



Federal Communications Commission
Washington, D.C. 20554

February 24, 2006

DA 06-404

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Viacom Stations Group of Miami, Inc.
WBFS-TV
2000 K Street, N.W.
Suite 725
Washington, D.C. 20006-1809

Re: Viacom Stations Group of Miami, Inc.
WBFS-TV, Miami, FL
Facility ID No. 12497
File No. BRCT-20041001AMW
NAL/Acct. No. 0641420035
FRN: 0003476116

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of twelve thousand dollars (\$12,000) pursuant to Section 503(b) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 503(b), under authority delegated to the Chief of the Media Bureau by Section 0.283 of the Commission's Rules (Rules), 47 C.F.R. § 0.283, for willful and repeated violations of the Commission's rule requiring each commercial broadcast station to place in its public inspection file Children's Television Programming Reports and willful and repeated violations of the Commission's rule limiting the amount of commercial matter which may be aired during children's programming.

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 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). In addition, the Commission reiterated its long-standing policy against “host-selling,” *i.e.*, “the use of program talent to deliver commercials,” including “endorsements or selling by animated cartoon characters as well as ‘live’ program hosts.” *Id.* at 2127 n.147, 6 FCC Rcd at 5097; *see also Action for Children’s Television*, 50 FCC 2d 1, 8, 16-17 (1974). The commercial limits 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)(iii) of the Rules, each commercial television broadcast station is required to prepare and place in its public inspection file a Children’s Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the educational needs of children. 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 October 1, 2004, you filed a license renewal application (FCC Form 303-S) for station WBFS-TV, Miami, Florida (File No. BRCT-20041001AMW). In response to Section IV, Question 3 of that application, you certify that, during the previous license term, station WBFS-TV failed to place in its 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 station WBFS-TV’s renewal application, you state that following a recent review of station WBFS-TV’s public inspection file, the licensee discovered that although all Children’s Television Programming Reports had been filed with the Commission, some of these forms were missing from the public file. Specifically, you report that copies of the Children’s Television Programming Reports from the first quarter of 2003, the third quarter of 2003, the third quarter of 2002, and the first quarter of 2000 were missing from the public file. You maintain that the missing documents have now been placed in the public file.

Moreover, in response to Section IV, Question 5 of station WBFS-TV’s renewal application, you certify that, during the previous license term, station WBFS-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 to the renewal application, you indicate that between February 3, 1997, and April 22, 2001, station WBFS-TV exceeded the children’s television commercial limits on six occasions.³ Of those violations, one was 23 seconds in duration, one was 24 seconds in duration, one was 46 seconds in duration, and two were program-length commercials. According to your

¹ See 47 C.F.R. § 73.3526.

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).

³ You also report seven incidents that you characterize as host-selling violations. We note that these violations occurred prior to the license term under consideration and consequently, warrant no further consideration.

description, the remaining violation involved host-selling. You attribute the violations to human error and describe the corrective measures taken by station WBFS-TV to ensure future compliance with the commercial limits.

Station WBFS-TV's failure to place in its public inspection file Children's Television Programming Reports for four quarters constitutes a willful and repeated violation of Section 73.3526(e)(11)(iii). In addition Station WBFS-TV's record of exceeding the commercial limits, including two program-length commercials, constitutes a willful and repeated violation of Section 73.670. The only reason Viacom Stations Group of Miami, Inc. (Viacom) cites for the violations of Section 73.670, human error, does not mitigate or excuse the violations. In fact, the Commission 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). Nor does Viacom's implementation of policies to prevent subsequent violations of the children's television rules and policies relieve it 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).

Section 503(b) of the 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 penalty.⁴ 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."⁵

The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to

⁴ 47 U.S.C. § 503(b).

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).

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).

⁵ 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).

Incorporate the Forfeiture Guidelines (Forfeiture Policy Statement) and Section 1.80 of the Rules establish a base forfeiture amount of \$10,000 for public file violations.⁶ In this case, the licensee has corrected the violation. On the other hand, required documents for four quarters were missing from the public inspection file. Considering the record as a whole, we believe that a \$4,000 forfeiture is appropriate for the licensee's violation of Section 73.3526(e)(11)(iii).

The 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. As discussed above, WBFS-TV exceeded the children's television commercial limits on six occasions, including two program-length commercials and one host-selling violation. Based on the record before us, we think that a forfeiture in the amount of \$8,000 is warranted for WBFS-TV's violations of Section 73.670.

Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act, and Sections 0.283 and 1.80 of the Rules, Viacom Stations Group of Miami, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twelve thousand dollars (\$12,000) for willful and repeated violations of Section 73.3526(e)(11)(iii) and 73.670 of the Rules.

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, Viacom Stations Group of Miami, Inc. 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, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷

⁶ 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section I. Base Amounts for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17113, Appendix A, Section I.

⁷ See 47 C.F.R. § 1.1914.

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 the licensee at the address listed above, and to E. Lanny Nass, Viacom, Inc., 2000 K Street, N.W., Suite 725, Washington, D.C. 20006-1809.

Sincerely,

Donna C. Gregg
Chief, Media Bureau