



Federal Communications Commission
Washington, D.C. 20554

March 29, 2006

DA 06-640

Released: March 29, 2006

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Media General Communications, Inc.
WJWB(TV)
333 East Franklin Street
Richmond, VA 23219

Re: Media General Communications, Inc.
WJWB(TV), Jacksonville, FL
Facility ID No. 29712
File No. BRCT-20040930BMM
NAL/Acct. No. 0641420037
FRN: 0002050185

Dear Licensee:

We have before us the above-captioned application of Media General Communications, Inc. (“Media General”) for renewal of its license for Station WJWB(TV), Jacksonville, Florida. This letter constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE to Media General in the amount of fourteen thousand dollars (\$14,000), issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”),¹ under authority delegated to the Chief of the Media Bureau by Section 0.283 of the Commission’s Rules (the “Rules”).² The forfeiture is proposed against Media General for its apparent willful and repeated violation of Section 73.3526(e)(11)(i) of the Rules, which requires each commercial television broadcast station to place in its public inspection file TV issues/programs lists each calendar quarter³ and of Section 73.670 of the Rules, which limits the amount of commercial matter which may be aired by such a station during children’s programming.⁴

Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.⁵ Section 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV

¹ 47 U.S.C. § 503(b)

² 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3526(e)(11)(i).

⁴ See 47 C.F.R. § 73.670.

⁵ See 47 C.F.R. § 73.3526.

broadcast station's public inspection file each calendar quarter. 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 the licensee's rule violation.⁶

Moreover, in the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 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 renewal applications 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 by such stations 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.⁷ 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."⁸ The commercial limits became effective on January 1, 1992.⁹

On September 30, 2004, you filed the above-captioned license renewal application (FCC Form 303-S) for Station WJWB(TV) (the "Application"). In response to Section IV, Question 3 of the Application, you certify that, during the previous license term, you failed to place in the station's public inspection file, at the appropriate times, all of the documentation required by Section 73.3526 of the Rules. In Exhibit 17, you state that, during the first quarter of 1997, due to confusion at the station concerning the applicability of certain Commission rules after the station changed its affiliation from the ABC Television Network to the WB Network, you failed to prepare and place in the station's public inspection file TV issues/programs lists. That omission continued through the third quarter of 2000. You assert that you mistakenly attempted to include summaries of the station's issue-responsive programming in its Children's Television Programming Reports. Upon discovering its mistake, you claim, Station WJWB(TV) immediately began preparing TV issues/programs lists. You also contend that, since that time,

⁶ 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).

⁷ *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

⁸ *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).

⁹ *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

the station has prepared and placed copies of these lists in its public inspection file in a timely manner.

In addition, in response to Section IV, Question 5 of the Application, you certify that, during the previous license term, the station failed to comply with the limitations on commercial matter aired during children's programming specified in Section 73.670 of the Rules. In Exhibit 25 and in a January 10, 2006 amendment to the Application, you indicate that the station exceeded the children's television commercial limits on three occasions between April 14, 1999, through October 18, 2003. Of those violations, one was a 90-second overage and one was a program-length commercial, which occurred when a commercial for Kellogg's Scooby-Doo cereal aired during the "Scooby-Doo" program. According to your description, the remaining violation involved host-selling. You attribute the 90-second overage to errors on the part of the WB Network's contractor. As for the program-length commercial and host-selling violations, you claim that they resulted from human errors. You also describe remedial efforts taken to prevent these errors from occurring in the future.

With respect to the 90-second overage, you argue that Media General should not be sanctioned for the errors of the WB Network's contractors. Specifically, you aver that the station did not participate in the "selection, planning or approval" of the commercials provided by the WB Network. Further, you assert that the station could not have anticipated the commercial overage that resulted from inadvertent errors by the WB Network's contractor.¹⁰

That the 90-second commercial overage may have been caused by the WB Network's contractor does not absolve Media General 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.¹¹

Your failure to have timely placed in the Station WJWB(TV) public inspection file TV issues/programs lists constitutes an apparent willful and repeated violation of Section 73.3526(e)(11)(i). In addition, Station WJWB(TV)'s broadcast of material that exceeded the children's television commercial limits constitutes an apparent willful and repeated violation of Section 73.670. 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 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.¹² In determining the appropriate forfeiture amount, we

¹⁰ In support of your argument, you cite *Complaints Against Various Television Licensees Concerning their February 1, 2004, Broadcast of the Super Bowl XXXVIII Halftime Show*, 19 FCC Rcd 19230, 19240-41 (2004), Forfeiture Order, FCC 06-19 (rel. March 5, 2006).

¹¹ 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).

¹² 47 U.S.C. § 503(b).

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.”¹³

The Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules establish a base forfeiture amount of \$10,000 for public file violations and a base forfeiture amount of \$8,000 for violation of the children’s television commercial limits.¹⁴ In this case, you concede that you failed to prepare and place in the station’s public file TV issues/programs lists for numerous quarters. As a result, the public file was not complete for a substantial period of time. You also acknowledge that the station exceeded the children’s television commercial limits on three occasions, including one program-length commercial and one host-selling violation. Considering the record as a whole, we believe that a \$14,000 proposed forfeiture is appropriate for the apparent violations of Sections 73.3526(e)(11)(i) and 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, Media General Communications, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of fourteen thousand dollars (\$14,000) for its apparent willful and repeated violations of Sections 73.3526(e)(11)(i) and 73.670 of the Rules.

IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Rules, within thirty (30) days of the release date of this Notice of Apparent Liability, Media General Communications, 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

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).

¹³ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17100 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

¹⁴ 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.

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.

The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

Requests for full payment of the proposed forfeiture under the installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁵

Finally, IT IS ORDERED that, a copies of this Notice of Apparent Liability shall be sent by First Class and Certified Mail, Return Receipt Requested to Media General Communications, Inc. at the address listed above, and to its counsel, Kevin P. Latek, Esquire, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036.

Sincerely,

Donna C. Gregg
Chief, Media Bureau

¹⁵ See 47 C.F.R. § 1.1914.