

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

In the Matter of)	
)	
Tribune Television Company)	Facility I.D. No. 146
Licensee of Station WXIN(TV))	NAL/Acct. No. 0741420047
Indianapolis, Indiana)	FRN: 0003576485

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: June 14, 2007

Released: June 22, 2007

By the Chief, Video Division, Media Bureau:

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 by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,² we find that Tribune Television Company (the "Licensee"), licensee of Station WXIN(TV), Indianapolis, Indiana (the "Station"), apparently willfully and repeatedly violated Sections 73.3526(e)(11)(i) and 73.670 of the Rules, by failing to place in the Station's public inspection file all required TV issues/programs lists, and by failing to comply with the limits on commercial matter in children's programming, respectively.³ 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 eight thousand dollars (\$8,000).

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. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a "program-length commercial").⁴

3. Section 73.3526 of the Rules requires a commercial broadcast licensee to maintain a

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

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. §§ 73.3526(e)(11)(i) and 73.670.

⁴ *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

public inspection file containing specific types of information related to station operations.⁵ As set forth in subsection 73.3526(e)(11)(i), a TV issues/programs list is to be placed in a commercial TV broadcast station's public inspection file each calendar quarter by the tenth day of the succeeding calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify the licensee's rule violation.⁶

4. On March 31, 2005, the Licensee filed its license renewal application (FCC Form 303-S) for Station WXIN(TV), (the "Application") (File No. BRCT-20050331AXF). In response to Section IV, Question 3 of the Application, the Licensee stated that during the previous license term, it had failed to timely place in its public inspection file all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17, the Licensee stated that during preparation of the Application, it discovered that TV issues/programs lists for 1999 and for the second and third quarters of 2000 were missing from the public inspection file. The Licensee explained that in December 2003, the Station relocated to a new facility and that it believes these records were lost in the move. The Licensee maintained that the Station has recreated most of the missing records and placed them in the public file. The Licensee asserted that its procedures for ensuring that all required documents are placed in the public file were followed with respect to the 1999 and 2000 TV issues/programs lists, and that the missing documents were the result of the move. Finally, the Licensee contended that it will continue to improve its procedures to ensure future compliance with the Commission's public file rules.

5. In response to Section IV, Question 5 of the Application, the Licensee stated that during the previous license term, the Station complied with the limits on commercial matter in children's programming specified in Section 73.670 of the Commission's Rules. In a July 14, 2005 amendment to the Application, however, the Licensee changed its response to Section IV, Question 5 to reflect a "no" response. In Exhibit 19 to the amended Application, the Licensee indicated that on June 18, 2005, the Station violated the children's television commercial limits. Specifically, the Licensee stated that the Station aired a commercial for the Nintendo "Touch Kirby" video game during the "Kirby" children's program. The Licensee attributed the violation to an inadvertent scheduling error and described the changes it made to its procedures to prevent recurrence of the incident.

III. DISCUSSION

6. The Licensee's failure to retain in its Station WXIN(TV) public inspection file all required TV issues/programs lists constitutes an apparent willful and repeated violation of Section 73.3526(e)(11)(i). Moreover, the Licensee's failure to comply with the limits on commercial matter in children's programming constitutes an apparent willful violation of Section 73.670. 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.⁷ 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.⁸ 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,⁹ and the

⁵ See 47 C.F.R. § 73.3526.

⁶ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

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

⁸ 47 U.S.C. § 312(f)(1).

⁹ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

Commission has so interpreted the term in the Section 503(b) context.¹⁰ 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.”¹¹

7. Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and programs. S. Rep. No. 227, 101st Cong., 1st Sess. 24 (1989). Given this congressional concern, the Commission made it clear that program-length commercials, by their very nature, are extremely serious violations of the children’s television commercial limits, stating that the program-length commercial policy “directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter.”¹²

8. The Licensee attributed the commercial overage to inadvertence. The Commission, however, has repeatedly rejected inadvertence as a basis for excusing violations of the children’s television commercial limits.¹³ Furthermore, corrective actions may have been taken to prevent subsequent violations of the children’s television rules and policies, but that, too, does not relieve the Licensee of liability for the violation which has occurred.¹⁴

9. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3526 and a base forfeiture amount of \$8,000 for violation of Section 73.670.¹⁵ 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.”¹⁶

10. In this case, the Licensee acknowledged that the Station’s TV issues/programs lists for 1999 and for the second and third quarters of 2000 were missing from the public inspection file. In addition, the Station aired one program-length commercial in violation of Section 73.670. Considering the record as a whole, we believe that a proposed forfeiture in the amount of \$8,000 is appropriate for the apparent willful and repeated violation of Section 73.3526(e)(11)(i) and willful violation of 73.670.

¹⁰ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹¹ 47 U.S.C. § 312(f)(2).

¹² *Children’s Television Programming*, 6 FCC Rcd at 2118.

¹³ See, e.g., *LeSea Broadcasting Corp. (WHKE-TV)*, 10 FCC Rcd 4977 (MMB 1995); *Buffalo Management Enterprises Corp. (WIVB-TV)*, 10 FCC Rcd 4959 (MMB 1995); *Act III Broadcasting License Corp. (WUTV-TV)*, 10 FCC Rcd 4957 (MMB 1995); *Ramar Communications, Inc. (KJTV-TV)*, 9 FCC Rcd 1831 (MMB 1994).

¹⁴ See, e.g., *WHP Television, L.P. (WHP-TV)*, 10 FCC Rcd 4979, 4980 (MMB 1995); *Mountain States Broadcasting, Inc. (KMSB-TV)*, 9 FCC Rcd 2545, 2546 (MMB 1994); *R&R Media Corporation (WTWS-TV)*, 9 FCC Rcd 1715, 1716 (MMB 1994); *KEVN, Inc. (KEVN-TV)*, 8 FCC Rcd 5077, 5078 (MMB 1993); *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969).

¹⁵ 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.

¹⁶ 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.

IV. ORDERING CLAUSES

11. 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 Tribune Television Company is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of eight thousand dollars (\$8,000) for its apparent willful and repeated violations of Sections 73.3526(e)(11)(i) and 73.670 of the Commission's Rules.

12. 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*, Tribune Television Company SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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 above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229.

14. 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.

15. 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.

16. 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

17. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Tribune Television Company, 6910 Network Place, Indianapolis, Indiana 46278, and to its counsel, R. Clark Wadlow, Esquire, Sidley Austin Brown & Wood LLP, 1501 K Street, N.W., Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁷ See 47 C.F.R. § 1.1914.