitations on

commercial matter in children's programming specified in Section 73.670 of the Rules.¹ In Exhibit 19, you indicate that station KTXH(TV) exceeded the children's television commercial limits on November 8, 2002, when a commercial including the character of "Buzz Lightyear" aired during the "Buzz Lightyear" program.² You attribute the violation to human error and recount station KTXH(TV)'s compliance procedures and corrective measures taken in order to prevent future violations of the commercial limits.

In *Children's Television Programming (Recon.)*, the Commission stated that, in order 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." 6 FCC Rcd at 5099. To ensure that there was no confusion, the Commission "specifically note[d] that intervening commercial matter will not suffice as a separation device." *Id.* at 5099 n.89. The Commission made it clear in *Children's Television Programming*, that program-length commercials, by their very nature, are extremely serious, 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." 6 FCC Rcd at 2118.

Although Fox Television Stations, Inc. (Fox) attributes the violation to human error, the Commission has repeatedly rejected human error and/or inadvertence 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 do corrective actions which have been taken to prevent subsequent violations of the children's television rules and policies relieve Fox of liability for the violation which has 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 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 broadcast of the one program-length commercial described in your renewal application appears to have been an isolated occurrence. Though we do not rule out more severe sanctions for a violation 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 Fox for the admitted violation of Section 73.670 of the Rules described in station KTXH(TV)'s renewal

¹ 47 C.F.R. § 73.670.

² On October 26, 2001, the Commission granted an application to assign the license for station KTXH(TV) from Paramount Stations Group of Washington Inc. to Fox Television Stations, Inc. (BALCT-20010808ABE). That assignment transaction was consummated on November 1, 2001.

application. We remind Fox that the Commission expects all commercial television licensees to comply with the limits on commercial matter in children's programming.

Accordingly, IT IS ORDERED that, a copy of this Letter shall be sent by First Class and Certified Mail Return Receipt Requested, to the licensee at the address listed above, and to Molly Pauker, Esq., Fox Television Stations, Inc., 5151 Wisconsin Avenue, N.W., Washington, D.C. 20016.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau