

Federal Communications Commission  
Washington, D.C. 20554

November 10, 1997

Released: November 13, 1997

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Lansing 53, Inc.  
Licensee, WLAJ(TV)  
5815 South Pennsylvania Avenue  
Lansing, MI 48911

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of twenty thousand dollars (\$20,000) pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. §503(b), under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules, 47 C.F.R. §0.283, for repeated violations of the Commission's rule limiting the amount of commercial matter that may be aired during 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. Children's Television Programming, 6 FCC Rcd 2111, 2118, recon. granted in part, 6 FCC Rcd 5093, 5098 (1991). The commercial limits became effective on January 1, 1992. Children's Television Programming, 6 FCC Rcd 5529, 5530 (1991).

On June 2, 1997, you filed an application for renewal of license (FCC Form 303-S) for Station WLAJ(TV), Lansing, MI (BRCT-970602LD). With regard to Section III, Question 4 of that application you state that during the previous license term WLAJ(TV) failed to comply with the limits on commercial matter in children's programming specified in Section 73.670 of the Commissions Rules. In Exhibit 2 to that application you indicate that between October 1, 1994, and December 16, 1996, WLAJ(TV) violated the children's television commercial limits on 82 occasions. Of these commercial overages, 29 were less than 30 seconds in duration; 29 were 30 seconds or longer but less than one minute in duration; 13 were one minute or longer but less than one minute and 30 seconds in duration; five were one minute and 30 seconds or longer but less than two minutes in duration; and six were two minutes or longer in duration. You state that

the overages were discovered during a review of WLAJ(TV)'s logs conducted in connection with the preparation of the station's license renewal application; and that "[a]ppropriate oversight of the commercial limits w[as] not maintained[,] nor was an appropriate monitoring system in effect" at WLAJ(TV).

WLAJ(TV)'s record of exceeding the children's television commercial limits on 82 occasions during the last license term constitutes a repeated violation of Section 73.670 of the Commission's rules. Accordingly, pursuant to Section 503(b) of the Communications Act, Lansing 53, Inc., is hereby advised of its apparent liability for forfeiture in the amount of twenty thousand dollars (\$20,000) for its apparent repeated violation of Section 73.670 of the Commission's Rules. The amount specified was reached after consideration of the following criteria: (1) the number of instances of commercial overages; (2) the length and nature of each such overage; (3) the period of time over which such overages occurred; (4) whether or not the licensee established an effective program to ensure compliance; and (5) the specific reasons that the licensee gives for the overages. These criteria are appropriate in analyzing violations of the commercial limits during children's programming, since they take into account, *inter alia*, "the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability", as required under §503(b)(2)(D) of the Communications Act.<sup>1</sup>

WLAJ(TV) exceeded the children's television commercial limits on 82 occasions. This is a very high number of violations. Further, 24 of the overages were one minute or longer in duration. Overages of this number and duration 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.

Further, the violations began on October 1, 1994, and continued until December 16, 1996, an extended period of two years and two months. The licensee admits that "[a]ppropriate oversight of the commercial limits w[as] not maintained[,] nor was an appropriate monitoring system in effect" at WLAJ(TV). According to the licensee's own explanation, the fact that the station was regularly and repeatedly violating the children's television commercial limits was discovered only in the course of preparing WLAJ(TV)'s license renewal application. Thus, the

---

<sup>1</sup> In United States Telephone Ass'n. v. FCC, 28 F3rd 1232 (D.C. Cir. 1994), the U.S. Court of Appeals for the District of Columbia set aside Policy Statement, Standards for Assessing Forfeitures, 6 FCC Rcd 4695 (1991), recon. denied, 7 FCC Rcd 5339 (1992), revised, 8 FCC Rcd 6215 (1993), stating that the guidelines for assessing forfeitures established therein must be subject to public comment to comply with the Administrative Procedure Act. In accordance with the court's decision, the Commission released Forfeiture Guidelines - Notice of Proposed Rulemaking in CI Docket No. 95-6, 10 FCC Rcd 2945 (1995). After receiving and considering comments from the public in that proceeding, the Commission adopted Forfeiture Guidelines - Report and Order in CI Docket No. 95-6, FCC Rcd \_\_\_ (FCC 97-218, adopted June 19, 1997, released July 28, 1997) ("Forfeiture Guidelines"). Forfeiture Guidelines, *id.*, will become effective on October 14, 1997. 62 Fed. Reg. 43474 (August 14, 1997). In accordance with Paragraph 49 of Forfeiture Guidelines, *supra*, the Commission will continue to use the case-by-case approach for violations that occurred before the effective date of that Report and Order. Under this approach, the Commission considers the criteria developed under Section 503 and applied by the Commission in previous cases. See, e.g., Clear Channel Television, Inc. (KTTU(TV)), 10 FCC Rcd 3773, 3774 (1995); Northstar Television of Erie, Inc. (WSEE-TV), 10 FCC Rcd 3779, 3780 (1995).

licensee not only failed to establish any program for compliance with the children's television commercial limits, but also failed to notice or rectify the deficiency for an extended period of time. The fact that WLAJ(TV) may have eventually implemented policies and procedures to prevent subsequent violations of the Commission's children's television rules does not relieve the licensee of liability for violations which have occurred. International Broadcasting Corp., 19 FCC 2d 793, 794 (1969); KBHK-TV, supra 10 FCC Rcd at 10988; KEVN, Inc., 8 FCC Rcd 5077, 5078 (1993); R&R Media Corporation (WTWS(TV)), 9 FCC Rcd 1715, 1716 (1994); Mountain States Broadcasting, Inc. (KMSB-TV), 9 FCC Rcd 2545, 2546 (1994); WHP Television, L.P., 10 FCC Rcd 4979, 4980 (1995). Consideration of all of these factors warrants a forfeiture in the above-specified amount of \$20,000. Cf., Jefferson-Pilot Communications Company (WBTV(TV)), 12 FCC Rcd 2526 (1997)(\$20,000 forfeiture for 79 commercial overages); WTWS(TV), supra 9 FCC Rcd at 1715 (\$20,000 forfeiture for 80 commercial overages).

You are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." Section 1.80(f)(3) of the Commission's Rules, 47 C.F.R. §1.80(f)(3). Other relevant provisions of Section 1.80(f)(3) of the Commission's Rules are summarized in the attachment to this letter.

Notwithstanding the substantial nature of the violations described here and the severity with which we regard them, we find you qualified to remain a Commission licensee and conclude that grant of your application would serve the public interest, convenience and necessity. Accordingly, the application of Lansing 53, Inc., for renewal of license for Station WLAJ(TV), Lansing, MI (BRCT-970602LD), is hereby GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart  
Chief, Mass Media Bureau