Federal Communications Commission
Washington, D.C. 20554

October 22, 2015

DA 15-1204
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WHEC-TV, LLC
3415 University Avenue, West
St. Paul, MN 55114-2099

Re: WHEC-TV, Rochester, NY
Facility ID: 70041
FRN: 0005828686

Dear Licensee:

This letter is in reference to the license renewal application for WHEC-TV, Rochester, New York (the "Station"), which is licensed to WHEC-TV, LLC (the "Licensee").[1] We hereby admonish the aforementioned Station for its failure to comply with the limits on commercial matter in children's programming.

In the Children's Television Act of 1990 ("CTA"), Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia,* limiting the amount of commercial matter that commercial television stations may air during children's programming, and to consider in its review of television license renewals 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, 47 C.F.R. § 73.670, 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.[2] These commercial limitations became effective on January 1, 1992.[3]

In furtherance of the CTA's underlying purpose to protect children from excessive and inappropriate commercial messages, the Commission adopted the website address rules.[4] The website address rules restrict the display of Internet web addresses during children's programming directed at

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[1] File No. BRCDT - 20150129AAI ("WHEC-TV Renewal").

[2] *See Policies and Rules Concerning Children's Television Programming*, MM Docket Nos. 90-570 and 83-670, Report and Order, 6 FCC Rcd 2111 (1991), *recon. granted in part*, Memorandum Opinion and Order, 6 FCC Rcd 5093 (1991).

[3] *See Policies and Rules Concerning Children's Television Programming*, MM Docket Nos. 90-570 and 83-670, Order, 6 FCC Rcd 5529 (1991).

[4] *See Children's Television Obligations of Digital Television Broadcasters*, MM Docket No 00-167, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943, 22961-62, ¶¶ 50-52 (2004) ("*2004 Report and Order*"), *aff'd in part, amended in part*, Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065, 11077-78, ¶¶ 29-32 (2006) ("*2006 Order on Reconsideration*"); *see also* 47 C.F.R. § 73.670(b), (c), and (d).

children ages 12 and under.[5] Specifically, Section 73.670(b) permits the display of Internet website addresses during program material or promotional material not counted as commercial time only if it meets the following four-prong test: (1) the website offers a substantial amount of *bona fide* program-related or other noncommercial content; (2) the website is not primarily intended for commercial purposes, including either e-commerce or advertising; (3) the website's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and (4) the page of the website to which viewers are directed by the website address is not used for e-commerce, advertising, or other commercial purposes (*e.g.*, contains no links labeled "store" and no links to another page with commercial material).[6]

On January 29, 2015, the Licensee filed the above-referenced license renewal application for the Station. In Exhibit 22 to the application, the Licensee admitted that on October 12, 2013, the Station aired the URL address for the website "www.lazytown.com," which appeared during the closing credits of the children's program "LazyTown." The program was supplied to the Station, through the NBC network, by Sprout as part of the NBC Kids Saturday Morning E/I Block.[7] The inclusion of the website address is described as being "inadvertently included" and "fleeting."

Even though the website address was displayed for only a short duration (estimated at one-half of one second), the display of a website address during program material, for any period of time, that does not comply with the four-prong test is a violation of Section 73.670(b). No evidence has been provided demonstrating that the website complies with the four-prong test set forth in Section 73.670(b). As recently as July 2, 2014, the top of the homepage of the website contained content of a commercial nature in the form of a link labeled "shop," in violation of the fourth prong of the test.[8] Furthermore, while the website address was only displayed during the closing credits, the Commission has specifically stated that closing credits are considered to be part of the television programming material and are subject to the website address rule.[9]

We note that while the commercial matter may have been inserted into the program by the Station's television network or program supplier (*e.g.*, NBC Network or Sprout), this does not relieve the Station of responsibility for the violation. In this regard, the Commission has consistently held that

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[5] *See 2004 Report and Order*, 19 FCC Rcd at 22961, ¶ 50; 47 C.F.R. § 73.670, note 2.

[6] *See* 47 C.F.R. § 73.670(b). In 2006, on reconsideration, the Commission retained the original text of Section 73.670(b) concluding that "the website address rule fairly balances the interest of broadcasters in exploring the potential uses of the Internet with our mandate to protect children from over-commercialization." The Commission went on to clarify that "broadcasters are free to display the addresses of websites that do not comply with the [four-prong] test during allowable commercial time, as long as it is adequately separated from the program material." *2006 Order on Reconsideration*, 21 FCC Rcd at 11078, ¶ 32.

[7] WHEC-TV Renewal, Exhibit 22.

[8] *See e.g., Orlando Hearst Television, Inc.*, Admonishment Letter, 29 FCC Rcd 9634 (Vid. Div. 2014); *COMCORP of Texas License Corp.*, Admonishment Letter, 29 FCC Rcd 9692 (Vid. Div. 2014). When viewed on July 28, 2015, the website at URL "www.lazytown.com" no longer contained a "shop" link or any content other than a description of the show and links to a LazyTown Facebook page and YouTube channel.

[9] *2006 Order on Reconsideration*, 21 FCC Rcd at 11080, ¶ 36.

reliance on a program's source or producer for compliance with our children's television rules and policies will not excuse or mitigate violations that occur.[10]

We consider any violation of our rules limiting the amount of commercial matter in children's programming to be significant, however, the violation described in the Licensee's license renewal application appears to have been an isolated occurrence. While we do not rule out more severe sanctions for similar violations of this nature in the future, we have determined that an admonition is appropriate at this time. Therefore, based upon the facts and circumstances before us, we **ADMONISH** the Station for its violation of Section 73.670(b) of the Commission's rules. We remind the Licensee that the Commission expects all commercial television licensees to comply with the limits on commercial matter, including the display of website addresses, during children's programming.

Accordingly, **IT IS ORDERED** that, a copy of this Letter shall be sent by First Class and Certified Mail, Return Receipt Requested to the licensee at the address listed above.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc:
Charles R. Naftalin, Esq.
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Washington, D.C. 20006-3906

[10] *See, e.g., WTXX, Inc.*, Admonishment Letter, 22 FCC Rcd 11968 (Vid. Div. 2007); *Max Television of Syracuse, L.P.*, Notice of Apparent Liability for Forfeiture, 10 FCC Rcd 8905 (MMB 1995).