

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

In the Matter of	)	
	)	
WSOC Television, Inc.	)	Facility I.D. No. 74070
Licensee of Station WSOC-TV	)	NAL/Acct. No.: 1041420007
Charlotte, North Carolina	)	FRN: 0001842822

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: May 26, 2010**

**Released: May 27, 2010**

By the Commission:

**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 (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),<sup>1</sup> we find that WSOC Television, Inc.<sup>2</sup> (the “Licensee”), licensee of Station WSOC-TV, Charlotte, North Carolina (the “Station”), apparently willfully and repeatedly violated Section 73.670 of the Rules, by failing to comply with the limits on commercial matter in children’s programming.<sup>3</sup> 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 five thousand dollars (\$25,000).

**II. BACKGROUND**

2. In the Children’s Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 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 renewal applications 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, 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.<sup>4</sup>

3. On August 2, 2004, the Licensee filed its license renewal application (FCC Form 303-S) for Station WSOC-TV (the “Application”) (File No. BRCT-20040802BJC). In response to Section IV, Question 5 of the Application, the Licensee stated that, during the previous license term, the Station failed to comply with the limits on commercial matter in children’s programming specified in Section 73.670 of

<sup>1</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> Subsequent to the filing of the WSOC license renewal application, the Commission granted the *pro forma* application (BALCT-20051123AGT) assigning the WSOC-TV license from WSOC-TV Holdings, Inc. to WSOC Television, Inc.

<sup>3</sup> See 47 C.F.R. § 73.670.

<sup>4</sup> *Children’s Television Programming*, Report and Order, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

the Rules. In Exhibit 19, the Licensee indicated that from the third quarter of 1997 through the fourth quarter of 2000, the Station exceeded the children's television commercial limits on 78 occasions. Of these overages, 12 were five seconds in duration, 47 were 15 seconds in duration, and 19 were 30 seconds in duration. The Licensee attributed the overages to human error in scheduling the ABC network's children's programs to accommodate the Station's local news.

4. The Licensee indicated that it has taken measures to ensure future compliance with the children's television commercial limits and that it has complied with the Commission's commercial limits since the first quarter of 2001. The Licensee also averred that the overages were not motivated by monetary benefit. According to the Licensee, the Station is committed to broadcast and non-broadcast efforts for children and has participated in programs and events dedicated to supporting families and children during the license term. The Licensee indicated that, since the Commission's core programming requirements became effective, the Station has aired three hours per week of core programming and that most of the time, the Station aired more than three hours per week of core programming. The Licensee requested that in reviewing its admitted overages, the Commission consider the mitigating circumstances<sup>5</sup> and the Licensee's "record as a licensee with a demonstrated commitment to children and children's programming."

### III. DISCUSSION

5. Station WSOC-TV's record of exceeding the children's television commercial limits on 78 occasions constitutes an apparent willful and repeated violation of Section 73.670. The 78 instances in which the Station exceeded the children's television commercial limits represent a significant number of violations. Moreover, the violations occurred over an extended period of three years. Overages of this number 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.<sup>6</sup> The Licensee argued that the violations in this case were caused by human error. The Commission, however, has repeatedly rejected inadvertence and human error as a basis for excusing violations of the children's television commercial limits.<sup>7</sup> Furthermore, while the Licensee may have taken corrective actions to prevent subsequent violations of the children's television rules and policies, this does not relieve it of liability for the violations which have occurred.<sup>8</sup> Moreover, we do not believe that the licensee's "demonstrated commitment to children and children's programming" is a mitigating circumstance in this case.<sup>9</sup>

6. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any 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.<sup>10</sup> Section 312(f)(1) of the Act defines willful as "the conscious and

<sup>5</sup> See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(b)(4).

<sup>6</sup> *Children's Television Programming*, *supra*, 6 FCC Rcd at 2117-18.

<sup>7</sup> See, e.g., *LeSea Broadcasting Corp. (WHKE(TV))*, Letter, 10 FCC Rcd 4977 (MMB 1995); *Buffalo Management Enterprises Corp. (WIVB-TV)*, Letter, 10 FCC Rcd 4959 (MMB 1995); *Act III Broadcasting License Corp. (WUTV(TV))*, Letter, 10 FCC Rcd 4957 (MMB 1995); *Ramar Communications, Inc. (KJTV(TV))*, Letter, 9 FCC Rcd 1831 (MMB 1994).

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

<sup>9</sup> See *WFTV-TV Holdings, Inc. (WRDQ(TV))*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 20178 (MB 2005).

<sup>10</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>11</sup> The 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,<sup>12</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>13</sup> 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.”<sup>14</sup>

7. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$8,000 for violation of Section 73.670.<sup>15</sup> 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)(D) 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.”<sup>16</sup>

8. In this case, an upward adjustment is warranted. As discussed above, the Station exceeded the children’s television commercial limits on 78 occasions. This is a substantial number of violations. The violations occurred, moreover, over an extended 37-month period. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$25,000 for its apparent willful and repeated violation of Section 73.670. This represents an increase over the forfeiture assessed for comparable violations in previous renewal cycles.<sup>17</sup> Given the numerous violations of the children’s TV commercial limits in recent years, it appears that the forfeiture amounts assessed previously have not had a sufficient deterrent effect. Thus, where, as here, a case presents violations that are comparable to violations reported in an earlier renewal cycle, we are raising the forfeiture levels to strengthen the deterrent effect.

#### IV. ORDERING CLAUSES

9. 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 WSOC Television, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twenty five thousand dollars (\$25,000) for its apparent willful and repeated violation of Section 73.670 of the Commission’s Rules.

10. 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*, WSOC Television, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the proposed forfeiture must be made by check or similar instrument, payable

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<sup>11</sup> 47 U.S.C. § 312(f)(1).

<sup>12</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>13</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>14</sup> 47 U.S.C. § 312(f)(2).

<sup>15</sup> See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

<sup>16</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

<sup>17</sup> See *Jefferson-Pilot Communications Company*, 12 FCC Rcd 2526 (MMB, 1997).

to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

12. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

13. 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.

14. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>18</sup>

15. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to WSOC Television, Inc., 3993 Howard Hughes Parkway, Suite 250, Las Vegas, Nevada 89109, and to its counsel, Kevin F. Reed, Esquire, Dow Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>18</sup> See 47 C.F.R. § 1.1914.