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## **Not enough KidVid? That'll Be \$20K!**

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The FCC has issued its first fine to a station for failure to have a sufficient amount of children's educational/informational programming, as opposed to failure to have sufficient record-keeping with regard to programming. The victim in this case was a Class A television station that was hit with a \$20,000 fine for failure to air "core" children's programming for a portion of its license term. According to the Commission, this failure constituted a violation of Section 73.671 of the Commission's rules. Adding insult to injury, the Commission then more that doubled the base fine for Section 73.671 violations, from the standard \$8,000 to a whopping \$20,000.

The problem is that the rule cited does *not* contain an absolute requirement that three hours per week – or *any* specific amount – of core programming be broadcast.

For purposes of the kidvid rules, "core programming" is defined as educational or informational programming for children ages 16 (and under) which is: (a) aired between 7:00 a.m. and 10:00 p.m.; (b) a regularly scheduled weekly program; (c) at least 30 minutes in length; (d) described in the station's children's television programming report; (e) listed in information provided to program guide publishers; and (f) broadcast with the E/I logo or "bug".

Section 73.671 of the Commission's rules specifies that a station that has broadcast an average of three hours per week of core programming will be presumed to have met the requirements of the Children's Television Act, and it can have its license renewed routinely by the FCC's staff. The rule also provides that a station may demonstrate that it has fulfilled its obligations through an alternate package of programming that shows an equivalent commitment to the educational needs of children. Further, the rule specifies that a station which does not meet the processing standards for routine renewal will be referred to the full Commission, where the licensee will be provided a full opportunity to comply with the Children's Television Act.

In this case, after the station obtained its Class A license, it sought out good quality E/I programming but did not regularly air core programming for approximately three years,

although the station did undertake other initiatives for children. Starting in the second quarter of 2004, the licensee began airing core children's programming. The licensee also submitted information to the Commission about its other efforts for children.

The Commission, however, did not take that additional information into account. Moreover, the staff did not refer the matter to the full Commission as provided by the rule. Instead, the staff's decision merely stated that the failure to broadcast at least three hours per week of core programming constituted a willful and repeated violation of Section 73.671 of the Commission's rules. There was no discussion whatsoever of the fact that the rule section in question establishes an average of three hours per week as a processing standard, *not* an absolute requirement. Indeed, there is a significant First Amendment question as to whether the Commission could legally establish a fixed requirement that broadcasters air a particular amount of programming of a certain type.

Here, however, the Commission's staff simply ignored those issues and assessed a substantial fine. There also was very little discussion of how it arrived at the amount of the fine beyond stating that the base fine is \$8,000. Clearly, the Commission's staff viewed the violation as a serious one, since the fine assessed was two and one-half times the base amount specified in the rules, but the decision does not provide any explanation of how the staff chose to assess the various factors that it was required to consider to justify the upward bump.

Since this decision appears to be at odds with the FCC's own rules in several respects, it will be interesting to watch both the progress of this case and any other decisions that may be issued in similar circumstances. In the meantime, this case underscores how important it is for TV and

Class A TV stations to continue to air at least three hours per week of core programming. As this case illustrates, even though the rules themselves do not establish three hours as a mandatory minimum, the staff seems to see things differently – so to avoid problems, an ounce of prevention may be worth a pound of cure (assuming that the going rate of cure is about \$20,000 per pound).

Should you have any questions concerning this matter, please communicate with either the attorney at the firm with whom you normally deal or Anne Goodwin Crump at 703-812-0400, e-mail [crump@fhhlaw.com](mailto:crump@fhhlaw.com).