

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

In the Matter of)	
)	
Media General Communications Holdings, LLC)	Facility I.D. No. 48668
Licensee of Station WHLT(TV))	NAL/Acct. No.: 1041420005
Hattiesburg, Mississippi)	FRN: 0015751217

**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”),¹ we find that Media General Communications Holdings, LLC (the “Licensee”), licensee of Station WHLT(TV), Hattiesburg, Mississippi (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.² 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, 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.³

3. On February 1, 2005, the Licensee filed its license renewal application (FCC Form 303-S) for Station WHLT(TV) (the “Application”) (File No. BRCT-20050201AYL). 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 the Rules. In Exhibit 19 and in a March 8, 2007, amendment to the Application, the Licensee indicated that, from the third quarter of 1997 through the fourth quarter of 1999, the Station violated the children’s television commercial limits on 127 occasions. Of these commercial overages, one was nine

¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 73.670.

³ *Children’s Television Programming*, Report and Order, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

seconds in duration, 63 were 15 seconds in duration, four were 30 seconds in duration, nine were 60 seconds in duration, and 50 were 90 seconds in duration. The Licensee explained that 107 of the overages were the result of inadvertent errors by the Station's staff in scheduling CBS network programming to accommodate other Station programs. The Licensee attributed the remaining 20 overages to errors in the rescheduling of preempted children's programs or the erroneous insertion of commercial matter into CBS Network or syndicated programming.

4. In considering the reported overages, the Licensee argued, the Commission should take into account the "mitigating circumstances"⁴ and its "record as a licensee with a demonstrated commitment to children and children's programming." Specifically, the Licensee asserted that the majority of the overages resulted from inadvertent errors by the Station's staff. Moreover, the Licensee contended that these overages were not motivated by monetary benefit. In addition, the Licensee maintained that the Station's staff has been trained in the children's television commercial limits and that the Station has complied with these limits since the end of 1999. Finally, the Licensee requests that the Commission "view this matter in light of the mitigating circumstances and the licensee's record as a whole."

III. DISCUSSION

5. Station WHLT(TV)'s record of exceeding the children's television commercial limits on 127 occasions during the last license term constitutes a willful and repeated violation of Section 73.670 of the Rules. The 127 instances in which the Station exceeded the children's television commercial limits represent a very high number of violations. 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 1990.⁵ Although the Licensee indicated that the overages resulted from human error and/or inadvertence, this does not mitigate or excuse the violations.⁶ 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.⁷ In addition, we do not believe that the Licensee's argument with respect to its record of commitment to children and children's programming is a mitigating circumstance in this case.⁸

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.⁹ 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.¹⁰ The

⁴ See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(b)(4).

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

⁶ 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).

⁷ 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).

⁸ See *WFTV-TV Holdings, Inc. (WRDQ-TV)*, Notice of Apparent Liability, 20 FCC Rcd 20178 (MB 2005).

⁹ 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

¹⁰ 47 U.S.C. § 312(f)(1).

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,¹¹ and the Commission has so interpreted the term in the Section 503(b) context.¹² 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.”¹³

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 73.670.¹⁴ 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.”¹⁵ In this case, we believe that an upward adjustment is warranted in light of the substantial number of commercial overages. Moreover, these violations occurred over an extended 25-month period. Accordingly, we find that the Licensee is apparently 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.¹⁶ 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

8. 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 Media General Communications Holdings, LLC is 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.

9. 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*, Media General Communications Holdings, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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:

¹¹ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹² See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹³ 47 U.S.C. § 312(f)(2).

¹⁴ 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.

¹⁵ 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.

¹⁶ See *Acme Television Licensees of Oregon LLC*, 14 FCC Rcd 9612 (1999).

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).

11. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th 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.

12. 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.

13. 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. 20554.¹⁷

14. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Media General Communications Holdings, LLC, 333 East Franklin Street, Richmond, Virginia 23219, and to its counsel, Kevin P. Latek, Esquire, Dow Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁷ See 47 C.F.R. § 1.1914.