

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

In the Matter of	)	
	)	
WCVB Hearst Television, Inc.	)	Facility I.D. No. 65684
Licensee of Station WCVB(TV)	)	NAL/Acct. No.: 1041420006
Boston, Massachusetts	)	FRN: 0004527107

**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> the Commission finds that WCVB Hearst Television, Inc. (the "Licensee"), licensee of Station WCVB(TV), Boston, Massachusetts (the "Station"), apparently willfully and repeatedly violated Section 73.670 of the Rules, by exceeding the commercial limitations in children's programming.<sup>2</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 thirty thousand dollars (\$30,000).

**II. BACKGROUND:**

2. In the Children's Television Act of 1990 ("CTA"),<sup>3</sup> 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<sup>4</sup> 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.

3. On December 1, 2006, the Licensee filed its license renewal application (FCC Form 303-S) for Station WCVB(TV) (the "Application") (File No. BRCT-20061201BPV). In response to Section IV, Question 5 of the Application, the Licensee stated that, during the previous license term, it failed to comply with limits on commercial matter in children's programming specified in Section 73.670 of the Rules. In Exhibit 19, the Licensee indicated that it violated the children's television commercial limits by 15 seconds on a total of 106 occasions during weekend broadcasts between the Third Quarter of 1999 and

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

<sup>2</sup> See 47 C.F.R. § 73.670.

<sup>3</sup> Pub. L. No. 101-437, 104 Stat. 996-1000, *codified* at 47 U.S.C. §§ 303(a), 303(b), and 394.

<sup>4</sup> "Children's programming" is defined as a program originally produced and broadcast primarily for an audience of children 12 years old and under. *Children's Television Programming*, Report and Order, 6 FCC Rcd 2111, 2112, *recon. granted in part*, 6 FCC Rcd. 5093, 5098 (1991).

Third Quarter of 2002 and during the Third Quarter of 2005 and First Quarter of 2006.

4. The Licensee indicated that in each instance an overage occurred, the Station split a network-provided children's programming clock hour block into two separate 30-minute program segments containing, respectively, 5.5 minutes and 5.0 minutes of commercial matter and aired the segments in different clock hours. In making each of these schedule changes, the Licensee explained that the "Station failed to properly apply the Commission's pro-rationing policy to the 30-minute children's programming" islands.

5. The Licensee argued that it should be exempt from these CTA violations for three reasons. First, the Licensee maintained that the 15-second overages were *de minimis* as the Commission found in two separate cases.<sup>5</sup> In each case cited by the Licensee, the Commission did not issue sanctions or admonishments and found 15-second overages on 13 occasions resulting from the "repositioning of commercial formatted network program[ing] as a half-hour children's segment" to be *de minimis* violations.<sup>6</sup> Next, the Licensee noted that with two exceptions, the general audience programming or programming targeted to 13- to 16-year-olds which aired during the same clock hour as the children's programming "contained commercial time that, when taken in combination with the commercial matter in the children's programming, contained no more than 10.5 minutes of commercial time in the entire clock-hour." Finally, the Licensee asserted that it has implemented procedures and instructed all Station employees to undergo additional training to ensure compliance with the Commission's Rules.

### III. DISCUSSION

6. Station WCVB(TV)'s record of exceeding the children's television commercial limits on 106 occasions during the last license term constitutes a willful and repeated violation of Section 73.670 of the Rules. The 106 instances in which the Licensee exceeded the children's television commercial limits represents a high number of violations. It appears that the 15-second overages occurred as a result of inadvertence and/or human error on the part of the Station's staff, who failed to prorate the commercial limits to half-hour islands of children's programming. The Commission has repeatedly rejected inadvertence and human error as a basis for excusing violations of the children's television commercial limits.<sup>7</sup>

7. The Licensee's assertions that it should be exempt from liability for violating the CTA have no merit. The Commission cases cited by Licensee are inapposite to the case at hand. Here, the Licensee committed 106 violations to the CTA. The cases cited by Licensee set the *de minimis* threshold at 13 violations. Next, Licensee's argument that for the majority of the overages, the total commercial time during the clock hour within which the children's program aired complied with the commercial limits does not excuse liability. The Rule clearly establishes "that where a half-hour 'island' of children's programming airs in the midst of adult viewing, the limits apply on a proportionate basis."<sup>8</sup> Finally, the Licensee may have since taken corrective actions to prevent subsequent violations of the children's television rules and policies; however, the Commission has found that the fact that a broadcast station

<sup>5</sup> See, *Letter from Barbara Kreisman, Chief, Video Division, Media Bureau, to KHBS Hearst-Argyle Television, Inc.*, File No. BRCT-20050131BFC (December 28, 2005); *Letter from Barbara Kreisman, Chief, Video Division, Media Bureau, to KHBS Hearst-Argyle Television, Inc.*, File No. BRCT-20050131BHL (December 29, 2005).

<sup>6</sup> *Id.*

<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> *Children's Television Programming*, 6 FCC Rcd at 2112 (1991).

may have implemented a plan to prevent future violations of the Commission's children's television rules and policies does not relieve the licensee of liability for prior violations.<sup>9</sup>

8. 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 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>

9. 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> In this case, an upward adjustment is justified in light of the number of commercial overages. Moreover, the violations occurred over an extended 39-month period. Accordingly, we find that the Licensee is liable for a forfeiture in the amount of \$30,000 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

10. 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 WCVB Hearst Television, Inc. is

<sup>9</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)*, 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>10</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

<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 *Kentuckiana Broadcasting, Inc.*, 13 FCC Rcd 7044 (1998).

hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of thirty thousand dollars (\$30,000) for its apparent willful and repeated violation of Section 73.670 of the Commission's Rules.

11. 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*, WCVB Hearst 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.

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

13. 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.

14. 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.

15. 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>

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to WCVB Hearst Television, Inc., c/o Brooks, Pierce, et al., P.O. Box 1800, Raleigh, NC 27602, and to its counsel, Mark J. Prak, Esquire, Brooks, Pierce, et al., P.O. Box 1800, Raleigh, NC 27602.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>18</sup> See 47 C.F.R. § 1.1914.