



Federal Communications Commission
Washington, D.C. 20554

July 6, 2007

DA 07-3044

Released: July 6, 2007

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

WTXX Inc.
WTXX(TV)
One Corporate Center
Hartford, CT 06103

Re: WTXX Inc.
WTXX(TV), Waterbury, CT
Facility ID No. 14050
File No. BRCT-20061201APT

Dear Licensee:

This refers to your license renewal application for station WTXX(TV), Waterbury, CT.

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.¹ The commercial limitations became effective on January 1, 1992.²

On December 1, 2006, you filed the above-referenced license renewal application for station WTXX(TV). In response to Section IV, Question 5 of that application, you certify that, during the previous license term, WTXX(TV) failed to comply with the limitations on commercial

¹ *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

² *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

matter in children's programming specified in Section 73.670 of the Commission's Rules. In Exhibit 19 and in a January 16, 2007 amendment to that application, you indicate that station WTXX(TV) violated the children's television commercial limits and policies on four occasions between September 24, 2002, and December 24, 2006. You report that one of the violations was 60 seconds in duration. You attribute this overage to human error on the part of an employee of GDMX, an entity that provides the WB Network with program format, content integration, and satellite uplink services.

You state that on September 24, 2002, station WTXX(TV) aired a commercial for the Nintendo GameBoy E-Reader, during the "Pokemon" program. You indicate that station WTXX(TV) did not know until after broadcast, when the WB Network brought the matter to its 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 you believed 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 or the Children's Television Act's commercial time limits. Additionally, in support of your assertion that this incident does not violate the Commission's children's television commercial limits, you cite the Commission's conclusion in *Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, 21 FCC Rcd 2664 (2006) ("*Omnibus Order*"), that a broadcast of "The Amazing Race 6" did not violate indecency restrictions. Specifically, in the *Omnibus Order*, the Commission considered whether a momentary showing of the phrase "Fuck Cops!" written on the side of a train during an episode of "The Amazing Race 6" was indecent. The Commission found that the program was not indecent under the three principal factors that comprised the Commission's contextual analysis of this incident.

Finally, you report that on December 23, 2006 and December 24, 2006, station WTXX(TV) aired a commercial containing a brief appearance of "Xiaolin" characters during the "Xiaolin Showdown" program. Based on your description, a view of a "postopia.com" web site page was displayed, and the display included a banner across the top of the screen that depicted "Xiaolin" characters. Further, you state that the banner was "no more than a tenth of the screen height." You indicate that The Licensee stated that the CW Network "mistakenly included" this commercial in the "Xiaolin Showdown" program.³

As a preliminary matter, we note that Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials

³ From the licensee's description of the "Xiaolin Showdown" commercial, it appears that this incident is more akin to a violation of the Commission's "host-selling" policy, rather than a program-length commercial.

and programs.⁴ 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."⁵ 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.⁶

With respect to the station's broadcast of the commercial for the Nintendo GameBoy E-Reader, although the Licensee contended 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.⁷ 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. Although you cited a case in support of the assertion that this incident does not violate the children's television commercial limits, that case is inapposite since it did not deal with the commingling of program content and commercial matter in children's programming.

Regarding the reason given for the 60-second overage, the fact that it was erroneously inserted into the program by station WTXX(TV)'s television network does not relieve WTXX(TV) of responsibility for the violations. 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).

⁴ S. Rep. No. 227, 101st Cong., 1st Sess. 24 (1989).

⁵ *Children's Television Programming*, 6 FCC Rcd at 2118.

⁶ *See, e.g., Scripps Howard Broadcasting Company (KNXV-TV)*, 9 FCC Rcd 2547 (1994), *aff'd* 12 FCC Rcd 19504, 19505 (MMB 1997).

⁷ *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").

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 WTXX(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 the licensee at the address listed above, and to its counsel, R. Clark Wadlow, Esquire, Sidley Austin Brown & Wood LLP, 1501 K Street, N.W., Washington, D.C. 20005.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau