

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

In the Matter of)
)
COMPLAINTS AGAINST VARIOUS) File No. EB-03-IH-0110
BROADCAST LICENSEES)
REGARDING THEIR AIRING OF)
THE "GOLDEN GLOBE AWARDS")
PROGRAM)
)

MEMORANDUM OPINION AND ORDER

Adopted: March 3, 2004

Released: March 18, 2004

By the Commission: Chairman Powell, Commissioners Abernathy and Adelstein issuing separate statements; Commissioners Copps and Martin approving in part, dissenting in part and issuing separate statements.

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, issued pursuant to section 1.115 of the Commission's rules,¹ we grant an Application for Review filed by the Parents Television Council ("PTC") on November 3, 2003. PTC seeks reversal of an October 3, 2003, *Memorandum Opinion and Order ("Bureau Order")*² issued by the Chief, Enforcement Bureau ("Bureau") that denied complaints alleging various licensees violated restrictions regarding the broadcast of obscene and indecent material by airing the "Golden Globe Awards" on January 19, 2003.³

2. We conclude that, based on the specific facts before us, the live broadcast of the "Golden Globe Awards" included material in violation of the applicable indecency and profanity prohibitions.

II. BACKGROUND

3. The Commission received numerous complaints from individuals associated with PTC alleging that the licensees named on the complaints broadcast the "Golden Globe Awards" program, during which the performer Bono uttered a phrase allegedly in violation of the FCC's

¹ 47 C.F.R. § 1.115.

² *Complaints Against Various Broadcast Licensees Regarding Their Airing of the "Golden Globe Awards,"* 18 FCC Rcd 19859 (EB rel. Oct. 3, 2003).

³ *See* 18 U.S.C. § 1464 (2002); 47 C.F.R. § 73.3999 (2002).

rules restricting the broadcast of indecent material.⁴ The Golden Globe Awards are sponsored by the Hollywood Foreign Press Association. Bono made the statement in response to winning the award for “Best Original Song.” The complainants maintained that such language was obscene and/or indecent, and requested that the Commission levy sanctions against the licensees for broadcasting the subject material. The Bureau, however, concluded that the material was not obscene or indecent, finding in particular with respect to indecency that the language used by Bono did not describe, in context, sexual or excretory organs or activities and that the utterance was fleeting and isolated.⁵ In its Application for Review, PTC maintains that the *Bureau Order* is legally incorrect, that it is “patently offensive” to use the “F-Word” in any shape, form or meaning on broadcast network television,” and requests that the Commission levy a forfeiture against each licensee that aired the “Golden Globe Awards” program.⁶ NBC opposes the Application for Review and argues that the *Bureau Order* is consistent with precedent.

III. DISCUSSION

A. Overview of Indecency Law

4. The Federal Communications Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the Commission’s rules and applicable statutory provisions concerning the operation of those stations. The Commission’s role in overseeing program content is very limited. The First Amendment to the United States Constitution and section 326 of the Communications Act of 1934, as amended (the “Act”), prohibit the Commission from censoring program material and from interfering with broadcasters’ freedom of expression.⁷ The Commission does, however, have the authority to enforce statutory and regulatory provisions restricting obscenity, indecency and profanity. Specifically, it is a violation of federal law to broadcast obscene, indecent or profane programming. Title 18 of the United States Code, Section 1464 prohibits the utterance of “any obscene, indecent or profane language by means of radio communication.”⁸ Consistent with a subsequent statute and court case,⁹ section 73.3999 of the Commission’s rules provides that radio and television stations shall not broadcast obscene

⁴ The hundreds of complaints varied in their characterization of Bono’s comments as either “this is really, really fucking brilliant,” or “this is fucking great,” and the Bureau’s analysis applied equally to both versions. On November 17, 2003, the National Broadcasting Company, Inc. (“NBC”) filed an Opposition to Application for Review. In that filing, NBC stated that Bono said the following: “This is really, really, fucking brilliant. Really, really great.” NBC Opposition at 3. We note that NBC filed its Opposition on behalf of its owned and operated affiliates that were the subject of the complaints. All references to “NBC” here are to those owned and operated affiliates, as Commission licensees.

⁵ *Bureau Order* at 3.

⁶ Application for Review at 3, 5. National Religious Broadcasters and Morality in Media filed Comments in Support of the Application for Review on December 2, 2003, and December 3, 2003, respectively. We are treating these filings as *amicus curiae* brief comments. There has also been a lot of public criticism of the Bureau’s decision, and thousands of individuals contacted the Commission in this regard.

⁷ U.S. CONST., amend. I; 47 U.S.C. § 326 (2002).

⁸ 18 U.S.C. § 1464.

⁹ Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (1992), *as modified by Action for Children’s Television v. FCC*, 58 F.3d 654 (D.C. Cir. 1995) (*en banc*), *cert. denied*, 516 U.S. 1043 (1996) (“*ACT III*”).

material at any time, and shall not broadcast indecent material during the period 6 a.m. through 10 p.m.¹⁰ The Commission may impose a monetary forfeiture, pursuant to Section 503(b)(1) of the Act,¹¹ upon a finding that a licensee has broadcast indecent material in violation of 18 U.S.C. § 1464 and section 73.3999 of the rules.

5. Any consideration of government action against allegedly indecent or profane programming must take into account the fact that such speech is protected under the First Amendment.¹² The federal courts consistently have upheld Congress's authority to regulate the broadcast of indecent speech, as well the Commission's interpretation and implementation of the governing statute.¹³ Nevertheless, the First Amendment is a critical constitutional limitation that demands that, in such determinations, we proceed cautiously and with appropriate restraint.¹⁴

6. The Commission defines indecent speech as language 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.¹⁵

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.¹⁶

7. In making indecency determinations, the Commission has indicated that the “*full*

¹⁰ See 47 C.F.R. § 73.3999. Only some of the stations at issue here broadcast the offending language contained in the program before 10:00 p.m.

¹¹ See 47 U.S.C. § 503(b)(1). See also 47 U.S.C. § 312(a)(6) (authorizing license revocation for indecency violations).

¹² U.S. CONST., amend. I; See *Action for Children's Television v. FCC*, 852 F.2d 1332, 1344 (D.C. Cir. 1988) (“*ACT I*”).

¹³ *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). See also *ACT I*, 852 F.2d at 1339; *Action for Children's Television v. FCC*, 932 F.2d 1504, 1508 (D.C. Cir. 1991), *cert. denied*, 503 U.S. 914 (1992) (“*ACT II*”); *ACT III*.

¹⁴ *ACT I*, 852 F.2d at 1344 (“Broadcast 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.”); *id.* at 1340 n.14 (“the potentially chilling effect of the FCC's generic definition of indecency will be tempered by the Commission's restrained enforcement policy.”).

¹⁵ *Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705 (1987) (subsequent history omitted) (citing *Pacifica Foundation*, 56 FCC 2d 94, 98 (1975), *aff'd sub nom. FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)).

¹⁶ *Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency* (“*Indecency Policy Statement*”), 16 FCC Rcd 7999, 8002 (2001) (emphasis in original).

context in which the material appeared is critically important,”¹⁷ and has articulated three “principal factors” for its analysis: “(1) the *explicitness or graphic nature* of the description or depiction of sexual or excretory organs or activities; (2) whether the material *dwells on or repeats at length* descriptions of sexual or excretory organs or activities; (3) *whether the material appears to pander or is used to titillate, or whether the material appears to have been presented for its shock value.*”¹⁸ In examining these three factors, we must weigh and balance them 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.”¹⁹ In particular cases, one or two of the factors may outweigh the others, either rendering the broadcast material patently offensive and consequently indecent,²⁰ or, alternatively, removing the broadcast material from the realm of indecency.²¹

B. Analysis

8. With respect to the first step of the indecency analysis,²² we disagree with the Bureau and conclude that use of the phrase at issue is within the scope of our indecency definition because it does depict or describe sexual activities. We recognize NBC’s argument that the “F-Word” here was used “as an intensifier.”²³ Nevertheless, we believe that, given the core meaning of the “F-Word,” any use of that word or a variation, in any context, inherently has a sexual connotation, and therefore falls within the first prong of our indecency definition. This conclusion is consistent with the Commission’s original *Pacifica* decision, affirmed by the Supreme Court, in which the Commission held that the “F-Word” does depict or describe sexual activities.²⁴

¹⁷ *Id.* (emphasis in original). In *Pacifica*, the Court “emphasize[d] the narrowness of [its] holding and noted that under the Commission rationale that it upheld, “context is all-important.” 438 U.S. at 750.

¹⁸ *Indecency Policy Statement*, 16 FCC Rcd at 8003 (emphasis in original).

¹⁹ *Id.*

²⁰ *Id.* at 8009 (citing *Tempe Radio, Inc (KUPD-FM)*, 12 FCC Rcd 21828 (MMB 1997) (forfeiture paid) (extremely graphic or explicit nature of references to sex with children outweighed the fleeting nature of the references); *EZ New Orleans, Inc. (WEZB(FM))*, 12 FCC Rcd 4147 (MMB 1997) (forfeiture paid) (same).

²¹ *Indecency Policy Statement* 16 FCC Rcd at 8010, ¶ 20 (“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”).

²² PTC does not allege in the Application for Review that the language was obscene. In any case, we agree with the Bureau’s conclusion that the language was not obscene since it did not meet the three-prong test set forth in *Miller v. California*. *Miller v. California*, 413 U.S. 15, 24 (1973) (holding that, to be obscene, the material must meet the following three-prong test: (1) the average person, applying contemporary community standards, must find that the material, as a whole, appeals to the prurient interest; (2) the material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law; and (3) the material, taken as a whole, must lack serious literary, artistic, political or scientific value).

²³ NBC Opposition at 5-6, citing American Heritage Dictionary (2d College Ed.) at 537 (1991) (definition of “fucking” as including “really” or “very”).

²⁴ *Citizen’s Complaint Against Pacifica Foundation Station WBAI(FM), New York, New York*, 56 FCC 2d 94, 99 (1975), *recon. granted in part*, 59 FCC 2d 892 (1976), *aff’d sub nom. FCC v. Pacifica Foundation*, 438 U.S. 726 (1978).

9. We now turn to the second step of the analysis – whether the broadcast of the phrase at issue here is patently offensive under contemporary community standards for the broadcast medium and therefore indecent. We conclude that the answer to this question is yes. The “F-Word” is one of the most vulgar, graphic and explicit descriptions of sexual activity in the English language. Its use invariably invokes a coarse sexual image. The use of the “F-Word” here, on a nationally telecast awards ceremony, was shocking and gratuitous. In this regard, NBC does not claim that there was any political, scientific or other independent value of use of the word here, or any other factors to mitigate its offensiveness.²⁵ If the Commission were routinely not to take action against isolated and gratuitous uses of such language on broadcasts when children were expected to be in the audience, this would likely lead to more widespread use of the offensive language.²⁶ Neither Congress nor the courts have ever indicated that broadcasters should be given free rein to air any vulgar language, including isolated and gratuitous instances of vulgar language.²⁷ The fact that the use of this word may have been unintentional is irrelevant; it still has the same effect of exposing children to indecent language. Our action today furthers our responsibility to safeguard the well-being of the nation’s children from the most objectionable, most offensive language.

10. We also note that in this case NBC and other licensees were on notice that an award presenter or recipient might use offensive language during the live broadcast, and it could have taken appropriate steps to ensure that it did not broadcast such language. In this regard, this is not the first case where such language has been used by an award recipient in a live program. For example, we note that, during the broadcast of the 2002 Billboard Awards Ceremony, Cher, in receiving an award, reportedly used the “F-Word.”²⁸ Indeed, Bono himself reportedly used the “F-Word” on the 1994 Grammy Awards broadcast.²⁹

²⁵ Compare *Peter Branton*, 6 FCC Rcd 610 (1991) (subsequent history omitted) (under specific circumstances at issue, “repetitious” use of the “F-Word” in a recording of a wiretap of an organized crime figure broadcast on a newscast not indecent because, *inter alia*, use of the word was not gratuitous but rather “was an integral part of a *bona fide* news story”). This is not to suggest that the fact that a broadcast had a social or political value would necessarily render use of the “F-Word” permissible. See *Action for Children’s Television*, 852 F.2d at 1340. (“Some material that has significant social value may contain language and descriptions as offensive, from the perspective of parental control over children’s exposure, as material lacking such value”). See also *id.* at n.13 (“The Carlin monologue itself may be an example of indecent material possessing significant social value Other examples that come readily to mind include certain passages in the works of Joyce, words and phrases found in the writings of D.H. Lawrence, James Baldwin”). With respect to political speech, we note the no-censorship provision of 47 U.S.C. § 315(a) regarding “uses” of broadcast stations by candidates for public office.

²⁶ See, e.g., “Watch Your Mouth!: An Analysis of Profanity Uttered by Children on Prime Time Television,” Barbara K. Kaye, Ph.D., University of Tennessee – Knoxville, and Barry S. Sapolsky, Ph.D., Florida State University (2003) (noting frequency of use of offensive language on prime time programming rated acceptable for viewing by children and teenagers, and the use of profane language by children and young adults).

²⁷ That the statute applies to whoever “utters” any obscene, indecent, or profane language, without reference to repeated or sustained utterances, seems to imply that a single, isolated use is sufficient.

²⁸ See note 32, *infra*. See also www.eonline.com/News/Items/0,1,10954,00.html (reporting on Cher’s comments). The fact that, in advance of the program, NBC simply “warned all participants that proper decorum was expected,” NBC Opposition at 2, is insufficient to absolve itself of liability.

²⁹ See <http://zooeuropa.com/quotes/bono.html>.

11. We note also that technological advances have made it possible as a general matter to prevent the broadcast of a single offending word or action without blocking or disproportionately disrupting the message of the speaker or performer. NBC and other licensees could have easily avoided the indecency violation here by delaying the broadcast for a period of time sufficient for them to effectively bleep the offending word. Indeed, we encourage networks and broadcasters to undertake such technological measures. The ease with which broadcasters today can block even fleeting words in a live broadcast is an element in our decision to act upon a single and gratuitous use of a vulgar expletive.³⁰

12. While prior Commission and staff action have indicated that isolated or fleeting broadcasts of the “F-Word” such as that here are not indecent or would not be acted upon, consistent with our decision today we conclude that any such interpretation is no longer good law. In *Pacifica Foundation, Inc.*, 2 FCC Rcd 2698, 2699 (1987) (subsequent history omitted), for example, the Commission stated as follows: “If a complaint focuses solely on the use of expletives, we believe that . . . deliberate and repetitive use in a patently offensive manner is a requisite to a finding of indecency.”³¹ The staff has since found that the isolated or fleeting use of the “F-Word” is not indecent in situations arguably similar to that here.³² We now depart from this portion of the Commission’s 1987 *Pacifica* decision as well as all of the cases cited in notes 31 and 32 and any similar cases holding that isolated or fleeting use of the “F-Word” or a variant thereof in situations such as this is not indecent and conclude that such cases are not good law to that extent. We now clarify, as we have made clear with respect to complaints going beyond the use of expletives,³³ that the mere fact that specific words or phrases are not sustained or repeated does not mandate a finding that material that is otherwise patently offensive to the broadcast medium is not indecent.

³⁰ We do not envision that today’s action will lead to licensees abandoning program material solely over uncertainty surrounding whether the isolated use of a particular word is indecent.

³¹ In this 1987 *Pacifica* decision, along with two other cases decided the same day, the Commission broadened its approach to indecency beyond the so-called “Seven Dirty Words” approach but maintained its policy that isolated use of expletives was not indecent. *See also Infinity Broadcasting Corporation of Pennsylvania, Inc.*, 2 FCC Rcd 2705 (1987) (subsequent history omitted); *The Regents of the University of California*, 2 FCC Rcd 2703 (1987) (subsequent history omitted) (“Speech that is indecent must involve more than the isolated use of an offensive word.”).

³² *See Lincoln Deller, Renewal of License for Stations KPRL(AM) and KDDB(FM)*, 8 FCC Rcd 2582, 2585 (MMB 1993) (news announcer’s statement “Ooops, fucked that one up” found not to be indecent); *L.M. Communications of South Carolina, Inc.*, 7 FCC Rcd 1595 (MMB 1992) (“The hell I did, I drove motherfucker. oh. Oh.” found not to be indecent. These two cases were cited in the *Indecency Policy Statement* as “cases where material was found not indecent because it was fleeting and isolated.” 16 FCC Rcd at 8008. Unpublished staff decisions have also held that the fleeting or isolated use of the “F-Word” or a variation thereof is not indecent in situations such as that presented here. Recent examples include the following: *E-mail from Charles W. Kelley*, EB-02-IH-0861-MT (Dec. 18, 2002) (broadcast of Cher saying “fuck ‘em” in receiving award on Billboard awards show not indecent); *Letter from Charles W. Kelley*, EB-01-IH-0639/DJB (Nov. 14, 2001) (broadcast of baseball player’s use of “motherfucker” during a playoff game not indecent); *Letter from Charles W. Kelley*, EB-01-IH-0046/RBP (May 4, 2001) (broadcast of a football player’s use of “motherfucker” during the introduction ceremonies of the Super Bowl not indecent).

³³ *See Pacifica*, 2 FCC Rcd at 2699.

13. We also find, as an independent ground, that the use of the phrase at issue here in the context and at the time of day here constitutes “profane” language under 18 U.S.C. § 1464. The term “profanity” is commonly defined as “vulgar, irreverent, or coarse language.”³⁴ The Seventh Circuit, in its most recent decision defining “profane” under section 1464, stated that the term is “construable as denoting certain of those personally reviling epithets naturally tending to provoke violent resentment or denoting language so grossly offensive to members of the public who actually hear it as to amount to a nuisance.”³⁵ We find that the broadcast of the phrase at issue here in the context and at the time of day qualifies as “profane” under the Seventh Circuit nuisance rationale.³⁶ Use of the “F-Word” in the context at issue here is also clearly the kind of vulgar and coarse language that is commonly understood to fall within the definition of “profanity.”

14. We recognize that the Commission’s limited case law on profane speech has focused on what is profane in the context of blasphemy,³⁷ but nothing in those cases suggests either that the statutory definition of profane is limited to blasphemy, or that the Commission could not also apply the definition articulated by the Seventh Circuit.³⁸ Broadcasters are on notice that the Commission in the future will not limit its definition of profane speech to only those words and phrases that contain an element of blasphemy or divine imprecation, but, depending on the context, will also consider under the definition of “profanity” the “F-Word” and those words (or variants thereof) that are as highly offensive as the “F-Word,” to the extent such language is broadcast between 6 a.m. and 10 p.m.³⁹ We will analyze other potentially profane words or phrases on a case-by-case basis.

15. But for the fact that existing precedent would have permitted this broadcast, it would be appropriate to initiate a forfeiture proceeding against NBC and other licensees that broadcast the program prior to 10 p.m. Given, however, that Commission and staff precedent prior

³⁴ Black’s Law Dictionary 1210 (6th ed. 1990) (citing 18 U.S.C. § 1464). *See also* American Heritage College Dictionary 1112 (4th ed. 2002) (definition of profane includes “[v]ulgar, coarse.”)

³⁵ *Tallman v. United States*, 465 F.2d 282, 286 (7th Cir. 1972). In *United States v Simpson*, 561 F.2d 53 (7th Cir. 1977), the court called into question the nuisance rationale for the regulation of offensive speech set forth in *Tallman*, suggesting that it might not survive cases such as *Cohen v California*, 403 U.S. 15 (1971). *Id.* at 58 & n.7. But the Supreme Court’s *Pacifica* decision subsequently upheld an indecency finding that “rested entirely on a nuisance rationale.” 438 U.S. at 750. *See also* 12 Am. Jur. 2d Blasphemy and Profanity 9 (citing *Tallman* standard in connection with section 1464).

³⁶ Nuisance has been defined as including “a condition of things which is prejudicial to the . . . sense of decency or morals of the citizens at large” Ballentine’s Law Dictionary (3d ed. 1969).

³⁷ *See, e.g., Raycom, Inc.*, 18 FCC Rcd 4186 (2003) (referring to God as a “sonofabitch” not profane under section 1464) (citing *Gagliardo v. United States*, 366 F.2d 720, 725 (9th Cir. 1966) (“God damn it” not profane under section 1464) and *Warren B. Appleton*, 28 FCC 2d 36 (B’cast Bur. 1971) (“damn” not profane under section 1464) (also citing *Gagliardo*). *See also* *Duncan v. United States*, 48 F.2d 128, 134 (9th Cir. 1931) (conviction under section 1464 for using profane language upheld where “the defendant . . . referred to an individual as ‘damned,’ . . . used the expression ‘By God’ irreverently, and . . . announced his intention to call down the curse of God upon certain individuals”).

³⁸ In this regard, the Supreme Court noted in *Pacifica* that “[t]he words ‘obscene, indecent, or profane’ are written in the disjunctive, implying that each has a separate meaning.” 438 U.S. at 739-40.

³⁹ *See Pacifica*, 438 U.S. at 749-750.

to our decision today permitted the broadcast at issue, and that we take a new approach to profanity, NBC and its affiliates necessarily did not have the requisite notice to justify a penalty.⁴⁰

16. Finally, our decision is not inconsistent with the Supreme Court ruling in *Pacifica*. The Court explicitly left open the issue of whether an occasional expletive could be considered indecent.⁴¹ Just as the Court held that *Pacifica*'s broadcast of the George Carlin routine "could have enlarged a child's vocabulary in an instant," we believe that even isolated broadcasts of the "F-Word" in situations such as that here could do so as well, in a manner that many, if not most, parents would find highly detrimental and objectionable. Thus, finding broadcast of this word indecent and profane here is consistent with the "well-being of [the country's] youth" and "supporting parents' claims to authority in their own household," which the Court used as a basis for its decision in *Pacifica*, in combination with the "ease with which children may obtain access to broadcast material"⁴²

IV. CONCLUSION

17. We conclude, therefore, that NBC and other licensees that broadcast Bono's use of the "F-Word" during the live broadcast of the Golden Globe Awards violated 18 U.S.C. § 1464.⁴³ By our action today, broadcasters are on clear notice that, in the future, they will be subject to potential enforcement action for any broadcast of the "F-Word" or a variation thereof in situations such as that here. We also take this opportunity to reiterate our recent admonition (which took place after the behavior at issue here) that serious multiple violations of our indecency rule by broadcasters may well lead to the commencement of license revocation proceedings, and that we may issue forfeitures for each indecent utterance in a particular broadcast.⁴⁴ We note that one way broadcasters can easily ensure that they are not subject to enforcement action under our decision today is to adopt and successfully implement a delay/bleeping system for live broadcasts.

⁴⁰ See *Trinity Broadcasting of Florida, Inc. v. FCC*, 211 F.3d 618 (D.C. Cir. 2000) (court reversed Commission decision that denied a renewal application for abuse of process in connection with the Commission's minority ownership rules because the court found the Commission had not provided sufficiently clear notice of what those rules required). In addition, given that existing precedent would have permitted this broadcast, we will not require any of the stations that broadcast the program to report our finding here to us as part of its renewal application and we will not consider the broadcast of this program adversely to such licensees as part of the renewal process.

⁴¹ 438 U.S. at 750. See also *id.* at 760-61 (Powell, J. concurring) ("the Commission's holding, and certainly the Court's holding today, does not speak to cases involving the isolated use of a potentially offensive word in the course of a radio broadcast").

⁴² *Id.* at 749-50.

⁴³ To the extent discussed above, we depart from the following seven published decisions: *Raycom, Inc.*, 18 FCC Rcd 4186 (2003); *Infinity Broadcasting Corp. of Pennsylvania, Inc.*, 2 FCC Rcd 2703 (1987) (subsequent history omitted); *The Regents of the University of California*, 2 FCC Rcd 2703 (1987) (subsequent history omitted); *Pacifica Foundation, Inc.*, 2 FCC Rcd 2698 (1987) (subsequent history); *Lincoln Dellar, Renewal of License for Stations KPRL(AM) and KDDDB(FM)*, 8 FCC Rcd 2582 (MMB 1993); *L.M. Communications of South Carolina, Inc.*, 7 FCC Rcd 1595 (MMB 1992); *Warren B. Appelton*, 28 FCC 2d 36 (B'cast Bur. 1971).

⁴⁴ See *Infinity Broadcasting Operations, Inc. (WKRK-FM)*, Forfeiture Order, 18 FCC Rcd 6915, 6919, ¶ 13 (2003); see also *AMFM Radio Licenses LLC (WWDC-FM)*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19917, ¶ 16 (2003) (forfeiture paid).

V. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED, pursuant to section 1.115 of the Commission's rules,⁴⁵ that the Application for Review filed on November 6, 2003, by the Parents Television Council is hereby GRANTED to the extent set forth herein.

19. IT IS FURTHER ORDERED, that a copy of this *Memorandum Opinion and Order* shall be sent by Certified Mail Return Receipt Requested to The Parents Television Council, 707 Wilshire Boulevard, Los Angeles, California 90017, and to NBC and its affiliates that are the subject of this complaint. *See Appendix.*⁴⁶

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴⁵ 47 C.F.R. § 1.115.

⁴⁶ It appears that many of the stations are not proper subjects of the complaint because they aired the program on a delayed basis after NBC had deleted the offending material. Nevertheless, in light of our decision not to initiate an enforcement proceeding and not to use our decision adversely against stations during the renewal process, we will not initiate an investigation here solely to determine which complaints could have been dismissed on this basis. *See NBC Opposition* at 8 n. 24.

APPENDIX

CALL SIGN	COMMUNITY OF LICENSE	LICENSEE
KALB-TV	Alexandria, LA	Media General Communications, Inc.
KARE(TV)	Minneapolis, MN	Multimedia Holdings Corp.
KARK-TV	Little Rock, AR	KARK-TV, Inc.
KATV(TV)	Little Rock, AR	KATV, LLC
KBTV-TV	Port Arthur, TX	Nexstar Broadcast of Beaumont/Port Arthur, L.L.C.
KCBD(TV)	Lubbock, TX	LIBCO, Inc.
KCEN-TV	Temple, TX	Channel 6, Inc.
KCNC-TV	Denver, CO	CBS Television Stations Inc.
KCRA-TV	Sacramento, CA	KCRA Hearst-Argyle Television, Inc.
KETK-TV	Jacksonville, TX	KETK Licensee L.P.
KFDM-TV	Beaumont, TX	Freedom Broadcasting of Texas, Inc.
KFOR-TV	Oklahoma City, OK	New York Times Management Services
KGW(TV)	Portland, OR	King Broadcasting Company
KHAS-TV	Hastings, NE	Greater Nebraska Television, Inc.
KING-TV	Seattle, WA	King Broadcasting Company
KKCO(TV)	Grand Junction, CO	Eagle III Broadcasting, LLC
KNBC(TV)	Los Angeles, CA	NBC Subsidiary (KNBC-TV), Inc.
KNSD(TV)	San Diego, CA	Station Venture Operations, LP
KOAA-TV	Pueblo, CO	Sangre De Cristo Communications, Inc.
KOB-TV	Albuquerque, NM	KOB-TV, LLC
KPNX(TV)	Mesa, AZ	Multimedia Holdings Corporation
KPRC-TV	Houston, TX	Post-Newsweek Stations, Houston, LP
KRBC-TV	Abilene, TX	Mission Broadcasting, Inc.
KRIS-TV	Corpus Christi, TX	KVOA Communications, Inc.
KTGF(TV)	Great Falls, MT	MMM License LLC
KSBW(TV)	Salinas, CA	Hearst-Argyle

		Stations, Inc.
KSDK(TV)	St. Louis, MO	Multimedia KSDK, Inc.
KSHB-TV	Kansas City, MO	Scripps Howard Broadcasting Company
KSNF(TV)	Joplin, MO	Nexstar Broadcasting of Joplin, L.L.C.
KTEN(TV)	Ada, OK	Channel 49 Acquisition Corp.
KTIV(TV)	Sioux City, IA	KTIV Television, Inc.
KUSA-TV	Denver, CO	Multimedia Holdings Corp.
KWES-TV	Odessa, TX	Midessa Television Company
KWWL(TV)	Waterloo, IA	Raycom America, Inc.
KXAS-TV	Fort Worth, TX	Station Venture Operations, LP
KYTV(TV)	Springfield, MO	KY3, Inc.
WANE-TV	Fort Wayne, IN	Indiana Broadcasting, LLC
WAVE(TV)	Louisville, KY	LIBCO, Inc.
WBBH-TV	Fort Myers, FL	Waterman Broadcasting Corp. of Florida
WBOY-TV	Clarksburg, WV	West Virginia Media Holdings, LLC
WBRE-TV	Wilkes-Barre, PA	Nexstar Broadcasting of Northeastern Pennsylvania, L.L.C.
WCAU(TV)	Philadelphia, PA	NBC Subsidiary (WCAU-TV), L.P.
WCNC-TV	Charlotte, NC	WCNC-TV, Inc.
WCSH(TV)	Portland, ME	Pacific and Southern Company, Inc.
WCYB-TV	Bristol, VA	Appalachian Broadcasting Corp.
WDIV-TV	Detroit, MI	Post-Newsweek Stations, Michigan, Inc.
WDSU(TV)	New Orleans, LA	New Orleans Hearst-Argyle Television, Inc.
WESH(TV)	Daytona Beach, FL	Orlando Hearst-Argyle Television, Inc.
WFIE(TV)	Evansville, IN	LIBCO, Inc.
WFLA-TV	Tampa, FL	Media General Communications, Inc.
WFMJ-TV	Youngstown, OH	WFMJ Television,

		Inc.
WGAL(TV)	Lancaster, PA	WGAL Hearst-Argyle Television, Inc.
WHDH-TV	Boston, MA	WHDH-TV
WHEC-TV	Rochester, NY	WHEC-TV, LLC
WHO-TV	Des Moines, IA	New York Times Management Services
WILX-TV	Onondaga, MI	Gray Midamerica TV Licensee Corp.
WJAR(TV)	Providence, RI	Outlet Broadcasting, Inc.
WJFW-TV	Rhineland, WI	Northland Television, Inc.
WKYC-TV	Cleveland, OH	WKYC-TV, Inc.
WLWT(TV)	Cincinnati, OH	Ohio/Oklahoma Hearst-Argyle TV, Inc.
WMAQ-TV	Chicago, IL	NBC Subsidiary (WMAQ-TV), Inc.
WMC-TV	Memphis, TN	Raycom America, Inc.
WMFE-TV	Orlando, FL	Community Communications, Inc.
WMGT(TV)	Stillwater, MN	Morris Multimedia, Inc.
WMTV(TV)	Madison, WI	Gray Midamerica TV Licensee Corp.
WNBC(TV)	New York, NY	National Broadcasting Company, Inc.
WNDU-TV	South Bend, IN	Michiana Telecasting Corp.
WNYT(TV)	Albany, NY	WNYT-TV, LLC
WOAI-TV	San Antonio, TX	CCB Texas Licenses, L.P.
WOOD-TV	Grand Rapids, MI	WOOD License Company, LLC
WOWT-TV	Omaha, NE	Gray Midamerica TV Licensee Corp.
WPMI(TV)	Mobile, AL	Clear Channel Broadcasting Licenses, Inc.
WPXI(TV)	Pittsburgh, PA	WPXI-TV Holdings, Inc.
WRC-TV	Washington, DC	NBC Subsidiary (WRC-TV), Inc.
WRCB-TV	Chattanooga, TN	Sarkes Tarzian, Inc.
WRIC-TV	Petersburg, VA	Young Broadcasting of Richmond, Inc.
WSAV-TV	Savannah, GA	Media General Communications, Inc.
WSAZ-TV	Huntington, WV	Emmis Television

		License Corp.
WSFA(TV)	Montgomery, AL	Libco, Inc.
WSMV-TV	Nashville, TN	Meredith Corp.
WTHR(TV)	Indianapolis, IN	Videoindiana, Inc.
WTMJ-TV	Milwaukee, WI	Journal Broadcast Corp.
WTVY(TV)	Dothan, AL	Gray Midamerica TV Licensee Corp.
WVLA(TV)	Baton Rouge, LA	Knight Broadcasting of Baton Rouge Lic. Corp.
WVTM-TV	Birmingham, AL	Birmingham Broadcasting (WVTM TV), Inc.
WWBT(TV)	Richmond, VA	Jefferson-Pilot Communications Company of Virginia
WWLP(TV)	Springfield, MA	WWLP Broadcasting, LLC
WXIA-TV	Atlanta, GA	Gannett Georgia, L.P.
WYFF(TV)	Greenville, SC	WYFF Hearst-Argyle Television, Inc.

**STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

*Re: Complaints Against Various Broadcast Licensees Regarding Their Airing of the
"Golden Globe Awards" Program*

Today, we overturn the Enforcement Bureau's October 2003 decision and find that the use of the "F-word" during last year's broadcast of the Golden Globes violates the federal statute. This sends a signal to the industry that the gratuitous use of such vulgar language on broadcast television will not be tolerated.

For the first time, the Commission has applied the profanity section of the statute for the broadcast of this highly offensive word, an application I fully support. The Commission has an important obligation to punish those who violate our law. In administering our authority, the Commission must afford parties fair warning and due process and not let our zeal trample these fundamental protections. Given that today's decision clearly departs from past precedent in important ways, I could not support a fine retroactively against the parties. Prospectively, parties are on notice that they could now face significant penalties for similar violations.

Going forward, as instructed by the Supreme Court, we must use our enforcement tools cautiously. As I have said since becoming a Commissioner, government action in this area can have a potential chilling effect on free speech. We guard against this by ruling when a clear line has been crossed and the government has no choice but to act.

We will continue to respect the delicate balance of protecting the interests of the First Amendment with the need to protect our children.

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Complaints Against Various Broadcast Licensees Regarding Their Airing of the “Golden Globe Awards” Program, File No. EB-03-IH-0110

Today, we take a strong stand against indecency on our public airwaves and a significant step in protecting our children. Indeed, use of the “f-word” on a nationally telecast awards ceremony is shocking, gratuitous, and offensive. I am pleased that the Commission has signaled that such language will no longer be tolerated.

I do recognize, however, that today’s decision is a departure from prior Commission’s precedent and policy. That is why I could not support a fine in this case. Prior Commissions not only failed to take action against an isolated use of the f-word, but in fact sanctioned such behavior. The Commission stated in the past that “[i]f a complaint focuses solely on the use of expletives, we believe that . . . deliberate and repetitive use in a patently offensive manner is a requisite to a finding of indecency.”¹ A series of prior Commission and staff decisions, moreover, have indicated that isolated or fleeting broadcasts of the f-word, such as the case here, are not indecent.²

Nor do I believe it is reasonable to suggest that broadcasters should have been on notice that we would find this incident to be profane. Although I support applying the definition of “profane” as discussed in *Tallman*³ to this particular incident, this too is a new finding by the Commission. The courts never applied the standard in *Tallman* to an isolated broadcast of the f-word and the FCC has never used this definition in any analysis of “profane” content, let alone the use of expletives. Rather, “profane language” has historically been interpreted in a legal sense to mean blasphemy.⁴ Moreover, the Mass Media Bureau in a document entitled “The Public and Broadcasting” stated that “[p]rofanity that does not fall under one of the above two categories [indecency or obscenity] is fully protected by the First Amendment and cannot be regulated.”⁵

¹ *Pacifica Foundation, Inc.*, 2 FCC Rcd 2698, 2699 (1987) (subsequent history omitted); *see also Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705 (1987) (“Speech that is indecent must involve more than the isolated use of an offensive word.”).

² *See, e.g. Industry Guidance on the Commission’s Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency*, 16 FCC Rcd 7999 (2001) and cases cited in note 32 of this decision.

³ *Tallman v. United States*, 465 F.2d 282, 286 (7th Cir. 1972).

⁴ *See, e.g., Duncan v. U.S.*, 48 F.2d 128, 133-134 (9th Cir. 1931) (“[T]he defendant having referred to an individual as ‘damned,’ having used the expression ‘By God’ irreverently, and having announced his intention to call down the curse of God upon certain individuals, was properly convicted of using profane language within the meaning of that term as used in the act of Congress prohibiting the use of profane language in radio broadcasting.”), *cert. denied*, 383 U.S. 863 (1931).

⁵ I recognize that the document itself states that “[t]his manual provides only a general review of our broadcast rules and policies. It is not intended to be a comprehensive or controlling statement of these rules and policies.” Yet, if the Mass Media Bureau was clearly unaware that the Commission would find *any* language to be profane, I fail to see how licensees are supposed to be on notice that we would find the isolated use of an expletive to be profane.

It is a fundamental principle of due process that a licensee must be on notice that its actions would be in violation of our rules before this Commission may impose sanctions.⁶ Given that prior Commission statements and staff action in fact *permitted* the broadcast at issue here, retroactive application of our new policy to these broadcasters would have been fundamentally unfair, not to mention unlawful. I emphasize, however, that the law has now changed and all licensees are on notice that even isolated and fleeting broadcasts of the f-word may violate our restrictions on indecency and profanity.

⁶ See *Trinity Broadcasting of Florida, Inc. v. FCC*, 211 F.3d 618 (D.C. Cir. 2000).

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART, DISSENTING IN PART**

Re: Complaints Against Various Broadcast Licensees Regarding Their Airing of the "Golden Globe Awards," Memorandum Opinion and Order

I support the decision to find the utterance of the f-word on NBC's broadcast of the "Golden Globe Awards" to be both indecent and profane. I found ludicrous the Enforcement Bureau's decision that a word that might otherwise be indecent is not indecent or profane merely because it is used as an adjective or expletive. The f-word clearly meets the definition of indecency whether used as an adjective, expletive, "intensifier" (as NBC curiously argues here), or any other part of speech.

I do not agree with all aspects of the majority's analysis. While I am pleased that the majority recognizes that profanity is not limited to blasphemy, I disagree that we need to give notice before we apply the law of the land. The better argument is that the statute itself gives due notice. Along these same lines, I disagreed last year when a majority at the Commission similarly found that notice was required prior to sending an indecency case to a hearing for license revocation, notwithstanding that the statute expressly provides for such an action. In past cases, when there have been truly outrageous violations or repeat offenses, I have sought to have cases sent to hearings to determine if the license should be revoked. This may not be a case where a revocation of license is in order. But neither is it a case that warrants no penalty at all. I believe the Commission would be fully within its rights to impose a fine for this particular instance of profanity and indecency. We send entirely the wrong signal by failing to do so.

**STATEMENT OF
COMMISSIONER KEVIN J. MARTIN
APPROVING IN PART, DISSENTING IN PART**

*Re: Complaints Against Various Broadcast Licensees Regarding Their Airing Of The
“Golden Globe Awards” Program, Memorandum Opinion And Order, March 3, 2004*

I am pleased that the Commission finally is making clear that the use of the “F-word” during this prime-time broadcast was both indecent and profane, regardless of whether used as an adjective, adverb, or gerund. I am particularly pleased that, at long last, the Commission is enforcing the statutory prohibition against the broadcast of profanity. Better late than never.

I firmly support these conclusions, and approve these aspects of this Order.

I disagree, however, with the Order’s characterization of our precedent on indecency, and the corresponding conclusion that licensees were not on notice that the F-word is indecent.

Even more troubling is the conclusion that we cannot issue a fine for the use of profanity. The majority argues that there is no notice. How ironic that the majority relies on the Commission’s own failure to enforce its statutory mandate as the basis for NBC not knowing that the F-word is prohibited profanity.⁷ Taking a step back, I can’t help but think NBC was “on notice” that the F-word was profane. In fact, *NBC* hasn’t even claimed that they were not on notice that the F-word was profane. Yet the majority concludes otherwise, and issues no fine. I cannot support this analysis, and therefore dissent in part.

⁷ I note that the Order explains that current case law, including a recent decision interpreting the very statutory provision at issue, defines profanity according to its common interpretation. *Order* at ¶13. Treatises document the rejection of old case law that had found profanity to mean blasphemy. 12 Am. Jur. 2d Blasphemy and Profanity 9. But even the very old case law equating profanity with blasphemy did not limit profanity to blasphemy. Moreover, the Commission’s own precedent has never implied that profanity was limited to blasphemy. Indeed, the only case on point found blasphemous language did *not* constitute profanity. *Raycom America, Inc., Licensee of Station WMC-TV, Memphis, TN*, Memorandum Opinion and Order, 18 FCC Rcd. 4186, 4187 (2003).

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Complaints Against Various Broadcast Licensees Regarding Their Airing of
the "Golden Globe Awards" Program; Memorandum Opinion and Order*

The Commission today takes a major step in safeguarding the well-being of our nation's children. By reversing the Bureau order, we deliver a loud and clear decree that gratuitous broadcasts of the F-word will not be tolerated on our airwaves. Many studies show that the use of the F-word and other vulgarities is becoming more prevalent in our society, and in our media. Broadcasters have a responsibility to serve the public interest, and fail to meet it if they contribute to this trend.

By today's action, the Commission steps up to its responsibility to enforce statutory and regulatory provisions restricting broadcast indecency and profanity. Recognizing that the First Amendment requires a delicate balance, the Supreme Court has held that the Commission can constitutionally regulate indecent broadcasts in the interests of protecting children from vulgarities broadcast over public airwaves to the public at large. The same statute also proscribes broadcast profanity, and I am pleased that we apply a profanity definition endorsed by the courts to give meaning to our statutory directive.⁸ While we have historically interpreted "profane" to mean blasphemy, I support our application of the statute to the F-word, a highly offensive and commonly understood "profanity."

I agree with the courts that what is indecent is largely a function of context, and cannot adequately be judged in an abstract, or per-se, manner. In large part, the character of an act is informed by the circumstances in which it is done. Yet, even for live award shows, where technology allows for the removal of isolated words, the gratuitous broadcast of the F-word is not justified. The tens of thousands of emails, calls and letters that poured in to the Commission opposing this broadcast are telling of the sexual connotation and offensiveness of that word. And its offensiveness does not depend on whether it is used as an adjective, adverb, verb or gerund.

Today's action does not fail to appreciate the cultural creativity and pluralism of our society. There was no suggestion that the use of the F-word in this case was traced to any literary, artistic, political or scientific value. Its use here was both gratuitous and easily avoidable.

There should be no doubt, my strong preference here would have been to assess a fine against the licensees in this case. Despite this preference, as a legal matter, today's action can be said to represent a departure from a previous line of cases issued before I joined the Commission. Those cases routinely failed to take action against isolated uses of the F-word, an approach that was endorsed in our April 2001 Policy Statement.⁹ Our action today also represents a fresh, new

⁸ See *Tallman v. United States*, 465 F.2d 282, 286 (7th Cir. 1972).

⁹ See, e.g., *Pacifica Foundation, Inc.*, 2 FCC Rcd 2698, 2699 (1987); *Infinity Broadcasting Corporation of Pennsylvania, Inc.*, 2 FCC Rcd 2705 (1987); *Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency*, 16 FCC Rcd 7999 (2001) (2001 Policy Statement) and cases cited in note 32 of this decision. Included in these examples is a broadcast of Cher saying the F-word on the 2002 Billboard Awards Ceremony which was found not indecent.

approach to enforcing our statutory responsibility with respect to profane broadcasts.¹⁰ Regardless of my personal view, in such instances, licensees should have fair notice that the use of this language in a setting such as this would be found actionably indecent and profane. Given the delicate authority the courts have permitted us under the First Amendment to enforce the indecency laws, the Commission must exercise care in affording licensees firm yet fair treatment. Nonetheless, it should be abundantly clear from today's action that we are setting a clear line to broadcast indecency and profanity to which all licensees should adhere and which from now on will result in forfeitures and other enforcement sanctions.

Broadcasters, themselves, bear much of the responsibility to keep our airwaves decent. As stewards of the public airwaves, they are in the position to showcase the best of our country's tremendous cultural heritage. Their choices will ultimately guide our future enforcement, as their transgressions will result in increasingly severe and swift action.

¹⁰ See *2001 Policy Statement* (stating that “[p]rofanity that does not fall under one of the above two categories [obscenity or indecency] is fully protected by the First Amendment and cannot be regulated.”).