



Federal Communications Commission
Washington, D.C. 20554

March 15, 2006

DA 06-584

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Tribune Television New Orleans, Inc.
Station WNOL-TV
1400 Poydras Street
Suite 745
New Orleans, Louisiana 70112

Re: Tribune Television New Orleans, Inc.
WNOL-TV, New Orleans, Louisiana
Facility ID No. 54280
File No. BRCT-20050201AZQ

Dear Licensee:

This refers to your license renewal application for station WNOL-TV, New Orleans, Louisiana.

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 commercial 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 February 1, 2005, you filed the above-referenced license renewal application for station WNOL-TV. In response to Section IV, Question 5 of that application, you certify that, during the previous license term, WNOL-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 between September 24, 2002, and February 7,

2004, station WNOL-TV violated the children's television commercial limits and policies on three occasions. First, you state that two conventional overages occurred on Saturday, February 7, 2004, and were 30-seconds in duration. You attribute these overages to human error.

Second, you report that on September 24, 2002, station WNOL-TV aired a WB Network commercial for the Nintendo GameBoy E-Reader, during the "Pokemon" program. You assert that station WNOL-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. Finally, you describe corrective measures taken subsequently to prevent future violations.

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, 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."¹ 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'g* 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

¹ *Children's Television Programming*, 6 FCC Rcd at 2118.

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. *Scripts Howard*, 12 FCC Rcd at 19506.

Regarding the reasons given for the program-length commercial, the fact that it was inserted into the program by station WNOL-TV’s television network does not relieve WNOL-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). The reason cited for the conventional overages, human error, does not mitigate or excuse the violations. In fact, the Commission has repeatedly rejected human error and 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 WNOL-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).

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 WNOL-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 Lawrence Delia, Vice President and General Manager, Tribune Television New Orleans, Inc. at the address listed above, and to its counsel, R. Clark Wadlow, Esquire, Sidley Austin Brown & Wood LLP, 1501 K Street, NW, Washington, D.C. 20005.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau