

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

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Federal Communications Commission
Office of Secretary

In the Matter of)

Complaints Against Various Television)
Licensees Concerning Their December 31,)
2004 Broadcast of the Program *Without A*)
Trace)

) File No. EB-05-IH-0035
) NAL Acct No. 20063208055
)
)

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**SUPPLEMENT TO OPPOSITION TO NOTICE OF APPARENT LIABILITY FOR
FORFEITURE OF 95 LOCAL TELEVISION BROADCAST STATIONS AFFILIATED
WITH THE CBS TELEVISION NETWORK**

Malara Broadcast Group of Duluth Licensee LLC ("MBG Duluth"), licensee of commercial television station KDLH(TV), Duluth, Minnesota ("KDLH" or "Station"), by its attorneys, hereby submits the instant supplement ("Supplement") to the opposition ("Opposition") to notice of apparent liability ("NAL") for forfeiture of 95 local television broadcast stations affiliated with the CBS television network. As a signatory to the Opposition, MBG Duluth fully supports and incorporates by reference the arguments set forth in the Opposition. In addition, MBG Duluth urges the Federal Communications Commission ("Commission") to rescind the forfeiture as applied to MBG Duluth because MBG Duluth did not become the licensee of the Station until March 8, 2005, over two months *after* the December 31, 2004 re-broadcast of the "Our Sons and Daughters" episode ("Episode") of *Without A Trace*.¹

¹ The Episode originally broadcast on KLDH on November 3, 2003, well before MBG Duluth acquired the Station license.

The imposition of a forfeiture on MBG Duluth for an allegedly indecent broadcast on the Station prior to the date on which MBG Duluth acquired it is inconsistent with Commission precedent. In July 2000, the Commission released two orders in which it rescinded forfeitures issued to commercial radio stations for the broadcast of indecent material.² In each of these orders, the Commission explained that a forfeiture is inappropriate where the station license subject to a notice of apparent liability has been assigned to a new entity.³ Such is the case here.

The NAL adopted by the Commission on February 21, 2006 relates to the broadcast of allegedly indecent content contained in the Episode, which broadcast on KDLH on December 31, 2004. Approximately two and one-half months thereafter, on March 8, 2005, MBG Duluth consummated a transaction pursuant to which it acquired KDLH from the predecessor licensee.⁴ Accordingly, the Commission should rescind the forfeiture against MBG Duluth because MBG Duluth was not the licensee of KDLH at the time the allegedly indecent Episode was broadcast.

* * *

Based on the foregoing and consistent with Commission precedent, MBG Duluth urges the Commission to rescind the forfeiture imposed on it for the pre-acquisition broadcast by KDLH of the Episode.

² See *In the Matter of Americom Las Vegas Ltd. Partnership*, 15 FCC Rcd 13550 (2000); *In the Matter of Flambo Broadcasting, Inc.*, 15 FCC Rcd 23429 (2000).

³ *Id.* The Commission subsequently has reiterated that new licensees will not be liable for forfeitures relating to the broadcast of allegedly indecent content by a prior licensee. See *In the Matter of WLDI, Inc.*, 17 FCC Rcd 14750, 14753 n.13 (2002) (noting that the licensee “could have negotiated an assignment of license as opposed to a transfer of control to insulate itself from liability for WLDI, Inc.’s [broadcast of indecent content]”).

⁴ See FCC File No. BALCT-20040504ABU.

Respectfully submitted,

**MALARA BROADCAST GROUP OF DULUTH
LICENSEE LLC**

By: 

Stuart A. Shorenstein
WOLF BLOCK SCHORR & SOLIS-COHEN LLP
250 Park Avenue
New York, NY 20036
(212) 883-4923

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Its Attorneys