

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 Licensees Regarding) File No. NAL/Account No. 200532080329
Their Broadcast of the Fox Television Network) File No. EB-03-1H-0162
Program "Married by America" on April 7, 2003)

To: The Commission

RESPONSE TO NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Independent Communications, Inc., licensee of Fox affiliate Station KTTW, Sioux Falls, South Dakota ("Independent") hereby responds to the above-captioned Notice of Apparent Liability for Forfeiture ("NAL"), released October 12, 2004. The NAL issued by the Commission states that Independent, as an affiliate of the Fox Television Network, is apparently liable for monetary forfeitures in the amount of \$7,000 for the broadcast of an episode of the Fox program "Married by America" on April 7, 2003. Independent hereby urges the Commission to cancel the proposed forfeiture with respect to Independent.

As noted by the Commission in its NAL "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. The parties featured strippers in various situations at the bachelor and bachelorette parties. Independent does

not believe that the episode was indecent and hereby incorporates by reference the response of the Fox Television Network with respect to this aspect of the NAL.

However, irrespective of the Commission's finding with respect to the indecency of the broadcast, Independent does not believe it is appropriate for the Commission to fine the Fox affiliate stations for this matter. The broadcasts were presented in real time to the affiliates with little or no opportunity to edit the broadcast. Contrary to the Commission's assertion that the episodes were "a taped episode in a taped series"¹ the episode was provided to Independent live via satellite. As such, Independent could not have reasonably anticipated that the episode would contain the material the Commission fines indecent.

The Commission claims that since one affiliate had preempted the program any affiliate could have preempted it. *Id.* The affiliate cited, WRAZ-TV, Raleigh-Durham, North Carolina, deleted the program following the March 5, 2003 episode since the licensee "decided that the program did not reflect prevailing standards of good taste and that the program was clearly demeaning to the institution of marriage." *See* NAL, note 13. The preemption had nothing to do with indecent material. As such, the Commission's reliance on the station's preemption is totally misplaced since it had nothing to do with the contents of the April 7, 2003 episode or the foreseeability of the programming that would be provided on a live satellite feed to the affiliates.

Moreover, the Commission's proposal to impose a forfeiture on each Fox affiliate is contrary to several precedents. Most recently with respect to the Super Bowl, the Commission specifically declined to fine the affiliates as they "could not have reasonably anticipated that the CBS Network production of a prestigious national event such as the Super Bowl would contain the on-camera

¹ *See* NAL, ¶ 16.

exposure of Ms. Jackson's breast."² This situation was no different in that the affiliates could not have reasonably anticipated that the Fox Network program would contain the alleged offending material. As noted above, the program was received via satellite in real time by Independent from the Fox Network. No previous episode contained such material.

Similarly, WKRK was fined for a Howard Stern show which contained indecent material.³ While the show was carried by numerous stations throughout the United States, only WKRK was fined.

Additionally, affiliates should not be held liable for syndicated or network programming in the absence of a specific complaint against the offending station. In this instance, to Independent's knowledge, no complaint was filed against Station KTTW.

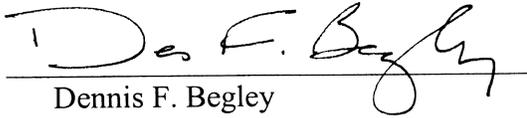
Accordingly, given that (a) Independent had no forewarning concerning the nature of the *Married by America* material to be presented on the April 7, 2003 episode; (b) no specific complaint was filed by a viewer of KTTW; and (c) the Commission's precedence do not consistently hold

² See *Complaints Against Various Television Licensees concerning their February 1, 2004, broadcast of the Super Bowl XXXVII Half Time Show*, Notice of Apparent Liability for Forfeiture, FCC 04-209 (released September 22, 2004 "Super Bowl NAL").

³ *In the Matter of Infinity Broadcasting Operations, Inc. (WKRK-FM)*, 19 FCC Rcd 5032.

affiliates liable for network broadcasts, Independent respectfully requests that the forfeiture be eliminated with respect to Station KTTW, Sioux Falls, South Dakota.

INDEPENDENT COMMUNICATIONS, INC.

By: 
Dennis F. Begley
Its Counsel

Reddy, Begley & McCormick, LLP
1156 15th Street, N.W., Suite 610
Washington, D.C. 20005-1770
(202) 659-5700

November 12, 2004

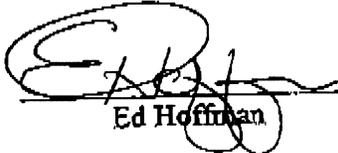
DECLARATION

I, Ed Hoffman, under penalty of perjury, do hereby declare and state:

I am General Manager of Independent Communications, Inc., licensee of Television Broadcast Station KTTW, Sioux Falls, South Dakota.

The facts recited in the foregoing Response to Notice of Apparent Liability for Forfeiture are true and correct based on my personal knowledge.

Dated this 12th day of November 2004.


Ed Hoffman

CERTIFICATE OF SERVICE

I, Janice M. Rosnick, hereby certify that on this 12th day of November, 2004, a copy of the foregoing **RESPONSE TO NOTICE OF APPARENT LIABILITY FOR FORFEITURE** was mailed, first class, postage pre-paid, to the following:

William H. Davenport, Chief
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554



Janice M. Rosnick