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November 2, 2004

VIA E-MAIL

William Davenport, Esq.
Federal Communications Commission
Enforcement Bureau
445 Twelfth Street, S.W.
Room 4-C330
Washington, DC 20554

**Re: Request for Extension of Time to File Response to
Notice of Apparent Liability Regarding
Fox Television Network Program "Married By America"
File No. EB-03-IH-0162**

Dear Mr. Davenport:

On behalf of the licensees listed in Exhibit A to this letter, we hereby request an extension of time until December 3, 2004, to submit a response to the above-captioned Notice of Apparent Liability (the "NAL") that the Commission released on October 12, 2004. The NAL concerns the broadcast of allegedly indecent material during an episode of the Fox Network program "Married By America" that was aired on April 7, 2003. Pursuant to the NAL, responses from the licensees cited in the NAL are due thirty days from the release of the NAL, or November 11, 2004.

We have been informed that the Commission has granted an extension of time until December 3, 2004, for Fox Television Stations, Inc. ("Fox") and any affiliates that join with it in filing a consolidated response to the NAL. We have been further informed that affiliates that do not join in the joint response to the NAL must file separate requests for extension of time to respond to the NAL. As a result, we are filing this separate request seeking the same extension granted to Fox and the affiliate licensees joining with it. The licensees listed in Exhibit A have not determined whether they will be joining in the joint response to the NAL. This extension of time is necessary to allow each of them sufficient time to determine an appropriate response to the NAL.

Please let us know if you should have any questions regarding this request.

Respectfully submitted,

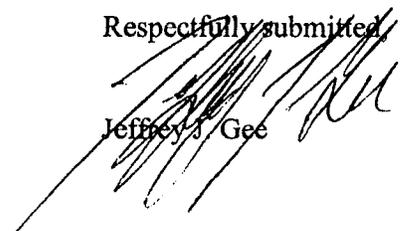

Jeffrey J. Gee

Exhibit A

Licensee	NAL Acct. No.	Station Call Sign and Community of License	Facility ID No.
Idaho Independent Television, Inc.	200432080327	KTRV, Nampa, ID	28230
Independence Television Company	200432080328	WDRB, Louisville, KY	28476
KTVU Partnership	200432080344	KRXI-TV, Reno, NV	48360
KTVU Partnership	200432080345	KFOX-TV, El Paso, TX	33716
KTVU Partnership	200432080346	KTVU, Oakland, CA	35703
KVOA Communications, Inc.	200432080347	K47DF, Corpus Christi, TX	51375
KVVU Broadcasting Corporation	200432080348	KVVU-TV, Henderson, NV	35870
Meredith Corporation	200432080351	KFXO-LP, Bend, OR	35464
Meredith Corporation	200432080351	WHNS, Greenville, SC	72300
Meredith Corporation	200432080351	KPTV, Portland, OR	50633
Peak Media of PA Licensee LLC	200432080364	WWCP-TV, Johnstown, PA	20295
North Carolina Broadcasting Partners	200432080359	WCCB, Charlotte, NC	49157
Springfield Broadcasting Partners	200432080387	WRSP-TV, Springfield, IL	62009
WNAC, LLC	200432080405	WNAC-TV, Providence, RI	73311

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Complaints Against Various Licensees Regarding)	NAL/Acct. No. 200532080003
Their Broadcast Of The Fox Television Network)	File No. EB-03-IH-0162 ¹
Program "Married By America" On April 7, 2003)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 5, 2004

Released: October 12, 2004

By the Commission: Commissioner Martin issuing a statement at a later date.

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), issued pursuant to section 503(b) of the Communications Act of 1934, as amended (the "Act"), and section 1.80 of the Commission's rules,² we find that the licensees of 169 Fox Television Network stations ("Fox Network Stations")³ apparently broadcast indecent material during an episode of the Fox program "Married By America" on April 7, 2003, in apparent willful violation of the federal restrictions regarding the broadcast of indecent material. Based on our review of the facts and circumstances in this case, we conclude that the licensees are apparently liable for monetary forfeitures in the amount of \$7,000 for each of their respective stations that broadcast the material at issue, for a total proposed forfeiture of \$1,183,000.

II. BACKGROUND

2. "Married By America" was a "reality-based" television program in which several single adults agreed to be engaged to and potentially marry each other, even though they had never previously met. The April 7, 2003 episode of the program focused on the Las Vegas bachelor and bachelorette parties for the remaining two couples. These parties featured strippers and various sexual situations. Following that broadcast, the Commission received 159 complaints alleging that the "Married By America" episode contained indecent material.⁴ After reviewing the complaints and a videotape of the

¹ The Attachment hereto lists the FCC Registration Numbers ("FRNs"), Facility Identification Numbers, and NAL account numbers for the licensees and stations involved in this proceeding.

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

³ For purposes of this NAL, the "Fox Network Stations" include: (i) the television stations identified in the Attachment that are licensed to or ultimately controlled by Fox Entertainment Group, Inc. ("Fox Stations"); and (ii) the television stations identified in the Attachment that are Fox Television Network affiliates but not licensed to or ultimately controlled by Fox ("Fox Affiliates").

⁴ See, e.g., E-mail from Complainant to Michael Powell, Chairman, Federal Communications Commission, *et al.*, dated April 30, 2003.

subject episode, the Enforcement Bureau directed a letter of inquiry ("LOI") to TVT License, Inc., licensee of Station WTVT(TV), Tampa, Florida, seeking further information about the episode.⁵ By letters dated August 11 and September 9, 2003, Fox responded to the LOI.⁶

3. In its responses, Fox states that all of the Fox Stations identified in the Attachment hereto broadcast "Married By America" prior to 10:00 p.m. on the date in question. Fox also states that none of the Fox Affiliates identified in the Attachment notified Fox that it declined to air the program.⁷ Fox maintains that the "Married By America" episode in question did not contain descriptions or depictions of sexual or excretory organs or activities and, even if it did, the material was not patently offensive.⁸

III. DISCUSSION

4. The Federal Communications Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the Commission's rules and applicable statutory provisions concerning the operation of those stations. The Commission's role in overseeing program content is very limited. The 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.⁹ The Commission does, however, have the authority to enforce statutory and regulatory provisions restricting indecency and obscenity. Specifically, it is a violation of federal law to broadcast obscene or indecent programming. Title 18 of the United States Code, section 1464, prohibits the utterance of "any obscene, indecent or profane language by means of radio communication."¹⁰ In addition, consistent with a subsequent statute and court case,¹¹ section 73.3999 of the Commission's rules provides that radio and television stations shall not broadcast indecent material during the period 6 a.m. through 10 p.m.¹²

5. As an initial matter, we find that the episode of "Married By America" that is the subject of this *NAL* was indeed broadcast on April 7, 2003, over each of the Fox Stations and Fox Affiliates identified in the Attachment.¹³ We further conclude that the stations listed in the Attachment apparently broadcast the program prior to 10 p.m., local time.

⁵ See Letter to TVT License, Inc., from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, dated July 10, 2003 ("LOI").

⁶ As a subsidiary of Fox Entertainment Group, Inc., TVT License, Inc. responded to the LOI on behalf of all Fox owned and operated stations. See Letter to Melanie A. Godschall, Investigations and Hearings Division, Enforcement Bureau, from John C. Quale, Skadden, Arps, Slate, Meagher & Flom, LLP, dated August 11, 2003 ("LOI Response"); Letter to William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, from John C. Quale, Skadden, Arps, Slate, Meagher & Flom, LLP, dated September 9, 2003 ("Supplemental LOI Response").

⁷ Supplemental LOI Response at Exhibits A and B.

⁸ LOI Response at 8.

⁹ See 47 U.S.C. § 326.

¹⁰ 18 U.S.C. § 1464.

¹¹ Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (1992); *Action for Children's Television v. FCC*, 58 F.3d 654 (D.C. Cir 1995), cert. denied, 516 U.S. 1043 (1996) ("*Act III*").

¹² 47 C.F.R. § 73.3999.

¹³ See note 7, *supra*, and accompanying text. As noted above, the Attachment hereto identifies the Fox Stations and Fox Affiliates that apparently broadcast the April 7, 2003 episode of "Married By America." We note that the list does not include all Fox affiliate stations; for example, the list omits Station WRAZ-TV, Raleigh-Durham, North

A. Indecency Analysis

6. Any consideration of government action against allegedly indecent programming must take into account the fact that such speech is protected under the First Amendment.¹⁴ The federal courts consistently have upheld Congress's authority to regulate the broadcast of indecent material, as well the Commission's interpretation and implementation of the governing statute.¹⁵ Nevertheless, the First Amendment is a critical constitutional limitation that demands that, in indecency determinations, we proceed cautiously and with appropriate restraint.¹⁶

7. The Commission defines indecent speech as language that, in context, depicts or describes sexual or excretory activities or organs in terms patently offensive as measured by contemporary community standards for the broadcast medium.¹⁷ Indecency findings involve at least two fundamental determinations. First, the material alleged to be indecent must fall within the subject matter scope of our indecency definition -- that is, the material must describe or depict sexual or excretory organs or activities. Second, the broadcast must be *patently offensive* as measured by contemporary community standards for the broadcast medium.¹⁸

8. Turning to the instant case, we begin our analysis with an examination of whether the material at issue depicts or describes sexual or excretory organs or activities. As noted above, the April 7, 2003, episode of "Married By America" focuses on bachelor and bachelorette parties in a Las Vegas hotel. Fox contends that these scenes do not depict or describe sexual or excretory organs or activity, arguing that its editing of the broadcast avoided any such depictions.¹⁹ We reject Fox's claim. Even with Fox's editing, the episode includes scenes in which party-goers lick whipped cream from strippers' bodies

Carolina, which is owned and operated by Capitol Broadcasting Company ("Capitol"). According to a Capitol press release, following the March 5, 2003 episode of "Married By America," Capitol "decided that the program did not reflect prevailing standards of good taste and that the show was clearly demeaning to the institution of marriage." See Capitol Broadcasting Press Release, *WRAZ-TV/FOX 50 To Preempt Future Broadcasts of Married by America* (March 9, 2003), available at http://www.cbc-raleigh.com/inside_cbc/2003%20news/030903fx.htm. Accordingly, Capitol refused to broadcast additional episodes of the program, including the episode at issue here. *Id.* See also Testimony of James Goodmon, President and CEO of Capitol Broadcasting Company, *Broadcast Localism Hearing, Charlotte, North Carolina, October 22, 2003*, at 144-145, at <http://www.fcc.gov/localism/hearing-charlotte102203.html>.

¹⁴ U.S. Const., amend. I; *Action for Children's Television v. FCC*, 852 F.2d 1332, 1344 (D.C. Cir. 1988) ("*ACT F*").

¹⁵ Title 18 of the United States Code, Section 1464 (18 U.S.C. § 1464), prohibits the utterance of "any obscene, indecent or profane language by means of radio communication." *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). See also *ACT I*, 852 F.2d at 1339; *Action for Children's Television v. FCC*, 932 F.2d 1504, 1508 (D.C. Cir. 1991), *cert. denied*, 503 U.S. 914 (1992) ("*ACT IP*"); *ACT III*, 58 F.3d 654.

¹⁶ *ACT I*, 852 F.2d at 1344 ("Broadcast material that is indecent but not obscene is protected by the First Amendment; the FCC may regulate such material only with due respect for the high value our Constitution places on freedom and choice in what people may say and hear."); *id.*, 852 F.2d at 1340, n.14 ("the potential chilling effect of the FCC's general definition of indecency will be tempered by the Commission's restrained enforcement policy.").

¹⁷ *Infinity Broadcasting Corporation of Pennsylvania*, Memorandum Opinion and Order, 2 FCC Rcd 2705 (1987) (subsequent history omitted) (citing *Pacifica Foundation*, Memorandum Opinion and Order, 56 FCC 2d 94, 98 (1975), *aff'd sub nom. FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)).

¹⁸ *Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency*, Policy Statement, 16 FCC Rcd 7999, 8002, ¶¶ 7-8 (2001) ("*Indecency Policy Statement*") (emphasis in original).

¹⁹ LOI Response at 8.

in a sexually suggestive manner. Another scene features a man on all fours in his underwear as two female strippers playfully spank him. Although the episode electronically obscures any nudity, the sexual nature of the scenes is inescapable, as the strippers attempt to lure party-goers into sexually compromising situations. Accordingly, we conclude that the broadcast satisfies the first prong of our indecency analysis and warrants further scrutiny to determine whether it was patently offensive as measured by contemporary community standards for the broadcast medium.²⁰

9. In our assessment of whether broadcast material is patently offensive, “the *full context* in which the material appeared is critically important.”²¹ Three principal factors are significant to this contextual analysis: (1) the explicitness or graphic nature of the description; (2) whether the material dwells on or repeats at length descriptions of sexual or excretory organs or activities; and (3) whether the material appears to pander or is used to titillate or shock.²² In examining these three factors, we must weigh and balance them to determine whether the broadcast material is patently offensive because “[e]ach indecency case presents its own particular mix of these, and possibly, other factors.”²³ In particular cases, the weight of one or two of the factors may outweigh the others, either rendering the broadcast material patently offensive and consequently indecent,²⁴ or, alternatively, removing the broadcast material from the realm of indecency.²⁵

10. We find that the material described above is sufficiently graphic and explicit to be indecent, particularly in light of our analysis of the last two factors. Contrary to Fox’s assertion,²⁶ merely obscuring (or “pixilating”) sexual organs does not necessarily remove a broadcast from our indecency analysis. As noted above, we must assess each broadcast on its “*full context*.” In this case, Fox obscures the depiction of sexual organs in the episode, but the pixilation does little to obscure the overtly sexual and gratuitous nature of the bachelor/bachelorette party scenes. These scenes show, for example, partially clothed strippers, such as a topless woman with her breasts pixilated, straddling a man in a sexually suggestive manner; two partially clothed female strippers kissing each other above a male; two partially clothed strippers rubbing a man’s stomach; a male stripper about to put a woman’s hand down the front of his pants; and a man in his underwear on all fours being spanked by two topless strippers. The scenes also show one of the bachelorettes straddling and touching a topless female stripper and then licking whipped cream off the stripper’s stomach and bare chest while the stripper holds her own breasts. Although the nudity was pixilated, even a child would have known that the strippers were topless and that sexual activity was being shown. See *Pacifica*, 438 U.S. at 749.

²⁰ The “contemporary standards for the broadcast medium” criterion is that of an average broadcast listener and with respect to Commission decisions, does not encompass any particular geographic area. See *id.*, 16 FCC Rcd at 8002, ¶ 8 and n. 15.

²¹ *Id.*, 16 FCC Rcd at 8002, ¶ 9 (emphasis in original).

²² *Id.*, 16 FCC Rcd at 8002-15, ¶¶ 8-23.

²³ *Id.*, 16 FCC Rcd at 8003, ¶ 10.

²⁴ *Id.*, 16 FCC Rcd at 8009, ¶ 19 (citing *Tempe Radio, Inc (KUPD-FM)*, Notice of Apparent Liability, 12 FCC Rcd 21828 (Mass Media Bur. 1997) (forfeiture paid)) (extremely graphic or explicit nature of references to sex with children outweighed the fleeting nature of the references); *EZ New Orleans, Inc. (WEZB(FM))*, Notice of Apparent Liability, 12 FCC Rcd 4147 (Mass Media Bur. 1997) (forfeiture paid) (same)).

²⁵ *Id.*, 16 FCC Rcd at 8010, ¶ 20 (“the manner and purpose of a presentation may well preclude an indecency determination even though other factors, such as explicitness, might weigh in favor of an indecency finding”).

²⁶ LOI Response at 8.

11. We also reject Fox's claim that the sexual material is fleeting.²⁷ Indeed, the opposite is true. The entire segment, lasting about six minutes, focuses on the bachelor/bachelorette parties, and strippers are featured prominently throughout the accompanying scenes attempting to lure participants into sexual activities. Under any reasonable interpretation, the material plainly dwells on matters of a sexual nature.

12. Finally, we find that the material is intended to pander to and titillate the audience. Fox contends that "all of the scenes are an integral part of the storyline and the various participants' character development" and, and therefore, the episode did not pander, the material was not used to titillate, and the program was not presented for "shock value."²⁸ We disagree. The episode depicts the prolonged appearance of strippers attempting to sexually arouse the party-goers and certainly goes well beyond that necessary for the "character development" of the various participants. The material is gratuitous, vulgar, and clearly intended to pander to and titillate.

13. Considering all three factors in our contextual analysis, we find that the broadcast material in question is patently offensive as measured by contemporary community standards for the broadcast medium, and is therefore indecent. Because there was a reasonable risk that children may have been in the audience on April 7, 2003, when the material in the "Married By America" episode was broadcast, the broadcast is legally actionable. By broadcasting this material over each of the stations identified in the Attachment, each of the Fox Network Stations apparently willfully violated the prohibitions in the Act and the Commission's rules against broadcast indecency.

B. Proposed Forfeiture

14. Section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80(a) of the Commission's rules, 47 C.F.R. § 1.80, both state that any person who willfully or repeatedly fails to comply with the provisions of the Act or the rules shall be liable for a forfeiture penalty. For purposes of section 503(b) of the Act, the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules.²⁹ Based on the material before us, it appears that the Fox Network Stations willfully violated 18 U.S.C. § 1464 and section 73.3999 of the Commission's rules, by airing indecent programming during the "Married By America" program on April 7, 2003.

15. The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$7,000 for the transmission of indecent or obscene materials.³⁰ The *Forfeiture Policy Statement* also specifies that the Commission shall adjust a forfeiture based upon consideration of the factors enumerated in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), such as "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."³¹

²⁷ *Id.*

²⁸ *Id.*

²⁹ See *Southern California Broadcasting Co.*, 6 FCC Rcd at 4387-4388.

³⁰ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Memorandum Opinion and Order, 12 FCC Rcd 17087, 17113 (1997), *recon. denied* 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80(b).

³¹ *Forfeiture Policy Statement*, 12 FCC Rcd at 17110.

16. We propose a \$7,000 forfeiture against each Fox Station and Fox Affiliate station. With respect to the Fox Affiliates, we note that the situation differs from our recent *Super Bowl NAL*.³² In that case, we concluded that the affiliates “could not have reasonably anticipated that the CBS Network production of a prestigious national event such as the Super Bowl would contain material that included the on-camera exposure of Ms. Jackson’s breast.”³³ This program, in contrast, was a taped episode in a taped series, and the affiliates could have preempted it, as at least one affiliate did.³⁴

IV. ORDERING CLAUSES

17. ACCORDINGLY, IT IS ORDERED, that the complaints filed against various licensees regarding their broadcast of the Fox Television Network program “Married By America” on April 7, 2003, ARE GRANTED to the extent indicated herein.

18. IT IS FURTHER ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission’s rules,³⁵ that each of the licensees identified in the Attachment hereto is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the respective amount specified in the Attachment for willfully violating 18 U.S.C. § 1464 and section 73.3999 of the Commission’s rules.

19. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission’s rules, that within thirty (30) days of the release of this *NAL*, each of the licensees identified in the Attachment SHALL PAY the full amount of its respective proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

20. 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*/Acct. No. and the FRN No. referenced in the Attachment. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

21. The response, if any, SHALL BE MAILED to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W. Room 4-C330, Washington DC 20554, and SHALL INCLUDE the *NAL*/Acct. No. referenced in the Attachment.

22. The Commission will 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”);

³² See *Complaints Against Various Television Licensees Concerning Their February 1, 2004, Broadcast of the Super Bowl XXXVIII Halftime Show*, Notice of Apparent Liability for Forfeiture, FCC 04-209 (rel. September 22, 2004) (“*Super Bowl NAL*”) (declining to propose forfeitures against the CBS affiliated stations not owned by Viacom, Inc., the parent company of CBS Broadcasting, Inc., which originated the broadcast).

³³ *Id.* at ¶ 25. We also “urge[d] each such licensee to take reasonable precautions in the future, such as employing such delay technology to independently prescreen the network feed to prevent the broadcast of indecent programming over its licensed station.” *Id.*

³⁴ See note 13, *supra*.

³⁵ 47 C.F.R. § 1.80.

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.

23. Requests for payment of the full amount of the forfeiture proposed in this *NAL* under an installment plan SHALL BE SENT to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.³⁶

24. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by Certified Mail/Return Receipt Requested, to each of the licensees identified in the Attachment hereto.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁶ See 47 C.F.R. § 1.1914.