

Federal Communications Commission
Washington, D.C. 20554

December 18, 1997

Released: December 22, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Journal Broadcast Group, Inc.
Licensee, WSYM-TV
600 West Saint Joseph Street
Suite 47
Lansing, MI 48933

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of fifteen thousand dollars (\$15,000) 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 amount 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. 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 WSYM-TV, Lansing, MI (File No. BRCT-970602LU). In response to Section III, Question 4 of that application you indicate that during the previous license term WSYM-TV failed to comply with the limitations on commercial matter in children's programming specified

in Section 73.670 of the Commission's Rules. In Exhibit C to that application you indicate that between April 29, 1992, and August 31, 1996, WSYM-TV violated the children's television commercial limit rules and policies on 19 occasions. Of these 19 commercial overages, five were less than 30 seconds in duration; three were 30 seconds in duration, and 11 were program-length commercials. Some of the program-length commercial violations are attributed to the inclusion of program-related commercial matter by the programs' producer or distributor. The remainder of the violations are attributed to inadvertence and human error, and/or the failure of station employees to follow established procedures. You state that after each violation the responsible station employees were retrained and/or the station established policies and procedures to prevent recurrence.

WSYM-TV's record of exceeding the children's television commercial limits on 19 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, Journal Broadcast Group, Inc., is hereby advised of its apparent liability for forfeiture in the amount of fifteen thousand dollars (\$15,000) 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.¹

WSYM-TV violated the children's television commercial limits on 19 occasions. This is a significant number of violations. Further, eleven of the violations were program-length commercials. 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. Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and programs. S. Rep. No. 227, 101st Cong., 1st Sess. 24 (1989). The assertion that program-

¹ 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/Assessing Forfeitures, *supra*, 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 guidelines for assessing forfeitures. 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.*, became effective on October 14, 1997. 62 Fed. Reg. 43474 (August 14, 1997). However, with regard to (i) all cases pending when Forfeiture Guidelines, *supra*, was adopted, and (ii) all cases involving "violations arising from facts that occurred before the effective date of th[at] order", forfeiture amounts are to be assessed "under the case-by-case approach in effect when the violation occurred", in conformity with the standards set out in Section 503 of the Communications Act. *Id.* at ¶49.

length commercial violations may have occurred because of the inclusion of program-related commercial matter by the programs' producer or distributor does not absolve WSYM-TV of responsibility for those 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 which do occur. See, e.g., Max Television of Syracuse, L.P. (WSYT(TV)), 10 FCC Rcd 8905 (1995); Mt. Mansfield Television, Inc. (WCAX-TV), 10 FCC Rcd 8797 (1995); Boston Celtics Broadcasting Limited Partnership (WFXT(TV)), 10 FCC Rcd 6686 (1995).

In addition, the violations occurred from April 29, 1992, to August 31, 1996, an extended period of four years and four months. When the Commission delayed the effective date of Section 73.670 of the Rules from October 1, 1991, until January 1, 1992, we stated that "giving the additional time to broadcasters and cable operators before compliance with the commercial limits is required will have the effect of enabling broadcasters and cable operators to hone their plans to ensure compliance...." Children's Television Programming, *supra* 6 FCC Rcd at 5530 n.10. Although it appears that WSYM-TV made an effort to comply with the children's television commercial limit rules and policies, it is apparent that that effort was not sufficient in view of the violations reported in the stations' renewal applications. The Commission has repeatedly rejected human error and/or inadvertence as a basis for excusing violations of the children's television commercial limits. See, e.g., UTV of San Francisco, Inc. (KBHK-TV), 10 FCC Rcd 10986, 10987 & Note 1; Le Sea Broadcasting Corp. (WHKE(TV)), 10 FCC Rcd 4977, 4978 (1995); Buffalo Management Enterprises Corp. (WIVB-TV), 10 FCC Rcd 4959, 4960 (1995); Gannett Massachusetts Broadcasting, Inc. (WLVI-TV), 9 FCC Rcd 1555 (1994); Ramar Communications, Inc. (KJTV(TV)), 9 FCC Rcd 1831 (1994); Channel 12 of Beaumont, Inc. (KBMT-TV), 9 FCC Rcd 1825; WKBD, Inc., 8 FCC Rcd 5079 (1993). Finally, the fact that WSYM-TV may have implemented policies to prevent subsequent violations of the Commission's children's television rules and policies 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 \$15,000. Cf., Paramount Stations Group of Washington, Inc. (WDCA(TV)), ___ FCC Rcd ___ (MMB NAL DA 97-391, adopted February 14, 1997, released February 26, 1997)(\$15,000 forfeiture for 20 overages, including 11 program-length commercials.)

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. Therefore, the license renewal application of Journal Broadcast Group, Inc., for Station WSYM-TV, Lansing, MI (File No. BRCT-970602LU), IS HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Enclosures

cc: John T. Scott, III, Esq.