



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

JUN 08 2010

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED,
Facsimile at (502) 589-5559

Independence Television Company
624 W. Muhammad Ali Boulevard,
Louisville, KY 40203

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.*

question. Fox refused to respond to the January 21, 2010 LOI or to subsequent demands for the information as directed, although it did not deny that it has the information, assert that production is unduly burdensome, or claim that the information is privileged. On June 3, 2010, the Bureau issued a Notice of Apparent Liability against Fox, proposing a \$25,000 forfeiture, for its willful and repeated violation of a Commission Order and of Section 73.1015 of the Commission's rules.³

We direct the Licensee, pursuant to Sections 4(i), 4(j), 308(b) and 403 of the Communications Act of 1934, as amended,⁴ to provide the information and Documents, as defined herein, within thirty (30) calendar days from the date of this letter. Instructions and Definitions are contained in the attachment to 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 January 3, 2009 to the present.

Inquiries: Documents and Information to be Provided

1. State whether the Licensee broadcast any or all of the material described in the Complaint, and Identify which station(s) licensed to the Licensee broadcast the material.
2. With regard to each station named in the response to Inquiry 1 above, provide:
 - a. the call sign, community of license and licensee; and
 - b. the date(s) and time(s) of the Broadcast(s).
3. With regard to each station named in the response to Inquiries 1 and 2 above, state whether the Licensee edited or otherwise broadcast only a portion of "American Dad" on January 3, 2010, and for each station that edited or otherwise broadcast only a portion of "American Dad" on January 3, 2010, provide:
 - a. a transcript of the Broadcast; and
 - b. (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

³ See *Fox Television Stations*, Notice of Apparent Liability, DA 10-995 (EB rel. June 3, 2010).

⁴ See 47 U.S.C. §§ 154(i), 154(j), 308(b), 403.

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.

4. If the programming described in the Complaint does not accurately reflect the material aired over the station(s), describe any inaccuracies.
5. 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.
6. With regard to each station named in response to Inquiries 1, 2 and 3, above, state whether the Licensee received any complaints relating to the broadcast. If so, provide copies of all Documents relating to any such complaints and group the Documents by station.
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,⁵ and be substantially in the form set forth therein.

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

⁵ See 47 C.F.R. § 1.16.

⁶ See 18 U.S.C. § 1001; see also 47 C.F.R. § 1.17.

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 Brian J. Carter, 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 Brian J. Carter, 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 Brian.Carter@fcc.gov and to Kenneth.Scheibel@fcc.gov.

Sincerely,



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

Attachments (2)

⁷ See *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002); *Globcom, 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).

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, 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."

"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 Independence Television Company 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.



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.

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.

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 Rcd 7589 (2002); *Globcom, 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).

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.

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

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“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

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 : cgb.475	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 :	P. O. Box :	
City / State / Zip : ARLINGTON TX 76014	Title :	Fax Number :	
Email :	Company :		

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, DC 20554**

In re:)
)
June 3, 2010 Letters of Inquiry to) File No. EB-10-IH-0188
Licensees of Stations Affiliated)
with the Fox Television Network Concerning)
the Broadcast of the Program)
“American Dad” on January 3, 2010)

To: Chief, Enforcement Bureau
Federal Communications Commission

CONSOLIDATED PETITION FOR EXPEDITED STAY

The licensees of the [fill in number] television broadcast stations listed in Attachment 1 hereto (“Licensees”) hereby collectively petition the Chief of the Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“FCC” or “Commission”) for an expedited stay of the requirement that Licensees respond to the above-captioned, substantively identical June 3, 2010 letters of inquiry sent by the Bureau to Licensees inquiring about the January 3, 2010 episode of the Fox Television Network (“FTN”) program “American Dad” (“American Dad Episode”). In support whereof, the following is shown.¹

FACTUAL BACKGROUND

On June 3, 2010, the Bureau released a Notice of Apparent Liability (the “NAL”) proposing to impose a forfeiture of \$25,000 on Fox Television Stations, Inc. (“FTS”) for what the NAL characterized as FTS’s failure to respond to several of the Bureau’s directives contained

¹ All Licensees except FTN affiliates owned and operated by Fox Television Holdings, Inc. (“FTH”) have authorized undersigned counsel from Lerman Senter PLLC to submit this consolidated Petition on their behalf. Counsel for Licensees of FTH-owned and operated stations are separately signing this Petition.

in a January 21, 2010 Letter of Inquiry directed to FTS by the Bureau (the “FTS LOI”).² The FTS LOI had posed a series of questions about the American Dad Episode. In response, NW Communications of Texas, Inc. (“NW”), licensee of the Fox-owned and operated FTN affiliate in the Dallas, Texas market (“KDFW”) and the subject of the only complaint attached to the FTS LOI, demurred concerning, inter alia, questions seeking disclosure of all FTN affiliates that had carried the American Dad Episode.³ In so doing, NW relied upon “Commission precedent requir[ing] the agency to provide licensees with all ‘properly documented complaints’ before it may inquire about allegedly indecent broadcasts.”⁴ In the NAL, the Bureau found FTS apparently liable for forfeiture after determining both that NW’s explanations were insufficient and that an otherwise unmet obligation to respond to an FCC order remained in place. The Bureau adjusted the base fine upwards, from \$4,000 to \$25,000, on the basis of FTS’s size and ability to pay, as well as what the Bureau concluded was the egregious nature of the offense.⁵

In the NAL, the Bureau also announced that, in light of FTS’s demurrer to the FTS LOI questions about all FTN affiliates, the Bureau would be sending out that day separate LOIs to 235 FTN affiliates. The Bureau in fact sent LOIs en masse to affiliates of the FTN on June 3, 2010 (the “Affiliate LOIs”), and to certain additional television stations, with each LOI asking a series of questions about the American Dad Episode. To the knowledge of Licensees, each of the Affiliate LOIs poses the same eight questions to FTN affiliates, each establishes a 30-day

² *Fox Television Stations, Inc.*, Notice of Apparent Liability for Forfeiture, DA 10-995, released June 3, 2010.

³ NAL at nn.11 and 12 and ¶¶ 6 and 8.

⁴ *Id.* at n.16.

⁵ *Id.* at ¶¶ 15-16.

response deadline, and each attaches a copy of the FTS LOI.⁶ The FTS LOI, in turn, contains a single attached complaint, directed to KDFW (the “KDFW Complaint”). To the knowledge of Licensees, no complaints other than the KDFW Complaint were attached to any of the Affiliate LOIs. Undersigned counsel for NW, as well as Mark Prak, counsel for Fisher Communications, Inc. and Quincy Newspapers, Inc., report that their informal telephonic requests (for NW, after issuance of the FTS LOI; for Fisher/Quincy, after issuance of the Affiliate LOIs) asking the Bureau to supply particularized complaints in markets other than the Dallas, Texas market, were denied.

Given the important threshold procedural issues raised by the Affiliate LOIs, Licensees have elected to submit this consolidated Petition. The Petition’s goal is to articulate, in a respectful manner, why the requirement that Licensees respond to the Affiliate LOIs should immediately be stayed, consistent with established full Commission precedent.⁷

DISCUSSION

In *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002) (“*SBC*”), the Commission, in a case referred to it by the Bureau, imposed a \$100,000 forfeiture on SBC Communications, Inc. (“SBC”) for its deliberate, repeated refusal to supply a declaration under penalty of perjury (the “Declaration”) to accompany its substantive response to a Bureau LOI. Submission of the Declaration had been required by that LOI. The Commission rejected SBC’s arguments as to why it should not be compelled to submit the Declaration. The FCC also expressly faulted SBC for its failure on at least two occasions to seek a stay, under Sections 1.43

⁶ Robert E. Levine, counsel for Lingard Broadcasting Corporation, reports that the Affiliate LOI as initially sent to Lingard did not contain any attachments.

⁷ Licensees are also submitting to the Bureau this day a closely related Consolidated Motion for Extension of Time (“Extension Request”).

and 1.44 of the Commission's Rules: "[A]t the same time [as it submitted its substantive LOI response], or at least upon receiving notice that it was in violation of the order, SBC could have petitioned the Commission or the Bureau for a stay of the portion of the [LOI] that required the sworn statement. Nonetheless, SBC chose not to avail itself of the opportunity to raise a *genuine good faith challenge* to the order." *Id.* at ¶ 19 (footnotes omitted) (emphasis added). *See also id.* at ¶ 3 ("SBC did not request that the Bureau or the Commission stay the portion of the NAL directing it again to provide a sworn statement."). *SBC* therefore clearly establishes a petition for stay as one appropriate procedural pathway for raising a "genuine good faith challenge" to a Bureau LOI, a pathway that Licensees are expressly following here.⁸

The basis for this Petition is simple. The Commission has historically pursued indecency enforcement actions on the basis of "documented complaints" from the public.⁹ Despite this general principle, for a few years leading up to 2006, the FCC pursued potential indecency enforcement action against *all* affiliates of a national television network, regardless of whether a local viewer complaint had been filed against a *particular* affiliate.¹⁰ But in 2006, the Commission deliberately rejected the approach embodied in the 2004 *Married by America* decision, and returned to the bedrock principle that the FCC will pursue indecency enforcement action against an individual television broadcast station only upon receipt by the FCC of a

⁸ *SBC* does not stand for the proposition that a petition for stay is the only way to raise a genuine good faith challenge to a Commissioner order.

⁹ *Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency*, 16 FCC Rcd 7999 (2001) ("*Industry Guidance*"), at ¶ 24.

¹⁰ *See, e.g., Complaints Against Various Television Licensees Regarding Their Broadcast of the Fox Television Network Program "Married By America" on April 7, 2003*, 19 FCC Rcd 20191 (2004), at ¶ 16 (proposing an indecency forfeiture against all FTN affiliates that broadcast the program in question) (subsequent history omitted).

complaint against that station submitted by a local viewer (the “Local Viewer Complaint Predicate”).¹¹ Through the Local Viewer Complaint Predicate, the FCC recognized a substantial limitation on its investigative powers. The importance of such FCC restraint in indecency enforcement matters is rooted in the First Amendment and finds long lineage in Court precedent, which has expressly relied on FCC commitments to “proceed cautiously, as it has in the past” (*Pacifica*) and the tempering of “potential chilling effects” by “the Commission’s restrained enforcement policy” (*ACT I*).¹² To the knowledge of Licensees, the FCC has strictly observed the Local Viewer Complaint Predicate in processing indecency complaints in the years since its adoption.¹³ In addition, the FCC has invoked the Local Viewer Complaint Predicate in ongoing, high-profile litigation in federal Court, as evidence of the FCC’s restrained approach to

¹¹ This policy was adopted and applied in two contemporaneous cases: (i) *Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, 21 FCC Rcd 2664 (2006), at ¶¶ 32, 42, 86 (subsequent history omitted); and (ii) *Complaints Against Various Television Licensees Concerning Their December 31, 2004 Broadcast of the Program “Without A Trace,”* Notice of Apparent Liability for a Forfeiture, 21 FCC Rcd 2732 (2006) at ¶ 19: “Although we are informed that other stations not mentioned in any complaint also broadcast the complained-of episode of ‘Without A Trace,’ we propose forfeitures *only* against those licensees whose broadcasts of the material between 6 a.m. and 10 p.m. *were actually the subject of viewer complaints to the Commission*. We recognize that this approach differs from that taken in previous Commission decisions involving the broadcast of apparently indecent programming. Our commitment to an *appropriately restrained enforcement policy*, however, justifies this more limited approach towards the imposition of forfeiture penalties.” (emphasis added).

¹² See *FCC v. Pacifica Foundation*, 438 U.S. 726, 761 n.4 (Powell, J., concurring) (“*Pacifica*”); *Action for Children’s Television v. FCC*, 852 F.2d 1332, 1340, n.14 (D.C. Cir. 1988) (“*ACT I*”).

¹³ In the section of its website dealing with viewer/listener complaints about indecency, the Commission instructs interested parties that “[e]nforcement actions in this area are based on documented complaints received from the public” See http://www.fcc.gov/cgb/consumer_facts/obscene.html (last visited Jun. 21, 2010).

indecent enforcement, consonant with its First Amendment obligations in this highly sensitive area of free speech regulation.¹⁴

Here, *none* of the Affiliate LOIs acknowledges the existence of the Local Viewer Complaint Predicate, nor does *any* Affiliate LOI either provide *any* evidence that the Local Viewer Complaint Predicate has been satisfied for *any* station other than KDFW or claim that the FCC has received complaints for each station that received an Affiliate LOI. That unequivocal record underpins this genuine good faith challenge to the Affiliate LOIs.

In the NAL, the Bureau emphasized that it was utilizing its investigative powers to inquire about *all* FTN affiliates at the threshold of its inquiry, in part to identify and winnow out those FTN affiliates that “edited or did not air” the American Dad Episode. NAL at ¶ 13. The NAL also recited that the information sought about all FTN affiliates in the FTS was “necessary” to allow the Bureau “to evaluate the complaints” it has received about the American Dad Episode. *Id.* at ¶ 10. These Bureau positions appear to be entirely inconsistent with the restrained approach to indecent enforcement articulated in the Commission precedent cited above. For the “restraint” embodied in the Local Viewer Complaint Predicate to have any practical import for broadcast licensees, the first “cut” in an indecent investigation of a television network program must address the central question of whether a local viewer has complained about a particular station. As the Commission succinctly summarized in November 2006 in the course of explaining its “consistent application of [its] restrained enforcement policy”: “[T]he sufficiency of a complaint *is the first step rather than the last step* in the

¹⁴ See Brief for Respondents FCC and the United States, at 14, 37-38, 40-41, *ABC, Inc. v. FCC*, No. 08-0841 (2d Cir.), filed Aug. 22, 2009 (“Respts’ NYPD Blue Br.”).

Commission's analysis."¹⁵ The record contains no indication that the Bureau has yet performed any such "first cut" or taken any such "first step" here.¹⁶ There is no need for the Bureau to take any steps at all to begin to investigate a matter that will ultimately lead nowhere because of the lack of a local viewer complaint.¹⁷

Under these circumstances, Licensees believe that the appropriate course of action is a stay of the requirement that they respond to the Affiliate LOIs until such time as the FCC establishes that the Local Viewer Complaint Predicate was satisfied with respect to each Licensee at the time of issuance of each Affiliate LOI. That is what Commission precedent calls for, at the threshold of a Bureau indecency enforcement investigation. Two considerations underline the urgency and propriety of the requested relief: (i) the importance which the Commission itself has repeatedly attached to its observance of the Local Viewer Complaint Predicate (*see, e.g.,* Respts' NYPD Blue Br., *supra*, at 41)("[w]here there is nothing in the record . . . to tie the complaints to [the station's] local viewing area . . . , the Commission will

¹⁵ *Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, 21 FCC Rcd 13299 (2006) (on remand), at ¶ 77 (emphasis added) (subsequent history omitted). The Commission also made clear in this decision (at ¶ 76) that "[i]n addition to demonstrating appropriate restraint in light of First Amendment values, this enforcement policy [of dismissing insufficient complaints] preserves limited Commission resources, while still vindicating the interests of local residents"

¹⁶ Phrased another way, Licensees do not understand why the agency or its licensees would or should expend any of their limited resources where the Local Viewer Complaint Predicate has not been satisfied.

¹⁷ *See Industry Guidance, supra*, 16 FCC Rcd at ¶ 24: The Commission's "enforcement actions are based on documented complaints of indecent broadcasting received from the public." An LOI is an enforcement "action." *See also, id.*: "In order for a complaint to be considered, our practice is that it must generally include . . . the call sign of the station involved (¶ 24) If a complaint does not contain the supporting material described above, or if it indicates that a broadcast occurred during 'safe harbor' hours or the material cited does not fall within the subject matter scope of our indecency definition, it is usually dismissed by a letter to the complainant advising of the deficiency. In many of these cases, the station may not be aware that a complaint has been filed." (¶ 25).

dismiss indecency proceedings against a television program” (citations omitted); and (ii) to the extent the Local Viewer Complaint Predicate cannot be established, the saving of substantial costs and expenses that would otherwise be imposed on individual television network affiliates in submitting predictably redundant responses to virtually identical LOIs. The compliance cost “stakes” are therefore high, not only for this Bureau inquiry into the American Dad Episode, but also for future Bureau indecency inquiries into other network television programming.

The showing set forth above clearly satisfies the traditional criteria for the grant of a stay as interim relief, as recognized by Commission precedent.¹⁸ Four criteria are traditionally consulted by the Commission in making stay determinations, with no one criterion being dispositive.¹⁹ In this case, as shown above:

(1) the merits not only strongly favor grant of the requested relief, the Commission itself has made clear that indecency enforcement is to be pursued only against stations that have been the subject of a local viewer complaint;

(2) in the absence of a stay, the First Amendment values promoted by the FCC’s carefully articulated and, until now, meticulously followed policy of restrained enforcement will suffer irreparable damage; moreover, the failure to grant a stay will unnecessarily and irreparably chill the speech of broadcasters improperly subjected to a broad government investigation and impose significant costs on Licensees that, if the Bureau’s issuance of the Affiliate LOIs is later overturned in whole or in part, can never be recouped;

¹⁸ See, e.g., *Shaw Communications, Inc.*, 24 FCC Rcd 5852 (2009), at ¶ 12 (citing *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (DC Cir 1985)).

¹⁹ The four criteria are: (1) a likelihood of success on the merits; (2) the threat of irreparable harm absent grant of preliminary relief; (3) the degree of injury to other parties if relief is granted; and (4) that a stay will be in the public interest. *Hyperion Communications Long Haul, L.P.*, 15 FCC Rcd 10202 (WTB 2000), at ¶ 3 (granting request for emergency stay). See also *Time Warner Cable v. RCN Telecom Services of New York, Inc.*, 15 FCC Rcd 5025 (CSB 2000), at ¶ 2 (“No single factor is dispositive of a petition for stay. The Commission typically balances all four factors in exercising its discretion to grant or deny a stay but does not require a showing as to each single factor in every case.”); *AT&T Corp. v. Ameritech Corporation*, 13 FCC Rcd 14508 (1998), at ¶ 14 (“In applying the four [interim relief] criteria, we recognize that no single factor is necessarily dispositive.”).

(3) there are no other parties to Bureau indecency enforcement proceedings, so substantial harm to “other parties to the proceeding” is technically not involved; ultimately, to the extent the Local Viewer Complaint Predicate has not been satisfied in particular markets, local viewers’ interests are not even implicated; and

(4) grant of a stay would clearly serve the public interest by conserving agency and private resources, while at the same time preserving the agency’s appropriately restrained approach to indecency enforcement, a public good the Commission itself has recognized and promoted.

REQUEST FOR EXPEDITION/REFERRAL

Licensees respectfully request expedited processing of this Petition and the related Extension Request. The current due date for responses to the Affiliate LOIs is July 6, 2010, the first business day after observance of the July 4th holiday. Given the very large number of substantive LOI responses represented here, prompt response by the Bureau is particularly necessary and appropriate. To the extent the Bureau concludes it needs more time to process and resolve this Petition, grant of the Extension Request will provide it any necessary time cushion.

Under the unusual circumstances of this case, Licensees respectfully make a further suggestion and request – that the Bureau immediately refer this Petition to the full Commission for resolution in the first instance. Such a course of action would be entirely consistent with Section 0.5(c) of the Commission’s Rules, cited and followed in *SBC, supra*, at note 1: “[T]he staff is at liberty to refer any matter at any stage to the Commission for action, upon concluding that it involves matters warranting the Commission’s consideration” Again, grant of the Extension Request will give the Commission the time it needs to resolve the important threshold issues raised herein. Such a referral would not only eliminate any need for Licensees to appeal to the Commission in the hypothetical event of a Bureau denial of the requested relief, it would also place the issues raised herein squarely and promptly before the decision makers ultimately responsible for the Local Viewer Complaint Predicate which forms the legal basis of this Petition.

* * *

Licensees are keenly aware that this Petition and the Extension Request are being submitted against the backdrop of the NAL, in which NW had raised issues concerning the Local Viewer Complaint Predicate, yet the Bureau made a special effort to emphasize its views as to the importance of compliance with FCC directives, punctuated by a very substantial proposed forfeiture. Nonetheless, for the reasons given above, Licensees believe their procedural approach to be entirely consistent with prior FCC advice as to an appropriate manner to lodge a genuine good faith challenge to an LOI, and their substantive arguments to be firmly grounded in Commission precedent. Licensees trust that the issues they have raised herein can be resolved expeditiously, in a way that will be conducive to continued open and frank dialogue between the agency and its regulatees on issues of industry-wide importance.

CONCLUSION

For the reasons set forth above, Licensees respectfully request that the Bureau, or the Commission on referral from the Bureau, immediately stay, in accordance with this Petition, the requirement that Licensees, respectively, respond to the Affiliate LOIs.

Respectfully submitted,

**LICENSEES OF THE ___ TELEVISION
BROADCAST STATIONS LISTED IN
ATTACHMENT 1 HERETO**

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June ___, 2010