



Federal Communications Commission  
Washington, D.C. 20554

November 13, 2013

**DA 13-2159**

**Released: November 13, 2013**

Winston Broadcasting Network, Inc.  
2690 State Road  
Cuyahoga Falls, Ohio 44223

Re: WBNX-TV, Akron, Ohio  
Facility ID No. 72958  
FRN: 0003775640

Dear Licensee:

This letter refers to your license renewal application for WBNX-TV (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 May 30, 2013, you filed the above-referenced license renewal application for the Station. In response to Section IV, Question 5 of that application, you attached an exhibit which included an email memorandum from the CW Network to affiliates which 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 memorandum stated that the CW Network's technology used to review children's

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<sup>1</sup> File No. BRCDDT-20130530ACW.

<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).

commercials prior to air proved inadequate. The memorandum describes this commercial as “an apparent violation of the FCC’s children’s advertising rules.”<sup>4</sup>

From the memorandum provided by the network describing 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.

You argue that the images did not appear during the commercial portion of the spot but during a portion of the material promoting a contest, relying on *WDBD License Corp.* as support for the proposition that this did not represent a violation of the commercial limits requirements.<sup>8</sup> We disagree, and agree with the network’s memorandum and other CW Network affiliates that this commercial violated the commercial limits requirements.<sup>9</sup> We do not believe that there is a clear distinction between the commercial and promotional portions of the spot. Moreover, unlike in *WDBD License Corp.*, the images of characters here did not merely identify the product prize in a free contest.

The fact that the commercial was erroneously inserted into the program by station WBNX-TV’s television network does not relieve WBNX-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.<sup>10</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.

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<sup>4</sup> File No. BRC DT-20130530ACW, Exhibit 22.

<sup>5</sup> *WVTV 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> Licensee Exhibit 22 (citing *WDBD License Corp.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd. 1151 (2000) at 6.

<sup>9</sup> See *Atlanta Television Station WUPA, Inc.*, Letter, 28 FCC Rcd 7233 (Vid. Div. 2013).

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

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

cc:  
Mark J. Prak  
Brooks, Pierce, et al.  
P.O. Box 1800  
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