

IV. THE COMMISSION'S SCHEME FOR REGULATING TELEVISION INDECENCY VIOLATES THE FIRST AMENDMENT.

The Notice should be vacated because the expanded indecency policy on which it is based is unconstitutional, both as it is applied against the Affiliates in this case and on its face. The current indecency policy is, at its core, a makeshift, standardless attempt to improperly regulate protected speech in a manner that is inconsistent with the First Amendment, the Communications Act, and Supreme Court precedent.

The Communications Act of 1934 forbids the Commission to take any action that would “interfere with the right of free speech by means of radio communication.”⁸⁵ Notwithstanding this general prohibition, the Supreme Court in 1978 issued what the Court later called an “emphatically narrow”⁸⁶ decision in *FCC v. Pacifica Foundation*, permitting the Commission to regulate radio indecency.⁸⁷ The U.S. Court of Appeals for the D.C. Circuit later limited the scope of the Commission’s authority to regulate indecent content, emphasizing in a series of lawsuits brought by a coalition of broadcasters, industry associations, and public interest groups (referred to in decisions by reference to the first named plaintiff, the group Action for Children’s Television (“ACT”)) that the First Amendment does not permit the Commission to impose an outright ban on indecent speech.⁸⁸

Under the First Amendment, content-based regulation of speech such as the Commission’s indecency standard must satisfy the so-called strict scrutiny standard –

⁸⁵ 47 U.S.C. § 326.

⁸⁶ *Sable Communications of California v. FCC*, 492 U.S. 115, 126 (1989).

⁸⁷ 438 U.S. 726 (1978).

⁸⁸ *Action for Children’s Television v. FCC*, 932 F.2d 1504 (D.C. Cir. 1991) (“ACT II”).

that is, the governmental action must be the most narrowly tailored means available to the government to accomplish a compelling purpose.⁸⁹ The Commission has asserted that its purpose in regulating broadcast indecency is “supporting parental supervision of children and more generally [protecting] children’s well being.”⁹⁰ In the fourth ACT case, the D.C. Circuit found that the Commission’s indecency policy was not the most narrowly tailored means for accomplishing this goal, and required it to permit indecent broadcasts between the “safe harbor” hours of 10 p.m. and 6 a.m., when it was believed that most children would not be in the audience.⁹¹ But the principle enunciated in *ACT* remains

⁸⁹ *United States v. Playboy Entm’t Group, Inc.*, 529 U.S. 803, 813 (2000).

Competing media sources today – cable, satellite and Internet – are reshaping the notion of media choice, and the audience treats them virtually interchangeably. The day is long past when over-the-air broadcasting dominated viewing patterns and habits or could be described as the sole pervasive medium available to American television consumers. For those reasons, and because the widespread availability of blocking technologies eviscerates the notion that broadcasting is uniquely accessible to children, there is simply no justification for holding the Commission’s indecency regime to a different standard of review than would apply to any other established medium.

The Commission’s indecency policy would fail to survive even the less rigorous intermediate scrutiny standard, which requires a showing that the regulation furthers an important governmental objective unrelated to the suppression of speech, that the law is narrowly tailored, and that ample alternative means of communication remain. The FCC states that its goal is to “support[] parental supervision of children,” but its indecency policy is not generally targeted toward that goal. Instead, it is a narrowly focused regime intended to prevent indecent speech from being received by children. That goal is plainly “related to the suppression of speech.” Moreover, as we will show, the measure is not narrowly tailored because there are several less restrictive means by which the Commission could pursue its goal. Further, “channeling” speech to time slots when fewer viewers – whether children or adults – are in the audience is not an adequate alternative means of communication. This is particularly true in the time zones under consideration here, given that no part of Central or Mountain time zone prime time falls within the safe harbor.

⁹⁰ *Action for Children’s Television v. FCC*, 58 F.3d 654, 661 (D.C. Cir. 1995) (en banc) (“ACT IV”).

⁹¹ *Id.* At least five broadcast television stations that aired the Episode after 10 p.m., and within the FCC’s “safe harbor” hours for indecency regulation, were inadvertently included in the Notice. The proposed forfeitures were cancelled after the licensees

vital: The Commission may only regulate if it can demonstrate that its regulatory scheme is the most narrowly tailored way to achieve its goals.

Moreover, although the Supreme Court's 1978 decision in *Pacifica* permitted the Commission to regulate indecency in radio broadcasts, that case did not address indecency regulation in the television context; indeed, the *Pacifica* court acknowledged the relevance of differences between television and radio.⁹² Beginning with the already limited scope of regulation approved in *Pacifica*, the ACT cases in the D.C. Circuit significantly reduced the scope of the Commission's authority in this area. And the regime upheld in *Pacifica* has long since been eclipsed by technology and market developments. Even if that regime was permissible in 1978, it is no longer the most narrowly tailored way to protect children from being exposed to broadcast indecency in the television medium, and it is therefore invalid under the First Amendment.

A. The Commission's Television Indecency Policy Facially Violates The Principles Set Out in *Reno v. ACLU*.

As discussed above, the Commission's indecency policy is premised on a determination whether the material at issue is patently offensive, "as measured by contemporary community standards for the broadcast medium."⁹³ The Commission has defined this standard by stating:

informed the Commission of its error. *Complaints Against Various Television Licensees Concerning Their December 31, 2004 Broadcast of the Program "Without A Trace,"* Order, File No. EB-05-0035, DA 06-675 (rel. Mar. 28, 2006).

⁹² *Pacifica*, 438 U.S. at 750 (emphasis added) (acknowledging that the "content of program in which the language is used will also affect the composition of the audience, and differences between radio, television, and perhaps closed-circuit transmissions, may also be relevant" to the amount of permissible regulation).

⁹³ *Industry Guidance* at ¶ 8.

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.⁹⁴

The Commission's standard, then, is a national one that is not tied to a particular broadcaster's community of license and that is not based on any specific viewer or group of viewers.

The Supreme Court recently invalidated a strikingly similar set of "contemporary community standards" in *Reno v. ACLU*.⁹⁵ In that decision, the Supreme Court struck down the Communications Decency Act's ("CDA") national indecency standard, which Congress proposed to use to restrict indecent content on the Internet. The Supreme Court rejected the CDA and its "contemporary community standards" as unworkably vague and inconsistent with the First Amendment. The Court found that the content-based regulation of speech contained in the CDA was of particular concern when coupled with the vagueness of the standard by which it would be enforced because it created an "obvious chilling effect on free speech."⁹⁶ Moreover, the Court emphasized that the CDA was unconstitutional because:

In order to deny minors access to potentially harmful speech, the CDA effectively suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another. That burden on adult speech is unacceptable if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve.⁹⁷

⁹⁴ *WPBN/WTOM License Subsidiary, Inc. (WPBN-TV and WTOM-TV)*, 15 FCC Rcd. 1838, 1841 (2000).

⁹⁵ 521 U.S. 844 (1997).

⁹⁶ *Id.* at 871-72.

⁹⁷ *Id.* at 874.

The invalidated CDA “contemporary community standards” are nearly identical to the standards used by the Commission for indecency cases, and the Supreme Court’s rationale in *Reno* applies in toto to the Commission’s broadcast indecency policy. Just as the CDA violated the First Amendment by applying an unquantifiable national standard to an inherently local medium,⁹⁸ the Commission’s indecency standard is equally impermissible.

Hamling v. United States, on which the Commission relies in support of its national standard, is not to the contrary.⁹⁹ *Hamling* emphasizes that it is of paramount importance 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.”¹⁰⁰ In that case, the Court, quoting *Miller v. California*, emphasizes that a national standard would be both “hypothetical” and “unascertainable.”¹⁰¹

A comparison of the decisions issued by the Commission on March 15, 2006 demonstrates that the *Hamling* court was right to be cautious of an “unascertainable” national standard. There can be no principled, decisionally significant distinction between the sexuality displayed in *Alias*, which the Commission found non-indecent, and the content of *Without a Trace*, which earned the program the highest indecency fine in history. It is similarly impossible to distinguish between the content of

⁹⁸ See, e.g., *Amendment of Section 73.202(b)*, 17 FCC Rcd. 7222, 7224 (2002) (“[I]t is the licensee’s primary obligation to serve the needs and interests of the community to which it is licensed.”).

⁹⁹ 418 U.S. 87 (1974). See *Notice* at ¶ 4, n.8.

¹⁰⁰ *Id.* at 107.

¹⁰¹ *Id.* at 104 (quoting *Miller v. California*, 413 U.S. 15, 31 (1973)). To the extent that the Commission believes that *Hamling* is inconsistent with *Reno*, the much more recent *Reno* decision controls. See also Section IV(C), *infra*.

Without a Trace and that of the *Oprah Winfrey Show* found not to be indecent in the *Omnibus Order*. Both programs discussed teenage sexuality in order to raise awareness about the risks of parental inattentiveness. The former program was found to be indecent and, on the same day, the latter program was found not to be indecent – even though its description of particular teenage sex acts was dramatically more explicit than anything even implied in *Without a Trace*. Indeed, while the Commission lauded Oprah’s explicit discussion of teenage sex practices, the Commission used the Episode’s comparably serious treatment of teen sexuality as an aggravating factor in its cursory forfeiture analysis.

As the *Reno* Court warned, a vague standard “provoke[s] uncertainty among speakers” and prevents speakers from knowing what conduct is to be prohibited.¹⁰² The Court also emphasized that, in the context of content-based regulation of speech, “[t]he vagueness of such a regulation raises special First Amendment concerns because of the obvious chilling effect on free speech.”¹⁰³ Like the unprecedented forfeitures proposed in the Notice, the Supreme Court held that the severe penalties of the CDA raised serious constitutional problems because they “may well cause speakers to remain silent rather than communicate even arguably unlawful words, ideas, and images.”¹⁰⁴

The Supreme Court’s concern is manifestly applicable in the context of the Commission’s errant indecency policy, and there are many instances of chilling effect caused directly by the Commission’s failure to properly limit the scope of its

¹⁰² *Id.* at 871.

¹⁰³ *Id.* at 871-72.

¹⁰⁴ *Id.* at 872.

enforcement. For example, although the film *Saving Private Ryan* was aired for two years without incident – and the Enforcement Bureau had formally found airings of the film in both years not to be indecent¹⁰⁵ – the Commission’s subsequent release of indecency decisions that were unduly restrictive and potentially inconsistent with past cases caused many broadcasters to be justifiably wary of airing it again. When the network and the film’s producer decided not to edit coarse language from the film because it would destroy the artistic merit of the work, 66 affiliates declined to air the program rather than risk indecency fines.¹⁰⁶

Public broadcasters, too, have recently shown that the Commission’s indecency policy has imposed a serious chilling effect on the speech of that broadcasting community.¹⁰⁷ For instance, public broadcasters have had to consider whether to edit a *Frontline* documentary about the Al Qaeda terrorist network, which included a videotape of the second plane crashing into the World Trade Center and an expletive uttered by a horrified onlooker; an *Antiques Roadshow* segment involving a famous 50-year-old lithograph of a nude celebrity; and an episode of *NOVA* that contained dramatic footage from the Iraq war in which a soldier, enraged after watching a bomb exploding near a

¹⁰⁵ See Letter from Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, to Mr. and Mrs. John Schmeling, Jr., File No. EB-02-IH-0838 (Dec. 19, 2002); Letter from Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, to Tim Wildmon, Vice President, American Family Association, File No. EB-02-IH-0085 (Jun. 7, 2002).

¹⁰⁶ Suzanne Goldenberg, *Fearful TV fails Private Ryan: Spielberg film boycotted as Janet Jackson episode and the morality vote expose censorship threat*, *The Guardian* 20 (Nov. 12, 2004).

¹⁰⁷ *Comments of Public Broadcasters on Petitions for Recon.*, File No. EB-03-IH-0110 (filed May 4, 2004).

convoy, used the word “fuck” as an intensifier when informing his commander that a nearby Iraqi was lying.¹⁰⁸

In the month since the Notice was issued, broadcasters from across the country have acknowledged that the inconsistency of the Commission’s indecency policy makes it impossible to predict what speech might next be considered indecent. Rather than risk the debilitating forfeitures proposed in the Notice, many broadcasters will be forced to choose to remain silent on controversial issues of public concern.¹⁰⁹ Such a result is simply not consistent with the First Amendment or *Pacifica*.

1. The Commission Has Never Explained Its Standard for Television.

The root of the problem posed by the Commission’s indecency action is its ongoing failure to define “contemporary community standards for the broadcast medium.” Every one of its decisions includes a rote recitation of language that provides no information at all about how the Commission measures the relevant community’s standards. Indeed, it is unclear whether the Commission defines that community to

¹⁰⁸ *Id.* at 4-5.

¹⁰⁹ *See, e.g.*, Bill Carter, *WB, Worried About Drawing Federal Fines, Censors Itself*, New York Times E1 (Mar. 23, 2006). Of course, the chilling effect of the 2004 indecency decisions has been well-documented. *See, e.g.*, L. Smith, *Profanity Rules Bother News Shows*, Los Angeles Times, May 6, 2004, at C1 (describing local stations curtailing live coverage of Pat Tillman funeral because of language concerns); J. Davies, *Fine-Warn Broadcasters Toe a Shifting Line*, San Diego Union-Tribune, May 29, 2004, at A-1 (describing editing of “50-year-old lithograph of a nude celebrity” on *Antiques Roadshow*); S. Collins, *Pulled into a Very Wide Net: Unusual Suspects Have Joined the Censor’s Target List*, Los Angeles Times, March 28, 2004, at E26 (describing decision to obscure the glimpse of an 80-year-old patient’s breast in an operating room drama).

include all Americans, or to include only the twelve percent of Americans who do not receive their television programming via cable or satellite.¹¹⁰

Today, 88 percent of viewers of broadcast television pay monthly fees to receive that broadcast programming – and a substantial amount of other content – via cable or satellite on at least one receiver in their homes. The Commission has no evidence that, as they move seamlessly from broadcast to cable and satellite program services, viewers are adjusting their expectations about the acceptability of the content they will encounter, and there is no reason to posit that they regard these sources as anything other than interchangeable for most purposes. That being the case, the Commission cannot justify a definition of “community standards for the broadcast medium” that excludes any consideration of the very significant amount of time viewers spend watching cable and satellite-based content.

Nor is the Commission qualified to act as the surrogate for some actual community. It once claimed to rely on its “collective experience and knowledge, developed through constant interaction with lawmakers, courts, broadcasters, public interest groups, and ordinary citizens,”¹¹¹ but, as we have stated, the Commission’s most recent interaction with courts on indecency was over ten years ago, and no court has *ever* passed judgment on a television indecency enforcement action. Neither has the Commission explained how any casual interactions that it has had with legislators, broadcasters, or “ordinary citizens” could have informed it sufficiently to develop the

¹¹⁰ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Tenth Annual Report, 19 FCC Rcd. 1606, ¶ 7 (2004).

¹¹¹ *Infinity Radio License, Inc.*, 19 FCC Rcd. 5022, 5026 (2004).

compelling and thorough understanding of contemporary community standards that is required to channel First Amendment-protected speech.

The Commission has never attempted to measure the standards of that purported community. Indeed, the Commission has rebuffed suggestions that it consider quantitative measures of community standards in its indecency decisions,¹¹² and its members have instead relied on their own gut reactions in establishing the standards by which all broadcasters are judged. An enforcement regime that subjects broadcasters to the subjective standards of a putative community, but which prevents broadcasters from identifying that community or actually measuring its standards, is unsupportable.

Even if the Commission were qualified to judge community standards, it has not even said whether a particular number of indecency complaints would suggest that a particular program violated them or, if the violation is not measured by number of complaints, how the Commission might objectively measure what content would be acceptable in any community.¹¹³ As a result, the Commission has no ability to make decisions that accurately reflect the standards of any audience. More importantly, the baseless nature of the Commission's approach prevents any licensee from challenging the

¹¹² See, e.g., *Entercom Sacramento*, 19 FCC Rcd. 20,129, 20,135 ¶ 13 (2004) (rejecting ratings as a proxy for community acceptance); *Complaints Against Various Television Licensees Concerning Their February 1, 2004 Broadcast of the Super Bowl XXXVIII Halftime Show*, File No. EB-04-IH-0011, FCC 06-19, at ¶ 5 n.17 (Mar. 15, 2006) (rejecting “third-party public opinion polls” of members of the community as viable measures of community standards, and instead relying on the Commission’s own *ad hoc* views concerning such standards).

¹¹³ Defining “community standards” solely by the particular tastes of those who choose to engage in the filing of mass complaints, of course, raises its own constitutional issues. See *Reno*, 521 U.S. at 844 (statute “would confer broad powers of censorship, in the form of a ‘heckler’s veto,’ upon any opponent of indecent speech who might simply log on and inform the would-be discourses that his 17-year-old child . . . would be present.”).

Commission's indecency determinations on the basis that the content believed indecent by the Commission did not, in fact, violate the standards of that licensee's community.

To the extent that imperfect measures of the standards of the American people exist, however, they consistently indicate that the Commission's view of certain content as indecent is off the mark. For example, a recent survey conducted by TV Watch revealed that only twelve percent of the respondents believed that the government should regulate television indecency.¹¹⁴ Because the majority of the country – and, presumably, the majority of the individuals in the Commission's "contemporary community" – oppose broadcast indecency regulation altogether, the Commission can hardly claim that it is faithfully applying "contemporary community standards" in its indecency decisions.

2. The Commission Has Never Consistently Applied Its Indecency Standard.

Moreover, ever since the Commission articulated its intent to apply "contemporary community standards for the broadcast medium" in regulating indecency, its effort to implement those standards has produced only decades of inconsistent indecency decisions, compounded by a lack of consideration for technological developments in the television industry (including the establishment of a universal

¹¹⁴ TV Watch, "Survey: More Likely to Find an Adult Who Believes in Alien Abductions Than a Voter Who Wants the Feds to Pick What's on TV," Press Release (Mar. 31, 2006), available at <http://www.televisionwatch.org/site/apps/nl/content2.asp?c=dhLPK0PHLuF&b=1129333&ct=2133849>.

The Commission engages in indecency regulation without considering the standards of most Americans. The Commission's indecency decisions, for instance, appear to misapprehend the manner in which Americans use language that is considered indecent for purposes of broadcast television. *See, e.g.,* Jocelyn Noveck, "Poll: Americans See, Hear More Profanity," Associated Press, *reprinted in* Washington Post Online (Mar. 28, 2006), available at http://www.washingtonpost.com/wp-dyn/content/article/2006/03/28/AR2006032801046_pf.html.

industry ratings code, the broad availability of blocking technologies, and the fact that 88 percent of television viewers obtain their broadcast television through cable and satellite systems).

Indeed, the Commission was unable on March 15 to release a set of decisions that were consistent with *each other*, let alone with the body of indecency decisions that purportedly guide broadcasters. We have already discussed the inconsistency of the Commission's treatment of the *Oprah Winfrey Show*, *Alias*, and *Without a Trace*. Under the Commission's application of its baseless standard, the word "bullshit" (used as a synonym for "nonsense") is indecent because its use "invariably invokes a coarse excretory image,"¹¹⁵ whereas the term "pissed off" (meaning "annoyed") is a "coarse expression," but, "in the context presented, [is] not sufficiently vulgar, graphic, or explicit to support a finding of patent offensiveness."¹¹⁶ While the Commission finds "bullshit," used in a context wholly unrelated to excretory activity in an *NYPD Blue* episode to be indecent,¹¹⁷ it upholds more extensive profanity in the film *Saving Private Ryan* on the theory that, in that work, editing "would have altered the nature of the artistic work and diminished the power, realism and immediacy of the film experience for viewers."¹¹⁸ While finding *NYPD Blue* indecent, the Commission inexplicably found extended and graphic discussions of "salad tossing"¹¹⁹ and "rainbow

¹¹⁵ *Omnibus Notice* at ¶ 91 (emphasis added).

¹¹⁶ *Id.* at ¶ 197 (emphasis added).

¹¹⁷ *Id.* at ¶ 131.

¹¹⁸ *Saving Private Ryan*, 20 FCC Rcd. at 4513 ¶ 14.

¹¹⁹ "[O]ral anal sex."

parties”¹²⁰ as permissible under “contemporary community standards for the broadcast medium.”¹²¹

When the Supreme Court narrowly approved indecency regulation in *Pacifica*, Justice Brennan expressed his fear that the Commission might use that authority to subjectively penalize protected speech. The Court and the Constitution require a consistent, objective standard in order to prevent the Commission from doing precisely what it has done in March 15 decisions:¹²² penalizing speech of which it disapproves¹²³ while permitting similar speech that it favors.¹²⁴

The Commission has never offered any principled explanation of what its indecency standard actually means. The Commission agreed as a part of a settlement in the *United States v. Evergreen Media Corp.*¹²⁵ that, “[w]ithin nine months of the date of this Agreement, the Commission shall publish industry guidance relating to its caselaw interpreting 18 U.S.C. § 1464 and the Commission’s enforcement policies with respect to broadcast indecency.” Nearly seven years after that settlement, the Commission released

¹²⁰ “[A] gathering where oral sex is performed [and where] all of the girls put on lipstick and each one puts her mouth around the penis of the gentleman or gentlemen who are there to receive favors and makes a mark in a different place on the penis.”

¹²¹ *Omnibus Notice* at ¶ 178-79 (“Oprah”).

¹²² Similarly to its decision in this case, the Commission engaged in prohibited censorship in its “NYPD Blue” decision. There, the FCC found that the word “bullshit” should have been deleted from an episode of that drama because, “[w]hile we recognize that the expletives may have made some contribution to the authentic feel of the program, we believe that purpose could have been fulfilled and all viewpoints expressed without the broadcast of expletives.” *Omnibus Notice* at ¶ 134.

¹²³ *See generally Notice; Omnibus Notice* at ¶¶ 72-86 (“The Blues: Godfathers and Sons”).

¹²⁴ *See Omnibus Notice* at ¶¶ 173-179 (“Oprah”), 147-152 (“Alias”); *Saving Private Ryan*, 20 FCC Rcd. 4507, 4513 ¶ 14 (2005).

¹²⁵ Civ. No. 92-C-5600 (N.D. Ill, E. Div. 1994).

Industry Guidance, which simply summarized existing decisions, some of which the Commission soon disregarded. The Commission's continued inability to define the standards by which the broadcasting industry must make daily and, indeed, hourly programming decisions fatally undermines the constitutionality of the Commission's current indecency policy.

B. As Applied In The Notice, The Commission's Indecency Policy Is Unconstitutional.

The standardless nature of the Commission's indecency decisions inevitably have led it to the content-based decisionmaking of the Notice, which constitutes little more than a subjective *ipse dixit* overruling of the creative and editorial judgment of the producers of *Without a Trace* and the broadcasters that aired it. The Commission invaded constitutionally protected territory, and violated the non-censorship provision of the Communications Act,¹²⁶ when it based its decision to propose a forfeiture on its belief that “the depictions of sexual activity . . . go[] well beyond what the story line could reasonably be said to require.”¹²⁷ Indeed, the Commission acts completely outside of its authority when it offers any opinion about – let alone bases its decision on – its own private judgments about artistic value or necessity.¹²⁸

¹²⁶ 47 U.S.C. § 326 (forbidding the Commission to take any action that would “interfere with the right of free speech by means of radio communication”).

¹²⁷ Notice at ¶ 15.

¹²⁸ See, e.g., *Turner Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622, 650 (1994) (Although “the Commission may inquire of licensees what they have done to determine the needs of the community they propose to serve, the Commission may not impose upon them its private notions of what the public ought to hear.”); *Hubbard Broadcasting, Inc.*, 48 F.C.C.2d 517, 520 (1974) (The Commission “has no authority and, in fact, is barred by the First Amendment and [Section 326] from interfering with the free exercise of journalistic judgment.”).

Even if it were possible to discern from the patchwork of indecency decisions anything other than an arbitrary and subjective assertion of government power to decide what ideas may be broadcast and in what form, it is well-settled that the Commission is simply not empowered to make or review editorial decisions. As the Supreme Court has noted in the news context, “editing is what editors are for; and editing is selection and choice of material. That editors—newspaper or broadcast—can and do abuse this power is beyond doubt, but that is no reason to deny the discretion Congress provided. Calculated risks of abuse are taken in order to preserve higher values.”¹²⁹

The Commission apparently recognized in the Notice that its “contemporary community standards for the broadcast medium” are so imprecise that it could not follow its own precedent and enforce them against CBS affiliates whose viewers did not complain about the Episode. It therefore decided to change course and, despite the fact that virtually none of the *stations* received legitimate viewer objections to the Episode, made a limited retreat by proposing forfeitures against only those affiliates for which the *Commission* received a “complaint” – presumably an automatically generated email from the PTC web site. But the whole premise of our system of speech regulation is that the most effective and important content might be the kind that produces objections or to which an audience has immediate reactions. The presence of visceral, or even well-thought-out, objections to such speech cannot serve to create a basis for banning or channeling it.¹³⁰ That is particularly true in this context, where

¹²⁹ *Columbia Broadcasting Sys., Inc. v. Democratic National Cttee.*, 412 U.S. 94, 124-25 (1973).

¹³⁰ *Playboy*, 529 U.S. at 825 (“the perception that the regulation in question is not a major one because the speech is not very important” cannot insulate a restriction on speech from First Amendment scrutiny).

programs can be subjected to organized letter and email campaigns from individuals who may or may not have viewed the material in question or reside in a particular broadcast community. Without measurable and real standards to guide its indecency enforcement, the Commission cannot avoid creating an inconsistent body of precedent or impermissibly imposing their own subjective views about permissible speech on the American public.

By arbitrarily designating certain disfavored content as indecent and other preferred content as permissible, and by concocting a brief and conclusory “analysis” to support its desired conclusions, the Commission has implemented an enforcement policy that is so vague and standardless that it simply cannot be sustained under the First Amendment’s demanding requirements.

C. The Commission’s Indecency Policy Is Not The Least Restrictive Means To Protect Children From Speech of Which Their Parents Disapprove.

The burden on adult speech caused by the Commission’s arbitrary and overbroad indecency enforcement “is unacceptable if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve.”¹³¹ To use anything less than the most narrowly tailored method of imposing content-sensitive restrictions on speech “would be to restrict speech without an adequate justification, a course the First Amendment does not permit.”¹³²

¹³¹ *Reno*, 521 U.S. at 874.

¹³² *Id.*

Indeed, the Court’s “emphatically narrow” decision in *Pacifica*¹³³ was premised on two factual findings that no longer support the Commission’s regulation of broadcast indecency: “(1) the pervasiveness of broadcast media in the lives of Americans, and (2) the unique accessibility of broadcast programming to children.”¹³⁴ As the Court noted in *Reno*, the decision in *Pacifica* to uphold indecency regulation was based solely on “special justifications for regulation of the broadcast media,” such as the uniquely “invasive” nature of broadcast programming.¹³⁵ Although video programming is still a pervasive presence in American society, the same “conditions that prevailed when Congress first authorized regulation of the broadcast spectrum”¹³⁶ and that existed in 1978 are simply not applicable nearly thirty years later.

Today, new technological means exist for the government to protect children without requiring virtually all broadcast programming to match the maturity level of a child.¹³⁷ All entertainment programming on broadcast television today includes

¹³³ *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). *See Sable Communications of California v. FCC*, 492 U.S. 115, 126 (1989).

¹³⁴ *Pacifica*, 438 U.S. at 748-50.

¹³⁵ *Id.* at 868.

¹³⁶ *Id.* at 870.

¹³⁷ *See Butler v. Michigan*, 352 U.S. 380, 383-84 (1957) (finding it unconstitutional for a speech regulation that is not narrowly tailored to “reduce the adult population . . . to [viewing] only what is fit for children”). *See also Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 252 (2002); *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 814 (2000) (“[T]he objective of shielding children does not suffice to support a blanket ban if the protection can be accomplished by a less restrictive alternative.”); *Reno v. American Civil Liberties Union*, 521 U.S. 844, 875 (1997) (“[T]he governmental interest in protecting children from harmful materials . . . does not justify an unnecessarily broad suppression of speech addressed to adults.”); *Sable Communications of California, Inc. v. FCC*, 492 U.S. 115, 130-31 (1989) (striking down a ban on “dial-a-porn” messages that had “the invalid effect of limiting the content of adult telephone conversations to that which is suitable for children to hear”).

parental guidance ratings that identify the age group for which the program is most appropriate and describe whether any adult content is presented.¹³⁸ Parents who choose to restrict their children's viewing¹³⁹ can use the V-chips included in their television sets to restrict the programming that their children can watch based on this rating.¹⁴⁰ They can also use equipment such as a cable or satellite "lockbox,"¹⁴¹ or third-party equipment such as TiVo Inc.'s newly announced KidZone product, which has received support from the Parents Television Council and other groups,¹⁴² to limit the programming available to their children.¹⁴³

It is no answer to say that regulation is still required because people do not avail themselves of these tools in sufficient numbers. Failure to use the available controls

¹³⁸ TV Parental Guidelines Monitoring Board, "Understanding the TV Ratings," available at <http://www.tvguidelines.org/ratings.asp>.

¹³⁹ A recent report by the Progress and Freedom Foundation emphasized that most parents use a combination of tools to guide their children's television viewing. For instance, in addition to using the V-chip and other tools, almost all parents monitor or impose rules on their children's exposure to television and other media. Adam Thierer, "Parents Have Many Tools to Combat Objectionable Media Content," Progress & Freedom Found., 13.9 Progress on Point (Apr. 2006), available at <http://www.pff.org/issues-pubs/pops/pop13.9contenttools.pdf>.

¹⁴⁰ See Telecommunications Act of 1996, § 551, Pub. L. No. 104-104, 110 Stat. 56 (1996); 47 C.F.R. §§ 15.120, 73.682.

¹⁴¹ See 47 U.S.C. § 560 (requiring cable and satellite providers to offer "lockboxes" to subscribers).

¹⁴² TiVo Inc., "TiVo Announces New Enhancement to TiVo KidZone," Press Release (Mar. 14, 2006), available at <http://sev.prnewswire.com/computer-electronics/20060314/SFTU10114032006-1.html> (explaining that KidZone can be used to select specific programs available for children's viewing, or to restrict viewing to specific lists of programming, such as programming approved by PTC or shows meeting the Commission's standard for educational and informational programming).

¹⁴³ The Supreme Court has invalidated indecency regulations in other media based on the availability of other alternatives for shielding children from indecent speech. See, e.g., *Ashcroft v. ACLU*, 542 U.S. 656, 667 (2004); *Playboy*, 529 U.S. at 821, 823-27; *Denver Area Telecomms. Consortium, Inc. v. FCC*, 518 U.S. 727, 756-59 (1996).

reflects the reality that, for many, the content available to them and their children is not unacceptable – that is, that the content is consistent with the “contemporary community standards for the broadcast medium” that are supposedly the Commission’s decisional touchstone. Indeed, when the Supreme Court invalidated the Child Online Protection Act in *Ashcroft v. ACLU*,¹⁴⁴ it based its finding that the statute was not the least restrictive means of protecting children on the availability of filtering and blocking technologies in the marketplace. The Court in *Ashcroft* did not inquire about the extent to which parents actually chose to use such technologies. Similarly, the fact that parents do not overwhelmingly choose to block their children’s viewing of broadcast television does not mean that the Commission’s indecency policy remains the least restrictive means for protecting children.

The members of the Commission have frequently recognized the value and importance of these technological measures.¹⁴⁵ The Commission erred in not considering the V-chip rating for this program, which was disclosed to the Commission by CBS, or other less-restrictive means by which the Commission could have fulfilled its statutory goals, in assessing whether a forfeiture was appropriate here.

¹⁴⁴ 542 U.S. 656 (2004).

¹⁴⁵ Commissioner Tate, for instance, “applaud[ed] the industry [for] develop[ing] more tools for parents in developing parental controls.” In recent remarks, she emphasized that parents have tools available to them to “block and limit objectionable material,” but also acknowledged that “sometimes [parents] must turn the TV off.” Comm. Daily 5 (Apr. 12, 2006).

In recent remarks at the National Cable Show, Commissioner Adelstein advocated that the Commission adopt “the least-restrictive means of protecting our children from indecency.” John M. Higgins, “Kneuer: Much Work To Be Done in Analog to Digital,” *Broadcasting & Cable Online*, <http://www.broadcastingcable.com/article/CA6323801.html> (Apr. 10, 2006).

CONCLUSION

In its Notice proposing forfeitures against CBS-affiliated local television broadcasters for airing an allegedly indecent episode of the drama “Without a Trace,” as in other recent indecency decisions, the Commission departed from its constitutionally mandated commitment to exercise restraint in enforcing its indecency regulations. It has concocted a weak and specious analysis to find that the Episode in question is indecent, and it has not followed established precedent with regard to either the enforcement procedures it implements or the magnitude of the forfeiture it proposes.

The Commission has compounded these flaws by applying the arbitrary and baseless “contemporary community standards of the broadcast medium” test, a standard that has never been reliably and objectively defined and applied by the Commission. Without considering the context of the material it regulates, the Commission has used this standard to penalize programming with which it disagrees, while permitting the broadcast of similar programming that it favors.

In so doing, the Commission has departed from constitutionally permissible regulatory territory and has proposed a forfeiture against local broadcasters

for airing a socially responsible, important treatment of a significant public issue. That proposed forfeiture is unsupported by the record and by the Commission's own indecency standards. The Notice should therefore be vacated.

Respectfully submitted,

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May 5, 2006

ATTACHMENT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

_____)	
In the Matter of)	File No. EB-05-IH-0035
)	
Complaints Against Various Television Licensees)	
Concerning Their December 31, 2004 Broadcast)	
of the Program <i>Without a Trace</i>)	
_____)	

DECLARATION OF JOY BARKSDALE

1. My name is Joy Barksdale. I am a Paralegal Specialist at the law firm of Covington & Burling. I am over the age of eighteen and am competent to make this declaration.

2. In connection with the accompanying Opposition to the above-captioned Notice of Apparent Liability for Forfeiture, I surveyed each of the 93 television stations affiliated with the CBS Television Network that is a signatory to the Opposition (the "Affiliates") to determine whether any of the Affiliates has received written comments and suggestions from the public concerning the "Our Sons and Daughters" episode of the program *Without a Trace*.

3. Specifically, I requested that the Affiliates review all records of written comments and suggestions received from the public that are maintained by each station in the ordinary course of business to determine the number of such comments and suggestions each station received concerning the airing of this episode on both November 6, 2003 and December 31, 2004.

4. The table attached to this Declaration as Exhibit A-1 accurately reflects, to the best of my knowledge and belief, the Affiliates' responses to the survey that I conducted.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 5, 2006.

Joy Barksdale

EXHIBIT A-1

**WRITTEN COMMENTS AND SUGGESTIONS
RECEIVED FROM THE PUBLIC CONCERNING
THE "OUR SONS AND DAUGHTERS" EPISODE
OF *WITHOUT A TRACE***

Licensee	Station Call Signs and Communities of License	Number of Communications (November 6, 2003)	Number of Communications (December 31, 2004)
Alabama Broadcasting Partners	WAKA (TV) Selma, AL	0	0
Alaska Broadcasting Company, Inc.	KTVA (TV) Anchorage, AK	0	0
Arkansas Television Company	KTHV (TV) Little Rock, AR	0	1
Barrington Broadcasting Quincy Corporation	KHQA-TV Hannibal, MO	0	0
Barrington Broadcasting Missouri Corp.	KRCG (TV) Jefferson City, MO	0	0
Catamount Bestg of Fargo LLC	KXJB-TV Valley City, ND	0	0
Chelsey Broadcasting Company of Casper, LLC	KGWC-TV Casper, WY	0	0
ComCorp of Indiana License Corp.	WEVV (TV) Evansville, IN	0	0
Coronet Comm Co.	WHBF-TV Rock Island, IL	1	0
Des Moines Hearst-Argyle Television, Inc.	KCCI (TV) Des Moines, IA	0	0
Eagle Creek Broadcasting of Laredo, LLC	KVTV (TV) Laredo, TX	0	0
Eagle Creek Broadcasting of Corpus Christi, LLC	KZTV (TV) Corpus Christi, TX	0	0

Licensee	Station Call Signs and Communities of License	Number of Communications (November 6, 2003)	Number of Communications (December 31, 2004)
Emmis Television License LLC	KBIM-TV Roswell, NM	0	0
	KGMB (TV) Honolulu, HI	0	0
	KMTV (TV) Omaha, NE	0	0
	KREZ-TV Durango, CO	0	0
	KRQE (TV) Albuquerque, NM	0	0
Fisher Broadcasting Idaho TV, LLC	KBCI-TV, Boise, ID	0	1
Fisher Broadcasting-SE Idaho TV LLC	KIDK (TV) Idaho Falls, ID	0	0
Freedom Bestg of TX Licensee LLC	KFDM-TV Beaumont, TX	0	0
Glendive Bestg Corp.	KXGN-TV Glendive, MT	0	0
Gray Television Licensee, Inc.	KBTX-TV Bryan, TX	0	0
	KGIN (TV) Grand Island, NE	0	0
	KKTV (TV) Colorado Springs, CO	0	0
	KOLN (TV) Lincoln, NE	0	0
	KWTX-TV Waco, TX	0	0
	KXII (TV) Sherman, TX	0	0
	WIBW-TV Topeka, KS	0	0
	WIFR (TV) Freeport, IL	0	0
	WSAW-TV Wausau, WI	0	0
Griffin Entities, LLC	KWTV (TV) Oklahoma City, OK	0	3

Licensee	Station Call Signs and Communities of License	Number of Communications (November 6, 2003)	Number of Communications (December 31, 2004)
Griffin Licensing, L.L.C.	KOTV (TV) Tulsa, OK	2	1
Hoak Media of Colorado LLC	KREX-TV Grand Junction, CO	0	0
Hoak Media of Wichita Falls, L.P.	KAUZ-TV Wichita Falls, TX	0	0
ICA Broadcasting I, LTD	KOSA-TV Odessa, TX	0	1
KCTZ Communications, Inc.	KBZK (TV) Bozeman, MT	0	0
KENS-TV, Inc.	KENS-TV San Antonio, TX	0	0
Ketchikan TV, LLC	KTNL (TV) Sitka, AK	0	0
KGAN Licensee, LLC	KGAN (TV) Cedar Rapids, IA	1	0
KHOU-TV LP	KHOU-TV Houston, TX	0	5
KLFY, LP	KLFY-TV Lafayette, LA	0	0
KMOV-TV, Inc.	KMOV (TV) St. Louis, MO	0	0
KPAX Communications, Inc.	KPAX-TV Missoula, MT	0	0
KRTV Communications, Inc.	KRTV (TV) Great Falls, MT	0	0
KSLA License Subsidiary, LLC	KSLA-TV Shreveport, LA	0	0
KTVQ Communications, Inc.	KTVQ (TV) Billings, MT	1	0
KXLF Communications, Inc.	KXLF-TV Butte, MT	0	0

Licensee	Station Call Signs and Communities of License	Number of Communications (November 6, 2003)	Number of Communications (December 31, 2004)
Libco, Inc.	KGBT-TV Harlingen, TX	0	0
Malara Broadcast Group of Duluth Licensee, LLC ¹⁴⁶	KDLH (TV) Duluth, MN	0	0
MMT License, LLC ¹⁴⁷	KYTX (TV) Nacogdoches, TX	0	0
Media General Broadcasting of South Carolina Holdings, Inc.	KBSH-TV Hays, KS	0	0
	KIMT (TV) Mason City, IA	0	0
	WKRK-TV Mobile, AL	0	0
Media General Communications, Inc.	WHLT (TV) Hattiesburg, MS	0	0
	WIAT (TV) Birmingham, AL	0	0
	WJTV (TV) Jackson, MS	0	0
Meredith Corp.	KCTV (TV) Kansas City, MO	1	0
	KPHO-TV Phoenix, AZ	0	0
Mission Broadcasting, Inc.	KOLR (TV) Springfield, MO	0	0
Neuhoff Family Partnership	KMVT (TV) Twin Falls, ID	0	0
News Channel 5 Network, LP	WTVF (TV) Nashville, TN	1	2
New York Times Management Services	KFSM-TV Fort Smith, AK	0	0
	WHNT-TV Huntsville, AL	0	0
	WREG-TV Memphis, TN	0	0

¹⁴⁶ Malara Broadcast Group was not licensee of KDLH(TV) on either November 6, 2003 or December 31, 2004.

¹⁴⁷ MMT License was not licensee of KYTX(TV) on November 6, 2003.

Licensee	Station Call Signs and Communities of License	Number of Communications (November 6, 2003)	Number of Communications (December 31, 2004)
Nexstar Broadcasting, Inc.	KLBK-TV Lubbock, TX	0	0
	KLST (TV) San Angelo, TX	0	0
	KTAB-TV Abilene, TX	0	0
	WCIA (TV) Champaign, IL	0	1
	WMBD-TV Peoria, IL	0	0
Noe Corp. LLC	KNOE (TV) Monroe, LA	0	1
Panhandle Telecasting Company	KFDA-TV Amarillo, TX	0	0
Queen B Television, LLC	WKBT (TV) La Crosse, WI	0	0
Raycom America License Subsidiary, LLC	KFVS-TV Cape Girardeau, MO	1	0
	KOLD-TV Tucson, AZ	0	0
Reiten Television, Inc.	KXMA-TV Dickinson, ND	0	0
	KXMB-TV Bismarck, ND	0	0
	KXMC-TV Minot, ND	0	0
	KXMD-TV Williston, ND	0	0
Saga Broadcasting, LLC	WXVT (TV) Greenville, MS	0	0
Saga Quad States Communications, LLC	KOAM-TV Pittsburg, KS	0	0
Sagamore Hill Broadcasting of Wyoming/Northern Colorado, LLC	KGWN-TV Cheyenne, WY	0	0
	KSTF (TV) Gering, NE	0	0
Television Wisconsin, Inc.	WISC-TV Madison, WI	0	0

Licensee	Station Call Signs and Communities of License	Number of Communications (November 6, 2003)	Number of Communications (December 31, 2004)
United Communications Corp.	KEYC-TV Mankato, MN	0	0
WAFB License Subsidiary LLC	WAFB (TV) Baton Rouge, LA	0	0
Waitt Broadcasting, Inc.	KMEG (TV) Sioux City, IA	0	0
WCBI-TV, LLC	WCBI-TV Columbus, MS	0	0
WDJT-TV Limited Partnership	WDJT-TV Milwaukee, WI	0	0
WMDN, Inc.	WMDN (TV), Meridian, MS	0	0
WWL-TV, Inc.	WWL-TV New Orleans, LA	0	1
Young Broadcasting of Rapid City, Inc.	KCLO-TV Rapid City, SD	0	0
Young Broadcasting of Sioux Falls, Inc.	KELO-TV Sioux Falls, SD	0	0
	KPLO-TV Reliance, SD	0	0

ATTACHMENT B

NAL Account Numbers for Each Licensee Responding to the NAL in this Opposition

Licensee	NAL Account Number	Call Sign and Community of License
Alabama Broadcasting Partners	200632080014	WAKA (TV) Selma, AL
Alaska Broadcasting Company, Inc.	200632080015	KTVA (TV) Anchorage, AK
Arkansas Television Company	200632080016	KTHV (TV) Little Rock, AR
Barrington Broadcasting Quincy Corporation	200632080017	KHQA-TV Hannibal, MO
Barrington Broadcasting Missouri Corp.	200632080018	KRCG (TV) Jefferson City, MO
Catamount Bestg of Fargo LLC	200632080019	KXJB-TV Valley City, ND
Chelsey Broadcasting Company of Casper, LLC	200632080023	KGWC-TV Casper, WY
ComCorp of Indiana License Corp.	200632080024	WEVV (TV) Evansville, IN
Coronet Communications Company	200632080025	WHBF-TV Rock Island, IL
Des Moines Hearst-Argyle Television, Inc.	200632080026	KCCI (TV) Des Moines, IA
Eagle Creek Broadcasting of Laredo, LLC	200632080027	KVTV (TV) Laredo, TX
Eagle Creek Broadcasting of Corpus Christi, LLC	200632080028	KZTV (TV) Corpus Christi, TX
Emmis Television License LLC	200632080029	KBIM-TV Roswell, NM KGMB (TV) Honolulu, HI KMTV (TV) Omaha, NE KREZ-TV Durango, CO KRQE (TV) Albuquerque, NM
Fisher Broadcasting Idaho TV, LLC	200632080030	KBCI-TV, Boise, ID
Fisher Broadcasting-SE Idaho TV LLC	200632080090	KIDK (TV) Idaho Falls, ID
Freedom Bestg of TX Licensee LLC	200632080031	KFDM-TV Beaumont, TX
Glendive Bestg Corp.	200632080032	KXGN-TV Glendive, MT

Licensee	NAL Account Number	Call Sign and Community of License
Gray Television Licensee, Inc.	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
Griffin Entities, LLC,	200632080034	KWTV (TV) Oklahoma City, OK
Griffin Licensing, L.L.C.	200632080035	KOTV (TV) Tulsa, OK
Hoak Media of Colorado LLC	200632080036	KREX-TV Grand Junction, CO
Hoak Media of Wichita Falls, L.P.	200632080037	KAUZ-TV Wichita Falls, TX
ICA Broadcasting I, LTD	200632080038	KOSA-TV Odessa, TX
KCTZ Communications, Inc.	200632080040	KBZK (TV) Bozeman, MT
KENS-TV, Inc.	200632080042	KENS-TV San Antonio, TX
Ketchikan TV, LLC	200632080043	KTNL (TV) Sitka, AK
KGAN Licensee, LLC	200632080044	KGAN (TV) Cedar Rapids, IA
KHOU-TV LP	200632080045	KHOU-TV Houston, TX
KLFY, LP	200632080046	KLFY-TV Lafayette, LA
KMOV-TV, Inc.	200632080047	KMOV (TV) St. Louis, MO
KPAX Communications, Inc.	200632080048	KPAX-TV Missoula, MT
KRTV Communications, Inc.	200632080049	KRTV (TV) Great Falls, MT
KSLA License Subsidiary, LLC	200632080050	KSLA-TV Shreveport, LA
KTVQ Communications, Inc.	200632080051	KTVQ (TV) Billings, MT
KXLF Communications, Inc.	200632080053	KXLF-TV Butte, MT
Libco, Inc.	200632080054	KGBT-TV Harlingen, TX

Licensee	NAL Account Number	Call Sign and Community of License
Malara Broadcast Group of Duluth Licensee, LLC	200632080055	KDLH (TV) Duluth, MN
MMT License, LLC	200632080056	KYTX (TV) Nacogdoches, TX
Media General Broadcasting of South Carolina Holdings, Inc.	200632080057	KBSH-TV Hays, KS KIMT (TV) Mason City, IA WKRK-TV Mobile, AL
Media General Communications, Inc.	200632080058	WHLT (TV) Hattiesburg, MS WIAT (TV) Birmingham, AL WJTV (TV) Jackson, MS
Meredith Corp.	200632080059	KCTV (TV) Kansas City, MO KPHO-TV Phoenix, AZ
Mission Broadcasting, Inc.	200632080060	KOLR (TV) Springfield, MO
Neuhoff Family Partnership	200632080061	KMVT (TV) Twin Falls, ID
News Channel 5 Network, LP	200632080062	WTVF (TV) Nashville, TN
New York Times Management Services	200632080063	KFSM-TV Fort Smith, AK WHNT-TV Huntsville, AL WREG-TV Memphis, TN
Nexstar Broadcasting, Inc.	200632080064	KLBK-TV Lubbock, TX KLST (TV) San Angelo, TX KTAB-TV Abilene, TX WCIA (TV) Champaign, IL WMBD-TV Peoria, IL
Noe Corp. LLC	200632080065	KNOE (TV) Monroe, LA
Panhandle Telecasting Company	200632080066	KFDA-TV Amarillo, TX
Queen B Television, LLC	200632080069	WKBT (TV) La Crosse, WI
Raycom America License Subsidiary, LLC	200632080070	KFVS-TV Cape Girardeau, MO KOLD-TV Tucson, AZ

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Reiten Television, Inc.	200632080071	KXMA-TV Dickinson, ND KXMB-TV Bismarck, ND KXMC-TV Minot, ND KXMD-TV Williston, ND
Saga Broadcasting, LLC	200632080072	WXVT (TV) Greenville, MS
Saga Quad States Communications, LLC	200632080073	KOAM-TV Pittsburg, KS
Sagamore Hill Broadcasting of Wyoming/Northern Colorado, LLC	200632080074	KGWN-TV Cheyenne, WY KSTF (TV) Gering, NE
Television Wisconsin, Inc.	200632080075	WISC-TV Madison, WI
United Communications Corp.	200632080076	KEYC-TV Mankato, MN
WAFB License Subsidiary LLC	200632080077	WAFB (TV) Baton Rouge, LA
Waitt Broadcasting, Inc.	200632080078	KMEG (TV) Sioux City, IA
WCBI-TV, LLC	200632080079	WCBI-TV Columbus, MS
WDJT-TV Limited Partnership	200632080080	WDJT-TV Milwaukee, WI
WMDN, Inc.	200632080081	WMDN (TV) Meridian, MS
WWL-TV, Inc.	200632080083	WWL-TV New Orleans, LA
Young Broadcasting of Rapid City, Inc.	200632080084	KCLO-TV Rapid City, SD
Young Broadcasting of Sioux Falls, Inc.	200632080085	KELO-TV Sioux Falls, SD KPLO-TV Reliance, SD