Federal Communications Commission
Washington, D.C. 20554

In reply refer to: 1800E1-LG

February 27, 1998

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Koplar Communications Television, L.L.C.
Licensee, KPLR-TV
4935 Lindell Boulevard
St. Louis, MO 63108

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of twenty thousand dollars ($20,000) pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. §503(b), under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules, 47 C.F.R. §0.283, for repeated violations of the Commission's rule limiting the amount of commercial matter that may be aired during children's programming.

In the Children's Television Act of 1990, 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 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. Accordingly, 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 on weekends and 12 minutes on weekdays. The Commission also reaffirmed and clarified its long-standing policy 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"). *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). These commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

On September 30, 1997, you filed a license renewal application (FCC Form 303-S) for station KPLR-TV, St. Louis, Missouri (File No. BRCT-970930KN). In response to Section III, Question 4 of that application, you state that during the previous license term KPLR-TV failed to comply with the limitations on commercial matter in children's programming specified in Section 73.670 of the Commissions Rules. In Exhibit 3 to that application and a letter dated December 5, 1997,

you indicate that between March 30, 1995, and October 9, 1997, KPLR-TV violated the children's television commercial limits on 34 occasions. Of these commercial overages, five were less than 30 seconds in duration, eight were 30 seconds or more but less than 60 seconds in duration, one was 60 seconds in duration and 20 were program-length commercials. You attribute all but one of these violations to inadvertence and/or human error, and assert that remedial actions have been taken to prevent the recurrence of such violations. The remedial actions you describe include having: (1) the traffic manager double-check all quarterly changes in commercial formatting for continuing children's programs; (2) the local and national traffic coordinators check the children's programming commercial count on each final log before it is sent to master control; (3) computer coding and specific assignments of responsibility to station personnel; (4) station personnel prescreen all commercials for children's programs to verify their content; and (5) a continuing series of educational meetings with station personnel regarding children's television commercial "regulations." As for the remaining violation, a program-length commercial, you state that a program provided to KPLR-TV by the Warner Network ("Warner") erroneously included a commercial featuring characters related to that program. You maintain that KPRL-TV was subsequently advised that Warner was implementing screening procedures to insure that no program-related spots would be scheduled in the future and steps to notify stations in advance of any spot that slips through the screening procedures.

KPLR-TV's record during the last license term of exceeding the Commission's commercial limits on children's television programming on 34 occasions, including 20 program-length commercials, constitutes a repeated violation of Section 73.670 of the Commission's Rules. Accordingly, pursuant to Section 503(b) of the Communications Act, Koplar Communications Television, L.L.C. is hereby advised of its apparent liability for forfeiture in the amount of twenty thousand dollars ($20,000) for its apparent repeated violation of Section 73.670 of the Commission's Rules. The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Communications Act, and, in particular, the following criteria: (1) the number of instances of commercial overages; (2) the length and nature of each such overage; (3) the period of time over which such overages occurred; (4) whether or not the licensee established an effective program to ensure compliance; and (5) the specific reasons that the licensee gives for the overages. These criteria are appropriate in analyzing violations of the commercial limits during children's programming, since they take into account, *inter alia*, "the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability", as required under §503(b)(2)(D) of the Communications Act.[1]

[1] In *United States Telephone Ass'n. v. FCC*, 28 F3rd 1232 (D.C. Cir. 1994), the U.S. Court of Appeals for the District of Columbia set aside *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *recon. denied*, 7 FCC Rcd 5339 (1992), *revised*, 8 FCC Rcd 6215 (1993), stating that the guidelines for assessing forfeitures established therein must be subject to public comment to comply with the Administrative Procedure Act. In accordance with the court's decision, the Commission released *Forfeiture Guidelines - Notice of Proposed Rulemaking in CI Docket No. 95-6*, 10 FCC Rcd 2945 (1995). After receiving and considering comments from the public in that proceeding, the Commission adopted *Forfeiture Guidelines - Report and Order in CI Docket No. 95-6*, 12 FCC Rcd 17087 (1997) (*Forfeiture Guidelines*). *Forfeiture Guidelines* became effective on October 14, 1997. 62 Fed. Reg. 43474 (August 14, 1997). However, with regard to (i) all cases pending when *Forfeiture Guidelines* was adopted, and (ii) all cases involving "violations arising from facts that occurred before the effective date of th[at]

When the Commission delayed the effective date of Section 73.670 of the Rules until January 1, 1992, we stated 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 . . . . " *Children's Television Programming, supra*, 6 FCC Rcd at 5530 n.10. Although KPLR-TV appears to have made an effort to comply with the Commission's children's television commercial limits, that effort apparently was not sufficient in light of the violations described in the station's renewal application. Further, 20 of the overages were program-length commercials. 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." *Children's Television Programming, supra*, 6 FCC Rcd at 2118. Accordingly, the Commission has routinely assessed higher forfeitures for program-length commercials than for a greater number of conventional overages. *See, e.g., Channel 39 Licensee, Inc. (WDZL(TV)*, 12 FCC Rcd 14012, 14015 n.3.

The number and magnitude of overages at issue here 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. *Children's Television Programming, supra*, 6 FCC Rcd at 2117-18. The only reasons KPLR-TV offers for all but one of the overages are human error and/or inadvertence. However, the Commission has repeatedly rejected human error and/or inadvertence as a basis for excusing violations of the children's television commercial limits. *Ramar Communications, Inc. (KJTV(TV))*, 9 FCC Rcd 1831 (1994); *Act III Broadcasting License Corp. (WUTV(TV))*, 10 FCC Rcd 4957 (1995); *Buffalo Management Enterprises Corp. (WIVB-TV)*, 10 FCC Rcd 4959 (1995); *LeSea Broadcasting Corp. (WHKE(TV))*, 10 FCC Rcd 4977 (1995). Likewise, the occurrence of a program-length commercial in programming supplied by Warner does not absolve KPLR-TV of responsibility for that violation. The Commission has consistently held that a licensee's reliance on a program's source or producer for compliance with our children's television rules and policies will not excuse or mitigate violations which do occur. *See, e.g., Max Television of Syracuse, L.P. (WSYT(TV))*, 10 FCC Rcd 8905 (1995); *Mt. Mansfield Television, Inc. (WCAX-TV)*, 10 FCC Rcd 8797 (1995); *Boston Celtics Broadcasting Limited Partnership (WFXT(TV))*, 10 FCC Rcd 6686 (1995); *WRGB Broadcasting, Inc.*, MMB Admonition dated August 10, 1994. The fact that KPLR-TV may have implemented, or may be implementing, policies to prevent subsequent violations of the Commission's children's television rules and policies does not relieve the licensee of liability for the violations which have occurred. *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);

order," forfeiture amounts are to be assessed "under the case-by-case approach in effect when the violation occurred," in conformity with the standards set out in Section 503 of the Communications Act. *Id.* at ¶49.

Mountain States Broadcasting, Inc. (KMSB-TV), 9 FCC Rcd 2545, 2546 (1994); *WHP Television, L.P.*, 10 FCC Rcd 4979, 4980 (1995). In this regard, we note that despite KPLR-TV's implementation of procedures to prevent future violations, a program-length commercial occurred as recently as October 9, 1997. Consideration of all of these factors warrants a forfeiture in the above-specified amount of $20,000. *Cf., Meredith Corp. (WOFL(TV))*, 12 FCC Rcd 2387 (1997) ($20,000 forfeiture for 33 overages, including 19 program-length commercials); *Ponce-Nicasio Broadcasting (KCMY(TV))*, 10 FCC Rcd 6728 (1995) ($20,000 forfeiture for 27 overages, all of which were program-length commercials); and *Max Television of Syracuse, L.P. (WSYT(TV))*, 10 FCC Rcd 8905 (1995) ($20,000 forfeiture for 29 overages, including 18 program-length commercials).

You are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." Section 1.80(f)(3) of the Commission's Rules, 47 C.F.R. §1.80(f)(3). Other relevant provisions of Section 1.80(f)(3) of the Commission's Rules are summarized in the attachment to this letter.

Notwithstanding the substantial nature of the violations described here and the severity with which we regard them, we find you qualified to remain a Commission licensee and conclude that grant of your application would serve the public interest, convenience and necessity. Therefore, the license renewal application of Koplar Communications Television, L.L.C., for station KPLR-TV, St. Louis, Missouri, File No. BRCT-970930KN, IS HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau