



Federal Communications Commission  
Washington, D.C. 20554

May 17, 2013

**DA 13-1117**  
**Released: May 17, 2013**

Atlanta Television Station WUPA, Inc.  
1800 K Street NW  
Suite 920  
Washington, D.C. 20006

Re: WUPA-DT, Atlanta, Georgia  
Facility ID No. 6900  
FRN: 0003474871

Dear Licensee:

This letter refers to your license renewal application for WUPA-DT (the "Station")<sup>1</sup> and hereby admonishes the Station for its failure to comply with the limits on commercial matter in children's programming.

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.<sup>2</sup> The commercial limitations became effective on January 1, 1992.<sup>3</sup>

On December 3, 2012, you filed the above-referenced license renewal application for the Station. In response to Section IV, Question 5 of that application, you certified that, during the previous license term, the Station 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 22 to that application, you reported that, on December 23, 2006, the Station aired a commercial (for Post Cereal's Cocoa Pebbles) during the "Xiaolin Showdown" program that contained glimpses of characters from the program on the screen. The appearance is described as "small, fleeting, and confined to a small area of the picture." The Licensee reported that the CW Network's technology used to review children's commercials prior to air proved inadequate.<sup>4</sup>

<sup>1</sup> File No. BRC DT-20121203BAV.

<sup>2</sup> *Children's Television Programming*, Report and Order, 6 FCC Rcd 2111, 2218, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

<sup>3</sup> *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

<sup>4</sup> File No. BRC DT-20121203BAV, Exhibit 22.

From the Licensee's description of the commercial, it appears that this incident is an example of "host-selling," which involves program-related characters promoting any product during the program in question and is a practice that the Commission has denounced because it takes unfair advantage of the trust that children place in such characters.<sup>5</sup> In this regard, the Commission has stated that "host-selling encompasses any character endorsement - not just direct vocal appeals - that has the effect of confusing a child viewer from distinguishing between program and non-program material."<sup>6</sup> For example, the Commission has determined that "advertisements featuring the same type of animation that is regularly featured in the accompanying program constitutes host-selling."<sup>7</sup> Based on the information before us, we believe the commercial broadcast on December 23, 2006, violated the Commission's host-selling policy.

The fact that the commercial was erroneously inserted into the program by station WUPA-DT's television network does not relieve WUPA-DT 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.<sup>8</sup>

Although we consider any violation of our rules limiting the amount of commercial matter in children's programming to be significant, the violation described in your renewal application appears to have been an isolated occurrence. Although we do not rule out more severe sanctions for a violation 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 this violation of the children's television commercial limits rule and policies described in the Station'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.

Sincerely,

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>5</sup> *WTVV Licensee, Inc.*, Forfeiture Order, 25 FCC Rcd 3741, 3743 (2010)

<sup>6</sup> *WHYY, Inc.*, Letter, 7 FCC Rcd 7123 (1992).

<sup>7</sup> *Id.*

<sup>8</sup> *See, e.g., WTXX, Inc.*, Letter, 22 FCC Rcd 11968 (2007); *Max Television of Syracuse, L.P.*, 10 FCC 8905 (1995).