



FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Investigations and Hearings Division
445 12th Street, S.W., Suite 4-C330
Washington, D.C. 20554

JUN 03 2010

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED.

Facsimile at: (641) 682-5173

American Spirit Media, LLC
Ottumwa Media Holdings, LLC
2131 Ayrley Town Boulevard, Suite 300
Charlotte, NC 28273

Re: "American Dad"
File No. EB-10-IH-0188

Dear Licensee:

The Enforcement Bureau has received numerous complaints alleging that Fox Television Network affiliated stations aired indecent material, in violation of 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules,¹ during the stations' broadcast of "American Dad" on January 3, 2010, at approximately 9:30 p.m. Eastern and Pacific Standard Time and 8:30 p.m. Central and Mountain Standard Time. The Bureau is investigating whether the "American Dad" broadcast violated the referenced sections.

On January 21, 2010, the Bureau sent a Letter of Inquiry concerning these allegations to Fox Television Stations, Inc. ("Fox") and directed Fox to provide information and documents concerning the stations that had aired the January 3, 2010 episode of "American Dad", including Fox owned stations and Fox Television Network affiliate stations.² The Fox LOI sought to create an accurate record during the fact-gathering phase of the Enforcement Bureau's investigation of this matter in a manner that was efficient to all relevant parties. Specifically, the Fox LOI provided an opportunity for Fox to indicate, as a preliminary matter, which stations did not air the material in

¹ See 47 C.F.R. § 73.3999.

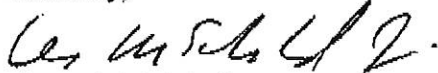
² See Letter from Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Joseph Di Scipio, Esquire, Vice President for Legal and FCC Compliance, Fox Television Stations, Inc., dated January 21, 2010 ("Fox LOI") (attached). The Fox LOI included an example complaint ("Complaint"). See *id.*

American Spirit Media, LLC
Ottumwa Media Holdings, LLC
Page 4 of 8

To knowingly and willfully make any false statement or conceal any material fact in reply to this inquiry is punishable by fine or imprisonment.⁶ Failure to respond appropriately to this letter of inquiry may constitute a violation of the Communications Act and our rules.⁷

The Licensee shall direct its response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554, to the attention of Jennifer A. Lewis, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, with a copy to Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Jennifer A. Lewis, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554, with a copy to Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554. The Licensee shall also, to the extent practicable, transmit a copy of the response via email to Jennifer.Lewis@fcc.gov and to Kenneth.Scheibel@fcc.gov.

Sincerely,



Kenneth M. Scheibel, Jr.
Assistant Chief
Investigations and Hearings Division
Enforcement Bureau

Attachments (2)

⁶ See 18 U.S.C. § 1001; see also 47 C.F.R. § 1.117.

⁷ See *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002); *Globeom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, n.36 (2003); *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (Enf. Bur. 2004); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003).

American Spirit Media, LLC
Ottumwa Media Holdings, LLC
Page 5 of 8

Attachment

Instructions

Request for Confidential Treatment. If the Licensee requests that any information or documents responsive to this letter be treated in a confidential manner, it shall submit, along with all responsive information and documents, a statement in accordance with Section 0.459 of the Commission's rules. See 47 C.F.R. § 0.459. Requests for confidential treatment must comply with the requirements of Section 0.459, including the standards of specificity mandated by Section 0.459(b). Accordingly, "blanket" requests for confidentiality of a large set of documents, and casual requests, including simply stamping pages "confidential," are unacceptable. Pursuant to Section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of Section 0.459.

Claims of Privilege. If the Licensee withholds any information or documents under claim of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item: the numbered inquiry to which each item responds and the type, title, specific subject matter and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific ground(s) for claiming that the item is privileged.

Format of Responses. The response must be organized in the same manner as the questions asked, i.e. the response to Inquiry 1 should be labeled as the response to Inquiry 1.

Method of Producing Documents. Each requested document, as defined herein, shall be submitted in its entirety, even if only a portion of that document is responsive to an inquiry made herein. This means that the document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other documents referred to in the document or attachments. All written materials necessary to understand any document responsive to these inquiries must also be submitted.

Identification of Documents. For each document or statement submitted in response to the inquiries stated in the cover letter, indicate, by number, to which inquiry it is responsive and identify the person(s) from whose files the document was retrieved. If any document is not dated, state the date on which it was prepared. If any document does not identify its author(s) or recipient(s), state, if known, the name(s) of the author(s) or recipient(s). The Licensee must identify with reasonable specificity all documents provided in response to these inquiries.

Documents No Longer Available. If a Document responsive to any inquiry made herein existed but is no longer available, or if the Licensee is unable for any reason to produce a Document responsive to any inquiry, identify each such Document by author,

American Spirit Media, LLC
Ottumwa Media Holdings, LLC
Page 6 of 8

recipient, date, title, and specific subject matter, and explain fully why the Document is no longer available or why the Licensee is otherwise unable to produce it.

Retention of Original Documents. With respect only to documents responsive to the specific inquiries made herein and any other documents relevant to those inquiries, the Licensee is directed to retain the originals of those documents for twelve (12) months from the date of this letter unless (a) the Licensee is directed or informed by the Enforcement Bureau in writing to retain such documents for some shorter or longer period of time or (b) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case, the Licensee must retain all such documents until the matter has been finally concluded by payment of any monetary penalty, satisfaction of all conditions, expiration of all possible appeals, conclusion of any collection action brought by the United States Department of Justice or execution and implementation of a final settlement with the Commission or the Enforcement Bureau.

Continuing Nature of Inquiries. The specific inquiries made herein are continuing in nature. The Licensee is required to produce in the future any and all documents and information that are responsive to the inquiries made herein but not initially produced at the time, date, and place specified herein. In this regard, the Licensee must supplement its responses (a) if the Licensee learns that, in some material respect, the documents and information initially disclosed were incomplete or incorrect or (b) if additional responsive documents or information are acquired by or become known to the Licensee after the initial production. The requirement to update the record will continue for twelve (12) months from the date of this letter unless (a) the Licensee is directed or informed by the Enforcement Bureau in writing that the Licensee's obligation to update the record will continue for some shorter or longer period of time or (b) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case the obligation to update the record will continue until the release of such item.

Definitions

For purposes of this letter, the following definitions apply:

"Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."

American Spirit Media, LLC
Ottumwa Media Holdings, LLC
Page 7 of 8

"Broadcast," when used as noun, shall mean visual images or audible sounds or language transmitted or disseminated over a station during the course of a radio or television broadcast.

"Broadcast," when used as a verb, shall mean the transmission or dissemination of radio or television communications intended to be received by the public. The verb "broadcast" may be used interchangeably with the verb "air."

"Correspondence" shall mean any letter, facsimile, e-mail, memorandum, note, telegram, report, record, posting on Licensee website blogs or social networking websites, or handwritten note.

"Document" shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, and regardless of how denominated, including but not limited to any broadcast, radio program, advertisement, book, pamphlet, periodical, contract, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tape, disks and such codes or instructions as will transform such computer materials into easily understandable form).

"Identify" when used with reference to a person or persons, means to state his/her full legal name, current or last known business address, current or last known telephone number, current or last known organization and position therewith. "Identify," when used with reference to a document, means to state the date, author, addressee, type of document (e.g., the types of document, as described above), a brief description of the subject matter, its present or last known location and its custodian, who must also be identified. "Identify," when used with reference to an entity other than a person, means to state its name, current or last known business address, and current or last known business telephone number.

"Licensee" shall mean American Spirit Media, LLC and/or Ottumwa Media Holdings, LLC and any predecessor-in-interest, affiliate, parent company, wholly or partially owned subsidiary, other affiliated company or business, and all owners, including but not limited to, partners or principals, and all directors, officers, employees, or agents, including consultants and any other persons working for or on behalf of the foregoing at any time during the period covered by this letter.

American Spirit Media, LLC
Ottumwa Media Holdings, LLC
Page 8 of 8

"Relating to" means in the whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.



FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Investigations and Hearings Division
445 12th Street, S.W., Suite 4-C330
Washington, D.C. 20554

January 21, 2010

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED
AND FACSIMILE AT (202) 824-6510

Mr. Joseph Di Scipio, Esq.
Vice President for Legal and FCC Compliance
Fox Television Stations, Inc.
444 North Capitol Street, N.W.
Suite 740
Washington, D.C. 20001

Re: "American Dad"
File No. EB-10-IH-0188

Dear Mr. Di Scipio:

The Enforcement Bureau is investigating allegations in numerous complaints, including the enclosed redacted complaint, that the Fox Television Network broadcast indecent material over various stations, including stations owned by Fox Television Stations, Inc. (the "Licensee"), in violation of 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules.¹ Specifically, it is alleged that indecent material was aired during the stations' broadcast of "American Dad" on January 3, 2010, at approximately 9:30 p.m. Eastern and Pacific Standard Time and 8:30 p.m. Central and Mountain Standard Time. Instructions and Definitions are contained in the attachment to this letter. We direct the Licensee, pursuant to Sections 4(i), 4(j), 308(b) and 403 of the Communications Act of 1934, as amended,² to provide the information and Documents, as defined herein, within thirty (30) calendar days from the date of this letter. **Requests for confidential treatment or claims of attorney-client privilege or attorney work product must meet the requirements stated in the attached Instructions.**

Unless otherwise indicated, the period of time covered by these inquiries is December 3, 2009 to the present.

¹ See 47 C.F.R. § 73.3999.

² See 47 U.S.C. §§ 154(i), 154(j), 308(b), and 403.

Fox Television Stations, Inc.
January 21, 2010
Page 2 of 7

Inquiries: Documents and Information to be Provided

1. It is alleged that, on January 3, 2010, certain stations owned by the Licensee broadcast material described in the Complaint during their airing of "American Dad." State whether the Licensee did, in fact, broadcast any or all of the material described in the Complaint and identify each station licensed to the Licensee that broadcast that material. If the programming described in the Complaint does not accurately reflect the material aired over the stations, describe any inaccuracies.
2. With regard to each station referred to in the response to Inquiry 1 above, provide:
 - a. the call sign, community of license and licensee;
 - b. the date(s) and time(s) of the Broadcast(s);
 - c. if only a portion of "American Dad" was broadcast on January 3, 2010, describe the material so broadcast;
 - d. a transcript of the Broadcast; and
 - e. (i) a high-definition recording of "American Dad," as broadcast on January 3, 2010, on a standard DVD that can be played on a DVD player and a personal computer in WMV or QuickTime format, as well as (ii) a VHS videotaped recording of the program in the highest available quality. The recording should allow the viewing of the program without interruption.
3. Identify each station licensed to an entity or individual other than the Licensee that had the contractual right with the Licensee, as a network affiliate of Licensee or otherwise, to air "American Dad" on January 3, 2010 and, for each such station, provide:
 - a. the licensee name, call sign, and community of license at the time of broadcast;
 - b. the date(s) and time(s) of the Broadcast(s); and
 - c. whether the Licensee has reason to believe that the station did not air the material in question and/or aired an edited version of it, and if so the Licensee's basis for that belief.

Fox Television Stations, Inc.
January 21, 2010
Page 3 of 7

4. Provide the final Nielsen Media Research TV Audience measurements (points and share), for "American Dad" on January 3, 2010. Organize the data for each category as follows:
 - a. Ages 18 and older;
 - b. Ages 12 to 17;
 - c. Ages 6 to 11; and
 - d. Ages 2 to 5.
5. Prior to the broadcast of "American Dad" on January 3, 2010, was the Fox Television Network's Program Practices or equivalent department consulted about the content of the broadcast? If so, describe fully and provide all Documents relating to that consultation. If not, explain why not. :
6. Did the Licensee or the Fox Television Network display or announce any TV Parental Guidelines regarding the broadcast of "American Dad" on January 3, 2010? If so, state the rating applied and when and how that rating was announced or displayed.
7. Provide copies of all Documents that provide the basis for or otherwise support the responses to Inquiries 1-6, above.
8. Provide any additional information that you believe may be helpful in our consideration and resolution of this matter.

Instructions for Filing Responses

We direct the Licensee to support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the Licensee with personal knowledge of the representations provided in the Licensee's response, verifying the truth and accuracy of the information therein and that all of the information and/or recordings requested by this letter which are in the Licensee's possession, custody, control, or knowledge have been produced. If multiple Licensee employees contribute to the response, in addition to such general affidavit or declaration of the authorized officer of the Licensee noted above, if such officer (or any other affiant or declarant) is relying on the personal knowledge of any other individual, rather than his or her own knowledge, provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. All such declarations provided must comply with Section 1.16 of the Commission's rules,³ and be substantially in the form set forth therein.

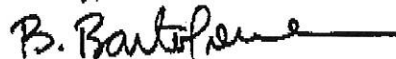
³ See 47 C.F.R. § 1.16.

Fox Television Stations, Inc.
January 21, 2010
Page 4 of 7

To knowingly and willfully make any false statement or conceal any material fact in reply to this inquiry is punishable by fine or imprisonment.⁴ Failure to respond appropriately to this letter of inquiry may constitute a violation of the Communications Act and our rules.⁵

The Licensee shall direct its response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554, to the attention of Melanie Godschall, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, with a copy to Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Melanie Godschall, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554, with a copy to Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554. The Licensee shall also, to the extent practicable, transmit a copy of the response via email to Melanie.Godschall@fcc.gov and to Ben.Bartolome@fcc.gov.

Sincerely,



Benigno E. Bartolome
Deputy Chief
Investigations and Hearings Division
Enforcement Bureau

Attachment
Enclosure

⁴ See 18 U.S.C. § 1001; see also 47 C.F.R. § 1.17.

⁵ See *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Red 7589 (2002); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Red 19893, n. 36 (2003); *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Red 2718 (Enf. Bur. 2004); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Red 26065 (Enf. Bur. 2003).

Fox Television Stations, Inc.
January 21, 2010
Page 5 of 7

Attachment

Instructions

Request for Confidential Treatment. If the Licensee requests that any information or documents responsive to this letter be treated in a confidential manner, it shall submit, along with all responsive information and documents, a statement in accordance with Section 0.459 of the Commission's rules. See 47 C.F.R. § 0.459. Requests for confidential treatment must comply with the requirements of Section 0.459, including the standards of specificity mandated by Section 0.459(b). Accordingly, "blanket" requests for confidentiality of a large set of documents, and casual requests, including simply stamping pages "confidential," are unacceptable. Pursuant to Section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of Section 0.459.

Claims of Privilege. If the Licensee withholds any information or documents under claim of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item: the numbered inquiry to which each item responds and the type, title, specific subject matter and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific ground(s) for claiming that the item is privileged.

Format of Responses. The response must be consistent with the format of the questions asked.

Method of Producing Documents. Each requested document, as defined herein, shall be submitted in its entirety, even if only a portion of that document is responsive to an inquiry made herein. This means that the document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other documents referred to in the document or attachments. All written materials necessary to understand any document responsive to these inquiries must also be submitted.

Identification of Documents. For each document or statement submitted in response to the inquiries stated in the cover letter, indicate, by number, to which inquiry it is responsive and identify the person(s) from whose files the document was retrieved. If any document is not dated, state the date on which it was prepared. If any document does not identify its author(s) or recipient(s), state, if known, the name(s) of the author(s) or recipient(s). The Licensee must identify with reasonable specificity all documents provided in response to these inquiries.

Documents No Longer Available. If a Document responsive to any inquiry made herein existed but is no longer available, or if the Licensee is unable for any reason to produce a Document responsive to any inquiry, identify each such Document by author, recipient, date, title, and specific subject matter, and explain fully why the Document is no longer available or why the Licensee is otherwise unable to produce it.

Fox Television Stations, Inc.
January 21, 2010
Page 6 of 7

Retention of Original Documents. With respect only to documents responsive to the specific inquiries made herein and any other documents relevant to those inquiries, the Licensee is directed to retain the originals of those documents for twelve (12) months from the date of this letter unless (a) the Licensee is directed or informed by the Enforcement Bureau in writing to retain such documents for some shorter or longer period of time or (b) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case, the Licensee must retain all such documents until the matter has been finally concluded by payment of any monetary penalty, satisfaction of all conditions, expiration of all possible appeals, conclusion of any collection action brought by the United States Department of Justice or execution and implementation of a final settlement with the Commission or the Enforcement Bureau.

Continuing Nature of Inquiries. The specific inquiries made herein are continuing in nature. The Licensee is required to produce in the future any and all documents and information that are responsive to the inquiries made herein but not initially produced at the time, date, and place specified herein. In this regard, the Licensee must supplement its responses (a) if the Licensee learns that, in some material respect, the documents and information initially disclosed were incomplete or incorrect or (b) if additional responsive documents or information are acquired by or become known to the Licensee after the initial production. The requirement to update the record will continue for twelve (12) months from the date of this letter unless (a) the Licensee is directed or informed by the Enforcement Bureau in writing that the Licensee's obligation to update the record will continue for some shorter or longer period of time or (b) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case the obligation to update the record will continue until the release of such item.

Definitions

For purposes of this letter, the following definitions apply:

"Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."

"Broadcast," when used as noun, shall mean visual images or audible sounds or language transmitted or disseminated over a station during the course of a radio or television broadcast.

Fox Television Stations, Inc.
January 21, 2010
Page 7 of 7

"Broadcast," when used as a verb, shall mean the transmission or dissemination of radio or television communications intended to be received by the public. The verb "broadcast" may be used interchangeably with the verb "air."

"Correspondence" shall mean any letter, facsimile, e-mail, memorandum, note, telegram, report, record, posting on Licensee website blogs or social networking websites, or handwritten note.

"Document" shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, and regardless of how denominated, including but not limited to any broadcast, radio program, advertisement, book, pamphlet, periodical, contract, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tape, disks and such codes or instructions as will transform such computer materials into easily understandable form).

"Identify" when used with reference to a person or persons, means to state his/her full legal name, current or last known business address, current or last known telephone number, current or last known organization and position therewith. "Identify," when used with reference to a document, means to state the date, author, addressee, type of document (e.g., the types of document, as described above), a brief description of the subject matter, its present or last known location and its custodian, who must also be identified. "Identify," when used with reference to an entity other than a person, means to state its name, current or last known business address, and current or last known business telephone number.

"Licensee" shall mean Fox Television Stations, Inc. and any predecessor-in-interest, affiliate, parent company, wholly or partially owned subsidiary, other affiliated company or business, and all owners, including but not limited to, partners or principals, and all directors, officers, employees, or agents, including consultants and any other persons working for or on behalf of the foregoing at any time during the period covered by this letter.

"Relating to" means in the whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

EB-10-14-0188

Consumer Information Management System (CIMS00002355779)

INDECENCY Complaint

Case Information			
Control ID : CIMS00002355779	IC Number : 10-WB14434798	Submission Method : Web	Status : [REDACTED]
Level One : Broadcast	Level Two : Programming Issues	Level Three : Indecent	Assigned Code Acronym : INDE
Owner Rep Number : PCC66	Creator : cgl475	Problem Submitted Time : 1/12/2010 11:39:29PM	Date Closed : [REDACTED]
Contact Information			
Consumer's Name : [REDACTED]	Phone : [REDACTED]	Best Time to Call :	
Address : [REDACTED]	Address 2 : [REDACTED]	P. O. Box :	
City / State / Zip : ARLINGTON TX 76014	Title : [REDACTED]	Fax Number :	
Email : [REDACTED]	Company : [REDACTED]		
Indecency			
Date of Program : Jan. 3, 2010	Call Sign/Channel/Frequency : KDFW		
Time of Program : 08:30 PM	City/State of Program : Arlington, TX		
Network : FOX	Program Type : TV		
Name of Program/DJ/Personality/Song/Film : American Dad			
Case Referred			
Case Referral Agency : FCC/Enforcement Bureau			
Referral Division/Dept. : IHD - Investigation & Hearings			
Referral Date : 1/15/2010			
EB/IHD Exported Case : 1/19/2010			
Problem Description			

Roger has an injured arm, and tells Stan he must care for their racehorse.

ROGER: ?You're gonna have to do the horse chores... You have to brush the horse's coat and mane, water and feed it, then give it a full release. You know, give it a happy photo finish. Take the glue out of the factory. Spank his front butt. Grant him a bone loan!?

Later, Stan strokes the horse's side.

STAN: ?Here we go. Just do me a favor and let me know when you're about to...you know.?

Stan bends down beneath the horse. The horse's eyes go wide with surprise and pleasure. Stan is shown with fluid spraying in his face, implying that the horse has ejaculated on Stan. The camera pulls back to reveal that Stan is washing himself off with a hose.

The Bible says that even looking at a women with lust is sinful so the thoughts that this puts into people minds is in my opinion way against anything that God would want us to be looking at.

Before the
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of

Fox Television Stations, Inc.

)
) EB-10-IH-1831
) NAL/Acct. No. 201032080028
) FRN No. 0001529056
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 3, 2010

Released: June 3, 2010

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find that Fox Television Stations, Inc. ("Fox") apparently willfully and repeatedly violated a Commission Order and Section 73.1015 of the Commission's Rules,¹ by failing to respond to an Enforcement Bureau ("Bureau") Letter of Inquiry ("LOI").² We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"),³ that Fox is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000).

II. BACKGROUND

2. The Commission's records indicate that the agency has received more than 100,000 consumer complaints concerning the January 3, 2010 episode of the Fox Television Network program "American Dad." In response to these numerous complaints, the Bureau issued the LOI to Fox on January 21, 2010.⁴ The LOI directed Fox to provide information and documents concerning the broadcast.⁵ Consistent with our usual practice and as a courtesy to the licensee, the Bureau enclosed with the LOI a redacted complaint that was representative of the complaints received by the Commission. The example complaint identified a specific Fox station, Station KDFW(TV), Dallas, Texas, but the LOI explicitly sought information regarding all Fox-affiliated stations that might have aired the program.⁶

¹ See 47 C.F.R. § 73.1015.

² See Letter from Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Joseph Di Scipio, Esquire, Vice President for Legal and FCC Compliance, Fox Television Stations, Inc., dated January 21, 2010. See also note 21, *infra* (citing March 19th Letter).

³ See 47 U.S.C. § 503(b).

⁴ See LOI.

⁵ See *id.* at 2-3 (Inquiry nos. 1-3, 6-7).

⁶ According to ownership reports filed with the Commission, News Corporation holds 100 percent of the outstanding shares of Fox Entertainment Group. See File No. BOA-20090129AKD. Fox Entertainment Group controls Fox Television Holdings, Inc., which in turn indirectly controls the licensees of twenty-eight television stations, including Fox Television Stations, Inc., which is the licensee of eighteen television stations, and NW Communications of Texas, Inc., which is the licensee of Station KDFW(TV). See *id.*

3. On February 2, 2010, following a request from Fox, the Bureau temporarily suspended the company's obligation to respond to inquiry number five in the LOI.⁷ The Bureau specifically noted that Fox's obligation to respond to the LOI's other inquiries remained in effect. On February 16, 2010, following an additional request from Fox, the Bureau extended Fox's deadline for responding to the LOI until March 1, 2010.⁸

4. Fox failed to respond to the LOI.⁹ Instead the Bureau received a response from NW Communications of Texas, Inc. ("NW Communications"), licensee of Station KDFW(TV), which was identified in the sample complaint attached to the LOI and is commonly-owned with other Fox stations.¹⁰

5. NW Communications' response did not claim to be on behalf of Fox and was incomplete. Its response not only was limited to information concerning material that had aired on Station KDFW(TV) during the January 3, 2010 episode of "American Dad," but also failed to answer several of the LOI's factual inquiries. Specifically, the NW Communications response did not provide information concerning Fox-owned and operated stations that broadcast the complained-of material, as inquiries numbers one and two required.¹¹ In addition, the NW Communications response did not provide information concerning other stations not owned by Fox that had a contractual right to broadcast the complained-of material, as inquiry number three required.¹² The NW Communications response also did

⁷ See E-mail from Melanie Godschall, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Maureen O'Connell, Esquire, Fox Television Stations, Inc., dated February 2, 2010. As reflected on page three of the LOI, inquiry number five asks if the Fox Television Network's Program Practices or equivalent department was consulted about the content of the January 3, 2010 episode of "American Dad." The temporary suspension of Fox's obligation to respond to inquiry number five remains in effect.

⁸ See E-mail from Anjali Singh, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Joseph DiScipio, Fox Television Stations, Inc., dated February 16, 2010.

⁹ See Letter from Jared S. Sher, Esquire, Skadden, Arps, Slate, Meagher & Flom L.L.P., Counsel to NW Communications, to Melanie Godschall, Investigations and Hearings Division, Enforcement Bureau, dated March 1, 2010 ("NW Communications Response").

¹⁰ See *id.* The LOI at page 7 defined the term "Licensee" not as "NW Communications of Texas, Inc." but as follows:

"Licensee" shall mean Fox Television Stations, Inc. and any predecessor-in-interest, affiliate, parent company, wholly or partially owned subsidiary, other affiliated company or business, and all owners, including but not limited to, partners or principals, and all directors, officers, employees, or agents, including consultants any any other persons working for or on behalf of the foregoing at any time during the period covered by this letter.

¹¹ Inquiry number one states: "It is alleged that, on January 3, 2010, certain stations owned by the Licensee broadcast material described in the Complaint during their airing of 'American Dad.' State whether the Licensee did, in fact, broadcast any or all of the material described in the Complaint and identify each station licensed to the Licensee that broadcast that material. If the programming described in the Complaint does not accurately reflect the material aired over the stations, describe any inaccuracies." LOI at 2. Inquiry two seeks, among other things, the licensee name, call sign, and community of license of each licensee of the stations named in inquiry one. See LOI at 2.

¹² Inquiry number three seeks the licensee, call sign, and community of license of each non-Fox-owned and operated station that had the contractual right to air the January 3, 2010 episode of "American Dad," and whether Fox has reason to know or believe that the station in question did not air the episode, or aired an edited version, as well as the basis for that knowledge or belief. See *id.*

not provide Nielsen Media Research TV Audience measurements, as inquiry number four required.¹³ Finally, the NW Communications response provided information concerning the TV Parental Guidelines information that Station KDFW(TV) displayed during the January 3, 2010 episode of “American Dad,” but did not state whether Fox or the Fox Television Network displayed this information, as inquiry number six required.¹⁴

6. The NW Communications response asserted that the information required by inquiry numbers one, two, and three is unnecessary to the Bureau’s investigation¹⁵ and beyond the Commission’s authority.¹⁶ The NW Communications response did not assert legal privilege or confidentiality on behalf of itself or Fox. Instead, it merely cited the Commission’s statements regarding its restrained approach to indecency enforcement, specifically, the Commission’s policy of limiting forfeiture actions “to licensees whose stations serve markets from which specific complaints were received.”¹⁷ It asserted that other Fox-owned and operated stations were therefore not required to respond to inquiries “unless and until the Commission provides [...] copies of all complaints that the FCC has received regarding the broadcast of the January 3, 2010 episode of ‘American Dad.’”¹⁸ In addition, the NW Communications response contended that the Commission should seek information about the broadcast on a station affiliated with the Fox Television Network only when it has received a complaint regarding the affiliated station, and then should issue an LOI directly to the licensee of the affiliated station.¹⁹ The NW Communications response also objected to inquiry number four, requiring final Nielsen Media research TV Audience measurements for “American Dad” on January 3, 2010, and claimed that this material has no bearing on whether the complained-of episode included any indecent material.²⁰

7. On March 19, 2010, the Bureau issued a letter to Fox describing its failure to respond to the LOI and requiring a full and complete response to all the Bureau’s inquiries no later than March 23, 2010.²¹ The Bureau rejected NW Communications’ arguments concerning the relevance of the required information to the Bureau’s investigation and the Commission’s authority to request such information.²² Specifically, the Bureau cited the Commission’s well-established authority to require information from

¹³ Inquiry number four seeks the final Nielsen Media Research TV Audience measurements (points and share) for “American Dad” on January 3, 2010, organized by various age categories ranging from two to five to over 18. *See id.* at 3.

¹⁴ Inquiry number six asks if Fox or the Fox Television Network displayed or announced any TV Parental Guidelines regarding the broadcast of “American Dad” on January 3, 2010. *See id.*

¹⁵ *See* LOI Response at 6.

¹⁶ *See id.* at 1-3, 5-6 (claiming that Commission precedent requires the agency to provide licensees with all “properly documented complaints” before it may inquire about allegedly indecent broadcasts).

¹⁷ *See id.* at 2-3.

¹⁸ *Id.* at 3.

¹⁹ *See id.* at 5-6.

²⁰ *See id.* at 6.

²¹ *See* Letter from Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Maureen A. O’Connell, Esquire, Fox Television Stations, Inc., dated March 19, 2010 (“March 19th Letter”).

²² *See id.* at 2-3.

its licensees.²³ Moreover, the Bureau pointed out that the facts and documents sought in the LOI are relevant to an assessment of potential violations of 18 U.S.C. § 1464 and the Commission's rules, as well as to the scope of such potential violations.²⁴ Further, the March 19th Letter observed that the requested information concerning Fox-owned and operated stations and Fox Television Network station affiliates that aired this episode of "American Dad" will help the Commission evaluate the complaints that have been filed, particularly if any of those stations did not air the complained-of material.²⁵ The Bureau also noted that Fox did not assert or demonstrate that providing the information would be unduly burdensome or that the information was privileged or confidential.²⁶ The March 19th Letter reiterated that failure to respond fully and completely to an official Commission letter of inquiry is a violation of the Act and the Commission's rules.²⁷ The Bureau cautioned Fox that its continued failure to respond fully to the inquiries might subject the licensee to potential enforcement action, including the imposition of monetary forfeitures.²⁸

8. Fox failed to respond to the March 19th Letter. On March 23, 2010, NW Communications responded to the March 19th Letter, but again failed to provide information requested in inquiry numbers one, two, and three concerning other stations that had broadcast the January 3, 2010 episode of "American Dad," including stations owned and operated by Fox and stations that are affiliated with the Fox Television Network.²⁹ The Supplemental NW Communications Response reiterated the objection to providing the required information for the same reasons set forth in the original NW Communications Response.³⁰ In addition, NW Communications noted it was simultaneously filing a request pursuant to the Freedom of Information Act ("FOIA") for copies of all complaints received by the Commission with respect to the January 3, 2010 episode of "American Dad."³¹ The Supplemental NW Communications Response provided the Nielsen data required by inquiry number four.³² In addition, with respect to inquiry number six, concerning the display or announcement of TV Parental Guidelines,

²³ See *id.* at 2 (citing Sections 4(i), 4(j), 308(b), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 308(b), 403, and Section 1.117 of the Commission's Rules, 47 C.F.R. § 1.117). See also *Stahlman v. FCC*, 126 F.2d 124 (D.C. Cir. 1942); *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7600 ¶ 28 (2002) (forfeiture paid) ("*SBC Communications Order*"); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd, 19893, 19898 n.36 (2003); *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (Enf. Bur. 2004); *American Family Association*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 14072 (Enf. Bur. 2004); *Donald W. Kaminski, Jr.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 10707 (Enf. Bur. 2001).

²⁴ See March 19th Letter at 2.

²⁵ See *id.*

²⁶ See *id.* at 3.

²⁷ See *id.* (citing authorities cited in *supra* note 23).

²⁸ See *id.*

²⁹ See Letter from Jared S. Sher, Esquire, Skadden, Arps, Slate, Meagher & Flom L.L.P., Counsel to NW Communications of Texas, Inc., to Melanie Godschall, Investigations and Hearings Division, Enforcement Bureau, dated March 23, 2010 ("*Supplemental NW Communications Response*").

³⁰ See *id.* at 2-3.

³¹ See *id.* at 3 & Attachment 1.

³² See *id.* at 4-7.

the Supplemental NW Communications Response stated that the Fox Television Network provided such rating information during the broadcast of "American Dad" on January 3, 2010.³³

III. DISCUSSION

9. Under Section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.³⁴ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.³⁵ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,³⁶ and the Commission has so interpreted the term in the Section 503(b) context.³⁷ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.³⁸ "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.³⁹ In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.⁴⁰ The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.⁴¹ As described in greater detail below, we conclude under this procedure that Fox is apparently liable for a forfeiture in the amount of \$25,000 for its apparent willful and repeated violations of a Commission Order and of Section 73.1015 of the Commission's rules.

A. Failure to Respond Fully to the LOI

10. We find that Fox's failure to respond to the Bureau's LOI constitutes an apparent willful and repeated violation of a Commission Order and of Section 73.1015 of the Commission's rules. The Bureau directed Fox to provide certain information related to the broadcast of the January 3, 2010 episode of "American Dad." This information is necessary to enable the Bureau to perform its investigatory function and to evaluate the complaints it has received concerning the January 3, 2010 episode of "American Dad." The Bureau specifically directed Fox to provide information concerning its owned and operated stations and information about affiliates with which it contracted to air the program at issue because this information would permit efficient and accurate fact-gathering in a Bureau investigation. In addition, the information is available to Fox, not privileged or confidential, and not burdensome for the

³³ See *id.* at 1 n.2.

³⁴ See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

³⁵ 47 U.S.C. § 312(f)(1).

³⁶ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

³⁷ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

³⁸ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) ("*Callais Cablevision*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage).

³⁹ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388 ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362 ¶ 9.

⁴⁰ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁴¹ See, e.g., *SBC Communications Order*, 17 FCC Rcd at 7591 ¶ 4.

company to provide.⁴² We note that Fox has not claimed otherwise. In fact, Fox has provided no written reply whatsoever to the LOI.

11. Although another entity, NW Communications, responded to some of the inquiries in the LOI, those responses were incomplete and unsatisfactory. NW Communications claims that before the Commission may inquire about any broadcast station regarding indecency allegations, a complaint identifying each individual station must be provided to mandate a licensee's response, and argues that the Commission must obtain the information, if at all, from each station individually.⁴³ We emphatically reject this position.

12. The Commission has broad investigatory authority under Sections 4(i), 4(j), and 403 of the Act, its rules, and relevant precedent. Section 4(i) authorizes the Commission to "issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."⁴⁴ Section 4(j) states that "the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."⁴⁵ Section 403 grants the Commission "full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter . . . relating to the enforcement of any of the provisions of this Act."⁴⁶ Pursuant to Section 73.1015 of the Commission's rules, the Commission may, in writing, require from a broadcast licensee written statements of fact relevant to any matter within its jurisdiction.⁴⁷ In carrying out this obligation, a broadcast licensee must provide truthful and accurate statements to the Commission or its staff in any investigatory or adjudicatory matter within the Commission's jurisdiction.⁴⁸ Numerous Commission decisions have reaffirmed the Commission's authority to investigate potential misconduct and punish those that disregard FCC inquiries.⁴⁹ The Commission delegated this authority to the Enforcement Bureau in Sections 0.111(a)(16) and 0.311 of the rules.⁵⁰

⁴² The same or similar information has been asked of other broadcast networks that are also licensees -- including Fox -- and other broadcast networks -- including Fox -- have provided the information in response to letters of inquiry.

⁴³ Given the continued absence of a response from Fox and the incomplete response received from NW Communications, contemporaneously with the release of this NAL, the Bureau is sending letters of inquiry to all licensees that air Fox Television Network programming. We take this step to advance the investigation. It should not be construed as a concession that our initial inquiry to Fox was misdirected.

⁴⁴ 47 U.S.C. § 154(i).

⁴⁵ 47 U.S.C. § 154(j).

⁴⁶ 47 U.S.C. § 403.

⁴⁷ 47 C.F.R. § 73.1015.

⁴⁸ See 47 C.F.R. § 1.17.

⁴⁹ See, e.g., *SBC Communications Order*, 17 FCC Rcd at 7599-7600 ¶¶ 23-28 (ordering \$100,000 forfeiture for egregious and intentional failure to certify the response to a Bureau inquiry); *Digital Antenna, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7600, 7602 (Spectrum Enforcement Div., Enf. Bur. 2008) (proposing \$11,000 forfeiture for failure to provide a complete response to a letter of inquiry); *BigZoo.Com Corporation*, Forfeiture Order, 20 FCC Rcd 3954 (Enf. Bur. 2005) (ordering \$20,000 forfeiture for failure to respond to a letter of inquiry).

⁵⁰ 47 C.F.R. § 0.111(a)(16) (granting the Enforcement Bureau authority to "[i]dentify and analyze complaint information, conduct investigations, conduct external audits and collect information, including pursuant to sections 218, 220, 308(b), 403 and 409(e) through (k) of the Communications Act, in connection with complaints, on its own (continued....)

13. We have previously considered and rejected Fox's arguments concerning our authority to request information concerning stations that aired the January 3, 2010 episode of "American Dad."⁵¹ Commission precedent holding that forfeiture penalties will be assessed only against the licensee of a station in a market in which there was a viewer complaint filed with the Commission about the programming is irrelevant to Fox's obligation to respond to Commission inquiries. The Bureau's LOI itself does not impose any enforcement penalty related to the January 3, 2010 episode of "American Dad." Rather, the Bureau's inquiries required Fox to provide factual information relevant to an investigation of matters within our delegated authority. Information requested in all the numbered inquiries is plainly relevant to this investigation. As noted, the responses to these inquiries will permit the Bureau to conduct a complete investigation, assess the scope of any potential wrongdoing, and determine whether there are stations that should be excluded from the investigation because they edited or did not air the January 3, 2010 episode of "American Dad."⁵²

14. The Bureau acted within its investigatory authority to carry out its responsibilities, particularly in light of the breadth and magnitude of the viewer complaints received, but in any event, parties must comply with Bureau orders even if they believe them to be outside the Commission's authority.⁵³ While there is no legal requirement that the Bureau attach a complaint to any investigative letter or any requirement that the Bureau attach a complaint that identifies a specific station or stations in order to obtain a reply from a licensee, in cases involving large numbers of complaints, the Bureau historically has provided a representative sample of the relevant complaints. We followed that approach here. Given the sheer volume, providing all the complaints was unworkable and would have unduly delayed the Bureau's investigation. Further, NW Communications' FOIA request seeking copies of complaints the Commission received concerning the "American Dad" episode does not excuse in any way Fox's obligation to provide the requested information.⁵⁴ In light of well-established Commission precedent, therefore, Fox's failure to respond to the Bureau's LOI and March 19th Letter constitutes apparent willful and repeated violations of a Commission Order and of Section 73.1015.⁵⁵

(Continued from previous page) _____
initiative or upon request of another Bureau or Office"). See also 47 C.F.R. § 0.311 (general delegated authority for Enforcement Bureau).

⁵¹ See March 19th Letter at 2-3.

⁵² The LOI Response cites *Eagle Radio Inc.*, Memorandum Opinion and Order, 9 FCC Rcd 1294, 1294 ¶ 2 (1994) (subsequent history omitted), and asserts that the Commission should not expect Fox to make assumptions about "independent editorial entit[ies]" that may or may not have carried a program based on "contractual arrangements with its producer." See LOI Response at 5-6. The cited decision relied upon by Fox, however, does not address the Commission's authority to require information responsive to its inquiries and does not preclude the Bureau from requesting information concerning the airing of the January 3, 2010 episode of "American Dad" by stations affiliated with the Fox Television Network.

⁵³ See, e.g., *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545, 18546 ¶ 5 (Enf. Bur. 2003) (citing 47 U.S.C. § 416(c)) (subsequent history omitted); *SBC Communications Order*, 17 FCC Rcd at 7591 ¶ 5).

⁵⁴ See *World Communications Satellite Systems, Inc.*, 18 FCC Rcd at 18547 ¶ 7, 18548 ¶ 9, *affirmed*, Forfeiture Order, 19 FCC Rcd 2718, 2720 ¶ 8 (Enf. Bur. 2004) (recipient of a letter of inquiry is not entitled to withhold its response to that inquiry prior to production of investigative records, including complaints).

⁵⁵ See, e.g., *SBC Communications Order*, 17 FCC Rcd at 7591 ¶ 5; 47 C.F.R. § 73.1015.

B. Proposed Forfeiture

15. Pursuant to the *Forfeiture Policy Statement* and Section 1.80 of the Commission's Rules, the base forfeiture amount for failure to respond to Commission communications is \$4,000.⁵⁶ The Commission's rules provide that base forfeitures may be adjusted based upon consideration of the factors enumerated in Section 503(b)(2)(E) of the Act⁵⁷ and Section 1.80(a)(4) of the Commission's rules, which include "the nature, circumstances, extent, and gravity of the violation . . . and the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁵⁸ We find that Fox's failure to respond to the Bureau's inquiries in the circumstances presented here warrants a significant increase from the base forfeiture amount. Misconduct of this type exhibits contempt for the Commission's authority and threatens to compromise the Commission's ability to adequately investigate violations of its rules. Prompt and full responses to Bureau inquiry letters are essential to the Commission's enforcement function. In this case, Fox's apparent violation has delayed our investigation, caused the Commission to expend additional, significant resources to send individual LOIs to 235 Fox-owned or affiliated stations, and inhibited our ability to examine allegations raised in viewers' indecency complaints. We further note that Fox failed to provide a full and complete response even after receiving the March 19th Letter. For these reasons, we find that Fox's misconduct was egregious and justifies an upward adjustment.

16. In addition, Fox's ability to pay warrants the upward adjustment of the forfeiture amount to serve as a deterrent to future misconduct.⁵⁹ To ensure that a proposed forfeiture is a deterrent, and not simply a cost of doing business, the Commission has determined that large or highly-profitable companies such as Fox⁶⁰ may be subject to proposed forfeitures that are substantially above the base forfeiture amount.⁶¹ Given Fox's size and its ability to pay a forfeiture, coupled with its egregious misconduct, we conclude that an upward adjustment of the base forfeiture amount to \$25,000 is appropriate. The proposed forfeiture amount is consistent with recent precedent in similar cases, where companies failed to provide responses to Bureau inquiries concerning compliance with the Commission's rules despite evidence that the letters of inquiry had been received.⁶²

IV. ORDERING CLAUSES

17. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.80 of the Commission's Rules, Fox Television Stations, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A**

⁵⁶ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17115 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80.

⁵⁷ See 47 U.S.C. § 503(b)(2)(E).

⁵⁸ 47 C.F.R. § 1.80(a)(4).

⁵⁹ See *SBC Communications Order*, 17 FCC Rcd at 7599 ¶ 23.

⁶⁰ Fox Entertainment Group, Inc., which controls Fox Television Holdings, Inc. as well as the Fox Television Network, operates the number two broadcast television network with more than 200 affiliated stations, including 17 company-owned television outlets. Its net yearly sales are \$2,624,000,000. See *Hoover's Company Records – In-depth Records*, March 22, 2010.

⁶¹ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100 ¶ 24.

⁶² See *supra* note 49.

FORFEITURE in the amount of twenty-five thousand dollars (\$25,000) for its willful and repeated violations of a Commission Order and Section 73.1015 of the Commission's rules.⁶³

18. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, that within thirty (30) days of the release date of this Notice, Fox Television Stations, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Commission's rules.

19. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Fox Television Stations, Inc. will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Anjali.Singh@fcc.gov and Melanie.Godschall@fcc.gov.

20. The response, if any, shall be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington D.C. 20554, and **SHALL INCLUDE** the NAL/Acct. No. referenced above. The licensee shall also, to the extent practicable, transmit a copy of the response via email to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Anjali.Singh@fcc.gov and Melanie.Godschall@fcc.gov.

21. The Commission shall not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

⁶³ See 47 U.S.C. §§ 310(d), 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1125.

22. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Maureen A. O'Connell, Esquire, and Joseph Di Scipio, Esquire, Fox Television Stations, Inc., 444 North Capitol Street, N.W., Suite 740, Washington, D.C. 20001; and to Jared S. Sher, Esquire, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, N.W., Washington, DC 20005-2111.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau