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

In the Matter of)
)
Complaints Against Various Licensees Regarding) NAL/Acct. No. 200432080349
Their Broadcast Of The Fox Television Network) File No. EB-03-IH-0162
Program "Married By America" On April 7, 2003)

To: The Commission

OPPOSITION TO NOTICE OF APPARENT LIABILITY FOR FORFEITURE

1. Lingard Broadcasting Corporation (hereinafter "LBC") is the licensee of Television Station WLOV-TV, West Point, Mississippi. On October 12, 2004, the Commission released a *Notice of Apparent Liability for Forfeiture* ("NAL") citing 169 Fox Television Network stations—including WLOV-TV—for allegedly broadcasting indecent material "during an episode of the program *Married By America*, aired by Fox Television Network on April 7, 2003." Based upon the Commission's "review of the facts," the Commission issued the *NAL* and imposed upon LBC a monetary forfeiture in the amount of \$7,000.00.

2. There is being filed contemporaneously herewith, the joint "Opposition To Notice Of Apparent Liability For Forfeiture" ("Joint Opposition") on behalf of numerous parties to this proceeding. Among others, LBC is a party to said "Joint Opposition," fully endorses it, and incorporates it herein by reference, in its entirety. Nonetheless, pursuant

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to §1.80 of the Commission's Rules and paragraph 19 of the *NAL*, LBC wishes to submit certain additional material as follows.¹

3. LBC believes that it is important that the Commission be made aware of certain facts which it has overlooked. First, none of the complaints received by the Commission in connection with the network broadcast of the April 7, 2003 episode of *Married By America* was directed against WLOV-TV. Second, at no time has LBC received any written, verbal, e-mail or other form of complaint concerning the program known as *Married By America*. In addition, prior to the issuance of the *NAL*, LBC has operated WLOV-TV since its acquisition on August 12, 1994, without once being cited by the Commission for any reason, let alone broadcasting indecent programming.

4. The Commission recognizes in its *NAL* that “[t]he First Amendment to the United States Constitution and section 326 of the Act prohibit the Commission from censoring program material and from interfering with broadcasters’ freedom of expression.”² Notwithstanding the Commission’s apparent, limited authority to regulate certain programming,³ the Commission’s issuance of the *NAL* against WLOV-TV, which was never even the subject of a complaint, is *tantamount* to the very government censorship specifically prohibited under §Section 326 of the Communications Act.⁴ Not only does §326 prohibit censorship, it also makes clear that “no regulation or *condition* shall be promulgated or *fixed* by the Commission *which shall interfere with the right of free speech* by means of radio communication.” (*Emphasis added*).⁵ The Commission’s actions in this case relative to its views of indecency as described in the aforementioned

¹ Pursuant to e-mail correspondence of November 8, 2004, the time for LBC to respond to the *NAL* directed against it was extended to and including December 3, 2004.

² See *Notice of Apparent Liability for Forfeiture*, FCC 04-242, at para. 4 (rel. October 12, 2004).

³ *Id.* at para. 6.

⁴ See 47 U.S.C. §326 which stating in pertinent part: Censorship. Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station”

⁵ *Id.*

“Joint Opposition,” amount to nothing short of frighteningly chilling behavior, in direct contravention of §326 of the Act. Clearly, the facts in this case—viewed in the light of applicable case law—result in a combination of a "chilling effect," prior restraint and effectively, censorship. It appears that we have reached the stage where a television station licensee can be fined by the Commission merely for what some small number of viewers—and Commission staff—imagine they saw.

5. The Commission’s actions in this and other recently released “indecent” cases are vague and ambiguous as to what does, or does not, constitute indecency. The Commission’s conclusions in this case—based in large part upon the imagined perceptions of a minuscule number of viewers—is clearly arbitrary, capricious, and an abuse of discretion under the Administrative Procedure Act.⁸

6. In view of the foregoing, and LBC’s participation in the “Joint Opposition,” it is requested that the Commission rescind its *NAL*.

Respectfully submitted,

**LINGARD BROADCASTING
CORPORATION**

By: _____


Robert E. Levine
Its Counsel

Dated this 3rd day of December, 2004

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⁸ 5 U.S.C. §706.

DECLARATION

I, John R. Lingard, hereby state as follows:

- 1. I am President of Lingard Broadcasting Corporation, licensee of Television Station WLOV-TV, Channel 27, West Point, Mississippi.
- 2. Other than certain facts of which official notice can be taken, I am familiar with the content of the foregoing "Opposition to Notice of Apparent Liability for Forfeiture."

I declare under penalty of perjury, that the foregoing is true and correct.



 JOHN R. LINGARD
 President
 Lingard Broadcasting Corporation

Dated this 3rd day of December, 2004.