



## JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1345 & 1355(a) and 47 U.S.C. § 504(a).

2. Venue is appropriate in this Court under 28 U.S.C. §§ 1355(b) & 1395(a) and 47 U.S.C. § 504(a). Defendants have their principal places of business in this district.

## THE PARTIES

3. Plaintiff is the United States of America.

4. The Federal Communications Commission (“FCC” or “Commission”) is an agency of the United States that regulates all channels of the radiofrequency spectrum, including frequencies used for television broadcasting. *See* 47 U.S.C. § 301. The FCC also “execute[s] and enforce[s] the provisions of” the Communications Act. 47 U.S.C. § 151. Congress has decreed that forfeitures assessed by the FCC shall be “payable into the Treasury of the United States” and shall be “recoverable . . . in a civil suit in the name of the United States.” 47 U.S.C. § 504(a).

5. Defendant FOX Television Stations, Inc. is a broadcasting company that holds directly or through intermediate subsidiaries licenses to operate television stations issued by the Commission.

6. Defendant FOX Television Stations, Inc. during the relevant period of time was licensed to operate Station KMSP-TV in Minneapolis, Minnesota, Station WJBK(TV) in Detroit, Michigan, and Station WTTG(TV) in Washington, DC.

7. Station KMSP-TV is licensed by the Commission as a commercial television station. *See* 47 U.S.C. § 397(6).

8. Station WJBK(TV) is licensed by the Commission as a commercial television station.

*See* 47 U.S.C. § 397(6).

9. Station WTTG(TV) is licensed by the Commission as a commercial television station.

*See* 47 U.S.C. § 397(6).

10. Defendant WDAF License, Inc. is a broadcasting company that holds directly or through intermediate subsidiaries licenses to operate television stations issued by the Commission.

11. Defendant WDAF License, Inc. during the relevant period of time was licensed to operate Station WDAF-TV in Kansas City, Missouri.

12. Station WDAF-TV is licensed by the Commission as a commercial television station.

*See* 47 U.S.C. § 397(6).

13. Defendant TVT License, Inc. is a broadcasting company that holds directly or through intermediate subsidiaries licenses to operate television stations issued by the Commission.

14. Defendant TVT License, Inc. during the relevant period of time was licensed to operate Station WTVT(TV) in Tampa, Florida.

15. Station WTVT(TV) is licensed by the Commission as a commercial television station.

*See* 47 U.S.C. § 397(6).

#### **STATUTORY AND REGULATORY PROVISIONS**

16. Congress has declared that “[w]hoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both.” 18 U.S.C. § 1464.

17. Pursuant to congressional mandate in Section 16(a) of the Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (1992), Commission rules provide in pertinent part that “[n]o licensee of a radio or television broadcast station shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent.” 47 C.F.R. § 73.3999(b).

18. Any “person who is determined by the Commission . . . to have . . . willfully or repeatedly failed to comply with any of the provisions of this [Act] . . . or of any rule, regulation, or order issued by the Commission under th[e Act] . . . or . . . violated any provision of section . . . 1464 of Title 18[, United States Code,] shall be liable to the United States for a forfeiture penalty.” 47 U.S.C. § 503(b)(1).

19. The maximum penalty for a violation occurring between November 14, 2000, and September 7, 2004, is \$27,500. *See Inflation Adjustment of Maximum Forfeiture Penalties*, 65 Fed. Reg. 60868, 60869 (2000).

### **FACTUAL BACKGROUND**

20. On the evening of April 7, 2003, before 10:00 p.m., Defendants’ television stations broadcast an episode of the FOX television network program *Married by America* that depicted or described scenes from two Las Vegas bachelor and bachelorette parties.

21. The Commission received complaints that this episode contained indecent material. The episode included scenes depicting or describing, among other things, the caressing of naked chests and stomachs, the thrusting of a male stripper’s crotch into a woman’s face, a topless female stripper performing a lap dance for a groom-to-be, a topless female stripper spanking with a whip or a belt the buttocks of a topless man who is on all fours, two topless female strippers apparently kissing while straddling a shirtless man, and a female stripper cupping her

own bare breasts and puckering her lips. The depictions of nude female breasts and buttocks were partially obscured by pixilation.

22. On October 12, 2004, the Commission released a Notice of Apparent Liability (“NAL”) making a preliminary finding that the episode’s depiction of sexual activities and female nudity was indecent in violation of 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999.

*Complaints Against Various Licensees Regarding Their Broadcast of the Fox Television Network Program “Married By America” on April 7, 2003*, Notice of Apparent Liability, 19 FCC Rcd 20191 (rel. Oct. 12, 2004). In the NAL, the Commission proposed that Defendants be fined \$7,000. *Id.* ¶ 16.

23. After Defendants had the opportunity to contest the preliminary findings set forth in the NAL, the Commission released a Forfeiture Order on February 22, 2008, finding that Defendants’ broadcasts of the April 7, 2003 episode constituted a willful broadcast of indecent material in violation of 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999. *Complaints Against Various Licensees Regarding Their Broadcast of the Fox Television Network Program “Married By America” on April 7, 2003*, Forfeiture Order, 23 FCC Rcd \_\_\_, FCC 08-63 (rel. Feb. 22, 2008).

24. The Commission further found that Defendants had provided no sufficient reason to reduce the amount of the proposed penalty. The Commission accordingly ordered that each of the Defendants pay a forfeiture penalty in the amount of \$7,000 for each of their stations in violation of the indecency laws.

25. Defendants were ordered to pay the forfeiture by the close of business on March 22, 2008, but failed to pay by that date.

#### **DEFENDANTS’ BROADCASTS VIOLATED 18 U.S.C. § 1464**

26. In assessing whether a given broadcast is indecent, the Commission examines two principal factors: (1) whether the material in question depicts or describes sexual or excretory

organs or activities; and (2) whether the material is patently offensive as measured by contemporary community standards for the broadcast medium. *Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency*, Policy Statement, 16 FCC Rcd 7999 (2001) ("*Indecency Policy Statement*").

27. Defendants' broadcasts of the April 7, 2003 episode depicted or described scenes from bachelor and bachelorette parties featuring sexual activities and partially obscured nude female breasts and buttocks, which are sexual or excretory organs.

28. The Commission examines three principal factors in determining whether a broadcast, in its full context, is patently offensive under the second prong of the indecency test: (1) whether the description or depiction of sexual or excretory organs or activities is explicit or graphic in nature; (2) whether the material dwells on or repeats at length descriptions or depictions of sexual or excretory organs or activities; and (3) whether the material appears to pander or is used to titillate or shock. *Indecency Policy Statement*, 16 FCC Rcd at 8002–03. Each of those factors supports the FCC's finding that Defendants' broadcasts were patently offensive.

29. Defendants' broadcasts of the April 7, 2003 episode depicted or described strippers luring partygoers into engaging in sexual behavior (*e.g.*, a topless female stripper is depicted spanking with a whip or a belt the buttocks of a topless man who is on all fours) in a graphic and explicit manner. The pixilation of the nude body parts in the scenes did not obscure the overall graphic nature of the depictions to the average viewer.

30. Defendants' broadcasts of the April 7, 2003 episode dwelled upon and repeated the indecent material because sexual or excretory organs and activities are depicted or described in multiple scenes during the episode.

31. The indecent material in Defendants' broadcasts of the April 7, 2003 episode was pandering, titillating, and shocking. The whole point of the strippers' performances appears to be to titillate the brides- and grooms-to-be, and, by extension, the audience. The scenes presented sexual activity and adult nudity in a pandering and titillating manner.

32. Because Defendants' broadcasts of the April 7, 2003 episode depicted or described sexual or excretory activities or organs and were patently offensive under contemporary community standards for the broadcast medium, they were indecent and thus violated 18 U.S.C. § 1464.

#### **DEFENDANTS' BROADCASTS VIOLATED 47 C.F.R. § 73.3999**

33. Plaintiff repeats and realleges as if set forth fully herein the foregoing paragraphs 1 through 32, inclusive.

34. Defendants' broadcasts of the April 7, 2003 episode aired between 6:00 a.m. and 10:00 p.m.

35. Defendants violated 47 C.F.R. § 73.3999 by broadcasting indecent material between the hours of 6:00 a.m. and 10:00 p.m.

#### **DEFENDANTS' VIOLATIONS WERE WILLFUL**

36. Plaintiff repeats and realleges as if set forth fully herein the foregoing paragraphs 1 through 35, inclusive.

37. Congress has defined "willful" to mean "the conscious and deliberate commission or omission of [an] act, irrespective of any intent to violate any provision of this [Act] or any rule or regulation of the Commission." 47 U.S.C. § 312(f)(1).

38. The indecent material in the April 7, 2003 episode was prerecorded, and Defendants could have edited or declined the content prior to broadcast.

39. Defendants acted willfully because they consciously and deliberately broadcast the April 7, 2003 episode.

**DEFENDANTS' VIOLATIONS WARRANT THE FORFEITURE PENALTY IMPOSED**

40. Plaintiff repeats and realleges as if set forth fully herein the foregoing paragraphs 1 through 39, inclusive.

41. Congress has directed that, “[i]n determining the amount of . . . a forfeiture penalty, the Commission . . . shall take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.” 47 U.S.C. § 503(b)(2)(E).

42. Defendants’ broadcasts of the April 7, 2003 episode contained repeated depictions or descriptions of adult sexual or excretory activities or organs that Defendants could have edited or declined prior to broadcast.

43. The \$7,000 penalty imposed by the FCC is appropriate under the circumstances.

44. The FCC has demanded payment of the \$7,000 for each station’s violations from Defendants, but Defendants have refused to pay that amount.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff seeks a judgment against Defendants as follows:

- a. Ordering Defendants WDAF License, Inc. and TVT License, Inc., each to pay to the United States Treasury \$7,000, the amount set forth in the Forfeiture Order;

- b. Order Defendant FOX Television Stations, Inc. to pay to the United States Treasury \$21,000, the total amount assessed against this Defendant in the Forfeiture Order for the violations of Stations KMSP-TV, WJBK(TV), and WTTG(TV);
- c. Ordering Defendants to pay interest at the legal rate in effect on the date of judgment until paid in full;
- d. Ordering Defendants to reimburse the United States for the costs of this civil action; and
- e. Ordering such other relief as the Court deems just and proper.

Date: April 4, 2008

Respectfully submitted,

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