

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

In the Matter of Liability of )  
 )  
SPOKANE TELEVISION, INC. )  
 )  
Licensee of Television Station )  
KXLY-TV, Spokane, Washington )  
Facility I.D. No. 61978 )  
 )  
for a Forfeiture )

MEMORANDUM OPINION AND ORDER  
AND FORFEITURE ORDER

Adopted: May 24, 2000

Released: May 26, 2000

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to authority delegated by Section 0.283 of the Commission's Rules, 47 C.F.R. § 0.283, has before it for consideration: (i) a Notice of Apparent Liability for forfeiture in the amount of twenty thousand dollars (\$20,000) issued against Spokane Television, Inc. (Spokane TV), licensee of station KXLY-TV, Spokane, Washington, in *Spokane Television, Inc. (KXLY-TV)*, 14 FCC Rcd 13557 (MMB 1999) (*KXLY NAL*); and (ii) Spokane TV's Response to *KXLY NAL* filed on September 20, 1999 (Response), requesting reduction of the forfeiture. The forfeiture was assessed for station KXLY-TV's apparent repeated violations of Section 73.670 of the Commission's Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter that may be aired during children's television programming.

2. In *KXLY NAL*, we found that station KXLY-TV exceeded the children's television commercial limits on 24 occasions during the last license term, constituting a repeated violation of Section 73.670 of the Commission's Rules. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), Spokane TV was advised of its apparent liability for forfeiture in the amount of \$20,000. That amount was reached after consideration of the factors set forth in Section 503(b)(2) of the Communications Act, and, in particular, the five criteria consisting of: (1) the number of instances of commercial overages; (2) the length of each overage; (3) the period of time over which the overages occurred; (4) whether or not the licensee established an effective program to ensure compliance; and (5) the specific reasons that the licensee gave for the overages. We applied these criteria to the facts of station KXLY-TV's case, considering the 24 violations reported by Spokane TV, which occurred over a period of more than two years and included 22 program-length commercials, the category of violations over which Congress expressed particular concern because young children often have difficulty distinguishing between commercials and programs. Based on the number and type of violations, we concluded that children had 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>1</sup> We noted, moreover, the Commission's expectation at the time it delayed the effective date of Section 73.670 of the Rules from October 1, 1991, until January 1, 1992, 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 . . . ." <sup>2</sup> In doing so, we rejected the reasons offered by Spokane TV -- human error and inadvertence on the part of the station staff and advertisers and/or program suppliers -- as bases for excusing station KXLY-TV's violations of the commercial limits. We added that, though station KXLY-TV implemented procedures to prevent future violations of the children's television commercial limitations, this did not relieve Spokane TV of liability for the violations which had occurred.

3. In its Response to *KXLY NAL*, Spokane TV claims we erred in determining the number of program-length commercials that aired on station KXLY-TV. According to Spokane TV, a total of 22 Kraft General Foods advertisements containing promotional tags that featured characters from the "Flintstones" movie aired during and adjacent to the 3:00 – 3:30 p.m. "Flintstones" cartoon. However, Spokane TV explains, only ten "Flintstones" episodes were actually impacted by the commercials because multiple advertisements containing the Flintstones tags aired during or adjacent to the episodes of the "Flintstones" cartoon on May 16, 1994 (five spots), May 17, 1994 (four spots), May 18, 1994 (two spots) and May 19, 1994 (five spots). Spokane TV maintains that, in other cases involving the broadcast during a program of multiple commercials for a product related to the program, the Commission has found the licensee liable for only one program-length commercial. In view of Commission precedent, Spokane TV asserts that it was mistakenly attributed with 12 additional program-length commercials.

4. Spokane TV additionally contends that, in assessing the forfeiture amount in this case, we failed to consider its "subsequent remedial measures and dedication to children's television programming." First, Spokane TV states that, following the last of station KXLY-TV's reported program-length commercials, it implemented a strict pre-screening policy for all commercials scheduled to air in, or adjacent to, children's programming. Spokane TV indicates that this policy has been effective, as no further program-length commercials have occurred at the station. In fact, Spokane TV says, its diligence has not only assured station KXLY-TV's compliance with the Commission's rules and policies concerning program-length commercials, but also enabled it to alert the ABC Television Network to a potentially large-scale violation of the program-length commercial prohibition involving an advertising agency's plan to place a commercial for the movie "Doug" within ABC's Saturday morning children's television line-up, which includes the "Doug" cartoon. Second, regarding its dedication to children in the Spokane community, Spokane TV points to the three hours of core educational programming aired on station KXLY-TV, as well as the station's broadcast of many non-core educational programs, including "Talk Box," an award-winning program produced by station KXLY-TV's sister station WISC-TV, Madison, Wisconsin. To further illustrate its commitment to

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<sup>1</sup> Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394.

<sup>2</sup> *Children's Television Programming*, 6 FCC Rcd 5529, 5530 n.10 (1991).

children in the Spokane community, Spokane TV also refers to its initiation of, and devotion of tremendous effort and resources to, local campaigns, such as “Coats for Kids,” Child Abuse Prevention Day, Children First, Chase Youth Awards, Children’s Miracle Network Telethon and News 4’s Family Fourth of July. Based on these considerations, *i.e.*, the disparate treatment it received with regard to the program-length commercials, its implementation of an effective compliance plan and “its recognized excellence in serving the needs of children,” Spokane TV believes that the forfeiture assessed against it should be reduced to \$10,000.

5. *Discussion.* As we indicated in *KXLY NAL*, the Commission has consistently held that a licensee’s implementation of policies to prevent subsequent violations of the children’s television does not relieve it of liability for violations which have occurred.<sup>3</sup> Therefore, we disagree with Spokane TV that its implementation of an effective compliance plan *after* violations had occurred at station KXLY-TV warrants reduction in the forfeiture amount. Furthermore, while Spokane TV appears to be meeting its other obligation under the Children’s Television Act of 1990, *viz.*, to meet the educational and informational needs of children through its programming, its efforts in that regard likewise do not warrant a reduction in the forfeiture assessed for violations of the commercial limits.

6. However, we agree with Spokane TV that we miscounted the number of program-length commercials reported in station KXLY-TV’s renewal application. The four episodes of the “Flintstones,” each of which involved the broadcast of more than one commercial containing Flintstones promotional tags, constituted four program-length commercials.<sup>4</sup> Therefore, the correct number of program-length commercials for consideration in this case is ten, and we believe that the forfeiture assessed against Spokane TV should be adjusted to reflect two conventional overages and 10, rather than 22, program-length commercials. In a recent, similar case, *WPIX, Inc. (WPIX(TV))*, 14 FCC Rcd 9077 (MMB 1999), we assessed a \$14,000 forfeiture for two overages less than 30 seconds in duration, two 30-second overages, one three-minute overage, one five and one-half-minute overage and eight program-length commercials, which occurred over a period of almost four years. The licensee in *WPIX, Inc.* attributed the 14 violations to inadvertence and human error on the part of station WPIX(TV)’s staff, a television network and a program distributor/syndicator, and claimed to have taken steps to prevent future violations. Compared to *WPIX, Inc.*, the instant case involves a slightly lower number of total violations, but more program-length commercials. In this regard, we note that the Commission has routinely assessed higher forfeitures for program-length commercials than for a greater number of conventional overages.<sup>5</sup> Additionally, the licensees in both cases offered virtually the same reasons for their respective violations, and each licensee indicated that it had instituted new procedures to prevent future violations. In view of these facts, we find that the violations at issue in this case are comparable to those involved in *WPIX, Inc.*, and conclude that a comparable forfeiture should be assessed against station KXLY-TV.<sup>6</sup> Therefore, we will reduce the

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<sup>3</sup> See *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969); *KEVN, Inc.*, 8 FCC Rcd 5077, 5078 (1993); *R&R Media Corporation (WTWS(TV))*, 9 FCC Rcd 1715, 1716 (1994); *Mountain States Broadcasting, Inc. (KMSB-TV)*, 9 FCC Rcd 2545, 2546 (1994); *WHP Television, L.P.*, 10 FCC Rcd 4979, 4980 (1995).

<sup>4</sup> See, e.g., *Tampa Bay Television, Inc. (WFTS-TV)*, 8 FCC Rcd 411 (MMB 1993).

<sup>5</sup> See, e.g., *Channel 39 Licensee, Inc. (WDZL(TV))*, 12 FCC Rcd 14012, 14015 n.3 (1997).

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forfeiture assessed against station KXLY-TV in *KXLY NAL* from \$20,000 to \$14,000.

7. Accordingly, IT IS ORDERED THAT Spokane Television, Inc.'s Response to *Spokane Television, Inc. (KXLY-TV)*, 14 FCC Rcd 13557 (MMB 1999), requesting reduction of the forfeiture assessed therein, IS GRANTED. IT IS FURTHER ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), Spokane Television, Inc. FORFEIT to the United States the sum of fourteen thousand dollars (\$14,000) for repeated violations of Section 73.670 of the Commission's Rules, 47 C.F.R. §73.670. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument payable to the Federal Communications Commission. With regard to this forfeiture proceeding, Spokane Television, Inc. may take any of the actions set forth in Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, as summarized in the attachment to this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart  
Chief, Mass Media Bureau

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<sup>6</sup> Cf., *WPTT, Inc. (WCWB-TV)*, DA 99-1724 (MMB released Aug. 27, 1999) (\$14,000 forfeiture assessed for eight program-length commercials); *TV 17 Unlimited, Inc. (WXMI-TV)*, 13 FCC Rcd 8978 (MMB 1997) (\$13,500 forfeiture assessed for 18 violations, including seven program-length commercials).