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January 26, 2004

VIA HAND DELIVERY

RECEIVED

Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

JAN 26 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Indecency Complaint re: January 2003 Golden Globes Broadcast
WNBC(TV), New York, NY, et. al
File No. EB-03-IH-0110**

Dear Chairman Powell:

From 1996 to 2002, NBC broadcast the Golden Globes awards ceremony live and without incident. NBC's internal standards and procedures have successfully ensured that none of the hundreds of thousands of minutes of NBC network audio in 2003 included any comprehensible form of what many refer to as the F-word, with but one regrettable and unfortunate exception.

That lone exception -- the unscripted and spontaneous choice of word by a non-NBC employee during the live broadcast of the 2003 Golden Globes -- violated the clear standards that the program producer had instructed all participants to observe for that event. Although the live nature of the broadcast precluded NBC from deleting the word from its feed to the Eastern and Central time zones, NBC deleted the word from its feed to Mountain and Pacific Time affiliates. NBC also took further steps to limit any chance that there could be a repeat performance this year, including a ten-second tape delay.

Nonetheless, a January 14, 2004, letter from the head of the Parents Television Council pressed the Commission to issue the maximum statutory allowable fine against all NBC stations that aired the relevant broadcast.¹ This proposed course of action would be wholly contrary to the Commission's own policies and precedents, settled administrative law, the U.S. Constitution, and common fairness.

¹ Letter to Chairman Michael Powell from L. Brent Bozell (dated January 14, 2004) (the "Bozell Letter"). This correspondence was submitted without motion for leave to file. Accordingly, we hereby request that this response also be entered into the record, or, to the extent leave to file is required, that such leave is granted in the interest of a complete record.

First, such a finding would necessarily require a sharp reversal of existing FCC law. The Commission, based on a long line of administrative and constitutional law precedent, has uniformly rejected any finding of indecency based on a single, isolated word.² There can be no doubt that this is settled Commission policy, as evidenced by the Commission's most recent and comprehensive Policy Statement and the Bureau's own prompt dismissal of the current matter. This clearly stated FCC policy also reflects a compelling practical foundation. If one isolated word, said in passing and outside of any sort of vulgar context, can make programming indecent, all broadcasts are a single word away from damaging Commission sanction. This in turn poses a particular threat to all live, unscripted programming that viewers have come to expect on free television, including news, sports and political coverage.

Second, there is no justification for the retroactive application against NBC of such a profound change in Commission policy. Even if the Commission were inclined to change its indecency policy, a retroactive application of this abrupt policy reversal to this matter would be contrary to Commission precedent, administrative law, Supreme Court precedent, the U.S. Constitution and fundamental fairness. For example, any retroactive sanction against NBC here would fail at least four of the five questions that the D.C. Circuit asks in reviewing the legality of retroactive agency adjudication. Moreover, an indecency policy that, overnight, can change dramatically and retroactively resuscitates multiple constitutional concerns with all Commission indecency regulation of broadcast television.

Third, there would be a fundamental procedural defect with any decision adverse to NBC based on the current record. It would ignore the fact that the complained-about stations still have never been asked for their side of the story. The Commission has stated that "Given the sensitive nature of these cases and the critical role of context in an indecency determination, it is important that the Commission be afforded as full a record as possible to evaluate allegations of indecent programming."³ Per this policy, the Enforcement Bureau uniformly issues a letter of inquiry to any station subject to a possibly meritorious indecency complaint in order to better develop the record. In this instance, however, the Bureau thought that settled Commission precedent so clearly ended any need for further investigation that no letter of inquiry was issued to NBC. Accordingly, the record in this proceeding is, at best, incomplete. For example, Pacific and Mountain Time NBC stations were wrongly accused of airing the relevant word, and at least one of the stations on the service list has informed NBC that it is not even an NBC affiliate.

² For example, in the Commission's 2001 Indecency Policy Statement, the Commission quoted approvingly a decision that the one-time use of a form of the F-word during live programming was only "a fleeting and isolated utterance which, within the context of live and spontaneous programming, does not warrant Commission sanction." If this policy is not read to apply in this case, which is materially identical, all past statements of Commission indecency policy likewise become meaningless.

³ Indecency Policy Statement, 16 FCC Rcd 7999 (2001).

The Chairman
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The Parents Television Council is urging the retroactive application to NBC of a material change in FCC policy, in a proceeding where the Commission Staff itself found the law to be so clear-cut that there was no need to formally contact NBC prior to the matter's dismissal. In our view, such an outcome would be indefensible. Accordingly, the Commission should uphold the decision that NBC stations are not subject to Commission sanction because of the spontaneous, fleeting and isolated use by a non-network employee of a single form of the F-word during a live event broadcast.

Respectfully submitted,

NATIONAL BROADCASTING COMPANY, INC.

By: 

F. William LeBeau

Its Assistant Secretary and Senior
Regulatory Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing letter was sent via first-class, U.S. mail on this 26th day of January, 2004 to the following:

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KARE
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KARK-TV
909 Lake Carolyn Parkway
#1450
Irving, TX 75039

KBTV-TV
Nexstar Broadcasting of
Beaumont/Port Arthur
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#1450
Irving, TX 75039

KCEN-TV
Channel 6, Inc.
P.O. Box 6103
17 South Third Street
Temple, TX 76503

KCRA-TV
KCRA Hearst-Argyle Television, Inc.
888 Seventh Avenue
New York, NY 10106

KFDM-TV
Freedom Broadcasting of Texas, Inc.
P.O. Box 7128
Beaumont, TX 77706

KGW
King Broadcasting Company
400 South Record Street
Dallas, TX 75202

KING-TV
King Broadcasting Company
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Dallas, TX 75202

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KATV
KATV, LLC
P.O. Box 77
Little Rock, AR 72203

KCBD
Libco, Inc.
639 Isbell Road
#390
Reno, NV 89509

KCNC-TV
CBS Television Stations, Inc.
2000 K Street, NW
#725
Washington, DC 20006

KETK-TV
KETK Licensee L.P.
Shaw Pittman (K.R. Schmeltzer)
2300 N Street, NW
Washington, DC 20037

KFOR-TV
New York Times Management
Svcs.
Corp. Center 1
2202 NW Shore Blvd., #370
Tampa, FL 33607

KHAS-TV
Greater Nebraska Television, Inc.
6475 Osborne Drive West
Hastings, NE 69801

KKCO
Eagle III Broadcasting, LLC
2325 Interstate Avenue
Grand Junction, CO 81505

KOAA-TV
Sangre de Cristo Communications,
Inc.
2200 Seventh Avenue
Pueblo, CO 81003

KOB-TV
 KOB-TV, LLC
 3415 University Avenue
 ATTN: L. Wefring
 St. Paul, MN 55114

KPRC-TV
 Post-Newsweek Stations, Houston, LP
 8181 Southwest Freeway
 Houston, TX 77074

KRIS-TV
 KVOA Communications, Inc.
 409 South Staples Street
 Corpus Christi, TX 78401

KSDK
 Multimedia KSDK, Inc.
 c/o Gannett Co., Inc.
 7950 Jones Branch Drive
 McLean, VA 22107

KSNF
 Nexstar Broadcasting of Joplin, LLC
 909 Lake Carolyn Parkway
 #1450
 Irving, TX 75039

KTIV
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 3135 Floyd Boulevard
 Sioux City, IA 51105

KWES-TV
 Midessa Television Company
 P.O. Box 60150
 Midland, TX 79711

KYTV
 KY3, Inc.
 999 West Sunshine Street
 Springfield, MO 65807

KPNX
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 7950 Jones Branch Drive
 McLean, VA 22107

KRBC-TV
 Mission Broadcasting, Inc.
 544 Red Rock Drive
 Wadsworth, OH 44281

KTGF
 MMM License LLC
 900 Laskin Road
 Virginia Beach, VA 23451

KSHB-TV
 Scripps Howard Broadcasting
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 312 Walnut Street
 Cincinnati, OH 45202

KTEN
 Channel 49 Acquisition
 Corporation
 P.O. Box 549
 Hampton, VA 23669

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WBOY-TV
 West Virginia Media Holdings, LLC
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 Charleston, WV 25339

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WESH
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 WHDH-TV Government Center
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 Boston, MA 02114

WHO-TV
 New York Times Management Svcs.
 Corporate Center 1
 2202 NW Shore Blvd., #370
 Tampa, FL 33607

WJFW-TV
 Northland Television, Inc.
 P.O. Box 858
 Rhinelander, WI 54501

WLWT
 Ohio/Oklahoma Hearst-Argyle TV,
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 P.O. Box 1800
 Raleigh, NC 27602

WMFE-TV
 Community Communications, Inc.
 11510 E. Colonial Drive
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WNYT
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 St. Paul, MN 55114

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WNDU-TV
 Michiana Telecasting Corp.
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WOOD-TV
 Wood License Company, LLC
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WRIC-TV
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WSAZ-TV
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