



FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Investigations and Hearings Division
445 12th Street, S.W., Suite 3-B443
Washington, D.C. 20554

February 3, 2004

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED
AND FACSIMILE AT (202) 222-4799

Susan L. Fox, Esquire
ABC, Inc.
1150 17th Street, N.W.
Suite 400
Washington, DC 20036

Re: File No. EB-03-IH-0353

Dear Ms. Fox:

The Enforcement Bureau is investigating allegations from numerous complainants that ABC, Inc. may have broadcast certain indecent material in violation of Title 18 U.S.C. § 1464 and section 73.3999 of the Commission's rules, 47 C.F.R. § 73.3999. Specifically, it is alleged that indecent material, described in Attachment A, was aired during the February 25 and July 29, 2003, broadcasts over certain stations, including those licensed to ABC, Inc., of the "NYPD Blue" program. We direct the Licensee, as defined herein, pursuant to 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), and 403, to provide the information and Documents, as defined herein, by February 9, 2004.

Instructions

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, unless the Document is a recording or transcript, in which case it should be provided only for the period of time of the broadcast specified in the pertinent inquiry 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.

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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.

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 (1) 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 (2) 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.

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 (1) 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 (2) 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.

For each Document or statement submitted in response to the inquiries below, 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.

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Unless otherwise indicated, the period of time covered by these inquiries is February 25, 2003, to the present.

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 any images and audible sounds or language transmitted or disseminated over a station.

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

"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, 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, shall mean to state his/her full legal name, current business address, and phone number. "Identify," when used with reference to a document, shall mean 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. "Identify," when used with reference to an entity other than a person, shall mean to state its name, current or last known business address, and current or last known business telephone number.

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"Licensee" shall mean "ABC, 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.

Inquiries: Documents and Information to be Provided

1. State whether the Licensee broadcast the material described in Attachment A over any station licensed to it on February 25 and/or July 29, 2003, between 9:00 p.m. and 10:00 p.m. and/or on that or any other date between 6:00 a.m. and 10:00 p.m. If answered in the affirmative, for each such broadcast, provide the following:
 - a. The call sign, community of license and the licensee;
 - b. The date and time of each broadcast;
 - c. If only a portion of the material was broadcast, describe the material so broadcast.
 - d. Any and all DVDs, tapes, transcripts, or other Documents reproducing, discussing or otherwise relating to the material in the broadcast. Provide, for each broadcast, a recording that includes the material described in Inquiry 1, above, and 15 minutes of the broadcast aired before and after that material. Also provide a written transcript of the material contained in each such recording.
2. With regard to each broadcast referred to in the response to Inquiry 1 above, if the programming described in Attachment A does not accurately reflect the material actually broadcast by the Licensee, describe any inaccuracies.
3. With regard to the material described in Attachment 1, identify each station licensed to an entity or individual other than the Licensee that had the contractual right with Licensee to air the material in question and, for each such station, state whether the Licensee has reason to believe that the station did not air the material in question and the basis for that belief.
4. If the Licensee believes that a defense to the subject allegations exists, state concisely the nature of each such defense.

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5. Provide copies of all Documents that provide the basis for or otherwise support the responses to Inquiries 1-4, above.

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 Documents and information 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, provide separate affidavits or declarations of each such individual that identify clearly to which responses the affiant or declarant is attesting. All such declarations provided must comply with section 1.16 of the Commission's rules, 47 C.F.R. § 1.16, 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. See 18 U.S.C. § 1001; see also 47 C.F.R. § 1.17.

The Licensee shall direct its response, if by messenger or hand delivery, to the attention of Melanie A. Godschall, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, c/o NATEK, 9300 East Hampton Drive, Capitol Heights, MD 20743. If sent by mail, the response should be sent to Ms. Godschall, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3A-365, Washington, D.C. 20554. The Licensee shall also, to the extent practicable, transmit a copy of the response via facsimile to Ms. Godschall at (202) 418-1420 or via e-mail to Melanie.Godschall@fcc.gov.

Sincerely,



William D. Freedman
Deputy Chief, Investigations and Hearings Division
Enforcement Bureau

Enclosure

ATTACHMENT A

Excerpt from February 25 and July 29, 2003, "NYPD Blue" program

An adult woman and a male child are involved in a bathroom scene that includes nudity. The woman enters the bathroom and removes her robe while preparing to shower. After she removes her robe, there are views of her from the rear, showing full rear nudity and side views of one breast. Subsequently, the child enters the room and the scene portrays him looking at the naked woman.