

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

In the Matter of
Gray Television Licensee, LLC
Licensee of Station WAHU-CD
Charlottesville, Virginia
Facility ID No. 47705
FRN No. 0018223693
NAL Acct. No. 201441420039
File No. BRDTA-20120601AHF

MEMORANDUM OPINION AND ORDER

Adopted: December 11, 2014

Released: December 12, 2014

By the Commission:

I. INTRODUCTION

1. This Order concerns the application of Gray Television Licensee, LLC ("Gray") for renewal of the license of television Station WAHU-CD (the "Application"). The Application is unopposed. For the reasons set forth below, we grant the Application. We also adopt the Consent Decree entered into between the Commission and Gray attached as Exhibit A (the "Consent Decree"). The Consent Decree resolves an investigation of the Licensee's compliance with the provisions of the Children's Television Act ("CTA") and, by its terms, the Commission agrees to grant the Application in conjunction and simultaneously with its adoption of the Consent Decree.

II. BACKGROUND

2. Under the CTA, as implemented by Section 73.671 of the Commission's Rules, broadcast television licensees are required to provide sufficient programming specifically designed to serve the educational and informational needs of children ("CORE programming"). Section 73.6026 of the Rules requires Class A stations to also comply with, inter alia, the Commission's CORE programming requirements. In the 1996 Children's Television Order revising our rules and policies governing children's programming, the Commission established a license renewal application processing guideline of three hours of CORE programming per week. The rules provide that the Media Bureau staff shall approve the CTA portion of any license renewal application where the licensee demonstrates that it has aired an average of three hours per week of CORE programming. A licensee will also be deemed to have satisfied this obligation and be eligible for staff approval if it demonstrates that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of CORE programming, demonstrates a level of commitment to educating and informing children at least equivalent to airing three hours per week of CORE

1 Pub L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303(a), 303(b), and 394.

2 47 C.F.R. § 73.6026

3 Policies and Rules Concerning Children's Television Programming: Revision of Programming Policies for Television Broadcast Stations, Report and Order, 11 FCC Rcd 10660, 10718 (1996) ("1996 Children's Television Order").

4 47 CFR §§73.671(e)(1),(d).

programming.⁵ The renewal applications of licensees that do not meet these processing guidelines are referred to the Commission, where the licensees have a full opportunity to demonstrate compliance with the CTA.⁶

3. The Commission established rules setting forth six criteria for evaluating whether a program qualifies as CORE programming: (1) the program has serving the educational and informational needs of children ages 16 and under as a significant purpose; (2) the program is aired between the hours of 7:00 a.m. and 10:00 p.m.; (3) the program is a regularly-scheduled weekly program; (4) the program is at least 30 minutes in length; (5) the educational objective and the target child audience are specified in writing in the licensee's Children's Television Programming Report; and (6) instructions for listing the program as educational/ informational, including an indication of the age group for which the program is intended, are provided by the licensee to publishers of program guides.⁷

4. On June 1, 2012, Gray filed the Application for Station WAHU-CD.⁸ In the originally-filed Application, Gray stated that, between the fourth quarter of 2005 and the third quarter of 2007, the station only broadcast one hour of CORE programming per week. Gray argued in an exhibit that the addition of several hours of CORE programming from the fourth quarter of 2007 through the first quarter of 2009 brought the average number of hours up to three per week for the license term.⁹ The staff informed Gray that this was not an adequate showing to meet the CORE programming requirement for the quarters in dispute.

5. Gray then amended the Application on June 19, 2013. In the amendment, Gray stated that it had reviewed its programming logs and found that the station had in fact aired over three hours of CORE programming in each quarter except for the fourth quarter of 2006 and the first and second quarters of 2007. Gray submitted amended Children's Television Programming Reports for all eight quarters to reflect that review. In the amended Children's Television Programming Reports for WAHU-CD, Gray included the following as examples of CORE programming for the disputed quarters: *Under the Helmet*; *This Week in Baseball*; *Cool Fuel Roadtrip*; *The American Athlete*; *Rebecca's Garden*; and *Friday Night Endzone*. The staff raised questions as to whether these programs have a significant purpose of serving the educational and informational needs of children ages 16 and under.

6. On June 17, 2014, the Video Division sent a follow-up letter pursuant to Section 1.88 of the Commission's Rules requesting further information about potential violations, including whether Gray met the Commission's processing guideline of offering three hours per week of CORE programming. The staff concluded that it could not clear the Application under our processing guidelines pursuant to Section 73.671(e)(1) of the Rules and therefore referred the matter to the Commission as required.¹⁰

III. DISCUSSION

7. As required by the CTA,¹¹ we have considered whether Gray "has served the educational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." The Commission and Gray have negotiated the terms of the Consent

⁵ 47 CFR § 73.671(e)(1).

⁶ *Id.*

⁷ *Id.* at 10696; 47 C.F.R. § 73.671(c).

⁸ File No. BRDTA-20120601AHF. The Licensee filed amended the Renewal Application on June 19, 2013.

⁹ File No. BRDTA-20120601AHF, Exhibit 23.

¹⁰ 47 C.F.R. §§ 73.671(c),(e)(1).

¹¹ 47 U.S.C. § 303b.

Decree, which resolves the children's programming issues raised in this proceeding. As part of the Consent Decree, Gray has agreed to make a voluntary contribution of \$25,000 (Twenty Five Thousand Dollars) to the U.S. Treasury. Based on our review of the record, including Gray's overall history of compliance with our rules, we conclude that Gray has the basic qualifications to be a Commission licensee and that the Consent Decree contains appropriate terms and conditions. In light of the foregoing and our finding that grant of the Application is warranted under Section 309(k)(2) of the Act, we need not determine whether Gray committed "serious violations" of our rules or violations that constituted a "pattern of abuse" for purposes of Section 309(k)(1).¹² Therefore, we conclude that there are no substantial and material questions of fact at issue and grant Gray's Application, subject to the specific representations and commitments contained in the Consent Decree.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, that the Consent Decree attached as Exhibit A **IS ADOPTED**.

9. **IT IS FURTHER ORDERED** that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal application of Gray Television Licensee, LLC, File No. BRDTA-20120601AHF, **IS GRANTED**.

10. **IT IS FURTHER ORDERED** that the investigation by the Media Bureau of the matters noted above **IS TERMINATED**.

11. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by both First Class mail and Certified Mail, Return Receipt Requested, to Gray Television Licensee, LLC, 999 Second Street S.E., Charlottesville, Virginia, 22902, and to its counsel, Joan Stewart, Esq., Wiley Rein LLP, 1776 K Street NW, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹² See 47 U.S.C. §§309(k)(1),(2): *Shareholders of Univision Communications Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 5842, 5859, n. 113 (2007).