

Federal Communications Commission
Washington, D.C. 20554

In reply refer to: 1800E1-BL

Facility I.D. No. 48360

Released: March 2, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

KTVU Partnership
Licensee, Station KRXI(TV)
4920 Brookside Court
Reno, NV 89502

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of thirty thousand dollars (\$30,000), pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), for repeated violations of the Commission's rule limiting the amount of commercial matter that may be aired during children's programming.

Background

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. Accordingly, 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 1, 1998, you filed a license renewal application (FCC Form 303-S) for station KRXI(TV), Reno, Nevada (File No. BRCT-980601LQ). In response to Section III, Question 5 of that application, you certified that, during the previous license term, station KRXI(TV) complied with the limits on commercial matter in children's programming specified in Section 73.670 of the Commission's Rules. However, in a letter dated September 18, 1998, you advised the Commission of your intent to file an amendment to station KRXI(TV)'s renewal application concerning compliance with the commercial

limits, and requested that no action be taken on the renewal application prior to receipt of the amendment. Subsequent letters filed on October 5, 1998, and November 9, 1998, notified the Commission that you were still attempting to sort through station KRXI(TV)'s logs in order to prepare the amendment, which was eventually filed on January 10, 2000.

In the January 10, 2000 amendment, you advised the Commission that, though your initial certification of compliance with the commercial limits was accurate to the best of your knowledge at the time the renewal application was filed, station KRXI(TV), in fact, had not fully complied with the commercial limits during its previous license term. Also in your January 10, 2000 amendment, you claimed to have had difficulties in determining the exact number and duration of the commercial overages due to the significant volume of logs to be reviewed, the number of overages which occurred and the lack of complete network advertising records.¹ Upon discussing these difficulties and alternate methods of calculating and reporting station KRXI(TV)'s violations with Commission staff, you proposed that you would review a sample of station KRXI(TV)'s logs and submit a composite for the number of overages that occurred during the license term. Accordingly, in the January amendment, you described the results of the sampling method for the time period between December 1995 and October 1998. You also included an explanation setting forth the circumstances that led to the commercial overages. Specifically, you explained that with your acquisition of KRXI(TV) in June of 1997, the station commenced broadcasting essentially as a start-up operation using new personnel and equipment. You further note that station KRXI(TV) is located in a small market, the Reno, Nevada Designated Market Area (DMA), ranked 111th in size, where few people have previous broadcast experience and even fewer have experience working in a traffic department. Given the nature and pay of traffic department jobs, you asserted that openings at station KRXI(TV) rarely attracted candidates from other geographic regions, so the station had to rely solely on inexperienced candidates from the local labor force to staff its traffic department. In sum, you claimed that the television broadcast inexperience of many of your employees, human error, and equipment problems led to the unintentional commercial overages.

By letter dated June 9, 2000, the staff requested additional, detailed information for the time period between June 2, 1997 (the date that KTVU Partnership acquired station KRXI(TV)) and June 9, 2000.² Specifically, for said time-frame, the staff requested that you provide a list of each segment of programming 5 minutes or more in duration designed for children 12 years old which contained commercial matter in excess of the limits, and for each programming segment so listed, the length of the segment and the amount of commercial matter contained in it. In an amendment dated

¹ Along this line, you stated that station KRXI(TV) commenced operation on December 3, 1995, and through May of 1997, was programmed by KTVU Partnership pursuant to a Management Agreement between Nevada Television Corporation (NTC), the licensee of the station at that time, and KTVU Partnership. On June 2, 1997, KTVU Partnership acquired ownership of station KRXI(TV) through an acquisition of NTC's stock. On April 30, 1998, NTC was merged into KTVU Partnership through a *pro forma* transaction, resulting in KTVU Partnership becoming the licensee of station KRXI(TV).

² See Letter to Kevin F. Reed, Counsel for KTVU Partnership, from Barbara A. Kreisman, Chief, Video Services Division, Mass Media Bureau, Federal Communications Commission (June 9, 2000).

July 31, 2000, you stated that during the period between June 2, 1997 and September 12, 1998, station KRXI(TV) violated the children's television commercial limits on 207 occasions. Of these commercial overages, 12 were less than 30 seconds in duration, 131 were 30 seconds or longer but less than one minute in duration; 31 were one minute or longer but less than one and one-half minutes in duration; 18 were one and one-half minutes or longer but less than two minutes in duration; 9 were two minutes or longer but less than three minutes in duration; and 6 were three minutes or longer but less than four minutes in duration. During the period between September 13, 1998 (when station KRXI(TV) advised the staff of the need to amend its license renewal application) and June 9, 2000, you indicate that station KRXI(TV) has been in compliance with the children's programming commercial matter limits. You stated that on September 13, 1998, the station implemented remedial measures,³ and as result, the station has incurred no further overages.

Discussion

Station KRXI(TV)'s record during the last license term of exceeding the Commission's commercial limits on children's television programming on 207 occasions constitutes a repeated violation of Section 73.670 of the Commission's Rules. Accordingly, pursuant to Section 503(b) of the Communications Act, you are hereby advised of your apparent liability for forfeiture in the amount of thirty thousand dollars (\$30,000) for station KRXI(TV)'s 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.⁴ These criteria are appropriate in analyzing violations of the commercial limits during children's programming since they take into account, *inter alia*, "the nature,

³ In your January 10, 2000 amendment, you set forth the following remedial measures which station KRXI(TV) has taken to prevent overages from occurring in the future: (1) restricted the amount of commercial matter aired during children's programs to a maximum of 11 minutes per hour on weekdays and 9.5 minutes per hour on weekends; (2) authorized only the traffic manager to change the formatting of commercial time during children's programming and required that any changes be approved by traffic personnel at station KTVU(TV), Oakland, California, another one of your stations; (3) planned to conduct periodic training sessions for station KRXI(TV)'s traffic, programming and master control departments concerning the children's television commercial limits; and (4) trained traffic personnel to code spots correctly to ensure that the computer traffic system promptly identifies overages in the future. Along with these measures, you stated that you will require children's commercial schedules to be manually reviewed three times a day for compliance with the Commission's Rules, thereby affording additional protection against future overages and enabling prompt corrective measures should an overage occur. Furthermore, to ensure that audits of children's programming continue to be conducted on a regular basis, you stated that, during the upcoming license term, you will file quarterly reports with the Commission regarding compliance with the commercial limits. Also beginning with the new license term, you pledged to increase station KRXI(TV)'s core children's programming by one-third so that the station will air an average minimum of four hours of core programming per week.

⁴ See, e.g., *Stainless Broadcasting Co. (WICZ-TV)*, 10 FCC Rcd 9961 (1995); *KXRM Partnership (KXRM-TV)*, 8 FCC Rcd 7890 (1993).

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.

Initially, we note that station KRXI(TV) exceeded the children's television commercial limitations on 207 occasions. This is an unusually high number of violations. Further, 64 of the violations were one minute or greater in duration, and 15 of those were two minutes or greater in duration. 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 1990.⁵ In addition, violations occurred at station KRXI(TV) regularly and continually from June, 1997, through September, 1998, an extended period of one year and three 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"⁶ Based on the information filed with respect to the renewal application for station KRXI(TV), it is apparent that you failed to establish an effective program to ensure compliance with the commercial limits. Though you belatedly implemented policies and procedures designed to rectify station KRXI(TV)'s deficient compliance and monitoring program, that does not relieve you of liability for the very high number of violations which occurred.⁷ As for the reasons you give to explain the violations, they essentially amount to, or stem from, human error, which the Commission has repeatedly rejected as a basis for excusing or mitigating violations of the children's television commercial limits.⁸ We see no reason to depart from that longstanding Commission precedent in this case.

While you plead mitigating circumstances, moreover, we do not believe the facts you present so qualify. The facts you cite, principally financial hardship, small market size and lack of monetary gain, fail as mitigating circumstances in this case. First, with respect to financial hardship, we note that the Commission has previously considered a licensee's financial inability to pay as a basis for reducing a forfeiture, but has required the submission of supporting documentation.⁹

⁵ *Children's Television Programming*, *supra*, 6 FCC Rcd at 2117-18.

⁶ *Children's Television Programming*, 6 FCC Rcd at 5530 n.10.

⁷ See, e.g., *WHP Television, L.P.*, 10 FCC Rcd 4979, 4980 (MMB 1995); *Mountain States Broadcasting, Inc. (KMSB-TV)*, 9 FCC Rcd 2545, 2546 (MMB 1994); *R&R Media Corporation (WTWS-TV)*, 9 FCC Rcd 1715, 1716 (MMB 1994); *KEVN, Inc.*, 8 FCC Rcd 5077, 5078 (MMB 1993); *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969).

⁸ See, e.g., *LeSea Broadcasting Corp. (WHMB-TV)*, 13 FCC Rcd 2751 (1998); *Buffalo Management Enterprises Corp. (WIVB-TV)*, 10 FCC Rcd 4959 (MMB 1995); *Act III Broadcasting License Corp. (WUTV-TV)*, 10 FCC Rcd 4957 (MMB 1995); *Ramar Communications, Inc. (KJTV-TV)*, 9 FCC Rcd 1831 (MMB 1994).

⁹ Compare *Delta Radio Corp.*, 12 FCC Rcd 22030 (CIB 1997) and *Benito Rish*, 10 FCC Rcd 2861 (1995) (licensees asserting inability to pay as a basis for reduction of forfeitures assessed against them submitted supporting documentation of financial hardship).

Here, you do not claim financial inability to pay a forfeiture, but assert that station KRXI(TV) has operated, and continues to operate, at a loss. In any event, you provide no documentation in support of that assertion. For these reasons, your alleged operating losses afford no basis for us to mitigate the forfeiture for station KRXI(TV)'s violations of the children's television commercial limits.¹⁰ Second, though you purportedly gained no monetary benefit from the overcommercialization at station KRXI(TV), that does not mitigate the harm to children who have been exposed to commercial matter beyond the statutory limits, and we do not believe the Children's Television Act or Section 503(b)(2)(D) of the Communications Act empowers us to reduce the forfeiture on that basis. Finally, having rejected all of the other mitigating circumstances you proffer, we do not believe that station KRXI(TV)'s operation in a small market, in and of itself, warrants consideration as a mitigating factor. In this regard, we have previously assessed forfeitures in other cases involving stations which operate in small markets, and have not considered small market size, alone, as a basis for reducing the forfeiture amounts.¹¹

Given all of these considerations, the violation of Section 73.670 of the Commission's Rules by station KRXI(TV) on 207 occasions warrants a forfeiture in the above-specified amount of \$30,000. The duration and repeated nature of the overages are among the more serious the Commission has considered, and we believe the forfeiture assessed here is consistent with the forfeitures assessed in other, similar cases. For example, in *Press Broadcasting Company, Inc. (WKCF(TV))*, 12 FCC Rcd 15491 (1997) (*Press Broadcasting*), a \$30,000 forfeiture was assessed for 200 violations, which included 75 overages one minute or longer, but less than two minutes in duration. The violations in that case were attributed to inadvertence and misunderstanding of the Commission's Rules, and the licensee claimed that, upon discovering the overages, it made changes to station WKCF(TV)'s policies and procedures to prevent further violations. In another case, *Koplar Communications (KPLR-TV)*, 8 FCC Rcd 7884 (1993) (*Koplar*), a \$30,000 forfeiture was assessed for 197 violations of the commercial limits. The majority of the violations occurred over a four-month period beginning shortly after the commercial limits went into effect, a fact which did not mitigate the extremely high number of violations. The licensee explained that the violations resulted from its failure to count the commercials between each half-hour program within an hour's block of children's programming, and described the steps it claimed to have taken to avoid future commercial overages. When compared, similarities may be drawn between *Press Broadcasting*, *Koplar* and the instant case. Like the stations in *Press Broadcasting* and *Koplar*, station KRXI(TV) reported a very high number of total overages. In all three cases, moreover, the licensees offered reasons for their respective overages and asserted that they had established policies and procedures to prevent future violations of the commercial limits. Overall, we find station KRXI(TV)'s misconduct sufficiently comparable to that of the stations in *Press Broadcasting* and *Koplar*. Therefore, based on our examination of the facts in this case and the foregoing considerations, we conclude that an appropriate forfeiture for station KRXI(TV)'s violations

¹⁰ See *LeSea Broadcasting Corporation (KWHE(TV))*, 12 FCC Rcd 15977 (MMB 1997).

¹¹ See, e.g., *Independent Communications, Inc. (KTTM(TV) and KTTW(TV))*, 8 FCC Rcd 7886 (1993), *aff'd*, FCC 99-143 (released June 14, 1999); *KCIT Acquisition Company*, 9 FCC Rcd 1827 (1994), *aff'd*, 14 FCC Rcd 12219 (MMB 1999) (small market size, alone, not considered mitigating factor to reduce forfeiture assessed for violations of the children's television commercial limits).

of the children's television commercial limits is in the amount of \$30,000.

You are afforded a period of 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 KTVU Partnership, for station KRXI(TV), Reno, Nevada, File No. BRCT-980601LQ, IS HEREBY GRANTED, subject to the condition that, on December 31, 2006, or by such other date as the Commission may establish in the future under Section 309(j)(14)(A) and (B) of the Communications Act, the licensee shall surrender either its analog or its digital television channel for reallocation or reassignment pursuant to Commission regulations. The channel retained by the licensee will be used to broadcast digital television only after this date.

This letter was adopted by the Commission on February 13, 2001.

BY DIRECTION OF THE COMMISSION

Magalie Roman Salas
Secretary