



Federal Communications Commission
Washington, D.C. 20554

September 16, 2014

DA 14-1326

Released: September 16, 2014

Channel 49 Acquisition Corporation
c/o Brooks, Pierce, et al.
P.O. Box 1800
Raleigh, NC 27602
Attention Mark J. Prak

Re: KTEN(TV)
Ada, Oklahoma
Facility ID No. 35666
FRN: 0003755279

Dear Licensee:

This letter refers to your license renewal application for KTEN(TV), Ada, Oklahoma (the "Station"),¹ 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.² The commercial limitations became effective on January 1, 1992.³

On January 31, 2014, 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 admitted to a potential violation of the Commission's commercial limit rules that occurred during the children's program "Xiaolin Showdown." You also admitted to a second potential violation of the Commission's commercial limit rules during the children's program "LazyTown."

¹ File No. BRCDDT-20140131ACQ ("KTEN Renewal").

² *Children's Television Programming*, MM Docket Nos. 90-570 and 83-670, Report and Order, 6 FCC Rcd 2111, 2118, ¶ 44 *recon. granted in part*, 6 FCC Rcd 5093, 5098, ¶ 28 (1991).

³ *Children's Television Programming*, MM Docket Nos. 90-570 and 83-670, Order, 6 FCC Rcd 5529 (1991).

First, the Station references an explanation provided in its fourth quarter 2006 children's commercial time limit certification ("certification") concerning a potential violation of the Commission's commercial limit rules.⁴ In the certification, the Station admits that on December 23, 2006, it aired a commercial (for Post Cereal's Cocoa Pebbles) during the "Xiaolin Showdown" program that contained "glimpses" of characters from the program "on a small portion of the screen." The certification describes the images of the characters as "small, fleeting, and confined to a small area of the picture." The Station states that the incident was reported to it in a communication from the CW Network, which acknowledged that "the technology used by the CW Network to review children's commercials prior to air proved inadequate." The communication described the commercial as "an apparent violation of the FCC's children's advertising rules." A few weeks after the incident, the CW Network advised the Station that it had undertaken efforts "to avoid repetition of this regrettable error."⁵

Based on the Station's description in its commercial limit certification, it appears that this incident is an example of "host-selling." Host-selling 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.⁶ 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."⁷ 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."⁸ Based on the information before us, we believe the commercial broadcast on December 23, 2006, violated the Commission's host-selling policy.

Second, the Station admits 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."⁹ The inclusion of the website address is described by a 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. You request that, if the Commission finds the display of the website address to be other than a *de minimis* violation of Section

⁴ *KTEN Renewal*, Attachment 22 (Children's Programming Commercial Limitations) at p. 3.

⁵ Fourth Quarter 2006 Certification of Commercial Material in Children's Television Programs, Electronic Public File of Station KTEN(TV), pg. 5-6 (Jan. 2, 2007), *available at* https://stations.fcc.gov/station-profile/kten/more-public-files/browse-%3erecords_concerning_commercial_limits_in_childrens_programs (follow "2006" hyperlink; then select "Certifications 4Q 2006").

⁶ *WVTV Licensee, Inc.*, Forfeiture Order, 25 FCC Rcd 3741, 3743, ¶ 12 (Vid. Div. 2010).

⁷ *WHYY, Inc.*, Admonishment Letter, 7 FCC Rcd 7123 (MMB 1992).

⁸ *Id.* at ¶ 2 (*citing KCOP Television, Inc.*, Admonishment Letter (MMB, rel. May 15, 1989)).

⁹ *KTEN Renewal*, Attachment 22 (Children's Programming Commercial Limitations) at pp. 1-2.

73.760, the violation should be treated in a similar manner to recent “host-selling” violations, which resulted in the sanction of an admonishment.¹⁰

In furtherance of the CTA’s underlying purpose to protect children from excessive and inappropriate commercial messages, the Commission adopted the website address rules.¹¹ The website address rules restrict the display of Internet web addresses during children’s programming directed at children ages 12 and under.¹² 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).¹³

Even though the website address was displayed for only a short duration (estimated at less than one-half of one second), the display of a website address during program material, for any period of time, that does not comply with the four-prong test is a violation of Section 73.670(b). No evidence has been provided 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 because the top of the homepage of the website contains content of a commercial nature in the form of a link labeled “shop.” Furthermore, while you state 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.¹⁴

We note that in both instances discussed above, 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

¹⁰ *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)).

¹¹ *See Children’s Television Obligations of Digital Television Broadcasters*, MM Docket No 00-167, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943, 22961-62, ¶¶ 50-52 (2004) (“*2004 Report and Order*”), *aff’d in part, amended in part*, Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065, 11077-78, ¶¶ 29-32 (2006) (“*2006 Order on Reconsideration*”); see also 47 C.F.R. § 73.670(b), (c), and (d).

¹² *See 2004 Report and Order*, 19 FCC Rcd at 22961, ¶ 50; 47 C.F.R. § 73.670, note 2.

¹³ *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 website 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.

¹⁴ *2006 Order on Reconsideration*, 21 FCC Rcd at 11080, ¶ 36.

violations which do occur.¹⁵ 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.¹⁶

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 admonition is appropriate at this time. Therefore, based upon the facts and circumstances before us, we **ADMONISH** you for the violation of Section 73.670 of the Commission's rules and host-selling policy. We remind you that the Commission expects all commercial television licensees to comply with the limits on commercial matter, including restrictions on the display of website addresses and host-selling, during 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

¹⁵ 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 Rcd 8905 (MMB 1995).

¹⁶ 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").