



Federal Communications Commission
Washington, D.C. 20554

January 9, 2006

DA 06-24

Released: January 9, 2006

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

WMMF License, LLC
WWAZ-TV¹
500 South Chinowth Road
Visalia, CA 93277

Re: WMMF License, LLC
WWAZ-TV, Fond du Lac, WI
Facility ID No. 60571
File No. BRCT-20050801CYT

Dear Licensee:

This refers to your license renewal application for station WWAZ-TV, Fond du Lac, WI.

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 limits became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

On August 1, 2005, you filed the above-referenced license renewal application for station WWAZ-TV. In response to Section IV, Question 5 of that application, you certify that, during the previous license term, WWAZ-TV failed to comply with the limitations on commercial

¹ The Commission's records indicate that on October 19, 2004, the station's call sign was changed from WMMF-TV to WWAZ-TV.

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 WWAZ-TV exceeded the children’s television commercial limits on April 14, 2001, when a commercial with content advertising Nana Puddin’ products aired during the program “The Nana Puddin’ Show.” You attribute the violation to inadvertence and state that the commercial was included in the program provided by FamilyNet. Finally, you describe the corrective measures taken by station WWAZ-TV to ensure future compliance with the commercial limits.

In *Children’s Television Programming (Recon.)*, *supra*, 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.”² In order to ensure that there was no confusion, the Commission “specifically note[d] that intervening commercial matter will not suffice as a separation device.”³ The Commission, moreover, 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.”⁴

Although you indicate that the program-length commercial was included in the program provided by FamilyNet, this does not relieve WWAZ-TV of responsibility for the violation. 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. *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). Moreover, you claim that the violation resulted from inadvertence. However, inadvertence does not mitigate or excuse the violation. In fact, the Commission has repeatedly rejected 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). 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 WWAZ-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);

² 6 FCC Rcd 5099.

³ *Id.* at 5099 n.89.

⁴ 6 FCC Rcd at 2118.

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 violation described in your renewal application appears to have been an isolated occurrence. 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 violation of the children's television commercial limits rule and policies described in station WWAZ-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) 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.⁵ 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.”⁶

On balance, we find that WWMF License, LLC's violation of Section 73.670 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 WWAZ-TV served the public interest, convenience, and necessity during the subject license term.

Accordingly, IT IS ORDERED that, a copy of this Letter shall be sent by First Class and Certified Mail, Return Receipt Requested to WWMF License, LLC at the address listed above, and to its counsel, John G. Johnson, Jr., Esquire, Paul, Hastings, Janofsky & Walker LLP, 875 15th Street, N.W., Washington, D.C. 20005.

⁵ 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).

⁶ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

Finally, IT IS ORDERED that, the application of WMMF License, LLC, for renewal of license for station WWAZ-TV, Fond du Lac, Wisconsin (BRCT-20050801CYT), IS HEREBY GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau