

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

In the Matter of)	
)	
Deerfield Media (Baltimore) Licensee, LLC)	Facility ID No.: 60552
)	NAL/Acct. No.: 202041420001
Licensee of Station WUTB(TV), Baltimore,)	FRN: 0022739833
Maryland)	LMS File No. 0000115626

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 23, 2020

Released: November 23, 2020

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 (Act), and section 1.80 of the Commission’s Rules (Rules),¹ by the Chief, Video Division, Media Bureau, pursuant to authority delegated under section 0.283 of the Rules,² we find that Deerfield Media (Baltimore) Licensee, LLC (Licensee), the licensee of Station WUTB(TV), Baltimore, Maryland (Station or WUTB), willfully and repeatedly violated section 73.670 of the Rules, by failing to comply with the limits on commercial matter in children’s programming.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 twenty thousand dollars (\$20,000).

II. BACKGROUND

2. In the Children’s Television Act of 1990,⁴ 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 that 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 that may be aired during children’s programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission has also stated that a program associated with a product, in which commercials for that product are aired, would be treated as a program-length commercial, (i.e., the entire program would be counted as commercial time).⁵ Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and

¹ 47 U.S.C. § 503(b); 47 CFR § 1.80.

² See 47 CFR § 0.283.

³ See 47 CFR § 73.670.

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

⁵ *Policies and Rules Concerning Children’s Television Programming, et al.*, MM Docket Nos. 90-570 and 83-670, Report and Order, 6 FCC Rcd 2111, 2118, paras. 44-46 (1991) (*1991 Children’s TV R&O*), *recon. granted in part*, 6 FCC Rcd 5093, 5098, paras. 28-34 (1991).

programs.⁶ Given this congressional concern, the Commission has made it clear that program-length commercials, by their very nature, are extremely serious violations of the children's television commercial limits, stating that the program-length commercial policy "directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter."⁷

3. On June 1, 2020, the Licensee filed its license renewal application (FCC Form 2100, Schedule 303-S) for WUTB (Application).⁸ In response to the question in the Application entitled *Children's Programming Commercial Limitations*, the Licensee responded "No", indicating that, during the previous license term the Station failed to fully comply with the commercial limits on children's television programming specified in section 73.670 of the Rules, and the Commission's commercial limit policies related to host-selling and program-length commercials.⁹ In an exhibit to the Application, the Licensee reported that on eleven occasions between November 10, 2018, and December 15, 2018, the Station aired a commercial for the "Hot Wheels Super Ultimate Garage" play set during eight showings of the program "Team Hot Wheels" (i.e. the commercial aired multiple times during certain episodes). Each impacted episode was 30-minutes in length.¹⁰

4. The Licensee states that the commercial was "inadvertently" placed by the KidsClick Network from which the Licensee obtained the programming block, the KidsClick Network "promptly pulled the commercial from the program after discovering the issue," and that the Licensee has "reminded its staff that they are required to monitor programming broadcast by the station for compliance with the Commission's commercial limitations."¹¹ While the Licensee acknowledges that it may be held liable for commercial limit violations caused by third-party programming sources, it asserts that "this was an isolated incident and that it otherwise has a long history of compliance with the Commission's rules."¹² The Licensee goes on to request that, should the Commission find forfeiture is appropriate, no upward adjustment is necessary and it be no higher than the base forfeiture amount for commercial limit violations established under the Rules.¹³

III. DISCUSSION

5. We find that the Licensee is apparently liable for a forfeiture in the amount of \$20,000 due to WUTB's record during the last license term of exceeding the Commission's commercial limits on eight occasions,¹⁴ all of which resulted from the airing of program-length commercials, which constitutes

⁶ See S. Rep. No. 101-227, at 24 (1989).

⁷ 1991 *Children's TV R&O*, 6 FCC Rcd at 2118, para. 44. See, e.g., *KSKN Television Inc., (KSKN(TV)), Spokane, Washington*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 6150, 6152, para. 7 (2010) (*KSKN NAL*) (finding that a commercial containing a brief reference to "Yu-Gi-Oh!" trading cards airing during the "Yu-Gi-Oh!" program, caused the entire program to be considered a program-length commercial).

⁸ WUTB Application for Renewal of License, File No. 0000115626, as amended (filed November 4, 2020).

⁹ See *id.*

¹⁰ *Id.* at "Amendment to WUTB Commercial Limits Exhibit," 1 (WUTB Renewal Exhibit).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 1-2. Section 1.80 of the Rules establishes a base forfeiture amount of \$8,000 for a violation of the Commission's children's television commercial requirements. 47 CFR § 1.80(b), note to paragraph (b)(9), Section I.

¹⁴ Although the commercial aired eleven separate times, the Licensee is only liable for eight program-length commercials because eight episodes of "Team Hot Wheels" were impacted. In instances where a single airing of a

(continued...)

an apparent willful and repeated violation of section 73.670 of the Rules. Airing a commercial for a Hot Wheels-themed toy during a Hot Wheels-themed show fits squarely within Commission precedent regarding what constitutes a program-length commercial.¹⁵ We believe that, in the context of the cognitive abilities of young children, airing a commercial for a “Hot Wheels Super Ultimate Garage” play set during the “Team Hot Wheels” program presents the clear risk for confusion between “program content” and “commercial matter” that this regulation was designed to avoid.¹⁶

6. We find that the eight instances that the Station exceeded the children’s television commercial limits represent a substantial number of violations. Overages of this number and nature mean that children have been subjected to commercial matter greatly in excess of the limits contemplated by Congress when it enacted the Children’s Television Act of 1990.¹⁷ Indeed, while recent program-length commercial cases often involve only brief, fleeting images of program-related content in a commercial with content otherwise unrelated to the program, the commercial in this case centers around a product directly related to the children’s program being aired and was not an isolated occurrence as alleged by the Licensee.¹⁸ Further, although the Licensee indicated that these overages were inadvertent, this does not mitigate or excuse the violations. The Commission has repeatedly rejected inadvertence as a basis for excusing violations of the children’s television commercial limits.¹⁹ Similarly, the fact that the Station’s television network supplied the commercial does not absolve the Licensee of responsibility for the violations. 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 that do occur.²⁰ The fact that the Licensee has taken steps to prevent subsequent violations by reminding its staff of the importance monitoring its programming for compliance with the Commission’s children’s television programming rules does not relieve the Licensee of liability for violations that have already occurred.²¹

7. This *NAL* is issued pursuant to section 503(b)(1)(B) of the Act. Under that provision, a 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.²² 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.²³ The

(Continued from previous page) _____

program episode is impacted by multiple advertisements for a product related to the program, licensees are liable for only one program-length commercial. *See Spokane Television, Inc. (KXLY(TV))*, Memorandum Opinion and Order and Forfeiture Order, 15 FCC Rcd 9188, 9189-90, paras. 3, 6 (MB 2000).

¹⁵ *See, e.g., KSKN NAL*, 25 FCC Rcd at 6153, para. 7.

¹⁶ *See 1991 Children’s TV R&O*, 6 FCC Rcd at 2118.

¹⁷ *See id.* at 2117-18.

¹⁸ *See KSKN NAL*, 25 FCC Rcd at 6153, para. 7 (finding that a commercial containing “very brief pictorial and aural reference to Yu-Gi-Oh! trading cards” that aired during the “Yu-Gi-Oh!” program, caused the entire program to be considered a program-length commercial).

¹⁹ *See, e.g., id.* at 6153, para. 9; *WCIU-TV Limited Partnership (WCIU(TV))*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 4506, 4508, para. 7 (MB 2008) (*WCIU NAL*); *Le Sea Broadcasting Corp. (WHKE(TV))*, Letter, 10 FCC Rcd 4977, 4978 (MB 1995).

²⁰ *See, e.g., WCIU NAL*, 23 FCC Rcd at 4508, para. 7; *WLFL Licensee, LLC (WLFL(TV))*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 8182, 8185, para. 10 (MB 2008); *Max Television of Syracuse, L.P. (WSYT(TV))*, Letter, 10 FCC Rcd 8905, 8906 (MB 1995).

²¹ *See, e.g., KSKN NAL*, 25 FCC Rcd at 6153, para. 9.

²² *See* 47 U.S.C. § 503(b)(1)(B); *see also* 47 CFR § 1.80(a)(2).

²³ 47 U.S.C. § 312(f)(1).

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,²⁴ and the Commission has so interpreted the term in the section 503(b) context.²⁵ 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.”²⁶

8. The Commission’s *Forfeiture Policy Statement* and section 1.80(b) of the Rules establish a base forfeiture amount of \$8,000 for violations of section 73.670.²⁷ 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.”²⁸

9. In this case, an upward adjustment to \$20,000 is justified considering the number, nature, and circumstances of the commercial limit overages. While we do not believe that the Licensee has acted in bad faith or that it deliberately disregarded the Commission’s rules, we are not persuaded by the Licensee’s argument that no upward adjustment is warranted.²⁹ In support of its argument, the Licensee cited a number of cases involving commercial limits violations where the Commission issued the base forfeiture amount of \$8,000.³⁰ These cases are not analogous here because they involve only conventional commercial overages, or a combination of far fewer program-length commercials, along with conventional commercial limit overages.³¹ Because of the Commission’s strong policy of treating program-length commercials as extremely serious violations of the children’s television commercial limitations, the Commission has routinely assessed higher forfeitures for program-length commercials than for a significantly greater number of conventional overages.³² In addition, we reject the Licensee’s argument that this is merely an “isolated incident” and the Commission has “typically” only made an

²⁴ See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

²⁵ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

²⁶ 47 U.S.C. § 312(f)(2).

²⁷ See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), note to paragraph (b)(9), Section I.

²⁸ 47 U.S.C. § 503(b)(2)(E). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(9); 47 CFR § 1.80(b), note to paragraph (b)(9), Section II.

²⁹ See WUTB Renewal Exhibit at 1-2.

³⁰ See *id.* (citing *San Antonio (KRRT-TV) Licensee, Inc. (KMYS(TV))*, Forfeiture Order, 25 FCC Rcd 3747, 3750 (MB 2010) (\$8,000 fine for two conventional commercial overages and two program-length commercials); *WVTV Licensee, Inc. (WVTV(TV))*, Forfeiture Order, 25 FCC Rcd 3741, 3744-45 (MB 2010) (\$8,000 fine for one conventional commercial overage, one instance of host-selling, and two program-length commercials); *WLOS Licensee, LLC (WLOS(TV))*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 4598, 4600 (MB 2010) (\$8,000 fine for 23 conventional commercial overages); *KLGT Licensee, LLC (WUCW(TV))*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 949, 953 (MB 2009) (\$8,000 fine for five conventional commercial overages, two program-length commercials, and one host-selling violation)).

³¹ See *id.*

³² See, e.g., *Ramar Communications, Inc. (KJTV(TV))*, Memorandum Opinion and Order, 12 FCC Rcd 20490, 20493, 20497 paras. 9, 22 (MB 1997) (comparing, *inter alia*, *Mt. Mansfield Television, Inc. (WCAX(TV))*, 10 FCC Rcd 8797, 8797-98 (MB 1995) (\$10,000 forfeiture for 30 conventional commercial limit overages), with *Gannett Massachusetts Broadcasting, Inc. (WLVI(TV))*, 9 FCC Rcd 1555 (MB 1994) (\$10,000 forfeiture for three conventional commercial limit overages and four program-length commercials)).

upward adjustment when the “number or extent of violations has been more willful and/or repeated than was the case here.”³³ In fact, on numerous occasions the Commission has made a substantial upward adjustment in program-length commercial cases that involved fewer violations than this case.³⁴ We find that the upward adjustment made here is consistent with this past precedent. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$20,000 for its willful and repeated violation of section 73.670.

IV. ORDERING CLAUSES

10. 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 Deerfield Media (Baltimore) Licensee, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for its apparent willful and repeated violation of section 73.670 of the Commission’s rules.

11. **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*, Deerfield Media (Baltimore) Licensee, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission’s Fee Filer (the Commission’s online payment system),³⁵ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money

³³ See WUTB Renewal Exhibit at 2 (citing *KSKN NAL*, 25 FCC Rcd at 6153 (\$70,000 fine for 86 program-length commercials, one host-selling violation, and failure to publicize the location of the station’s Children’s Television Programming Reports); *UTV of San Francisco, Inc. Licensee (KBHK(TV))*, Letter, 10 FCC Rcd 10986, 10988 (1995) (*KBHK Letter*) (\$40,000 fine for 218 commercial overages, including two program-length commercials); *Winston Broadcasting Network, Inc. (WBNX(TV))*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 14606, 14607-09, paras. 4-5, 11 (MB 2008) (*WBNX NAL*) (\$20,000 fine for one conventional commercial overage, 11 program-length commercials, and five host-selling violations), *modified*, 25 FCC Rcd 4571, 4573, para. 11 (MB 2010) (reducing fine to \$16,000 due to the licensee’s history of compliance with the Rules)). We do not believe these cases are directly relevant to this matter. The first two cases cited, the *KSKN NAL* and the *KBHK Letter*, do not make for a good comparison because they involve many more violations and much higher fines than this case. The third case, the *WBNX NAL*, is not directly relevant because all but one of the program-length commercials involved a “fleeting” moment of program-related content in the commercial. See *WBNX NAL*, 23 FCC Rcd at 14607, para. 4 (noting that ten of the program-length commercial violations involved an instance where “only half of the letter ‘M’ and the letters ‘ON’ of ‘Pokémon’ were visible . . . for ‘slightly’ more than one second” in a Nintendo Gameboy commercial during a Pokémon program). In contrast, this case is factually distinct because the entire commercial centers around a product directly related to the children’s program being aired and should have been easier for station personnel to spot and prevent from airing. Furthermore, to the extent the Licensee cited the *WBNX NAL* to support its contention that it should only be fined the base forfeiture amount due to its “history of compliance,” we note that the licensee in the *WBNX NAL* was ultimately fined double the base forfeiture amount. In addition, a licensee’s history of prior offenses is but one factor among many that we consider when determining a forfeiture amount. See 47 U.S.C. § 503(b)(2)(E). When considering the specific facts and circumstances of this case, and in light of the totality of past precedent and all the relevant factors listed under section 503, we believe a \$20,000 forfeiture is appropriate.

³⁴ See, e.g., *Mercury Broadcasting Company, Inc. (KMTW(TV))*, Forfeiture Order, 25 FCC Rcd 4564, 4565-66, paras. 6-9 (MB 2010) (\$16,000 forfeiture for six program-length commercials over the course of approximately one month); *WTWB of the Triad, LLC (WTWB(TV))*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 1652, 1654, para. 7 (MB 2006) (\$17,500 forfeiture for seven program-length commercials).

³⁵ Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

order. Below are instructions that payors should follow based on the form of payment selected:³⁶

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).³⁷ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the “Pay by Credit Card” option. Please note that there is a dollar limitation on credit card transactions, which cannot exceed \$24,999.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the NAL Account—the bill number is the NAL Account number with the first two digits excluded—and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Commission’s rules.³⁸ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy should also be emailed to Andrew.Kennedy@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.³⁹

³⁶ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

³⁷ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

³⁸ 47 CFR §§ 1.16 and 1.80(f)(3).

³⁹ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

14. 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. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.⁴⁰

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, N.E., Washington, DC 20554.⁴¹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

16. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Deerfield Media (Baltimore) Licensee, LLC, c/o Pillsbury Winthrop Shaw Pitman LLP, 1200 Seventeenth Street, N.W., Washington, DC 20036, and to its counsel, Scott R. Flick, Esquire, Pillsbury Winthrop Shaw Pittman, LLP, 1200 Seventeenth Street, N.W., Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁴⁰ See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

⁴¹ See 47 CFR § 1.1914.