

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

In the Matter of)
)
Young Broadcasting of Davenport Inc.) Facility I.D. No. 6885
Licensee of Station KWQC-TV) NAL/Acct. No.: 201441420031
Davenport, Iowa) FRN: 0003475670

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: September 10, 2014

Released: September 10, 2014

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 we find that that Young Broadcasting of Davenport Inc. (the “Licensee”), licensee of Station KWQC-TV, Davenport, Iowa, (the “Station”), apparently willfully and repeatedly violated (i) Section 73.3526(e)(11)(iii) by failing to publicize the existence and location of the Station’s Children’s Television Programming Reports and (ii) Section 73.670 of the Rules by not complying with the website address component of the Commission’s commercial limits rule. 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 Two Thousand Dollars (\$2,000) for its failure to publicize the existence and location of the reports and we hereby admonish the Licensee for its violation of the commercial limits rule.

II. BACKGROUND:

2. 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.² As set forth in subsection 73.3526(e)(11)(iii), each commercial television licensee is required to prepare and place in its public inspection file a Children’s Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts that it made during that quarter to serve the educational and informational needs of children. That subsection also requires licensees to file the reports with the Commission and to publicize the existence and location of the reports.

3. Section 73.670 of the Rules 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.³ The website address component of the commercial limits rule restricts the display of Internet

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

² 47 C.F.R. § 73.3526.

³ See *Policies and Rules Concerning Children’s Television Programming*, MM Docket Nos. 90-570 and 83-670, Report and Order, 6 FCC Rcd 2111 (1991), recon. granted in part, Memorandum Opinion and Order, 6 FCC Rcd 5093 (1991).

web addresses during children's programming directed at children ages 12 and under.⁴ Specifically, Section 73.670(b) permits the display of Internet website addresses during program material or promotional material not counted as commercial time only if: (1) the website offers a substantial amount of *bona fide* program-related or other noncommercial content; (2) the website is not primarily intended for commercial purposes, including either e-commerce or advertising; (3) the website's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and (4) the page of the website to which viewers are directed by the website address is not used for e-commerce, advertising, or other commercial purposes (e.g., contains no links labeled "store" and no links to another page with commercial material).⁵

4. The Licensee filed its license renewal application (FCC Form 303-S) for the Station on September 30, 2013 and filed an amendment to the application on January 27, 2014.⁶ In response to Section IV, Question 5 of that application, the Licensee attached an exhibit which admitted that on October 12, 2013, the Station aired the URL address for the website "www.lazytown.com," (*last visited Jul. 2, 2014*) which appeared during the closing credits of the NBC Network supplied children's program "LazyTown."⁷ The inclusion of the website address is described by an NBC Network communication sent to the Station as being "inadvertently included" and " fleeting." NBC Network goes on to describe the precautions it takes to avoid such incidents and states that it is working "to develop and implement additional procedures to minimize the possibility of a re-occurrence of this isolated incident." You argue that because the website address was displayed for an "exceedingly short duration" and would not have been "discernible to a reasonable child viewer," the display was not a violation of the rules or was, at most, a *de minimis* violation. The Licensee requests that, if the Commission finds the display of the website address to be other than a *de minimis* violation of Section 73.760, the violation should be treated in a similar manner to recent "host-selling" violations, which resulted in the sanction of an admonishment.⁸

5. In response to Section IV, Question 10 of the Application, the Licensee admitted that it had not publicized the existence and location of the Station's Children's Television Programming Reports for approximately two years during the license period.⁹

III. DISCUSSION

6. The Licensee's display of the website URL, albeit for a very short duration, represents a violation of Section 73.670 of the Commission's Rules. The Licensee has provided no evidence demonstrating that the website complies with the four-prong test and, upon examination of the website, we conclude that it does not comply. In particular, the website does not meet the fourth prong of the test

⁴ See 2004 Report and Order, 19 FCC Rcd at 22961, ¶ 50; 47 C.F.R. § 73.670, note 2.

⁵ See 47 C.F.R. § 73.670(b). In 2006, on reconsideration, the Commission retained the original text of Section 73.670(b) concluding that "the website address rule fairly balances the interest of broadcasters in exploring the potential uses of the Internet with our mandate to protect children from over-commercialization." The Commission went on to clarify that "broadcasters are free to display the addresses of websites that do not comply with the [four-prong] test during allowable commercial time, as long as it is adequately separated from the program material." 2006 Order on Reconsideration, 21 FCC Rcd at 11078, ¶ 32.

⁶ File No. BRCDT-20130930BCP.

⁷ *Id.*, Exh. 22.

⁸ *Id.* at p. 2 (citing see, e.g., Winston Broadcasting Network, Inc., Admonishment Letter, 28 FCC Rcd 15627 (Vid. Div. 2013) (admonishing television station in connection with the Xiaolin Showdown incident); WAOW-WYOW Television, Inc., Admonishment Letter, 29 FCC Rcd 133 (Vid. Div. 2014) (same)).

⁹ File No. BRCDT-20130930BCP, Exh. 27.

because the top of the homepage of the website contains content of a commercial nature in the form of a link labeled “shop.” Furthermore, although the Licensee states that the website address was only displayed during the closing credits, the Commission has specifically stated that closing credits are considered to be part of the television programming material and are subject to the website address rule.¹⁰

7. We note that while the commercial matter may have been inserted into the program by the Station’s television network, this does not relieve the Station of responsibility for the violations. In this regard, the Commission has consistently held that 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 Although corrective actions may have been taken to prevent future violations, this does not relieve the Station from liability for violations which have already occurred.¹²

8. 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 license renewal application appears to have been an isolated occurrence. While we do not rule out more severe sanctions for a similar violation of this nature in the future, we have determined that an admonishment is appropriate at this time.

9. The Licensee’s failure to publicize the existence and location of the Station’s Children’s Television Programming Reports constitutes apparent willful and/or repeated violations of Section 73.3526(e)(11)(iii).

10. 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.¹³ 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.¹⁴ 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,¹⁵ and the Commission has so interpreted the term in the Section 503(b) context.¹⁶ 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.”¹⁷

11. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for public file violations and \$3,000 for failure to file a

¹⁰ *2006 Order on Reconsideration*, 21 FCC Rcd at 11080, ¶ 36.

¹¹ See, e.g., *WTXX, Inc.*, Admonishment Letter, 22 FCC Rcd 11968 (Vid. Div. 2007); *Max Television of Syracuse, L.P.*, Notice of Apparent Liability for Forfeiture, 10 FCC 8905 (1995).

¹² See *International Broadcasting Corp.*, Memorandum Opinion and Order, 19 FCC 2d 793, 794 (1969) (permitting mitigation as an excuse based upon corrective action following a violation would “tend to encourage remedial rather than preventive action”).

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

¹⁴ 47 U.S.C. § 312(f)(1).

¹⁵ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁶ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁷ 47 U.S.C. § 312(f)(2).

required form.¹⁸ 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)(E) 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.”¹⁹ In this case, the Licensee failed to publicize the Station’s Children’s Television Programming Reports for two years, and we believe that a forfeiture in the amount of \$2,000 is appropriate for the Licensee’s apparent willful and repeated violations of Sections 73.3526.²⁰

IV. ORDERING CLAUSES

12. 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 Young Broadcasting of Davenport Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of Two Thousand Dollars for its apparent willful and repeated violation of Sections 73.3526 of the Commission’s Rules.

13. IT IS FURTHER ORDERED, that Young Broadcasting of Davenport Inc. is **ADMONISHED** for the violation of Section 73.670(b) of the Commission’s website display rules.

14. 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*, Young Broadcasting of Davenport Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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).

16. 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: Evan Morris, Attorney Advisor, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

17. 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.

¹⁸ 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.

¹⁹ 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.

²⁰ Based upon the record before us, we think that an admonishment is warranted for the station’s failure to identify CORE children’s programming for publishers of program guides.

18. 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. 20554.²¹

19. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Young Broadcasting of Davenport, Inc., c/o Mark J. Prak, Brooks, Pierce, et al., P.O. Box 1800, Raleigh, North Carolina, 27602.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²¹ See 47 C.F.R. § 1.1914.