

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of )  
 )  
Complaints Against Various Licensees Regarding ) NAL/Acct. No. 200532080003  
Their Broadcast of the Fox Television Network ) File No. EB-03-IH-0162<sup>1</sup>  
Program "Married By America" On April 7, 2003 )

To: The Secretary  
The Chief, Investigations and Hearings Division, Enforcement Division

**OPPOSITION TO NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Sinclair Broadcast Group, Inc. ("Sinclair"), on behalf of the sixteen Fox affiliate stations listed in Attachment A, hereby file this Opposition to the above-captioned Notice of Apparent Liability for Forfeiture ("NAL").<sup>2</sup> For the reasons stated below and in the Opposition to Notice of Apparent Liability for Forfeiture filed by the Fox Broadcasting Company and the Fox affiliates (the "Joint Opposition"),<sup>3</sup> Sinclair requests that the Commission rescind the NAL.

None of the Sinclair Fox affiliate stations received any viewer complaints for airing the April 7, 2003 episode of "Married By America," or for that matter, any of the prior six episodes. Having no reason to suspect that the April 7, 2003 episode would be any different from the prior

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<sup>1</sup> Attachment A lists the FCC Registration Numbers, Facility Identification Numbers, and NAL account numbers for all of Sinclair's Fox affiliate stations that were identified by the FCC in the NAL.

<sup>2</sup> At Sinclair's request, FCC staff extended the filing deadline until December 3, 2004. *See* Request for Extension of Time (November 4, 2004).

<sup>3</sup> Sinclair has joined the Joint Opposition but is filing separately to emphasize factors particular to its stations or not addressed in that pleading.

episodes, and having no opportunity to review the episode in question,<sup>4</sup> Sinclair cannot fairly be charged with violating the Commission's indecency regulations.

Such a conclusion is consistent with the Commission's recent *Super Bowl NAL* decision.<sup>5</sup> In that case, the Commission declined to assess forfeitures on CBS network affiliates, because they "were not involved in the selection, planning or approval" of allegedly indecent material and could not have reasonably anticipated the network's provision of such material.<sup>6</sup> Because those factors are also relevant here, the Commission's decision to include the Fox network affiliates in the NAL is arbitrary and capricious. The fact that the Commission in the *Super Bowl NAL* warned licensees to take reasonable precautions in the future is not relevant.<sup>7</sup> That decision was issued almost a year-and-a-half after the stations had already aired the April 7, 2003 "Married by America" episode, and accordingly, the decision could not have provided any guidance or warning to the stations.

Additionally, none of the stations at issue has ever been fined for an indecency violation, and accordingly, leniency is warranted.<sup>8</sup> Moreover, procedurally, the Commission did not issue any of the Sinclair Fox affiliate stations a letter of inquiry regarding the allegedly indecent

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<sup>4</sup> See generally, Joint Opposition.

<sup>5</sup> See *In re Complaints Against Various Television Licensees Concerning Their February 1, 2004, Broadcast of the Super Bowl XXXVIII Halftime Show*, File No. EB-04-IH-0011, Notice of Apparent Liability for Forfeiture (September 22, 2004) ("*Super Bowl NAL*").

<sup>6</sup> *Id.* at ¶ 25; see also Statement of Chairman Powell, *Super Bowl NAL* ("[F]undamental fairness dictates that in this instance we not sanction those affiliates . . . . Past half time productions have generally reflected the family-friendly character of the event.").

<sup>7</sup> See *Super Bowl NAL*, at ¶ 25.

<sup>8</sup> See, e.g., *WLDI, Inc. Licensee of Station WCOM(FM), Bayamon, Puerto Rico*, 16 FCC Rcd 9571, at ¶ 14 (2001) (history of compliance is a mitigating factor in establishing a forfeiture amount); *Liability of WVGGO License Limited Partnership Former Licensee, WBZU(FM), Richmond, Virginia for a Forfeiture*, 12 FCC Rcd 5918, at ¶ 5 (1997) (same).

broadcast, and the stations unfairly have had no prior opportunity to respond or notice that they were under investigation.

**Conclusion**

For the reasons stated above and those provided in the Joint Opposition, the Commission should rescind the NAL in its entirety. In the alternative, in light of the circumstances discussed above, the Commission should rescind the forfeiture with respect to the Sinclair Fox affiliate stations.

Respectfully submitted,



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Kathryn R. Schmeltzer

Tony Lin

*Counsel for Sinclair Broadcast Group, Inc.*

Shaw Pittman LLP  
2300 N Street, NW  
Washington, D.C. 20037  
(202) 663-8000

December 3, 2004

**ATTACHMENT A**

<b>Licensee Name and Mailing Address</b>	<b>FRN No.</b>	<b>NAL Acct. No.</b>	<b>Station Call Sign and Community of License</b>	<b>Facility ID No.</b>	<b>Time of Broadcast (Local Time)</b>	<b>Proposed Forfeiture Amount</b>	<b>Fox Station or Fox Affiliate</b>
Chesapeake Television Licensee, LLC, Shaw Pittman (Kathryn R. Schmeltzer), 2300 N Street, N.W., Washington, D.C. 20037	4970679	200432080311	WBFF, Baltimore, MD	10758	9-10 p.m.	\$7,000	Fox Affiliate
KABB Licensee, LLC, Shaw Pittman (Kathryn R. Schmeltzer), 2300 N Street, N.W., Washington, D.C. 20037	4970455	200432080333	KABB, San Antonio, TX	56528	8-9 p.m.	\$7,000	Fox Affiliate
KBSI Licensee L.P., C/O Shaw Pittman LLP. ATTN: K Schmeltzer, 2300 N Street, N.W., Washington, D.C. 20037	4970471	200432080335	KBSI, Cape Girardeau, MO	19593	8-9 p.m.	\$7,000	Fox Affiliate
KDSM Licensee, LLC, Shaw Pittman (Kathryn R. Schmeltzer), 2300 N Street, N.W., Washington, D.C. 20037	5019195	200432080336	KDSM-TV, Des Moines, IA	56527	8-9 p.m.	\$7,000	Fox Affiliate
KOKH Licensee, LLC, Shaw Pittman LLP (Kathryn R. Schmeltzer), 2300 N Street, N.W., Washington, D.C. 20037	6587109	200432080341	KOKH-TV, Oklahoma City, OK	35388	8-9 p.m.	\$7,000	Fox Affiliate

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Sign and Community of License	Facility ID No.	Time of Broadcast (Local Time)	Proposed Forfeiture Amount	Fox Station or Fox Affiliate
WDKY Licensee, LLC, Shaw Pittman (Kathryn R. Schmeltzer), 2300 N Street, N.W., Washington, D.C. 20037	3865094	200432080400	WDKY-TV, Danville, KY	64017	9-10 p.m.	\$7,000	Fox Affiliate
WEMT Licensee L.P., Shaw Pittman (Kathryn R. Schmeltzer), 2300 N Street, N.W., Washington, D.C. 20037	5525019	200432080402	WEMT, Greeneville, TN	40761	9-10 p.m.	\$7,000	Fox Affiliate
WMSN Licensee, LLC, Shaw Pittman (Kathryn R. Schmeltzer), 2300 N Street, N.W., Washington, D.C. 20037	6551824	200432080404	WMSN-TV, Madison, WI	10221	8-9 p.m.	\$7,000	Fox Affiliate
WPGH Licensee, LLC, Shaw Pittman (Kathryn R. Schmeltzer) 2300 N Street, N.W., Washington, D.C. 20037	5020870	200432080408	WPGH-TV, Pittsburgh, PA	73875	9-10 p.m.	\$7,000	Fox Affiliate
WRLH Licensee, LLC, C/O Shaw Pittman LLP (ATTN: K Schmeltzer), 2300 N Street, N.W., Washington, D.C. 20037	6551782	200432080410	WRLH-TV, Richmond, VA	412	9-10 p.m.	\$7,000	Fox Affiliate
WSMH Licensee, LLC, Shaw Pittman (Kathryn R. Schmeltzer), 2300 N Street, N.W., Washington, D.C. 20037	5020904	200432080412	WSMH, Flint, MI	21737	9-10 p.m.	\$7,000	Fox Affiliate

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WSYT Licensee L.P., Shaw Pittman (Kathryn R. Schmeltzer), 2300 N Street, N.W., Washington, D.C. 20037	4970877	200432080413	WSYT, Syracuse, NY	40758	9-10 p.m.	\$7,000	Fox Affiliate
WUHF Licensee, LLC, Shaw Pittman LLP, ATTN: Kathryn Schmeltzer, 2300 N Street, N.W., Washington, D.C. 20037	6551568	200432080416	WUHF, Rochester, NY	413	9-10 p.m.	\$7,000	Fox Affiliate
WUTV Licensee, LLC, Shaw Pittman (Kathryn R. Schmeltzer), 2300 N Street, N.W., Washington, D.C. 20037	6551626	200432080418	WUTV, Buffalo, NY	415	9-10 p.m.	\$7,000	Fox Affiliate
WYZZ Licensee, Inc., Shaw Pittman (Kathryn R. Schmeltzer), 2300 N Street, N.W., Washington, D.C. 20037	7682032	200432080423	WYZZ-TV, Bloomington, IL	5875	8-9 p.m.	\$7,000	Fox Affiliate
WZTV Licensee, LLC, Shaw Pittman (Kathryn R. Schmeltzer) 2300 N Street, N.W., Washington, D.C. 20037	6551758	200432080424	WZTV, Nashville, TN	418	8-9 p.m.	\$7,000	Fox Affiliate