



Federal Communications Commission
Washington, D.C. 20554

December 1, 2006

DA 06-2442

Released: December 1, 2006

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Tribune Broadcast Holdings, Inc.
WTTK(TV)
6910 Network Place
Indianapolis, Indiana 46278

Re: Tribune Broadcast Holdings, Inc.
WTTK(TV), Kokomo, Indiana
Facility ID No. 56526
File No. BRCT-20050331AZA

Dear Licensee:

This refers to your license renewal application for station WTTK(TV), Kokomo, Indiana.

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).

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.¹ As set forth in Section 73.3526(e)(11)(i) of the Rules, a TV issues/programs list is to be placed in a

¹ See 47 C.F.R. § 73.3526.

commercial TV broadcast station's public inspection file each calendar quarter by the tenth day of the succeeding calendar quarter. In addition Section 73.3526(e)(9) requires that letters and e-mail from the public are to be placed in the public file. 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.²

On March 31, 2005, you filed the above-referenced license renewal application for station WTTK(TV). In response to Section IV, Question 5 of that application, you certify that, during the previous license term, WTTK(TV) failed to comply with the limits on commercial matter in children's programming specified in Section 73.670 of the Commission's Rules. In Exhibit 19, you indicate that station WTTK(TV) violated the children's television commercial limits and policies on September 24, 2002, and October 18, 2003. You attribute both incidents to errors that occurred in the programming supplied by the station's national television network, The WB Network, and describe corrective measures taken subsequently to prevent future violations.

First, you state that one conventional overage occurred on Saturday, October 18, 2003, and was 33-seconds in duration. Second, you report that on September 24, 2002, station WTTK(TV) aired a WB Network commercial for the Nintendo GameBoy E-Reader, during the "Pokemon" program. You assert that station WTTK(TV) was not warned, and did not know until after broadcast, when the WB Network brought the matter to the licensee's attention, 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 the third 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 was the licensee's good faith judgment that the program-length commercial policy was 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.

In response to Section IV, Question 3 of that application, you also certify that, during the previous license term, station WTTK(TV) failed to place in the public inspection file at the appropriate times, all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17 to the renewal application, you state that during preparation of the instant application, it was discovered that TV issues/programs lists for the fourth quarter of 2002 and the third quarter of 2004, as well as the 2003 viewer correspondence, were missing from the station's public inspection file. You explain that in December 2003, station WTTK(TV) relocated to a new facility and that you believe these records were lost in the move. You maintain that station WTTK(TV) has recreated the missing TV issues/programs lists and most of

² 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).

the station's viewer correspondence for 2003 and placed these records in the public file. You assert that the licensee's procedures for ensuring that all required documents are placed in the public file were followed with respect to the fourth quarter 2002 and third quarter 2004 TV issues/programs lists and the 2003 viewer correspondence, and that the missing documents were the result of the move. Finally, you contend that the licensee will continue to improve its procedures to ensure future compliance with the Commission's public file rules.

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, 101st Cong., 1st 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."³ 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) (*Scripps Howard*), *aff'd* 9 FCC Rcd 2547 (MMB 1994).

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 one second during the commercial, it is well-established that the determination as to whether a particular 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. *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"). 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.

Regarding the reasons given for the two overages, the fact that they resulted from errors that occurred in the programming supplied by the station's national television network does not relieve WTTK(TV) of responsibility for the violations. In this regard, the Commission has

³ *Children's Television Programming*, 6 FCC Rcd at 2118.

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. *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). 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 WTTK(TV) 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 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).

Based upon the record before us, 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 admitted violations of Sections 73.670, 73.3526(e)(11)(i), and 73.3526(e)(9) of the Rules described in station WTTK(TV)'s renewal application.

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.⁴ 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.”⁵

On balance, we find that Tribune Broadcast Holdings, Inc.'s violations of Sections 73.670 and 73.3526 do 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 WTTK(TV) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the renewal application below.

⁴ 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).

⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

Accordingly, IT IS ORDERED that, a copy of this Letter shall be sent by First Class and Certified Mail, Return Receipt Requested to Jerome P. Martin, Vice President and General Manager, Tribune Broadcast Holdings, Inc. at the address listed above, and to R. Clark Wadlow, Esquire, Sidley Austin Brown & Wood LLP, 1501 K Street, N.W., Washington, D.C. 20005.

Finally, IT IS ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the application of Tribune Broadcast Holdings, Inc., for renewal of license for station WTTK(TV), Kokomo, Indiana (BRCT-20050331AZA) IS HEREBY GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau