

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Hearst-Argyle Properties, Inc.)	Facility I.D. No. 73292
Licensee of Station WMUR-TV)	NAL/Acct. No. 0841420050
Manchester, New Hampshire)	FRN: 0002538445

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: June 16, 2008

Released: June 18, 2008

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),¹ by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,² we find that Hearst-Argyle Properties, Inc. (the “Licensee”), licensee of Station WMUR-TV, Manchester, New Hampshire (the “Station”), apparently willfully and repeatedly violated Sections 73.670 and 73.3526(e)(11)(iii) of the Rules, by failing to comply with the limits on commercial matter in children’s programming, and by failing to publicize the existence and location of the Station’s Children’s Television Programming Reports, respectively.³ Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of eight thousand dollars (\$8,000).

II. BACKGROUND

2. In the Children’s Television Act of 1990, (the “CTA”),⁴ 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 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 during children’s programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a “program-length commercial”).⁵

¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. §§ 73.670 and 73.3526(e)(11)(iii).

⁴ Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b and 394.

⁵ *Children’s Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

3. Under the Commission's rules implementing the CTA, each television broadcast station licensee has an obligation, during its license term, to air programming that serves the educational and informational needs of children through both the licensee's overall programming and programming "specifically designed" to educate and inform children (core programming).⁶ The Commission's rules require commercial licensees to provide information to the public about the shows they air to fulfill their obligation. Section 73.3526(e)(11)(iii) of the Rules requires each commercial television broadcast station to prepare and place in its public inspection file a Children's Television Programming Report for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the educational needs of children. As set forth in Section 73.3526(e)(11)(iii), licensees are also required to file the reports with the Commission and to publicize for the public the existence and location of the reports.

4. On December 1, 2006, the Licensee filed its license renewal application (FCC Form 303-S) for Station WMUR-TV (the "Application") (File No. BRCT-20061201BPK). In response to Section IV, Question 5 of the Application, the Licensee stated that, during the previous license term, the Station failed to comply with the limits on commercial matter in children's programming specified in Section 73.670 of the Rules. In Exhibit 19, the Licensee reported that, during the first two quarters of 2004, and the fourth quarter of 2005, the Station exceeded the children's television commercial limits by 15 seconds on 21 occasions.

5. The Licensee indicated that, in each instance, the overage occurred when the Station aired a 30-minute children's program in the same clock hour as a general audience program or other programming, thereby causing a half-hour "island" of children's programming for which the commercial limits were not prorated. According to the Licensee, 20 of the overages occurred when the Station's programming staff separated network children's programming, "that had previously run in a single, one-hour block targeting 12-and-under children." The Licensee stated that in making the scheduling changes, the Station's staff "failed to properly apply the Commission's pro-rationing policy to 30-minute islands of programming." Further, the Licensee argued that although the Station exceeded the children's television commercial limits by 15 seconds during a half-hour children's program, in the majority of these instances, the total commercial time for the clock hour in which the children's program aired was in compliance with the commercial limits. The Licensee also described the procedures it implemented to prevent future violations.

6. In Exhibit 24, the Licensee reported that during the fourth quarter of 2003, it discovered that it had not publicized the existence and location of the Station's Children's Television Programming Reports since March 28, 2001. The Licensee claimed that since the first quarter of 2004, it has publicized the existence and location of the Station's Children's Television Programming Reports on a weekly basis.

III. DISCUSSION

7. Station WMUR-TV's record of exceeding the children's television commercial limits on 21 occasions during the last license term, and its failure to publicize the existence and location its Children's Television Programming Reports constitute willful and repeated violations of Sections 73.670 and 73.3526(e)(11)(iii) of the Rules, respectively. The 21 instances in which Station WMUR-TV exceeded the children's television commercial limits represent a high number of violations. It appears that the 15-second overages occurred as a result of inadvertence and/or human error on the part of the Station's staff, who failed to prorate the commercial limits to half-hour islands of children's programming. However, the Commission has repeatedly rejected inadvertence and human error as a basis

⁶ 47 C.F.R. § 73.671.

for excusing violations of the children's television commercial limits.⁷ 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 the Licensee of liability for the violations which have occurred.⁸

8. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁹ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹⁰ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹¹ and the Commission has so interpreted the term in the Section 503(b) context.¹² 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."¹³

9. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3526 and a base forfeiture amount of \$8,000 for violation of Section 73.670.¹⁴ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering 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."¹⁵

10. In this case, the Licensee has acknowledged that it violated the children's television commercial limits on 21 occasions. Moreover, the Licensee failed to publicize the existence and location of its Children's Television Programming Reports. Considering the record as a whole, we believe that a proposed forfeiture of \$8,000 is appropriate for the apparent willful and repeated violations of Sections 73.670 and 73.3526(e)(11)(iii).

IV. ORDERING CLAUSES

⁷ 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).

⁸ 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).

⁹ 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹² See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹³ 47 U.S.C. § 312(f)(2).

¹⁴ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁵ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

11. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Hearst-Argyle Properties, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of eight thousand dollars (\$8,000) for its apparent willful and repeated violations of Sections 73.670 and 73.3526(e)(11)(iii) of the Commission's Rules.

12. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Hearst-Argyle Properties, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the proposed 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 in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

14. 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.

15. 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.

16. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁶

17. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Hearst-Argyle Properties, Inc., c/o Brooks Pierce McLendon Humphrey & Leonard, LLP, P.O. Box 1800, Raleigh, North Carolina 27602, and to its counsel, Mark J. Prak, Esquire, Brooks Pierce McLendon Humphrey & Leonard, LLP, P.O. Box 1800, Raleigh, North Carolina 27602.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁶ See 47 C.F.R. § 1.1914.