

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
WTWB of the Triad, LLC)	Facility I.D. No. 35385
Licensee of WTWB-TV,)	NAL/ Acct. No. 0641420036
Lexington, North Carolina)	FRN: 0004367710

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: February 22, 2006

Released: February 24, 2006

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission, by the Chief, Media Bureau, pursuant to delegated authority, has before it for consideration a license renewal application for the captioned television station in Lexington, North Carolina. We find that WTWB of the Triad, LLC, the licensee of station WTWB-TV, apparently violated Section 73.670 of the Commission's Rules (Rules), by failing to comply with the limits on commercial matter in children's programming.¹ For the reasons discussed below, we find WTWB of the Triad, LLC apparently liable for a forfeiture in the amount of seventeen thousand, five hundred dollars (\$17,500) for its violation of Section 73.670 of the Rules.

II. BACKGROUND

2. In the Children's Television Act of 1990 (CTA), 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 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 stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a "program-length commercial"). *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

3. On August 2, 2004, the licensee filed an application for renewal of license (FCC Form 303-S, File No. BRCT-20040802BJH) for station WTWB-TV. In response to Section IV, Question 5 of that application, the licensee certifies that, during the previous license term, station

¹ 47 C.F.R. § 73.670.

WTWB-TV failed to comply with the limitations on commercial matter in children's programming specified in Section 73.670 of the Rules. In Exhibit 19 and a November 29, 2004 amendment to that application, the licensee indicates that station WTWB-TV violated the children's television commercial limits on seven occasions. All seven violations were program-length commercials. The licensee attributes the overages to human error, and describes the corrective measures it has taken to prevent future violations.

III. DISCUSSION

4. Station WTWB-TV's record of exceeding the children's television commercial limits on seven occasions during the last license term constitutes a willful and repeated violation of Section 73.670 of the Rules. All of the overages in this case were program-length commercials. Overages of this number and nature mean that children will have been subjected to commercial matter greatly in excess of the limits contemplated by Congress when it enacted the Children's Television Act of 1990. *Children's Television Programming*, 6 FCC Rcd at 2117-18. 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). Given this Congressional concern, 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."² 6 FCC Rcd at 2118.

5. The licensee attributes the violations to human error. The Commission, however, has repeatedly rejected human error 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, while corrective actions may have been taken to prevent subsequent violations of the children's television rules and policies, this does not relieve WTWB of the Triad, LLC 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).

6. Section 503(b) of the Communications Act of 1934, as amended, (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

² 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." *Children's Television Programming (Recon.)*, 6 FCC Rcd at 5099. To prevent confusion, the Commission "specifically note[d] that intervening commercial matter will not suffice as a separation device." *Id.* at 5099 n.89.

penalty.³ The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term “repeated” means that the violation occurred on more than one day.⁵ 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.”⁶

7. *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines (Forfeiture Policy Statement)* and Section 1.80 of the Rules set a base forfeiture amount of \$8,000 for violation of the children’s television commercialization requirements. However, an upward adjustment is appropriate in this case. As discussed above, WTWB-TV exceeded the children’s television commercial limits on seven occasions, all of which were program-length commercials. Accordingly, we find that WTWB of the Triad, LLC is apparently liable for a forfeiture in the amount of \$17,500 for its apparent violation of Section 73.670.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, WTWB of the Triad, LLC is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of seventeen thousand, five hundred dollars (\$17,500) for willful and repeated violations of Section 73.670 of the Rules.

9. 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 of Apparent Liability, WTWB of the Triad, LLC 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, at 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,

³ 47 U.S.C. § 503(b).

⁴ 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).

⁵ 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).

⁶ 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).

Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷

10. Finally, IT IS ORDERED that, a copy of this Notice of Apparent Liability shall be sent by First Class and Certified Mail, Return Receipt Requested to WTWB of the Triad, LLC, 500 South Chinowth Road, Visalia, California, and to its counsel, John Griffith Johnson, Jr., Esq., Paul, Hastings, Janofsky & Walker LLP, 1299 Pennsylvania Avenue, N.W., Tenth Floor, Washington, D.C. 20004-2400.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief, Media Bureau

⁷ See 47 C.F.R. § 1.1914.