

COPY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Media General Communications Holdings, LLC)	Facility ID No. 48667
Licensee of WJTV(TV), Jackson, Mississippi)	NAL/Acct. No. 1041420004
)	FRN: 0015751217

To: Office of the Secretary
Attn: Barbara A. Kreisman
Chief, Video Division, Media Bureau

FILED/ACCEPTED
JUN 28 2010
Federal Communications Commission
Office of the Secretary

**REQUEST FOR RESCISSION OF NOTICE OF
APPARENT LIABILITY FOR FORFEITURE**

Media General Communications Holdings, LLC (“Media General”), licensee of WJTV(TV), Jackson, Mississippi, by its attorneys and pursuant to Section 1.80(f)(3) of the Commission’s rules, hereby submits this Request for Rescission of the Notice of Apparent Liability for Forfeiture (“NAL”) issued in the above-captioned proceeding.¹ The Commission must rescind the NAL in its entirety because it is statutorily barred from collecting the proposed forfeiture.

BACKGROUND

From the third quarter of 1997 through the third quarter of 2000, WJTV(TV) experienced 124 commercial overages during its CBS network children’s programs. Throughout the remainder of its license renewal term, Media General fully complied with the Commission’s children’s programming rules. On February 1, 2005, Media General filed its license renewal application for WJTV(TV) and, in Exhibit 19 to this application, disclosed the overages. On May 27, 2010, almost ten years after the last violation occurred, the Commission released the NAL proposing a \$30,000 forfeiture for the violations.

¹ Notice of Apparent Liability for Forfeiture, *Media General Communications Holdings, LLC, Licensee of Station WJTV(TV), Jackson, Mississippi*, FCC 10-95 (rel. May 27, 2010).

DISCUSSION

The Commission must rescind the NAL because the five-year statute of limitations for civil fines has long since passed. Under 28 U.S.C. § 2462, “the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued.”² The courts have held that a claim accrues at the time of the underlying violation and not when a violation is discovered.³ Indeed, in the broadcasting context, the D.C. Circuit has stated that a forfeiture claim “accrues” when offending material is broadcast.⁴ Here, the conduct giving rise to the NAL occurred between the third quarter of 1997 and the third quarter of 2000. If the Commission were to bring suit in district court to recover the proposed forfeiture, the court would be compelled to dismiss the action immediately as time-barred.

Moreover, even if the Commission were to argue that the claim in this case accrued when the Commission discovered the violations,⁵ it still is time barred from enforcing this forfeiture.

² See 28 U.S.C. § 2462.

³ See *Nat'l Parks and Conservation Assoc. v. Tenn. Valley Auth.*, 502 F.3d 1316, 1322 (11th Cir. 2007) (“[a] claim first accrues on the date that a violation first occurs”); *Action for Children's Television v. FCC*, 59 F.3d 1249, 1254 (D.C. Cir. 1995) (“the general five-year period of limitations on forfeiture proceedings . . . would effectively prevent the Government from filing a civil action more than five years after” the conduct at issue); *3M Company (Minnesota Min. and Mfg) v. Browner*, 17 F.3d 1453, 1462 (D.C. Cir. 1994) (“an action, suit or proceeding to assess or impose a civil penalty must be commenced within five years of the date of the violation giving rise to the penalty”); *United States v. Core Lab.*, 759 F.2d 480, 482 (5th Cir. 1985) (“the date of the underlying violation has been accepted without question as the date when the claim first accrued and, therefore, as the date on which the statute [of limitations] began to run”); *Smith v. United States*, 143 F.2d 228 (9th Cir. 1944) (analyzing the predecessor to 28 U.S.C. § 2462 and holding that “the phrase ‘time when the penalty of forfeiture accrued’ has reference merely to the time of the commission of the offense or the doing of the act by which the penalty or forfeiture was incurred.”); *but see U.S. v. Aluminum Co. of America*, 824 F.Supp. 640 (E.D. Tex. 1993) (holding that an enforcement action under the Clean Water Act accrued when defendant reported violations to the Environmental Protection Agency).

⁴ See *Action for Children's Television* 59 F.3d at 1254 (reviewing the Commission’s indecency forfeiture scheme and stating that the five-year period of limitations codified in 28 U.S.C. § 2462 would prevent the Commission from filing a civil action to enforce an indecency forfeiture more than five years after the indecent material was broadcast).

⁵ The D.C. Circuit has exhaustively analyzed the legislative history of 28 U.S.C. § 2462 and found that Congress “could not possibly have intended the word [accrued] to incorporate any discovery of violation rule” when it created the general five-year statute of limitations because contemporaneous

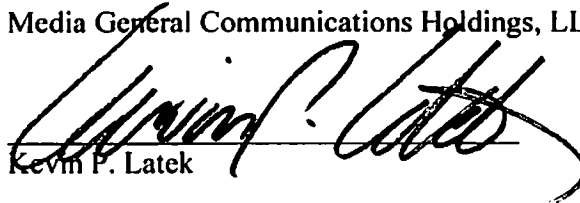
Assuming *arguendo* that a claim “accrues” upon discovery, the Commission would have had five years from its discovery of the commercial overages to impose a forfeiture and file suit to collect it. Media General fully disclosed the commercial overages occurring at WJTV(TV) during the prior license term in the license renewal application filed for the station on February 1, 2005.⁶ On this date, the Commission unequivocally had notice of the commercial overages at the station. Under a “notice” accrual perspective, the Commission had five years — until February 1, 2010 — to take measures to collect a forfeiture with respect to WJTV(TV)’s commercial overages. The Commission did not act within this time frame, and any further action is therefore time barred.

Conclusion

Regardless of whether the claim “first accrued” when WJTV(TV) broadcast the commercial overages or when the Commission had notice of the overages, the statute of limitations has expired. Based on the foregoing, the Commission must rescind the NAL.

Respectfully submitted,

Media General Communications Holdings, LLC



Kevin P. Latek

DOW LOHNES PLLC
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(202) 776-2000

Its Attorney

Dated: June 28, 2010

Supreme Court opinions “consistently used the phrase ‘claim accrued’ to mean the time at which a cause of action first existed, not the time when the violation was first discovered.” *3M Co.*, 17 F.3d at 1462.

6 FCC File Number BRCT-20050201AYB.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
WSOC Television, Inc.)
Licensee of Station WSOC-TV,)
Charlotte, North Carolina)

Facility ID No. 74070
NAL/Acct. No. 1041420007
FRN: 0001842822

FILED/ACCEPTED

To: Office of the Secretary
Attn: Barbara A. Kreisman
Chief, Video Division, Media Bureau

JUN 28 2010
Federal Communications Commission
Office of the Secretary

**REQUEST FOR RESCISSION OF NOTICE OF
APPARENT LIABILITY FOR FORFEITURE**

WSOC Television, Inc. (“Petitioner”), licensee of WSOC-TV, Charlotte, North Carolina (the “Station”), by its attorneys and pursuant to Section 1.80(f)(3) of the Commission’s rules, hereby submits this Request for Rescission of the Notice of Apparent Liability for Forfeiture (“NAL”) issued in the above-captioned proceeding.¹ The Commission must rescind the NAL in its entirety because it is statutorily barred from collecting the proposed forfeiture.

BACKGROUND

From the third quarter of 1997 through the fourth quarter of 2000, the Station experienced 78 commercial overages during its ABC network children’s programs as a result of airing those network programs out of pattern. Throughout the remainder of its license renewal term, *i.e.*, from 2001 to June 3, 2010, Petitioner fully complied with the Commission’s children’s programming rules. On August 2, 2004, Petitioner filed its license renewal application for the Station and, in Exhibit 19 to the application, disclosed the overages. On May 27, 2010, almost ten years after the last violation occurred, the Commission released the NAL proposing a \$25,000 forfeiture for the violations.

¹ Notice of Apparent Liability for Forfeiture, *WSOC Television, Inc., Licensee of Station WSOC-TV, Charlotte, North Carolina*, FCC 10-93 (rel. May 27, 2010). This Request for Rescission is timely because Petitioner was required to respond to the NAL within thirty days. The thirtieth day was June 26, 2010, which was a Saturday. Thus, Petitioner’s response is due on the following business day, which is Monday June 28, 2010. *See* 47 C.F.R. § 1.4(j).

DISCUSSION

The Commission must rescind the NAL because the five-year statute of limitations for civil fines has long since passed. Under 28 U.S.C. § 2462, “the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued.”² The courts have held that a claim accrues at the time of the underlying violation and not when a violation is discovered.³ Indeed, in the broadcasting context, the D.C. Circuit has stated that a forfeiture claim “accrues” when the relevant material is broadcast.⁴ Here, the broadcast conduct giving rise to the NAL occurred between the third quarter of 1997 and the fourth quarter of 2000. If the Commission were to bring suit in district court to recover the proposed forfeiture, the court would be compelled to dismiss the action immediately as time-barred.

Moreover, even if the Commission were to argue that the claim in this case accrued when the Commission discovered the violations,⁵ it still is time barred from enforcing the proposed forfeiture.

² See 28 U.S.C. § 2462.

³ See *Nat'l Parks and Conservation Assoc. v. Tenn. Valley Auth.*, 502 F.3d 1316, 1322 (11th Cir. 2007) (“A claim first accrues on the date that a violation first occurs”); *Action for Children's Television v. FCC*, 59 F.3d 1249, 1254 (D.C. Cir. 1995) (“the general five-year period of limitations on forfeiture proceedings . . . would effectively prevent the Government from filing a civil action more than five years after” the conduct at issue); *3M Company (Minnesota Min. and Mfg) v. Browner*, 17 F.3d 1453, 1462 (D.C. Cir. 1994) (“an action, suit or proceeding to assess or impose a civil penalty must be commenced within five years of the date of the violation giving rise to the penalty”); *United States v. Core Lab.*, 759 F.2d 480, 482 (5th Cir. 1985) (“the date of the underlying violation has been accepted without question as the date when the claim first accrued and, therefore, as the date on which the statute [of limitations] began to run”); *Smith v. United States*, 143 F.2d 228 (9th Cir. 1944) (analyzing the predecessor to 28 U.S.C. § 2462 and holding that “the phrase ‘time when the penalty of forfeiture accrued’ has reference merely to the time of the commission of the offense or the doing of the act by which the penalty or forfeiture was incurred.”); *but see U.S. v. Aluminum Co. of America*, 824 F.Supp. 640 (E.D. Tex. 1993) (holding that an enforcement action under the Clean Water Act accrued when defendant reported violations to the EPA).

⁴ See *Action for Children's Television*, 59 F.3d at 1254 (reviewing the Commission’s indecency forfeiture scheme and stating that the five-year period of limitations would prevent the Commission from filing a civil action to enforce an indecency forfeiture more than five years after the material was broadcast).

⁵ The D.C. Circuit has exhaustively analyzed the legislative history of 28 U.S.C. § 2462 and found that Congress “could not possibly have intended the word [accrued] to incorporate any discovery of violation rule” when it created the general five-year statute of limitations because contemporaneous Supreme Court opinions “consistently used the phrase ‘claim accrued’ to mean the time at which a cause of action first existed, not the time when the violation was first discovered.” *3M Co.*, 17 F.3d at 1462.

Assuming *arguendo* that a claim “accrues” upon discovery, the Commission would have had five years from its discovery of the commercial overages to impose a forfeiture and file suit to collect it. Petitioner fully disclosed the commercial overages occurring at the Station during the prior license term in the license renewal application filed for the Station on August 2, 2004.⁶ On this date, the Commission unequivocally had notice of the commercial overages at the Station. Under a “notice” accrual perspective, the Commission had five years — until August 2, 2009 — to take measures to collect a forfeiture with respect to the Station’s commercial overages. The Commission did not act within this time frame, and any further action is therefore time barred.

CONCLUSION

Regardless of whether the claim “first accrued” when the Station broadcast the commercial overages or when the Commission had notice of the overages, the statute of limitations has expired. Based on the foregoing, the Commission must rescind the NAL.

Respectfully submitted,

WSOC Television, Inc.



John R. Feore, Jr.
Michael D. Basile

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1200 New Hampshire Avenue NW, Suite 800
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(202) 776-2000

Its Attorney

Dated: June 28, 2010

⁶ FCC File Number BRCT-20040802BJC.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	Facility ID No. 72076
WFTV, Inc.)	NAL/Acct. No. 1041420003
Licensee of Station WFTV(TV),)	FRN: 0001842848
Orlando, Florida)	

To: Office of the Secretary
Attn: Barbara A. Kreisman
Chief, Video Division, Media Bureau

FILED/ACCEPTED

JUN 28 2010

**REQUEST FOR RESCISSION OF NOTICE OF
APPARENT LIABILITY FOR FORFEITURE**

Federal Communications Commission
Office of the Secretary

WFTV, Inc. ("Petitioner"), licensee of WFTV(TV), Orlando, Florida (the "Station"), by its attorneys and pursuant to Section 1.80(f)(3) of the Commission's rules, hereby submits this Request for Rescission of the Notice of Apparent Liability for Forfeiture ("NAL") issued in the above-captioned proceeding.¹ The Commission must rescind the NAL in its entirety because it is statutorily barred from collecting the proposed forfeiture.

BACKGROUND

From the third quarter of 1997 through the fourth quarter of 2001, the Station experienced 154 commercial overages during its ABC network children's programs as a result of airing those network programs out of pattern. Throughout the remainder of its license renewal term, *i.e.*, from 2002 to June 3, 2010, Petitioner fully complied with the Commission's children's programming rules. On October 1, 2004, Petitioner filed its license renewal application for the Station and, in Exhibit 25 to the application, disclosed the overages. On May 27, 2010, almost nine years after the last violation occurred, the Commission released the NAL proposing a \$40,000 forfeiture for the violations.

¹ Notice of Apparent Liability for Forfeiture, *WFTV, Inc., Licensee of Station WFTV(TV), Orlando, Florida*, FCC 10-97 (rel. May 27, 2010). This Request for Rescission is timely because Petitioner was required to respond to the NAL within thirty days. The thirtieth day was June 26, 2010, which was a Saturday. Thus, Petitioner's response is due on the following business day, which is Monday June 28, 2010. *See* 47 C.F.R. § 1.4(j).

DISCUSSION

The Commission must rescind the NAL because the five-year statute of limitations for civil fines has long since passed. Under 28 U.S.C. § 2462, “the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued.”² The courts have held that a claim accrues at the time of the underlying violation and not when a violation is discovered.³ Indeed, in the broadcasting context, the D.C. Circuit has stated that a forfeiture claim “accrues” when the relevant material is broadcast.⁴ Here, the broadcast conduct giving rise to the NAL occurred between the third quarter of 1997 and the fourth quarter of 2001. If the Commission were to bring suit in district court to recover the proposed forfeiture, the court would be compelled to dismiss the action immediately as time-barred.

Moreover, even if the Commission were to argue that the claim in this case accrued when the Commission discovered the violations,⁵ it still is time barred from enforcing the proposed forfeiture.

² See 28 U.S.C. § 2462.

³ See *Nat'l Parks and Conservation Assoc. v. Tenn. Valley Auth.*, 502 F.3d 1316, 1322 (11th Cir. 2007) (“A claim first accrues on the date that a violation first occurs”); *Action for Children's Television v. FCC*, 59 F.3d 1249, 1254 (D.C. Cir. 1995) (“the general five-year period of limitations on forfeiture proceedings . . . would effectively prevent the Government from filing a civil action more than five years after” the conduct at issue); *3M Company (Minnesota Min. and Mfg) v. Browner*, 17 F.3d 1453, 1462 (D.C. Cir. 1994) (“an action, suit or proceeding to assess or impose a civil penalty must be commenced within five years of the date of the violation giving rise to the penalty”); *United States v. Core Lab.*, 759 F.2d 480, 482 (5th Cir. 1985) (“the date of the underlying violation has been accepted without question as the date when the claim first accrued and, therefore, as the date on which the statute [of limitations] began to run”); *Smith v. United States*, 143 F.2d 228 (9th Cir. 1944) (analyzing the predecessor to 28 U.S.C. § 2462 and holding that “the phrase ‘time when the penalty of forfeiture accrued’ has reference merely to the time of the commission of the offense or the doing of the act by which the penalty or forfeiture was incurred.”); *but see U.S. v. Aluminum Co. of America*, 824 F.Supp. 640 (E.D. Tex. 1993) (holding that an enforcement action under the Clean Water Act accrued when defendant reported violations to the EPA).

⁴ See *Action for Children's Television*, 59 F.3d at 1254 (reviewing the Commission’s indecency forfeiture scheme and stating that the five-year period of limitations would prevent the Commission from filing a civil action to enforce an indecency forfeiture more than five years after the material was broadcast).

⁵ The D.C. Circuit has exhaustively analyzed the legislative history of 28 U.S.C. § 2462 and found that Congress “could not possibly have intended the word [accrued] to incorporate any discovery of violation rule” when it created the general five-year statute of limitations because contemporaneous Supreme Court opinions “consistently used the phrase ‘claim accrued’ to mean the time at which a cause of action first existed, not the time when the violation was first discovered.” *3M Co.*, 17 F.3d at 1462.

Assuming *arguendo* that a claim “accrues” upon discovery, the Commission would have had five years from its discovery of the commercial overages to impose a forfeiture and file suit to collect it. Petitioner fully disclosed the commercial overages occurring at the Station during the prior license term in the license renewal application filed for the Station on October 1, 2004.⁶ On this date, the Commission unequivocally had notice of the commercial overages at the Station. Under a “notice” accrual perspective, the Commission had five years — until October 1, 2009 — to take measures to collect a forfeiture with respect to the Station’s commercial overages. The Commission did not act within this time frame, and any further action is therefore time barred.

Conclusion

Regardless of whether the claim “first accrued” when the Station broadcast the commercial overages or when the Commission had notice of the overages, the statute of limitations has expired. Based on the foregoing, the Commission must rescind the NAL.

Respectfully submitted,

WFTV, Inc.



John R. Feore, Jr.
Michael D. Basile

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1200 New Hampshire Avenue NW, Suite 800
Washington, DC 20024
(202) 776-2000

Its Attorney

Dated: June 28, 2010

⁶ FCC File Number BRCT - 20041001AEV.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
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Media General Communications Holdings, LLC) Facility ID No. 48668
) NAL/Acct. No. 1041420005
Licensee of WHLT(TV), Hattiesburg, Mississippi) FRN: 0015751217

FILED/ACCEPTED

To: Office of the Secretary
Attn: Barbara A. Kreisman
Chief, Video Division, Media Bureau

JUN 28 2010

Federal Communications Commission
Office of the Secretary

**REQUEST FOR RESCISSION OF NOTICE OF
APPARENT LIABILITY FOR FORFEITURE**

Media General Communications Holdings, LLC (“Media General”), licensee of WHLT(TV), Hattiesburg, Mississippi, by its attorneys and pursuant to Section 1.80(f)(3) of the Commission’s rules, hereby submits this Request for Rescission of the Notice of Apparent Liability for Forfeiture (“NAL”) issued in the above-captioned proceeding.¹ The Commission must rescind the NAL in its entirety because it is statutorily barred from collecting the proposed forfeiture.

BACKGROUND

From the third quarter of 1997 through the fourth quarter of 1999, WHLT(TV) experienced 127 commercial overages during its CBS network children’s programs. Throughout the remainder of its license renewal term, Media General fully complied with the Commission’s children’s programming rules. On February 1, 2005, Media General filed its license renewal application for WHLT(TV) and, in Exhibit 19 to this application, disclosed the overages. On May 27, 2010, over ten years after the last violation occurred, the Commission released the NAL proposing a \$30,000 forfeiture for the violations.

¹ Notice of Apparent Liability for Forfeiture, *Media General Communications Holdings, LLC, Licensee of Station WHLT(TV), Hattiesburg, Mississippi*, FCC 10-96 (rel. May 27, 2010).

DISCUSSION

The Commission must rescind the NAL because the five-year statute of limitations for civil fines has long since passed. Under 28 U.S.C. § 2462, “the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued.”² The courts have held that a claim accrues at the time of the underlying violation and not when a violation is discovered.³ Indeed, in the broadcasting context, the D.C. Circuit has stated that a forfeiture claim “accrues” when offending material is broadcast.⁴ Here, the conduct giving rise to the NAL occurred between the third quarter of 1997 and the fourth quarter of 1999. If the Commission were to bring suit in district court to recover the proposed forfeiture, the court would be compelled to dismiss the action immediately as time-barred.

Moreover, even if the Commission were to argue that the claim in this case accrued when the Commission discovered the violations,⁵ it still is time barred from enforcing this forfeiture.

² See 28 U.S.C. § 2462.

³ See *Nat’l Parks and Conservation Assoc. v. Tenn. Valley Auth.*, 502 F.3d 1316, 1322 (11th Cir. 2007) (“[a] claim first accrues on the date that a violation first occurs”); *Action for Children’s Television v. FCC*, 59 F.3d 1249, 1254 (D.C. Cir. 1995) (“the general five-year period of limitations on forfeiture proceedings . . . would effectively prevent the Government from filing a civil action more than five years after” the conduct at issue); *3M Company (Minnesota Min. and Mfg) v. Browner*, 17 F.3d 1453, 1462 (D.C. Cir. 1994) (“an action, suit or proceeding to assess or impose a civil penalty must be commenced within five years of the date of the violation giving rise to the penalty”); *United States v. Core Lab.*, 759 F.2d 480, 482 (5th Cir. 1985) (“the date of the underlying violation has been accepted without question as the date when the claim first accrued and, therefore, as the date on which the statute [of limitations] began to run”); *Smith v. United States*, 143 F.2d 228 (9th Cir. 1944) (analyzing the predecessor to 28 U.S.C. § 2462 and holding that “the phrase ‘time when the penalty of forfeiture accrued’ has reference merely to the time of the commission of the offense or the doing of the act by which the penalty or forfeiture was incurred.”); *but see U.S. v. Aluminum Co. of America*, 824 F.Supp. 640 (E.D. Tex. 1993) (holding that an enforcement action under the Clean Water Act accrued when defendant reported violations to the Environmental Protection Agency).

⁴ See *Action for Children’s Television* 59 F.3d at 1254 (reviewing the Commission’s indecency forfeiture scheme and stating that the five-year period of limitations codified in 28 U.S.C. § 2462 would prevent the Commission from filing a civil action to enforce an indecency forfeiture more than five years after the indecent material was broadcast).

⁵ The D.C. Circuit has exhaustively analyzed the legislative history of 28 U.S.C. § 2462 and found that Congress “could not possibly have intended the word [accrued] to incorporate any discovery of violation rule” when it created the general five-year statute of limitations because contemporaneous

Assuming *arguendo* that a claim “accrues” upon discovery, the Commission would have had five years from its discovery of the commercial overages to impose a forfeiture and file suit to collect it. Media General fully disclosed the commercial overages occurring at WHLT(TV) during the prior license term in the license renewal application filed for the station on February 1, 2005.⁶ On this date, the Commission unequivocally had notice of the commercial overages at the station. Under a “notice” accrual perspective, the Commission had five years — until February 1, 2010 — to take measures to collect a forfeiture with respect to WHLT(TV)’s commercial overages. The Commission did not act within this time frame, and any further action is therefore time barred.

Conclusion

Regardless of whether the claim “first accrued” when WHLT(TV) broadcast the commercial overages or when the Commission had notice of the overages, the statute of limitations has expired. Based on the foregoing, the Commission must rescind the NAL.

Respectfully submitted,

Media General Communications Holdings, LLC



Kevin P. Latek
DOW LOHNES PLLC
1200 New Hampshire Avenue NW, Suite 800
Washington, DC 20024
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Its Attorney

Dated: June 28, 2010

Supreme Court opinions “consistently used the phrase ‘claim accrued’ to mean the time at which a cause of action first existed, not the time when the violation was first discovered.” *3M Co.*, 17 F.3d at 1462.

6 FCC File Number BRCT - 20050201AYL.