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

In the Matter of	)	
	)	
Complaints Against Various Television Licensees	)	File No. EB-05-IH-0035[1]
Concerning Their December 31, 2004 Broadcast	)	
of the Program "Without A Trace"	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 21, 2006 **Released: March 15, 2006**

By the Commission: Chairman Martin, Commissioners Copps and Tate issuing separate statements; Commissioner Adelstein concurring and issuing a statement.

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture ("NAL")*, issued pursuant to section 503(b) of the Communications Act of 1934, as amended (the "Act"), and section 1.80 of the Commission's rules,[2] we find that the CBS Television Network ("CBS") affiliated stations and CBS owned-and-operated stations listed in Attachment A aired material that apparently violates the federal restrictions regarding the broadcast of indecent material.[3] Specifically, during the *Our Sons and Daughters* episode of the CBS program "Without a Trace" on December 31, 2004, at 9:00 p.m. in the Central and Mountain Time Zones, these licensees each broadcast material graphically depicting teenage boys and girls participating in a sexual orgy. Based upon our review of the facts and circumstances of this case, we conclude that the licensees listed in Attachment A are apparently liable for a monetary forfeiture in the amount of $32,500 per station for broadcasting indecent material in apparent violation of 18 U.S.C. § 1464 and section 73.3999 of the Commission's rules.

II. BACKGROUND

2. Section 1464 of title 18, United States Code, prohibits the broadcast of obscene, indecent, or profane programming.[4] The FCC rules implementing that statute, a subsequent statute establishing a "safe harbor" during certain hours, and the Act prohibit radio and television stations from broadcasting obscene material at any time and indecent material between 6 a.m. and 10 p.m.

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[1] The NAL/Acct. Nos. and FRN numbers for each licensee subject to this Notice of Apparent Liability For Forfeiture are contained in Attachment A hereto.

[2] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

[3] *See* 18 U.S.C. § 1464, 47 C.F.R. § 73.3999.

[4] 18 U.S.C. § 1464.

3. ***Indecency Analysis.*** Enforcement of the provisions restricting the broadcast of indecent, obscene, or profane material is an important component of the Commission's overall responsibility over broadcast radio and television operations. At the same time, however, the Commission must be mindful of the First Amendment to the United States Constitution and section 326 of the Act, which prohibit the Commission from censoring program material or interfering with broadcasters' free speech rights.[5] As such, in making indecency determinations, the Commission proceeds cautiously and with appropriate restraint.[6]

4. The Commission defines indecent speech as material that, in context, depicts or describes sexual or excretory activities or organs in terms patently offensive as measured by contemporary community standards for the broadcast medium.[7]

> Indecency findings involve at least two fundamental determinations. First, the material alleged to be indecent must fall within the subject matter scope of our indecency definition—that is, the material must describe or depict sexual or excretory organs or activities. . . . Second, the broadcast must be *patently offensive* as measured by contemporary community standards for the broadcast medium.[8]

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[5] U.S. CONST., amend. I; 47 U.S.C. § 326. *See also United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813-15 (2000).

[6] *See Action for Children's Television v. FCC*, 852 F.2d 1332, 1344, 1340 n. 14 (1988) ("*ACT I*") (stating that "[b]roadcast material that is indecent but not obscene is protected by the First Amendment; the FCC may regulate such material only with due respect for the high value our Constitution places on freedom and choice in what people may say and hear," and that any "potential chilling effect of the FCC's generic definition of indecency will be tempered by the Commission's restrained enforcement policy.").

[7] *See Infinity Broadcasting Corporation of Pennsylvania,* Memorandum Opinion and Order, 2 FCC Rcd 2705 (1987) (subsequent history omitted) (citing *Pacifica Foundation*, Memorandum Opinion and Order, 56 FCC 2d 94, 98 (1975), *aff'd sub nom. Pacifica*, 438 U.S. 726).

[8] *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, 8002 ¶¶ 7-8 (2001) ("*Indecency Policy Statement*") (emphasis in original). In applying the "community standards for the broadcast medium" criterion, the Commission has stated:

> The determination as to whether certain programming is patently offensive is not a local one and does not encompass any particular geographic area. Rather, the standard is that of an average broadcast viewer or listener and not the sensibilities of any individual complainant.

WPBN/WTOM License Subsidiary, Inc., Memorandum Opinion and Order, 15 FCC Rcd 1838, 1841 ¶ 10 (2000) ("*WPBN/WTOM MO&O*"). The Commission's interpretation of the term "contemporary community standards" flows from its analysis of the definition of that term set forth in the Supreme Court's decision in *Hamling v. United States*, 418 U.S. 87 (1974), *reh'g denied*, 419 U.S. 885 (1974). In *Infinity Broadcasting Corporation of Pennsylvania (WYSP(FM))*, Memorandum Opinion and Order, 3 FCC Rcd 930 (1987) (subsequent history omitted), the Commission observed that in *Hamling*, which involved obscenity, "the Court explained that the purpose of 'contemporary community standards' was to ensure that material is judged neither on the basis of a decisionmaker's personal opinion, nor by its effect on a particularly sensitive or insensitive person or group." *Id.* at 933 (citing 418 U.S. at 107). The Commission also relied on the fact that the Court in *Hamling* indicated that decisionmakers need not use any precise geographic area in evaluating material. *Id.* at 933 (citing 418 U.S. at 104-05). Consistent with *Hamling*, the Commission concluded that its evaluation of allegedly indecent material is "not one based on a local standard, but one based on a broader standard for broadcasting generally." *Id.* at 933.

5. In our assessment of whether broadcast material is patently offensive, "the *full context* in which the material appeared is critically important."[9] Three principal factors are significant to this contextual analysis: (1) the explicitness or graphic nature of the description; (2) whether the material dwells on or repeats at length descriptions of sexual or excretory organs or activities; and (3) whether the material panders to, titillates, or shocks the audience.[10] In examining these three factors, we must weigh and balance them on a case-by-case basis to determine whether the broadcast material is patently offensive because "[e]ach indecency case presents its own particular mix of these, and possibly, other factors."[11] In particular cases, one or two of the factors may outweigh the others, either rendering the broadcast material patently offensive and consequently indecent,[12] or, alternatively, removing the broadcast material from the realm of indecency.

6. In this *NAL*, we apply the two-pronged indecency analysis described above. Specifically, we first determine whether the complained-of material is within the scope of our indecency definition; *i.e.*, whether it describes or depicts sexual or excretory activities or organs. We then turn to the three principal factors of the second prong to determine whether, taken in context, the material is patently offensive as measured by contemporary community standards for the broadcast medium.

7. Our contextual analysis takes into account the manner and purpose of broadcast material.[13] For example, material that panders to, titillates, or shocks the audience is treated quite differently than material that is primarily used to educate or inform the audience. In particular, we recognize the need for caution with respect to complaints implicating the editorial judgment of broadcast licensees in presenting news and public affairs programming, as these matters are at the core of the First Amendment's free press guarantee.[14]

8. ***Forfeiture Calculations.*** This *NAL* is issued pursuant to section 503(b)(1) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission or to have violated section 1464 of title 18, United States Code, shall be liable to the United States for a forfeiture penalty.[15] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[16] The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,[17] and the Commission has so interpreted the term in the section 503(b) context.[18]

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[9] *Indecency Policy Statement*, 16 FCC Rcd at 8002 ¶ 9 (emphasis in original).

[10] *Id.* at 8002-15 ¶¶ 8-23.

[11] *Id.* at 8003 ¶ 10.

[12] *Id.* at 8009 ¶ 19 (*citing Tempe Radio, Inc (KUPD-FM)*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 21828 (Mass Media Bur. 1997) (forfeiture paid), and *EZ New Orleans, Inc. (WEZB(FM))*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 4147 (Mass Media Bur. 1997) (forfeiture paid) (finding that the extremely graphic or explicit nature of references to sex with children outweighed the fleeting nature of the references).

[13] *Indecency Policy Statement*, 16 FCC Rcd at 8010 ¶ 20 (noting that "the manner and purpose of a presentation may well preclude an indecency determination even though other factors, such as explicitness, might weigh in favor of an indecency finding").

[14] *See Syracuse Peace Council*, Memorandum Opinion and Order, 2 FCC Rcd 5043, 5050-51 ¶ 52 (1987) (subsequent history omitted) (eliminating the fairness doctrine, which placed an affirmative obligation on broadcasters to cover, and present contrasting viewpoints on, controversial issues of public importance).

[15] 47 U.S.C. § 503(b)(1)(B) & D. *See also* 47 C.F.R. 1.80(a)(1).

[16] 47 U.S.C. § 312(f)(1).

[17] *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

We emphasize that every licensee is responsible for the decision to air particular programming and will be held accountable for violating federal restrictions on the willful or repeated broadcast of obscene, indecent, or profane material.

9. The Commission's *Forfeiture Policy Statement* establishes a base forfeiture amount of $7,000 for the transmission of indecent or obscene materials.[19] The *Forfeiture Policy Statement* also specifies that the Commission shall adjust a forfeiture based upon consideration of the factors enumerated in section 503(b)(2)(D), such as "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."[20] The statutory maximum forfeiture amount for violations occurring on or after September 7, 2004, is $32,500.[21]

III. DISCUSSION

10. ***The Programming.*** The Commission received numerous complaints alleging that certain affiliates of CBS and CBS owned-and-operated stations (listed in Attachment A) broadcast indecent material during the *Our Sons and Daughters* episode of the CBS program "Without a Trace" on December 31, 2004, at 9:00 p.m. in the Central and Mountain Time Zones.

11. The December 31, 2004 episode at issue concerns an FBI investigation into the disappearance and possible rape of a high school student. During an interrogation, a witness recalls a party held at the home of a teenager. As she recounts the details of the party, the program cuts to a "flashback" scene. The scene -- which forms the basis of the viewer complaints -- consists of a series of shots of a number of teenagers engaged in various sexual activities, including sex between couples and among members of a group. Although the scene contains no nudity, it does depict male and female teenagers in various stages of undress. The scene also includes at least three shots depicting intercourse, two between couples and one "group sex" shot. In the culminating shot of the scene, the witness exclaims to the others in the party that the victim is a "porn star." The action briefly returns to the present, as the witness pauses in her story, then the flashback resumes, as the victim is shown wearing bra and panties, straddled on top of one male character, while two other male characters kiss her breast near the bra strap. The lower portion of the panties is shaded, but she is shown moving up and down while the male teenager thrusts his hips into her crotch.

12. ***Indecency Analysis.*** We find that the material meets the first prong of the indecency test. While no nudity is shown, it is clear, as detailed above, that the scene depicts numerous sexual activities.

13. We also find that the material is, in the context presented here, patently offensive as measured by contemporary community standards for the broadcast medium. Turning to the first principal factor in our contextual analysis, the scene is explicit and graphic. The material contains numerous depictions of sexual conduct among teenagers that are portrayed in such a manner that a child watching the program could easily discern that the teenagers shown in the scene were engaging in sexual activities,

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[18] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

[19] *See Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113 (1997), *recon. denied,* 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); *see also* 47 C.F.R. § 1.80(b).

[20] *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01 ¶ 27.

[21] *See Amendment of Section 1.80 of the Commission's Rules*, Order, 19 FCC Rcd 10945, 10946 ¶ 6 (2004) (amending rules to increase maximum penalties due to inflation since last adjustment of penalty rates).

including apparent intercourse.[22] The background sounds, which include moaning, add to the graphic and explicit sexual nature of the depictions. The scene is not shot as clinical or educational material, and the movements, sounds, and comments contained in the scene are highly sexually charged.

14. Next, although not dispositive, we find it relevant that the broadcast dwells on and repeatedly depicts the sexual material, the second principal factor in our analysis. The scene in question contains several depictions of apparent sexual intercourse.

15. As for the third factor, we find that the complained-of material is pandering, titillating, and shocking to the audience. The explicit and lengthy nature of the depictions of sexual activity, including apparent intercourse, goes well beyond what the story line could reasonably be said to require. Moreover, the scene is all the more shocking because it depicts minors engaged in sexual activities.[23]

16. In sum, because the scene is explicit, dwells upon sexual material, and is shocking and titillating, we conclude that the broadcast of the material at issue here is patently offensive under contemporary community standards for the broadcast medium and thus apparently indecent. The complained-of material was broadcast within the 6 a.m. to 10 p.m. time frame relevant to an indecency determination under section 73.3999 of the Commission's rules.[24] Therefore, there is a reasonable risk that children may have been in the viewing audience and the broadcast is legally actionable.

17. ***Forfeiture Calculation.*** We find that the CBS affiliates and CBS owned-and-operated stations listed in Attachment A consciously and deliberately broadcast the episode in question. Accordingly, we find that each broadcast in apparent violation of 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999 was willful within the meaning of section 503(b)(1) of the Act, and subject to forfeiture.

18. We therefore turn to the proposed forfeiture amount, based on the factors enumerated in section 503(b)(2)(D) of the Act and the facts and circumstances of this case. We find that the statutory maximum of $32,500 is an appropriate proposed forfeiture amount for each violation arising out of the December 31, 2004 broadcasts.[25] The gravity of the apparent violation is heightened in this case because, as discussed above, the material graphically depicts teenage boys and girls participating in a sexual orgy. While there is no nudity, the scene is highly sexually charged and explicit. Moreover, the material is particularly egregious because it focuses on sex among children. In addition, the program is prerecorded, and CBS and its affiliates could have edited or declined the content prior to broadcast.[26] Therefore, we find that each of the licensees listed in Attachment A is apparently liable for a proposed forfeiture of $32,500 for broadcast of the December 31, 2004 episode of "Without A Trace." prior to 10 p.m.[27]

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[22] *See Complaints Against Various Licensees Regarding Their Broadcast of the Fox Television Network Program "Married By America" on April 7, 2003,* Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 20191, 20194 ¶ 10 (2004) (finding that "although the nudity was pixilated, even a child would have known that the strippers were topless and that sexual activity was being shown").

[23] In any event, even if the depictions had been more essential to the program, the other two factors weigh heavily in favor of a finding of patent offensiveness as measured by contemporary community standards for the broadcast medium, so we would not alter our ultimate conclusion in this case.

[24] *See* 47 C.F.R. § 73.3999.

[25] *See supra* ¶ 9.

[26] 19 FCC Rcd at 21096 ¶ 16.

[27] The fact that the stations in question may not have originated the programming in question is irrelevant to whether there is an indecency violation. *See Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates,* Notice of Proposed Rulemaking, 10 FCC Rcd 11951,11961, ¶ 20 (1995) (internal quotation omitted) ("We conclude that a licensee is not fulfilling his obligations to operate in the

(continued....)

19. Although we are informed that other stations not mentioned in any complaint also broadcast the complained-of episode of "Without A Trace," we propose forfeitures only against those licensees whose broadcasts of the material between 6 a.m. and 10 p.m. were actually the subject of viewer complaints to the Commission. We recognize that this approach differs from that taken in previous Commission decisions involving the broadcast of apparently indecent programming. Our commitment to an appropriately restrained enforcement policy, however, justifies this more limited approach towards the imposition of forfeiture penalties. Accordingly, we propose forfeitures as set forth in Attachment A.

IV. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission's rules, that the licensees of the stations that are affiliates of the CBS Television Network and of the stations owned and operated by CBS listed in Attachment A are hereby NOTIFIED of their APPARENT LIABILITY FOR FORFEITURE in the amount of $32,500 per station for willfully violating 18 U.S.C. § 1464 and section 73.3999 of the Commission's rules by their broadcast of the program "Without a Trace" on December 31, 2004.

21. IT IS FURTHER ORDERED that a copies of this *NAL* shall be sent by Certified Mail, Return Receipt Requested, to Anne Lucey, Senior Vice President, Regulatory Affairs, CBS, 1501 M Street, N.W., Suite 1100, Washington, D.C. 20005, and to the licensees of the stations listed in Attachment A, at their respective addresses noted therein.

22. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, that within thirty (30) days of the release of this *NAL*, each licensee identified in Attachment A SHALL PAY the full amount of its proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of their proposed forfeiture.

23. Payment of the forfeitures must be made by check or similar instrument, payable to the order of the Federal Communications Commission. Payments must include the relevant NAL/Acct. No. and FRN No. referenced in Attachment A. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

24. The responses, if any, must be mailed to 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, and MUST INCLUDE the relevant NAL/Acct. No. referenced for each proposed forfeiture in Attachment A hereto.

25. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

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public interest, and is not operating in accordance with the express requirements of the Communications Act, if he agrees to accept programs on any basis other than his own reasonable decision that the programs are satisfactory.").

26. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Associate Managing Director -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.[28]

27. Accordingly, IT IS ORDERED that the complaints in this *NAL* proceeding ARE GRANTED to the extent indicated herein, AND ARE OTHERWISE DENIED, and the complaint proceeding IS HEREBY TERMINATED.[29]

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[28] *See* 47 C.F.R. § 1.1914.

[29] Consistent with section 503(b) of the Act and consistent Commission practice, for the purposes of the forfeiture proceeding initiated by this *NAL*, the only parties to such proceeding will be licensees specified in Attachment A hereto.

ATTACHMENT A
PROPOSED FORFEITURES FOR DECEMBER 31, 2004
BROADCASTS OF "WITHOUT A TRACE"

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Signs and Communities of License	Facility ID Nos.	Proposed Forfeiture Amount
Alabama Broadcasting Partners 3020 Eastern Boulevard Montgomery, AL 36123	0003828738	200632080014	WAKA (TV) Selma, AL	701	$32,500
Alaska Broadcasting Company, Inc. 1007 W. 32nd Ave Anchorage, AK 99503	0006160915	200632080015	KTVA (TV) Anchorage, AK	49632	$32,500
Arkansas Television Company c/o Gannett Co., Inc. 7950 Jones Branco Dr. Mclean, VA 22107	0003756442	200632080016	KTHV (TV) Little Rock, AR	2787	$32,500
Barrington Broadcasting Quincy Corporation 2500 W. Higgins Road Ste 880 Hoffman Estates, IL 60195	0011063302	200632080017	KHQA-TV Hannibal, MO	4690	$32,500
Barrington Broadcasting Missouri Corp. 2500 W. Higgins Road Suite 880 Hoffman Estates, IL 60195	0012140109	200632080018	KRCG (TV) Jefferson City, MO	41110	$32,500
Catamount Bcstg of Fargo LLC 1350 21st Ave. South Fargo, ND 58103	0002474161	200632080019	KXJB-TV Valley City, ND	49134	$32,500

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Signs and Communities of License	Facility ID Nos.	Proposed Forfeiture Amount
CBS Broadcasting, Inc. 2000 K Street, N.W. Suite 725 Washington, DC 20006	0003482189	200632080020	KCCO-TV Alexandria, MN WBBM-TV Chicago, IL WCCO-TV Minneapolis, MN WFRV-TV Green Bay, WI	9632 9617 9629 9635	$130,000
CBS Stations Group of Texas, L.P. 2000 K Street, N.W. Ste. 725 Washington, DC 20006	0001767078	200632080021	KEYE-TV Austin, TX KTVT (TV) Fort Worth, TX	33691 23422	$65,000
CBS Television Stations, Inc. 2000 K Street, N.W. Suite 725 Washington, DC 20006	0004425773	200632080022	KCNC-TV Denver, CO	47903	$32,500
Chelsey Broadcasting Company of Casper, LLC 2923 East Lincolnway Cheyenne, WY 82001	0008721292	200632080023	KGWC-TV Casper, WY	63177	$32,500
ComCorp of Indiana License Corp. P.O. Drawer 53708 Lafayette, LA 70505	0004328308	200632080024	WEVV (TV) Evansville, IN	72041	$32,500
Coronet Comm Co. 99 Pondfield Rd Bronxville , NY 10708	0003757457	200632080025	WHBF-TV Rock Island, IL	13950	$32,500

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Signs and Communities of License	Facility ID Nos.	Proposed Forfeiture Amount
Des Moines Hearst-Argyle Television, Inc. c/o Brooks, Pierce, Et. Al. P.O. Box 1800 Raleigh, NC 27602	0002573277	200632080026	KCCI (TV) Des Moines, IA	33710	$32,500
Eagle Creek Broadcasting of Laredo, LLC 2111 University Park Drive, Ste. 650 Okemos, MI 48864	0007262348	200632080027	KVTV (TV) Laredo, TX	33078	$32,500
Eagle Creek Broadcasting of Corpus Christi, LLC 2111 University Park Dr Ste 650 Okemos, MI 48864	0007277445	200632080028	KZTV (TV) Corpus Christi, TX	33079	$32,500
Emmis Television License LLC 3500 W Olive Ave Ste. 1450 Burbank, CA 915051	0002884252	200632080029	KBIM-TV Roswell, NM KGMB (TV) Honolulu, HI KMTV (TV) Omaha, NE KREZ-TV Durango, CO KRQE (TV) Albuquerque, NM WTHI-TV Terre Haute, IN	48556 36917 35190 48589 48575 70655	$195,000
Fisher Broadcasting Idaho TV, LLC 100 4th Ave N Ste 510 Seattle, WA 98101	0005848445	200632080030	KBCI-TV, Boise, ID	49760	$32,500
Fisher Broadcasting-SE Idaho TV LLC 100 4th Ave N Ste 510 Seattle, WA 9810	0005848619	200632080090	KIDK (TV) Idaho Falls, ID	56028	$32,500

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Signs and Communities of License	Facility ID Nos.	Proposed Forfeiture Amount
Freedom Bcstg of TX Licensee LLC PO Box 7128 Beaumont, TX 77726	0010053064	200632080031	KFDM-TV Beaumont, TX	22589	$32,500
Glendive Bcstg Corp. 210 S Douglas St Glendive, MT 59330	0003749892	200632080032	KXGN-TV Glendive, MT	24287	$32,500
Gray Television Licensee, Inc. 4141 East 29th Street Bryan, TX 77801	0002746022	200632080033	KBTX-TV Bryan, TX KGIN (TV) Grand Island, NE KKTV (TV) Colorado Springs, CO KOLN (TV) Lincoln, NE KWTX-TV Waco, TX KXII (TV) Sherman, TX WIBW-TV Topeka, KS WIFR (TV) Freeport, IL WSAW-TV Wausau, WI WVLT-TV Knoxville, TN	6669 7894 35037 7890 35903 35954 63160 4689 6867 35908	$325,000
Griffin Entities, LLC, 3993 Howard Hughes Parkway, Suite 250, Las Vegas, NV 89109	0002147155	200632080034	KWTV (TV) Oklahoma City, OK	25382	$32,500

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Signs and Communities of License	Facility ID Nos.	Proposed Forfeiture Amount
Griffin Licensing, L.L.C. 3993 Howard Hughes Pkwy., Ste 250 Las Vegas, NV 89109	0004283339	200632080035	KOTV (TV) Tulsa, OK	35434	$32,500
Hoak Media of Colorado LLC 500 Crescent Court, Suite 220 Dallas, TX 75240	0009455809	200632080036	KREX-TV Grand Junction, CO	70596	$32,500
Hoak Media of Wichita Falls, L.P. 13355 Noel Road Dallas, TX 75240	0009510603	200632080037	KAUZ-TV Wichita Falls, TX	6864	$32,500
ICA Broadcasting I, LTD 700 N Grant St Odessa, TX 79761	0003758976	200632080038	KOSA-TV Odessa, TX	6865	$32,500
Indiana Broadcasting, LLC 4 Richmond Square Providence , RI 02906	0007641590	200632080039	WANE-TV Fort Wayne, ID WISH-TV Indianapolis, IN	39270 39269	$65,000
KCTZ Communications, Inc. 1128 East Main Bozeman, MT 59715	0001811827	200632080040	KBZK (TV) Bozeman, MT	33756	$32,500
KDBC License, LLC 500 South Chinowth Rd Visalia, CA 93277	0010811776	200632080041	KDBC-TV El Paso, TX	33764	$32,500
KENS-TV, Inc. 400 South Record St. Dallas, TX 75202	0008654188	200632080042	KENS-TV San Antonio, TX	26304	$32,500

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Signs and Communities of License	Facility ID Nos.	Proposed Forfeiture Amount
Ketchikan TV, LLC P.O. Box 348 2539 North Highway 67 Sedalia, CO 80135	0005039896	200632080043	KTNL (TV) Sitka, AK	60519	$32,500
KGAN Licensee, LLC Shaw Pittman LLP. Attn: K. Schmeltzer 2300 N Street, N.W. Washington, DC 20037	0009405226	200632080044	KGAN (TV) Cedar Rapids, IA	25685	$32,500
KHOU-TV LP 1945 Allen Parkway Houston, TX 77019	0004542346	200632080045	KHOU-TV Houston, TX	34529	$32,500
KLFY, LP P.O. Box 1800 Raleigh, NC 27602	0005575733	200632080046	KLFY-TV Lafayette, LA	35059	$32,500
KMOV-TV, Inc. 1 Memorial Drive St. Louis, MO 63102	0001569110	200632080047	KMOV (TV) St. Louis, MO	70034	$32,500
KPAX Communications, Inc. P.O. Box 4827 Missoula, MT 59806	0001811827	200632080048	KPAX-TV Missoula, MT	35455	$32,500
KRTV Communications, Inc. Post Office Box 2989 Great Falls, MT 59403	0004523304	200632080049	KRTV (TV) Great Falls, MT	35567	$32,500
KSLA License Subsidiary, LLC RSA Tower 20th Fl 201 Monroe St Montgomery, AL 36104	0003733045	200632080050	KSLA-TV Shreveport, LA	70482	$32,500

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Signs and Communities of License	Facility ID Nos.	Proposed Forfeiture Amount
KTVQ Communications, Inc. 3203 3rd Ave North Billings, MT 59101	0001628551	200632080051	KTVQ (TV) Billings, MT	35694	$32,500
KUTV Holdings, Inc. 2000 K Street, N.W. Suite 725 Washington, DC 20006	0009072380	200632080052	KUTV (TV) Salt Lake City, UT	35823	$32,500
KXLF Communications, Inc. 1003 Montana Street Butte, MT 59701	0001563956	200632080053	KXLF-TV Butte, MT	35959	$32,500
Libco, Inc. 2215 B Renaissance Drive, Ste 5 Las Vegas, NV 89119	0001881523	200632080054	KGBT-TV Harlingen, TX	34457	$32,500
Malara Broadcast Group of Duluth Licensee, LLC 5880 Midnight Pass Rd Apt 701 Siesta Key, FL 34242-2104	0002836237	200632080055	KDLH (TV) Duluth, MN	4691	$32,500
MMT License, LLC 900 Laskin Road Virgina Beach, VA 23451	0009745027	200632080056	KYTX (TV) Nacogdoches, TX	55644	$32,500
Media General Broadcasting of South Carolina Holdings, Inc. 333 East Franklin Street Richmond, VA 23219	0002207520	200632080057	KBSH-TV Hays, KS KIMT (TV) Mason City, IA WKRG-TV Mobile, AL	66415 66402 73187	$97,500

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Signs and Communities of License	Facility ID Nos.	Proposed Forfeiture Amount
Media General Communications, Inc. 333 East Franklin Street Richmond, VA 23219	0002050185	200632080058	WDEF-TV Chattanooga, TN WHLT (TV) Hattiesburg, MS WIAT (TV) Birmingham, AL WJHL-TV Johnson City, TN WJTV (TV) Jackson, MS	54385 48668 5360 57826 48667	$162,500
Meredith Corp. 1716 Locust St Des Moines IA 50309-33203	0005810726	200632080059	KCTV (TV) Kansas City, MO KPHO-TV Phoenix, AZ	41230 41223	$66,000
Mission Broadcasting, Inc. 544 Red Rock Dr Wadsworth, OH 44281	0003725389	200632080060	KOLR (TV) Springfield, MO	28496	$32,500
Neuhoff Family Partnership 11793 Lake House Court North Palm Beach, FL 33408	0005011648	200632080061	KMVT (TV) Twin Falls, ID	35200	$32,500
News Channel 5 Network, LP 474 James Robertson Pky. Nashville, TN 37219	0002054880	200632080062	WTVF (TV) Nashville, TN	36504	$32,500
New York Times Management Services Corporate Center 1, International Plaza 2202 N.W. Shore Blvd., Suite 370 Tampa, FL 33607	0003481587	200632080063	KFSM-TV Fort Smith, AK WHNT-TV Huntsville, AL WREG-TV Memphis, TN	66469 48693 66174	$97,500

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Signs and Communities of License	Facility ID Nos.	Proposed Forfeiture Amount
Nexstar Broadcasting, Inc. 909 Lake Carolyn Parkway Ste 1450 Irving, TX 75039	0009961889	200632080064	KLBK-TV Lubbock, TX KLST (TV) San Angelo, TX KTAB-TV Abilene, TX WCIA (TV) Champaign, IL WMBD-TV Peoria, IL	3660 31114 59988 42124 42121	$187,500
Noe Corp. LLC 1400 Oliver Road Monroe, LA 71211	0008295198	200632080065	KNOE (TV) Monroe, LA	48975	$32,500
Panhandle Telecasting Company PO Box 10 Amarillo, TX 79105	0001662899	200632080066	KFDA-TV Amarillo, TX	51466	$32,500
Pappas Arizona License, LLC 500 South Chinowth Road Visalia, CA 93277	0004934683	200632080067	KSWT (TV) Yuma, AZ	33639	$32,500
Primeland Television, Inc. 4 Richmond Sq Ste 200 Providence, RI 02906	0007641590	200632080068	WLFI-TV Lafayette, IN	73204	$32,500
Queen B Television, LLC 141 S. 6th Street P.O. Box 1867 Lacrosse, WI 54601	0003769973	200632080069	WKBT (TV) La Crosse, WI	74424	$32,500

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Signs and Communities of License	Facility ID Nos.	Proposed Forfeiture Amount
Raycom America License Subsidiary, LLC RSA Tower 20th FL 201 Monroe St Montgomery, AL 36104	0001835289	200632080070	KFVS-TV Cape Giradeau, MO KOLD-TV Tucson, AZ	592 48663	$65,000
Reiten Television, Inc. 1625 West Villard Dickinson, ND 58701	0002476885	200632080071	KXMA-TV Dickinson, ND KXMB-TV Bismarck, ND KXMC-TV Minot, ND KXMD-TV Williston, ND	55684 55686 55685 55683	$130,000
Saga Broadcasting, LLC 73 Kercheval Ave Grosse Pointe Farms, MI 48236	0005237599	200632080072	WXVT (TV) Greenville, MS	25236	$32,500
Saga Quad States Communications, LLC 73 Kercheval Ave Grosse Pointe Farms, MI 48236	0003574084	200632080073	KOAM-TV Pittsburg, KS	58552	$32,500
Sagamore Hill Broadcasting of Wyoming/Northern Colorado, LLC Two Embarcadero Ctr. 23rd Floor San Francisco, CA 94111	0009676958	200632080074	KGWN-TV Cheyenne, WY KSTF (TV) Gering, NE	63166 63182	$65,000
Television Wisconsin, Inc. P.O. Box 44965 Madison, WI 53744	0002715563	200632080075	WISC-TV Madison, WI	65143	$32,500
United Communications Corp. 715 58th Street Kenosha, WI 53140	0002210383	200632080076	KEYC-TV Mankato, MN	68853	$32,500

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Signs and Communities of License	Facility ID Nos.	Proposed Forfeiture Amount
WAFB License Subsidiary LLC RSA Tower 20th Fl 201 Monroe St Montgomery, AL 36104	0003733060	200632080077	WAFB (TV) Baton Rouge, LA	589	$32,500
Waitt Broadcasting, Inc. 1125 S 103rd St Ste 200 Omaha, NE 6812	0004957650	200632080078	KMEG (TV) Sioux City, IA	39665	$32,500
WCBI-TV, LLC 27 Abercorn Street Savannah, GA 31412	0005413471	200632080079	WCBI-TV Columbus, MS	12477	$32,500
WDJT-TV Limited Partnership 26 N Halsted St Chicago, IL 60661	0009562265	200632080080	WDJT-TV Milwaukee, WI	71427	$32,500
WMDN, Inc. P.O. Box 2424 Meridian, MS 39302	0001744838	200632080081	WMDN (TV)	73255	$32,500
WSBT, Inc. 300 W. Jefferson Blvd. South Bend, IN 46601	0008712937	200632080082	WSBT-TV South Bend, IN	73983	$32,500
WWL-TV, Inc. 1024 North Rampart St. New Orleans, LA 70116	0008654154	200632080083	WWL-TV New Orleans, LA	74192	$32,500
Young Broadcasting of Rapid City, Inc. P.O. Box 1800 Raleigh, NC 27602	0003475449	200632080084	KCLO-TV Rapid City, SD	41969	$32,500

Licensee Name and Mailing Address	FRN No.	NAL Acct. No.	Station Call Signs and Communities of License	Facility ID Nos.	Proposed Forfeiture Amount
Young Broadcasting of Sioux Falls, Inc. P.O. Box 1800 Raleigh, NC 27602	0003475464	200632080085	KELO-TV Sioux Falls, SD KPLO-TV Reliance, SD	41983 41964	$65,000

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

Re: Complaints Against Various Television Licensees Concerning Their February 1, 2004 Broadcast of the Super Bowl XXXVIII Halftime Show; Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005; Complaints Against Various Television Licensees Concerning Their December 31, 2004 Broadcast of the Program "Without A Trace"

Congress has long prohibited the broadcasting of indecent and profane material and the courts have upheld challenges to these standards. But the number of complaints received by the Commission has risen year after year. They have grown from hundreds, to hundreds of thousands. And the number of programs that trigger these complaints continues to increase as well. I share the concerns of the public - and of parents, in particular - that are voiced in these complaints.

I believe the Commission has a legal responsibility to respond to them and resolve them in a consistent and effective manner. So I am pleased that with the decisions released today the Commission is resolving hundreds of thousands of complaints against various broadcast licensees related to their televising of 49 different programs. These decisions, taken both individually and as a whole, demonstrate the Commission's continued commitment to enforcing the law prohibiting the airing of obscene, indecent and profane material.

Additionally, the Commission today affirms its initial finding that the broadcast of the Super Bowl XXXVIII Halftime Show was actionably indecent. We appropriately reject the argument that CBS continues to make that this material is not indecent. That argument runs counter to Commission precedent and common sense.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: Complaints Regarding Various Television Broadcasts Between January 1, 2002 and March 12, 2005, Notices of Apparent Liability and Memorandum Opinion and Order

Complaints Against Various Television Licensees Concerning Their December 31, 2004 Broadcast of the Program "Without A Trace," Notice of Apparent Liability

Complaints Against Various Television Licensees Concerning Their February 1, 2004 Broadcast Of The Super Bowl XXXVII Halftime Show, Forfeiture Order

In the past, the Commission too often addressed indecency complaints with little discussion or analysis, relying instead on generalized pronouncements. Such an approach served neither aggrieved citizens nor the broadcast industry. Today, the Commission not only moves forward to address a number of pending complaints, but does so in a manner that better analyzes each broadcast and explains how the Commission determines whether a particular broadcast is indecent. Although it may never be possible to provide 100 percent certain guidance because we must always take into account specific and often-differing contexts, the approach in today's orders can help to develop such guidance and to establish precedents. This measured process, common in jurisprudence, may not satisfy those who clamor for immediate certainty in an uncertain world, but it may just be the best way to develop workable rules of the road.

Today's Orders highlight two additional issues with which the Commission must come to terms. First, it is time for the Commission to look at indecency in the broader context of its decisions on media consolidation. In 2003 the FCC sought to weaken its remaining media concentration safeguards without even considering whether there is a link between increasing media consolidation and increasing indecency. Such links have been shown in studies and testified to by a variety of expert witnesses. The record clearly demonstrates that an overwhelming number of the Commission's indecency citations have gone to a few huge media conglomerates. One recent study showed that the four largest radio station groups which controlled just under half the radio audience were responsible for a whopping 96 percent of the indecency fines levied by the FCC from 2000 to 2003.

One of the reasons for the huge volume of complaints about excessive sex and graphic violence in the programming we are fed may be that people feel increasingly divorced from their "local" media. They believe the media no longer respond to their local communities. As media conglomerates grow ever larger and station control moves farther away from the local community, community standards seem to count for less when programming decisions are made. Years ago we had independent programming created from a diversity of sources. Networks would then decide which programming to distribute. Then local affiliates would independently decide whether to air that programming. This provided some real checks and balances. Nowadays so many of these decisions are made by vertically-integrated conglomerates headquartered far away from the communities they are supposed to be serving—entities that all too often control both the distribution ***and*** the production content of the programming.

If heightened media consolidation is indeed a source for the violence and indecency that upset so many parents, shouldn't the Commission be cranking that into its decisions on further loosening of the ownership rules? I hope the Commission, before voting again on loosening its media concentration protections, will finally take a serious look at this link and amass a credible body of evidence and not act again without the facts, as it did in 2003.

Second, a number of these complaints concern graphic broadcast violence. The Commission

states that it has taken comment on this issue in another docket. It is time for us to step up to the plate and tackle the issue of violence in the media. The U.S. Surgeon General, the American Academy of Pediatrics, the American Psychological Association, the American Medical Association, and countless other medical and scientific organizations that have studied this issue have reached the same conclusion: exposure to graphic and excessive media violence has harmful effects on the physical and mental health of our children. We need to complete this proceeding.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
CONCURRING

Re: *Complaints Against Various Television Licensees Concerning Their December 31, 2004 Broadcast of the Program "Without A Trace,"* Notice of Apparent Liability for Forfeiture

I have sworn an oath to uphold the Constitution[1] and to carry out the laws adopted by Congress.[2] Trying to find a balance between these obligations has been challenging in many of the indecency cases that I have decided. I believe it is our duty to regulate the broadcast of indecent material to the fullest extent permissible by the Constitution because safeguarding the well-being of our children is a compelling national interest.[3] I therefore have supported efforts to step up our enforcement of indecency laws since I joined the Commission.

The Commission's authority to regulate indecency over the public airwaves was narrowly upheld by the Supreme Court with the admonition that we should exercise that authority with the utmost restraint, lest we inhibit constitutional rights and transgress constitutional limitations on government regulation of protected speech.[4] Given the Court's guidance in *Pacifica,* the Commission has repeatedly stated that we would judiciously walk a "tightrope" in exercising our regulatory authority.[5] Hence, within this legal context, a rational and principled "restrained enforcement policy" is not a matter of mere regulatory convenience. It is a constitutional requirement.[6]

Accordingly, I concur with the instant decision, but concur in part and dissent in part with the companion Omnibus Order[7] because, while in some ways the Omnibus decision does not go far enough, in other ways it goes too far. Significantly, it abruptly departs from our precedents by adopting a new, weaker enforcement mechanism that arbitrarily fails to assess fines against broadcasters who have aired indecent material. Additionally, while the Omnibus Order appropriately identifies violations of our indecency laws, not every instance determined to be indecent meets that standard.

We have previously sought to identify all broadcasters who have aired indecent material and hold them accountable. In the Omnibus Order, however, the Commission inexplicably fines only the licensee whose broadcast of indecent material was the subject of a viewer's complaint, even though we know

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[1] U.S. CONST., amend. I.

[2] Congress has specifically forbidden the broadcast of obscene, indecent or profane language. 18 U.S.C. § 1464. It has also forbidden censorship. 47 U.S.C. § 326.

[3] *See, e.g., N.Y. v. Ferber,* 458 U.S. 747, 756-57 (1982).

[4] *See FCC v. Pacifica Foundation,* 438 U.S. 726, 750 (1978) (emphasizing the "narrowness" of the Court's holding); *Action for Children's Television v. FCC,* 852 F.2d 1332, 1344 (D.C. Cir. 1988) ("*ACT I*") ("Broadcast material that is indecent but not obscene is protected by the [F]irst [A]mendment.").

[5] *See* Brief for Petitioner, FCC, 1978 WL 206838 at *9.

[6] *ACT I, supra* note 4, at 1344 ("the FCC may regulate [indecent] material only with due respect for the high value our Constitution places on freedom and choice in what the people say and hear."); *Id.* at 1340 n.14 ("[T]he potentially chilling effect of the FCC's generic definition of indecency will be tempered by the Commission's restrained enforcement policy.").

[7] *Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005,* Notices of Apparent Liability and Memorandum Opinion and Order (decided March 15, 2006) (hereinafter "Omnibus Order").

millions of other Americans were exposed to the offending broadcast. I cannot find anywhere in the law that Congress told us to apply indecency regulations only to those stations against which a complaint was specifically lodged. The law requires us to prohibit the broadcast of indecent material, period. This means that we must enforce the law anywhere we determine it has been violated. It is willful blindness to decide, with respect to network broadcasts we know aired nationwide, that we will only enforce the law against the local station that happens to be the target of viewer complaints. How can we impose a fine solely on certain local broadcasters, despite having repeatedly said that the Commission applies a national indecency standard – not a local one?[8]

The failure to enforce the rules against some stations but not others is not what the courts had in mind when they counseled restraint. In fact, the Supreme Court's decision in *Pacifica* was based on the uniquely pervasive characteristics of broadcast media.[9] It is patently arbitrary to hold some stations but not others accountable for the same broadcast. We recognized this just two years ago in *Married By America*.[10] The Commission simply inquired who aired the indecent broadcast and fined all of those stations that did so.

In the *Super Bowl XXXVIII Halftime Show* decision, we held only those stations owned and operated by the CBS network responsible, under the theory that the affiliates did not expect the incident and it was primarily the network's fault.[11] I dissented in part to that case because I believed we needed to apply the same sanction to every station that aired the offending material. I raise similar concerns today, in the context of the Omnibus Order.

The Commission is constitutionally obligated to decide broadcast indecency and profanity cases based on the "contemporary community standard," which is "that of the average broadcast viewer or listener." The Commission has explained the "contemporary community standard," as follows:

> We rely on our collective experience and knowledge, developed through constant interaction with lawmakers, courts, broadcasters, public interest groups and ordinary citizens, to keep abreast of contemporary community standards for the broadcast medium.[12]

I am concerned that the Omnibus Order overreaches with its expansion of the scope of indecency and profanity law, without first doing what is necessary to determine the appropriate contemporary community standard.

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[8] *See, e.g., In re Sagittarius Broadcasting Corporation,* Memorandum Opinion and Order, 7 FCC Rcd 6873, 6876 (1992) (subsequent history omitted).

[9] *See Pacifica Found.*, 438 U.S. at 748-49 (recognizing the "uniquely pervasive presence" of broadcast media "in the lives of all Americans"). In today's Order, paragraph 10, the Commission relies upon the same rationale.

[10] *See Complaints Against Various Licensees Regarding Their Broadcast of the Fox Television Network Program "Married by America" on April 7, 2003,* Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 20191, 20196 (2004) (proposing a $7,000 forfeiture against each Fox Station and Fox Affiliate station); *reconsideration pending. See also Clear Channel Broadcast Licenses, Inc.,* 19 FCC Rcd 6773, 6779 (2004) (proposing a $495,000 fine based on a "per utterance" calculation, and directing an investigation into stations owned by other licensees that broadcast the indecent program). In the instant Omnibus Order, however, the Commission inexplicably fines only the licensee whose broadcast of indecent material was actually the subject of a viewer's complaint to the Commission. *Id.* at ¶ 71.

[11] *See Complaints Against Various Television Licensees Concerning Their February 1, 2004, Broadcast of the Super Bowl XXXVIII Halftime Show,* Notice of Apparent Liability, 19 FCC Rcd 19230 (2004).

[12] *In re Infinity Radio License, Inc.,* Memorandum Opinion and Order, 19 FCC Rcd 5022, 5026 (2004).

The Omnibus Order builds on one of the most difficult cases we have ever decided, *Golden Globe Awards*,[13] and stretches it beyond the limits of our precedents and constitutional authority. The precedent set in that case has been contested by numerous broadcasters, constitutional scholars and public interest groups who have asked us to revisit and clarify our reasoning and decision. Rather than reexamining that case, the majority uses the decision as a springboard to add new words to the pantheon of those deemed to be inherently sexual or excretory, and consequently indecent and profane, irrespective of their common meaning or of a fleeting and isolated use. By failing to address the many serious concerns raised in the reconsideration petitions filed in the *Golden Globe Awards* case, before prohibiting the use of additional words, the Commission falls short of meeting the constitutional standard and walking the tightrope of a restrained enforcement policy.

This approach endangers the very authority we so delicately retain to enforce broadcast decency rules. If the Commission in its zeal oversteps and finds our authority circumscribed by the courts, we may forever lose the ability to protect children from the airing of indecent material, barring an unlikely constitutional amendment setting limitations on the First Amendment freedoms.

The perilous course taken today is evident in the approach to the acclaimed Martin Scorsese documentary, "The Blues: Godfathers and Sons." It is clear from a common sense viewing of the program that coarse language is a part of the culture of the individuals being portrayed. To accurately reflect their viewpoint and emotions about blues music requires airing of certain material that, if prohibited, would undercut the ability of the filmmaker to convey the reality of the subject of the documentary. This contextual reasoning is consistent with our decisions in *Saving Private Ryan*[14] and *Schindler's List*.[15]

The Commission has repeatedly reaffirmed, and the courts have consistently underscored, the importance of content *and* context. The majority's decision today dangerously departs from those precedents. It is certain to strike fear in the hearts of news and documentary makers, and broadcasters that air them, which could chill the future expression of constitutionally protected speech.

We should be mindful of Justice Harlan's observation in *Cohen v. California*.[16] Writing for the Court, he observed:

> [W]ords are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive function which, practically speaking, may often be the more important element of the overall message sought to be communicated.[17]

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[13] *In re Complaints Against Broadcast Licensees Regarding Their Airing of the "Golden Globe Awards" Program*, Memorandum Opinion and Order, 19 FCC Rcd 4975 (2004); *petitions for stay and reconsideration pending.*

[14] *In the Matter of Complaints Against Various Television Licensees Regarding Their Broadcast on November 11, 2004, of the ABC Television Network's Presentation of the Film, "Saving Private Ryan,"* Memorandum Opinion and Order, 20 FCC Rcd 4507, 4513 (2005) ("Deleting all [indecent] language or inserting milder language or bleeping sounds into the film would have altered the nature of the artistic work and diminished the power, realism and immediacy of the film experience for viewers."). *See also Peter Branton*, Letter by Direction of the Commission, 6 FCC Rcd 610 (1991) (concluding that repeated use of the f-word in a recorded news interview program not indecent in context).

[15] *In the Matter of WPBN/WTOM License Subsidiary, Inc.*, 15 FCC Rcd 1838 (2000).

[16] 403 U.S. 15 (1971).

[17] *Id.* at 26 ("We cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process.").

Given all of these considerations, I find that the Omnibus Order, while reaching some appropriate conclusions both in identifying indecent material and in dismissing complaints, is in some ways dangerously off the mark. I cannot agree that it offers a coherent, principled long-term framework that is rooted in common sense. In fact, it may put at risk the very authority to protect children that it exercises so vigorously.

STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE

Re: *Re: Complaints Against Various Television Licensees Concerning Their February 1, 2004, Broadcast of the Super Bowl XXXVIII Halftime Show*, Forfeiture Order; *Complaints Against Various Television Licensees Concerning Their December 31, 2004 Broadcast of the Program "Without A Trace,"* Notice of Apparent Liability for Forfeiture; *Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, Notices of Apparent Liability and Memorandum Opinion and Order

Today marks my first opportunity as a member of the Federal Communications Commission to uphold our responsibility to enforce the federal statute prohibiting the airing of obscene, indecent or profane language.[1] To be clear – I take this responsibility very seriously. Not only is this the law, but it also is the right thing to do.

One of the bedrock principles of the Communications Act of 1934, as amended, is that the airwaves belong to the public. Much like public spaces and national landmarks, these are scarce and finite resources that must be preserved for the benefit of all Americans. If numbers are any indication, many Americans are not happy about the way that their airwaves are being utilized. The number of complaints filed with the FCC reached over one million in 2004. Indeed, since taking office in January 2006, I have received hundreds of personal e-mails from people all over this country who are unhappy with the content to which they – and, in particular, their families – are subjected.

I have applauded those cable and DBS providers for the tools they have provided to help parents and other concerned citizens filter out objectionable content. Parental controls incorporated into cable and DBS set-top boxes, along with the V-Chip, make it possible to block programming based upon its content rating. However, these tools, even when used properly, are not a complete solution. One of the main reasons for that is because much of the content broadcast, including live sporting events and commercials, are not rated under the two systems currently in use.

I also believe that consumers have an important role to play as well. Caregivers – parents, in particular – need to take an active role in monitoring the content to which children are exposed. Even the most diligent parent, however, cannot be expected to protect their children from indecent material broadcast during live sporting events or in commercials that appear during what is marketed to be "appropriate" programming.

Today, we are making significant strides toward addressing the backlog of indecency complaints before this agency. The rules are simple – you break them and we will enforce the law, just as we are doing today. Both the public and the broadcasters deserve prompt and timely resolution of complaints as they are filed, and I am glad to see us act to resolve these complaints. At the same time, however, I would like to raise a few concerns regarding the complaints we address in these decisions.

First, I would like to discuss the complaint regarding the 6:30 p.m. Eastern Daylight Time airing of an episode of *The Simpsons*. The *Order* concludes that this segment is not indecent, in part because of the fact that *The Simpsons* is a cartoon. Generally speaking, cartoons appeal to children, though some may cater to both children and adults simultaneously. Nevertheless, the fact remains that children were extremely likely to have been in the viewing audience when this scene was broadcast. Indeed, the marketing is aimed at children. If the scene had involved real actors in living color, at 5:30 p.m. Central Standard Time, I wonder if our decision would have been different? One might argue that the cartoon

[1] *See* 18 U.S.C. § 1464.

medium may be a more insidious means of exposing young people to such content. By their very nature, cartoons do not accurately portray reality, and in this instance the use of animation may well serve to present that material in a more flattering light than it would if it were depicted through live video. I stop short of disagreeing with our decision in this case, but note that the animated nature of the broadcast, in my opinion, may be cause for taking an even closer look in the context of our indecency analysis.

Second, our conclusion regarding the 9:00 p.m. Central Standard Time airing of an episode of *Medium* in which a woman is shot at point-blank range in the face by her husband gives me pause. While I agree with the result in this case, I question our conclusion that the sequence constitutes violence *per se* and therefore falls outside the scope of the Commission's definition of indecency. Without question, this scene is violent, graphically so. Moreover, it is presented in a way that appears clearly designed to maximize its shock value. And therein lies my concern. One of the primary ways that this scene shocks is that it leads the viewer to believe that the action is headed in one direction – through dialogue and actions which suggest that interaction of a sexual nature is about to occur – and then abruptly erupts in another – the brutally violent shooting of a wife by her husband, in the head, at point-blank range. Even though the Commission's authority under Section 1464 is limited to indecent, obscene, and profane content, and thus does not extend to violent matter, the use of violence as the "punch line" of titillating sexual innuendo should not insulate broadcast licensees from our authority. To the contrary, the use of sexual innuendo may, depending on the specific case, subject a licensee to potential forfeiture, regardless of the overall violent nature of the sequence in which such sexual innuendo is used.

* * *

Finally, I would like to express my hope and belief that the problem of indecent material is one that can be solved. Programmers, artists, writers, broadcasters, networks, advertisers, parents, public interest groups, and, yes, even Commissioners can protect two of our country's most valuable resources: the public airwaves and our children's minds. We must take a stand against programming that robs our children of their innocence and constitutes an unwarranted intrusion into our homes. By working together, we should promote the creation of programming that is not just entertaining, but also positive, educational, healthful, and, perhaps, even inspiring.