



Federal Communications Commission  
Washington, D.C. 20554

February 24, 2006

**DA 06-406**

**Released: February 24, 2006**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Channel 39, Inc.  
WBZL(TV)  
2055 Lee Street  
Hollywood, FL 33020

Re: Channel 39, Inc.  
WBZL(TV), Miami, FL  
Facility ID No. 10203  
File No. BRCT-20040930APN

Dear Licensee:

This refers to your license renewal application for station WBZL(TV), Miami, FL.

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).

On September 30, 2004, you filed the above-referenced license renewal application for station WBZL(TV). In response to Section IV, Question 5 of that application, you certify that, during the previous license term, WBZL(TV) failed to comply with the limitations on commercial 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 WBZL(TV) violated the children's

television commercial limits and policies on two occasions between September 24, 2002, and October 20, 2003, and describe the corrective measures taken subsequently to prevent future violations. You indicate that one conventional overage occurred on October 20, 2003, during the 2:00 p.m. to 3:00 p.m. clock hour, and lasted ten seconds. You attribute this overage to human error.

You also indicate that, in your view, another instance did not constitute a commercial overage, but that you are nonetheless reporting it because the station prefers to completely document its efforts to comply with the limits on commercial matter in children's programming. Specifically, you state that on September 24, 2002, station WBZL(TV) aired a WB Network commercial for the Nintendo GameBoy E-Reader, during the "Pokemon" program. You assert that station WBZL(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 three 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 the program-length commercial policy is 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. You argue that this display of three letters from the word "Pokemon" in a commercial for an unrelated product in a quickly moving video display that contains no reference to "Pokemon" does not violate the Commission's rules. You attribute this incident to formats or errors which occurred in the programming supplied by the WB Network. Finally, you state that station WBZL(TV) wishes to avoid any question regarding this issue, and consequently, the licensee has adopted a policy to ensure that the GameBoy commercial will not air in the future in or adjacent to the "Pokemon" program.

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, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess. 24 (1989). Thus, in *Children's Television Programming*, 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."<sup>1</sup> 6 FCC Rcd at 2118. 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*

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<sup>1</sup> 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.

*Broadcasting Company (KNXV-TV)*, 12 FCC Rcd 19504, 19505 (MMB 1997) (*Scripps Howard*), *aff'g* 9 FCC Rcd 2547 (MMB 1994).

With this in mind, we disagree with Channel 39, Inc. (Channel 39) and the WB Network that the broadcast of the commercial for the Nintendo GameBoy E-Reader during the “Pokemon” program does not constitute a program-length commercial. Though Channel 39 contends that the image appears appeared for just over 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. Based on these circumstances, where there is a clear potential for confusion in the minds of young children, the Commission’s program-length policy is applicable. *See Scripps Howard*, 12 FCC Rcd at 19506.

Although Channel 39 argues that the conventional overage resulted from human error, 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). Moreover, the fact that the program-length commercial was inserted into the program by station WBZL(TV)’s national television network does not relieve Channel 39 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). 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 Channel 39 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).

While we consider any violation of our rules limiting the amount of commercial matter in children's programming to be significant, 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 violations of the children's television commercial limits rule and policies described in station WBZL(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.

Accordingly, IT IS ORDERED that, a copy of this Letter shall be sent by First Class and Certified Mail, Return Receipt Requested to Channel 39, Inc. at the address listed above, and to its counsel, Jennifer Tatel, Esquire, Sidley Austin Brown & Wood LLP, 1501 K Street, N.W., Washington, D.C. 20005.

Sincerely,

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau