



Federal Communications Commission
Washington, D.C. 20554

DA 21-1490
Released: December 1, 2021

Gray Television Licensee, LLC
4370 Peachtree Road NE
Atlanta, GA 30319

Re: WITN-TV, Washington, NC
Facility ID No.: 594
FRN: 0018223693
LMS File No.: 0000119815

Dear Licensee:

This letter is in reference to the license renewal application (Application) for WITN-TV, Washington, North Carolina (Station), which is licensed to Gray Television Licensee, LLC, dba WITN (Licensee).¹ We hereby admonish the Station for its violation of section 73.670 of the Commission's rules (Rules).²

In 1990, Congress directed the Commission to create rules that, *inter alia*, limit the amount of commercial matter that commercial television stations may air during children's programming.³ Pursuant to this 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.⁴ In furtherance of the CTA's underlying purpose to protect children from excessive and inappropriate commercial messages, section 73.670(b) of the Rules restricts the display of Internet web addresses during programming directed at children ages 12 and under.⁵

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 it meets the following four prong test: (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).⁶

¹ LMS File No. 0000119815 (filed Aug. 3, 2020 and amended Dec. 7, 2020). WITN-TV is a full power commercial television station.

² 47 CFR § 73.670.

³ Children's Television Act of 1990 (CTA), Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b, and 394.

⁴ 47 CFR § 73.670(a).

⁵ *See Children's Television Obligations of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943, 22961-62, paras. 50-52 (2004); *aff'd in part, amended in part*, Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065, 11077-78, paras. 29-32 (2006) (2006 Order on Reconsideration); *see also* 47 CFR § 73.670(b), (c), and (d).

⁶ *See* 47 CFR § 73.670(b).

On December 7, 2020, the Licensee amended its Application to disclose that, on October 12, 2013, the Station had aired the URL address for the website “www.lazytown.com” during the closing credits of an episode of the children’s program “LazyTown.”⁷ The Licensee states the program was part of the educational and informational programming block supplied to it and other NBC affiliates by Sprout.⁸ NBC notified its affiliates that the website address was “inadvertently included” and “fleeting.” The Licensee notes that NBC stated it was working with Sprout to prevent future incidents.⁹

Airing this material constitutes a violation of section 73.670(b) of the Rules. Even though the website address was displayed for only a short duration (estimated at one-half of one second), the display of a website address during program material that does not comply with the four-prong test – for any period of time – is a violation of section 73.670(b).¹⁰ In particular, the website did not meet the fourth prong of the test because the top of the homepage of the website contained content of a commercial nature in the form of a link labeled “shop.”¹¹ Furthermore, although the website address was only displayed during the closing credits, the Commission has specifically stated that closing credits are considered to be part of television programming material and are subject to the website address rule.¹² Licensee has provided no evidence demonstrating that the website complies with the four-prong test set forth in section 73.670(b) and, upon our prior examination of the website, we have concluded that it does not comply.¹³

We note that while the commercial matter may have been inserted into the program by the Station’s television network or program supplier (*i.e.*, NBC Network and/or Sprout), this does not relieve the Station of responsibility for material it broadcasts. In this regard, the Commission has consistently held that reliance on a program’s source or producer for compliance with our Rules and policies will not excuse or mitigate violations which do occur.¹⁴ Although corrective actions may have been taken to

⁷ Application, as amended, at Attach. Commercial Limit Disclosure (Disclosure) (acknowledging failure to disclose this coverage in the Application as originally filed, but noting the Station’s public file contained notice of this coverage; Licensee had overlooked this notice when preparing the Application).

⁸ *Id.* Licensee, an NBC affiliate, identified the target audience for “LazyTown” programming as preschoolers. Licensee Children’s Television Programming Report for WITN-TV, LMS File No. CPR-149517 (filed Jan. 8, 2014).

⁹ Disclosure.

¹⁰ See, e.g., *Tribune Broadcasting Oklahoma City License, LLC*, Admonishment Letter, 30 FCC Rcd 14512 (MB 2015) (*Tribune*) (admonishing station for broadcasting this same “www.lazytown.com” material on October 12, 2013).

¹¹ See e.g., *Orlando Hearst Television, Inc.*, Admonishment Letter, 29 FCC Rcd 9634, 9635 (MB 2014).

¹² *2006 Order on Reconsideration*, 21 FCC Rcd at 11080, para. 36.

¹³ See *Tribune*, 30 FCC at 14513 (noting that the website did not meet the test’s fourth prong because the top of the website’s homepage contained content of a commercial nature in the form of a link labeled “shop”).

¹⁴ See, e.g., *Max Television of Syracuse, L.P.*, Memorandum Opinion and Order, 13 FCC Rcd 10105, 10108, para.7 (MMB 1997) (imposing forfeiture for violations of 73.670 and rejecting argument that licensee was not liable for excessive commercial material that had been inserted into children’s programming by program producer or distributor).

prevent future violations, this does not relieve the Station from liability for violations that have already occurred.¹⁵ Licensee in fact acknowledges that it is responsible for airing this material.¹⁶

While we do not rule out more severe sanctions for similar violations 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** the Station for its violation of section 73.670(b) of the Rules.¹⁷ We remind the Licensee that the Commission expects all commercial television licensees to comply with the limits on commercial matter, including the display of website addresses, during children's programming

In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Communications Act of 1934, as amended (Act).¹⁸ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁹ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.”²⁰ We find that the Licensee's apparent violation of section 73.760(b) of the Rules does not constitute a “serious violation” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse. Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term.

Accordingly, **IT IS ORDERED** that the application for renewal of license of WITN-TV, Washington, North Carolina, **IS GRANTED**. **IT IS FURTHER ORDERED** that copies of this Letter shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Gray Television Licensee, LLC, 4370 Peachtree Road NE, Atlanta, GA 30319, and to its counsel, Joan Stewart, Esq., Wiley Rein LLC, 1776 K Street, NW, Washington, DC, 20006.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁵ See *International Broadcasting Corp.*, Memorandum Opinion and Order, 19 FCC 2d 793, 794, para. 5 (1969) (imposing forfeiture and declining to credit as mitigation corrective action following a violation because doing so would “tend to encourage remedial rather than preventive action”).

¹⁶ Application at Disclosure.

¹⁷ This admonishment is issued pursuant sections 1.80 and 0.283(d) of the Rules, 47 CFR §§ 1.80 and 0.283.

¹⁸ 47 U.S.C. § 309(k).

¹⁹ 47 U.S.C. § 309(k)(1).

²⁰ 47 U.S.C. §§ 309(k)(2), 309(k)(3).