



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

September 4, 2007

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**  
**AND FACSIMILE AT FACSIMILE (513) 412-6121**

Ohio/Oklahoma Hearst-Argyle Television, Inc.  
c/o Brooks, Pierce, et.al.  
P. O. Box 1800  
Raleigh, North Carolina 27602

Re: Station WLWT(TV), Cincinnati, Ohio  
File No. EB-07-IH-3904

Dear Licensee:

The Enforcement Bureau is investigating allegations contained in the enclosed redacted complaint (the "Complaint") that Ohio/Oklahoma Hearst-Argyle Television, Inc. (the "Licensee") broadcast prohibited material over the above-referenced station (the "Station"), in violation of Title 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules.<sup>1</sup> Specifically, it is alleged that indecent commercial material was aired during the Station's broadcast of a commercial for "American Pie" on December 14, 2006, between the hours of 8:00 p.m. and 10:00 p.m. 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,<sup>2</sup> to provide the information and Documents, as defined herein, within thirty (30) calendar days from the date of this letter.

Unless otherwise indicated, the period of time covered by these inquiries is December 14, 2006 to the present.

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<sup>1</sup> See 47 C.F.R. § 73.3999.

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

**Inquiries: Documents and Information to be Provided**

1. State whether the Licensee broadcast any or all of the material described in the Complaint over the Station on December 14, 2006, between the hours of 8:00 p.m. and 10:00 p.m. Provide a recording of the broadcast on DVD or a VHS videocassette tape, including the complained-of material plus the 15 minutes aired before and after it, and a written transcript of the recording.
2. With regard to the broadcast referred to in the response to Inquiry 1 above, if the programming described in the Complaint does not accurately reflect the material aired over the Station, describe any inaccuracies.
3. Provide copies of any and all Documents relating or referring to each broadcast referred to in the response to Inquiry 1 above, and of any and all other Documents that provide the basis for or otherwise support the responses to Inquiries 1 and 2 above.

**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,<sup>3</sup> 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.<sup>4</sup> Failure to respond appropriately to this letter of inquiry may constitute a violation of the Communications Act and our rules.<sup>5</sup>

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<sup>3</sup> See 47 C.F.R. § 1.16.

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

<sup>5</sup> See *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Red 7589 (2002); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Red 19893, n. 36 (2003); *World Communications*

The Licensee shall direct its response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002, to the attention of Sandra Watson, Investigations and Hearings Division, Enforcement Bureau, Room 4-A330, with a copy to Jennifer Lewis, Investigations and Hearings Division, Enforcement Bureau, Room 4-A330, 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 Sandra Watson, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 4-A330, Washington, D.C. 20554, with a copy to Jennifer Lewis, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 4-A330, Washington, D.C. 20554. The Licensee shall also, to the extent practicable, transmit a copy of the response via email to [Sandra.Watson@fcc.gov](mailto:Sandra.Watson@fcc.gov) and to [Jennifer.Lewis@fcc.gov](mailto:Jennifer.Lewis@fcc.gov).

Sincerely,



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

Attachment

Enclosure

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.<sup>6</sup> 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 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.

*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, 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.

*Identification of Documents.* 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.

*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.

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<sup>6</sup> See 47 C.F.R. § 0.459.

*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 (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.

### **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 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."

"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).

EB-07-Jh-3904

# COMPLAINT FOR [REDACTED]

Complaint Type: Broadcast

Account Type: Residential

Congressional Complaint ☐

IC Number:	06-WB12556687	Case Type:	Complaint
Date Received:	12/18/2006	Complainant:	[REDACTED]
Date Entered:	12/18/2006	Date Assigned:	12/19/2006
Entered By:	FCC_NOTES01	Date Reassigned:	
Assigned To:	[REDACTED]	Service Date:	[REDACTED]
Date Closed:	01/03/2007	Response Date:	
Closed By:	[REDACTED]	Original Analyst:	
Close Letter Needed?	<input type="radio"/> Yes <input checked="" type="radio"/> No	Purged By:	Purged Date:
		Removed By:	Removed Date:
Supervisor Check:	<input type="radio"/> Yes <input checked="" type="radio"/> No	Indecency Referral Code:	[REDACTED]

Current Status: [REDACTED]

Associated Case:

## Complaint Summary:

I was watching a taping of The Office from my DVR at home. There was an aspect of the show that I had missed and decided to rewind to go back and view it again. I was rewinding through some commercials and came across the American Pie movie commercial. There was a slight pause on a particular frame that caught my attention and I was able to pause on. For one frame, there were two topless girls in full view. If you watch the commercial at regular speeds, you never see it. But if you step through it frame by frame, it is very clear. I was really surprised to see this on regular network television. It occurred at 8:58:22 pm.

Apparent Carrier(s):

☐ Yes<<< Check here if you wish to serve both a Wireline and Wireless carrier.

Problem Number:

Title: None	First Name: [REDACTED]	Middle Initial: [REDACTED]	Last Name: [REDACTED]
Contact Name:	[REDACTED]	Best Time to Call:	
Contact Number:	[REDACTED]	Consumer's Telephone Number:	Ext.
Fax Number:		TTY Number:	
Email Address:	[REDACTED]	Internet Address:	
PO Box:		Address:	[REDACTED]
City:	Cincinnati	State:	OH
		Zip:	45236

On Behalf Of:	
Company Name:	
Party's Name:	Relationship with the Party:
Party's Contact Number: Ext.	PO Box:
	Address:
	City: State: Zip:
Other Party that can be contacted?	
Name:	Relationship:
Contact Number: Ext.	Address:
	City: State: Zip:

**Amount of credit FCC effort generated:	Duplicate Credit Checked: <input type="radio"/> Yes <input checked="" type="radio"/> No
	Supervisor Credit Checked: <input type="radio"/> Yes <input checked="" type="radio"/> No By: _____

Have you paid any of the disputed charges?

Did the company billing for these charges adjust or refund some or all of the disputed charges?

If yes, what was the amount of the adjustment or refund?

a. Name of carrier(s) or company(ies) involved in your complaint: T-Mobile USA

b. Telephone number for the carrier(s) or company(ies) involved

with your complaint, including area code:

Phone: Ext:

c. Which type of service is involved with your complaint:

TCPA Information from 475

1. the telephone number of the individual or company who called or faxed you:

Ext:

2. your telephone number(s) on which the call or fax was received:

Ext:

3. a description of the telemarketing call, pre-recorded message, or unsolicited fax, including an identification of the company whose products or services were being advertised, and any phone numbers that were included in the call or fax:

4. the "opt-out" number(s) provided in the call(s) or on the fax(es):

(List number(s) given in the call(s) or fax(es) for you to contact if you do not want to receive any additional calls or faxes.)

Ext:

5. Have you: (a) purchased anything from the company being advertised in the call or fax;

(b) made an inquiry or application to that company; or (c) given consent to the company to send you the call or fax? If so, please describe and state when you had such contact with the company.

Broadcast Information from 475B

(1) Date of Program: 12/14/2006

(2) Time of Program: 8 pm

(3) Network: NBC

(4) Call Sign, Channel OR Frequency of the station on which you viewed/heard the material:

WLWT

(5) City and State Where Program Was Viewed:

Cincinnati, OH

(6) Name of Program or DJ/Personality/Song/Film:

American Pie

Commercial

Updated? ☐ Yes ☒ No

#### ANALYSIS SECTION

Correspondence Type:	<input checked="" type="radio"/> Complaint <input type="radio"/> Inquiry	Source Code:	Internet
Apparent Carrier(s):		Re-Serve Carrier(s):	
Responding Carrier(s):		Assigned Subject Code:	Programming Issues
		Program Type:	TV
Activity Code:	Direct	Assigned Code Acronym:	PROG
Final Responsible Party:		Sub-Category:	Content Criticism (PCCR)
Copy of Response Sent to Consumer by Carrier?:	<input type="radio"/> Yes <input type="radio"/> No		
Mediation with Carrier/Complainant?:	<input type="radio"/> Yes <input type="radio"/> No	Response Type:	

#### Referral Information

Date Referred:	01/03/2007	Consumer Referral Letter	Agency Ref
Referred To:	Agency Name(s):	Company Name(s):	Create TCP