



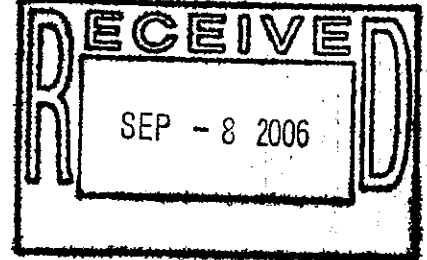
FEDERAL COMMUNICATIONS COMMISSION  
ENFORCEMENT BUREAU

INVESTIGATIONS AND HEARINGS DIVISION

445 12th STREET, S.W. ■ WASHINGTON, D.C. 20554

TEL: (202) 418-1420 ■ FAX: (202) 418-2080

FACSIMILE TRANSMISSION



DATE: September 7, 2006

TO: Fox Television Stations, Inc.

Fax number: (202) 895-3340

Telephone number: \_\_\_\_\_

FROM: Melissa Marshall

Telephone number: (202) 418-0263

**IMPORTANT:** This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is confidential, privileged, and/or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

MESSAGE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TOTAL NUMBER OF PAGES IN THIS FAX : 2 (including this cover page)

IF THERE IS A PROBLEM WITH THIS TRANSMISSION, PLEASE CALL (202) 418-1420.



FEDERAL COMMUNICATIONS COMMISSION  
Enforcement Bureau  
Investigations and Hearings Division  
445 12<sup>th</sup> Street, S.W., Suite 4-C330  
Washington, D.C. 20554

September 7, 2006

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**  
**AND FACSIMILE AT (202) 895-3340**

Fox Television Stations, Inc.  
5151 Wisconsin Avenue, N.W.  
Washington, DC 20015

Re: Station WTTG(TV), Washington, DC  
File No. EB-03-IH-0460

Dear Licensee:

The Enforcement Bureau (the "Bureau") is investigating allegations contained in the enclosed redacted complaint (the "Complaint") that Fox Television Stations, Inc. (the "Licensee") broadcast prohibited material over the above-noted station (the "Station"), in violation of 18 U.S.C. § 1464 and section 73.3999 of the Commission's rules.<sup>1</sup> Specifically, it is alleged that the phrase "fuck 'em" (the "Expletive") was aired during the Station's broadcast of the 2002 Billboard Music Awards on December 9, 2002, at approximately 8:00 p.m. Eastern Standard Time.<sup>2</sup> This letter is being released in connection with the September 7, 2006 order from the United States Court of Appeals for the Second Circuit in *Fox Television Stations, Inc. v. FCC*.<sup>3</sup> Under the Court's Order, the case has been remanded to the Commission for a period of sixty days "for the entry of a further final or appealable order of the FCC following such further consideration as the FCC may deem appropriate in the circumstances."<sup>4</sup> We direct the Licensee, pursuant to sections 4(i), 4(j), 308(b) and 403 of the Communications Act of 1934, as amended,<sup>5</sup> to

<sup>1</sup> See 47 C.F.R. § 73.3999.

<sup>2</sup> See *Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, Notices of Apparent Liability and Memorandum Opinion and Order, 21 FCC Rcd 2664, 2690 (2006) ("Omnibus Order") (describing specific indecency allegations concerning the 2002 Billboard Music Awards), *pets. for review pending*, *Fox Television Stations, Inc. v. FCC*, No. 06-1760-AG (2d Cir filed Apr. 13, 2006).

<sup>3</sup> See *Fox Television Stations, Inc. v. FCC*, No. 06-1760-AG (2d Cir. Sep. 7, 2006) ("Remand Order").

<sup>4</sup> *Id.* at 2.

<sup>5</sup> See 47 U.S.C. §§ 154(i), 154(j), 308(b), and 403.

Fox Television Stations, Inc.  
September 7, 2006  
Page 2

provide the information and documents, as defined herein, within fourteen (14) calendar days from the date of this letter (*i.e.*, no later than September 21, 2006).<sup>6</sup>

### Instructions

*Request for Confidential Treatment.* If the Licensee requests that any information or Documents responsive to this letter be treated in a confidential manner, it shall submit, along with all responsive information and Documents, a statement in accordance with section 0.459 of the Commission's rules.<sup>7</sup> Requests for confidential treatment must comply with the requirements of section 0.459, including the standards of specificity mandated by section 0.459(b). Accordingly, "blanket" requests for confidentiality of a large set of Documents are unacceptable. Pursuant to section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of section 0.459.

*Claims of Privilege.* If the Licensee withholds any information or Documents under claim of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item, the numbered inquiry to which each item responds and the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific ground(s) for claiming that the item is privileged.

*Method of Producing Documents.* Each requested Document, as defined herein, shall be submitted in its entirety, even if only a portion of that Document is responsive to an inquiry made herein, unless the Document is a recording or transcript, in which case it should be provided only for the period of time of the broadcast specified in the pertinent inquiry herein. This means that the Document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other Documents referred to in the Document or attachments. All written materials necessary to understand any Document responsive to these inquiries must also be submitted.

*Identification of Documents.* For each Document or statement submitted in response to the inquiries below, indicate, by number, to which inquiry it is responsive and identify the person(s) from whose files the Document was retrieved. If any Document is not dated, state the date on which it was prepared. If any Document does not identify its author(s) or recipient(s), state, if known, the name(s) of the author(s) or recipient(s). The Licensee must identify with reasonable specificity all Documents provided in response to these inquiries.

*Documents No Longer Available.* If a Document responsive to any inquiry made herein existed but is no longer available, or if the Licensee is unable for any reason to produce a Document responsive to any inquiry, identify each such Document by author,

<sup>6</sup> See Public Notice, "FCC Announces Filing Procedures in Connection with Court Remand of Section III.B of the Commission's March 15, 2006 *Omnibus Order* Resolving Numerous Broadcast Television Indecency Complaints," DA 06-1739 (Enf. Bur. rel. Sept. 7, 2006).

<sup>7</sup> See 47 C.F.R. § 0.459.

Fox Television Stations, Inc.  
September 7, 2006  
Page 3

recipient, date, title, and specific subject matter, and explain fully why the Document is no longer available or why the Licensee is otherwise unable to produce it.

*Retention of Original Documents.* With respect only to Documents responsive to the specific inquiries made herein and any other Documents relevant to those inquiries, the Licensee is directed to retain the originals of those Documents for twelve (12) months from the date of this letter unless (a) the Licensee is directed or informed by the Enforcement Bureau in writing to retain such Documents for some shorter or longer period of time or (b) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case, the Licensee must retain all such Documents until the matter has been finally concluded by payment of any monetary penalty, satisfaction of all conditions, expiration of all possible appeals, conclusion of any collection action brought by the United States Department of Justice or execution and implementation of a final settlement with the Commission or the Enforcement Bureau.

*Continuing Nature of Inquiries.* The specific inquiries made herein are continuing in nature. The Licensee is required to produce in the future any and all Documents and information that are responsive to the inquiries made herein but not initially produced at the time, date and place specified herein. In this regard, the Licensee must supplement its responses (a) if the Licensee learns that, in some material respect, the Documents and information initially disclosed were incomplete or incorrect or (b) if additional responsive Documents or information are acquired by or become known to the Licensee after the initial production. The requirement to update the record will continue for twelve (12) months from the date of this letter unless (1) the Licensee is directed or informed by the Enforcement Bureau in writing that the Licensee's obligation to update the record will continue for some shorter or longer period of time or (2) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case the obligation to update the record will continue until the release of such item.

Unless otherwise indicated, the period of time covered by these inquiries is December 9, 2002 to the present.

### Definitions

For purposes of this letter, the following definitions apply:

"Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."

Fox Television Stations, Inc.  
September 7, 2006  
Page 4

"Broadcast," when used as a noun, shall mean audible sounds or language transmitted or disseminated over a station during the course of a radio or television broadcast.

"Broadcast," when used as a verb, shall mean the transmission or dissemination of radio or television communications intended to be received by the public. The verb "broadcast" may be used interchangeably with the verb "air."

"Document" shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any broadcast, radio program, advertisement, book, pamphlet, periodical, contract, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tape, disks and such codes or instructions as will transform such computer materials into easily understandable form).

**Inquiries: Documents and Information to be Provided**

1. State whether the Licensee broadcast the material described in the Complaint, including the Expletive, over the Station on December 9, 2002, during the airing of the show at approximately 8:00 p.m. local time. Provide a recording of the complained-about program on DVD or a VHS videocassette tape, to the extent the Licensee has not already furnished such material to the Bureau.
2. With regard to each broadcast referred to in the response to Inquiry 1 above, if the Complaint does not accurately describe the programming aired over the Station, describe any inaccuracies.
3. Describe all procedures employed by the Licensee to ensure that the broadcast of the 2002 Billboard Music Awards on December 9, 2002 did not contain any indecent or profane language. If the Licensee broadcast the material described in the Complaint over the Station on December 9, 2002, despite the existence of any such procedures, explain how and why such material was, in fact, broadcast.
4. Provide copies of any and all Documents relating or referring to each broadcast referred to in the response to Inquiry 1 above, and of any and all other Documents that provide the basis for or otherwise support the responses to Inquiries 1, 2 and 3 above.

Fox Television Stations, Inc.  
September 7, 2006  
Page 5

5. Describe any program ratings or other warnings that would have placed viewers on notice that the complained-of material would or might be broadcast.
6. Provide any other information relevant to the Bureau's investigation of this matter.

### **Instructions for Filing Responses**

We direct the Licensee to support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the Licensee with personal knowledge of the representations provided in the Licensee's response, verifying the truth and accuracy of the information therein and that all of the information and/or recordings requested by this letter which are in the Licensee's possession, custody, control or knowledge have been produced. If multiple Licensee employees contribute to the response, in addition to such general affidavit or declaration of the authorized officer of the Licensee noted above, if such officer (or any other affiant or declarant) is relying on the personal knowledge of any other individual, rather than his or her own knowledge, provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. All such declarations provided must comply with section 1.16 of the Commission's rules<sup>8</sup> and be substantially in the form set forth therein.

To knowingly and willfully make any false statement or conceal any material fact in reply to this inquiry is punishable by fine or imprisonment.<sup>9</sup> Failure to respond appropriately to this letter of inquiry may constitute a violation of the Communications Act and our rules.<sup>10</sup>

The Licensee shall direct its response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002, to the attention of Melissa Marshall, Investigations and Hearings Division, Enforcement Bureau, Room 4-A431, with a copy to Benigno Bartolome, Investigations and Hearings Division, Enforcement Bureau, Room 4-A465, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Melissa Marshall, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 4-A431,

<sup>8</sup> See 47 C.F.R. § 1.16.

<sup>9</sup> See 18 U.S.C. § 1001; see also 47 C.F.R. § 1.17.

<sup>10</sup> See *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, n. 36 (2003) (subsequent history omitted); *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (Enf. Bur. 2004); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003).

Fox Television Stations, Inc.  
September 7, 2006  
Page 6

Washington, D.C. 20554, with a copy to Benigno Bartolome, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 4-A465, Washington, D.C. 20554. The Licensee shall also, to the extent practicable, transmit a copy of the response via email to [Melissa.Marshall@fcc.gov](mailto:Melissa.Marshall@fcc.gov) and to [Ben.Bartolome@fcc.gov](mailto:Ben.Bartolome@fcc.gov).

Sincerely,



Benigno E. Bartolome  
Deputy Chief  
Investigations and Hearings Division  
Enforcement Bureau

Enclosure

cc (w/ encl.): Maureen A. O'Connell, Esq. (via facsimile)  
News Corporation  
444 North Capitol Street, NW  
Suite 740  
Washington, DC 20001  
Fax: (202) 824-6510

John Quale, Esq. (via facsimile)  
Skadden Arps Slate Meagher & Flom, LLP  
1440 New York Avenue, N.W.  
Washington, DC 20005  
Fax: (202) 661-8233

Carter Phillips, Esq. (via facsimile)  
Sidley Austin LLP  
1501 K Street, NW  
Washington, DC 20005  
Fax: (202) 736-8711

Bringing Res

2006-110460  
Liability To The Entertainment Industry



West Coast PTC Office  
707 Wilshire Blvd., #21775 • Los Angeles, CA 90017  
Tel (213) 629-8254 • Fax (213) 629-8254  
(800) TV-COUNTS

East Coast PTC Office  
325 South Patrick Street • Alexandria, VA 22304  
Tel (703) 584-1699 • Fax (703) 585-9796

FCC ENFORCEMENT BUREAU

2003 OCT -8 A 9 05

REGISTRATION &  
IF, COMMISSION

August 22, 2003

David Solomon  
FCC Enforcement Bureau  
445 12<sup>th</sup> St SW  
Washington, DC 20554

Dear Mr. Solomon,

On behalf of the Parents Television Council and its over 800,000 members, I am filing an indecency complaint against the Fox network television special, 2002 Billboard Music Awards. The program that contained the indecent material originally aired at 8:00 p.m. EST/PT and at 7:00 p.m. CT, on December 9, 2002. This program was seen in homes across the country on the Fox network, and in Washington DC, the program aired on WTTG.

If the content is found to be indecent, then a Notice of Apparent Liability should be levied against each Fox affiliate that aired the program.

A transcript of the indecent segment follows. I would be happy to provide you with a videotape of this episode to further demonstrate the indecency of this episode.

- o The celebrity, Cher, says: "People have been telling me I'm on the way out every year, right? So fuck 'em."

I look forward to your timely judgment and response.

Sincerely,

Lara Mahoney  
Director of Corporate and Entertainment Affairs  
Parents Television Council

Cc:  
Chairman Powell  
Commissioner Abernathy  
Commissioner Coppa  
Commissioner Martin  
Commissioner Adelstein

Sen. Hollings  
Sen. McCain  
Sen. Brownback  
Sen. Dorgan  
Sen. Hutchinson  
Sen. Shelby

Sen. Smith  
Rep. Tauzin  
Rep. Dingell  
Rep. Markey  
Rep. Shimkus  
Rep. Upson





FEDERAL COMMUNICATIONS COMMISSION  
Enforcement Bureau  
Investigations and Hearings Division  
445 12<sup>th</sup> Street, S.W., Suite 4-C330  
Washington, D.C. 20554

September 7, 2006

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**  
**AND FACSIMILE AT (202) 895-3340**

Fox Television Stations, Inc.  
5151 Wisconsin Avenue, N.W.  
Washington, DC 20015

Re: Station WTTG(TV), Washington, DC  
File No. EB-03-IH-0460

Dear Licensee:

The Enforcement Bureau (the "Bureau") is investigating allegations contained in the enclosed redacted complaint (the "Complaint") that Fox Television Stations, Inc. (the "Licensee") broadcast prohibited material over the above-noted station (the "Station"), in violation of 18 U.S.C. § 1464 and section 73.3999 of the Commission's rules.<sup>1</sup> Specifically, it is alleged that the phrase "fuck 'em" (the "Expletive") was aired during the Station's broadcast of the 2002 Billboard Music Awards on December 9, 2002, at approximately 8:00 p.m. Eastern Standard Time.<sup>2</sup> This letter is being released in connection with the September 7, 2006 order from the United States Court of Appeals for the Second Circuit in *Fox Television Stations, Inc. v. FCC*.<sup>3</sup> Under the Court's Order, the case has been remanded to the Commission for a period of sixty days "for the entry of a further final or appealable order of the FCC following such further consideration as the FCC may deem appropriate in the circumstances."<sup>4</sup> We direct the Licensee, pursuant to sections 4(i), 4(j), 308(b) and 403 of the Communications Act of 1934, as amended,<sup>5</sup> to

<sup>1</sup> See 47 C.F.R. § 73.3999.

<sup>2</sup> See *Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, Notices of Apparent Liability and Memorandum Opinion and Order, 21 FCC Red 2664, 2690 (2006) ("Omnibus Order") (describing specific indecency allegations concerning the 2002 Billboard Music Awards), *petis. for review pending, Fox Television Stations, Inc. v. FCC*, No. 06-1760-AG (2d Cir filed Apr. 13, 2006).

<sup>3</sup> See *Fox Television Stations, Inc. v. FCC*, No. 06-1760-AG (2d Cir. Sep. 7, 2006) ("Remand Order").

<sup>4</sup> *Id.* at 2.

<sup>5</sup> See 47 U.S.C. §§ 154(i), 154(j), 308(b), and 403.

Fox Television Stations, Inc.  
September 7, 2006  
Page 2

provide the information and documents, as defined herein, within fourteen (14) calendar days from the date of this letter (*i.e.*, no later than September 21, 2006).<sup>6</sup>

### Instructions

*Request for Confidential Treatment.* If the Licensee requests that any information or Documents responsive to this letter be treated in a confidential manner, it shall submit, along with all responsive information and Documents, a statement in accordance with section 0.459 of the Commission's rules.<sup>7</sup> Requests for confidential treatment must comply with the requirements of section 0.459, including the standards of specificity mandated by section 0.459(b). Accordingly, "blanket" requests for confidentiality of a large set of Documents are unacceptable. Pursuant to section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of section 0.459.

*Claims of Privilege.* If the Licensee withholds any information or Documents under claim of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item, the numbered inquiry to which each item responds and the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific ground(s) for claiming that the item is privileged.

*Method of Producing Documents.* Each requested Document, as defined herein, shall be submitted in its entirety, even if only a portion of that Document is responsive to an inquiry made herein, unless the Document is a recording or transcript, in which case it should be provided only for the period of time of the broadcast specified in the pertinent inquiry herein. This means that the Document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other Documents referred to in the Document or attachments. All written materials necessary to understand any Document responsive to these inquiries must also be submitted.

*Identification of Documents.* For each Document or statement submitted in response to the inquiries below, indicate, by number, to which inquiry it is responsive and identify the person(s) from whose files the Document was retrieved. If any Document is not dated, state the date on which it was prepared. If any Document does not identify its author(s) or recipient(s), state, if known, the name(s) of the author(s) or recipient(s). The Licensee must identify with reasonable specificity all Documents provided in response to these inquiries.

*Documents No Longer Available.* If a Document responsive to any inquiry made herein existed but is no longer available, or if the Licensee is unable for any reason to produce a Document responsive to any inquiry, identify each such Document by author,

<sup>6</sup> See Public Notice, "FCC Announces Filing Procedures in Connection with Court Remand of Section III.B of the Commission's March 15, 2006 *Omnibus Order* Resolving Numerous Broadcast Television Indecency Complaints," DA 06-1739 (Enf. Bur. rel. Sept. 7, 2006).

<sup>7</sup> See 47 C.F.R. § 0.459.

Fox Television Stations, Inc.  
September 7, 2006  
Page 3

recipient, date, title, and specific subject matter, and explain fully why the Document is no longer available or why the Licensee is otherwise unable to produce it.

*Retention of Original Documents.* With respect only to Documents responsive to the specific inquiries made herein and any other Documents relevant to those inquiries, the Licensee is directed to retain the originals of those Documents for twelve (12) months from the date of this letter unless (a) the Licensee is directed or informed by the Enforcement Bureau in writing to retain such Documents for some shorter or longer period of time or (b) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case, the Licensee must retain all such Documents until the matter has been finally concluded by payment of any monetary penalty, satisfaction of all conditions, expiration of all possible appeals, conclusion of any collection action brought by the United States Department of Justice or execution and implementation of a final settlement with the Commission or the Enforcement Bureau.

*Continuing Nature of Inquiries.* The specific inquiries made herein are continuing in nature. The Licensee is required to produce in the future any and all Documents and information that are responsive to the inquiries made herein but not initially produced at the time, date and place specified herein. In this regard, the Licensee must supplement its responses (a) if the Licensee learns that, in some material respect, the Documents and information initially disclosed were incomplete or incorrect or (b) if additional responsive Documents or information are acquired by or become known to the Licensee after the initial production. The requirement to update the record will continue for twelve (12) months from the date of this letter unless (1) the Licensee is directed or informed by the Enforcement Bureau in writing that the Licensee's obligation to update the record will continue for some shorter or longer period of time or (2) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case the obligation to update the record will continue until the release of such item.

Unless otherwise indicated, the period of time covered by these inquiries is December 9, 2002 to the present.

### Definitions

For purposes of this letter, the following definitions apply:

"Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."

Fox Television Stations, Inc.  
September 7, 2006  
Page 4

"Broadcast," when used as a noun, shall mean audible sounds or language transmitted or disseminated over a station during the course of a radio or television broadcast.

"Broadcast," when used as a verb, shall mean the transmission or dissemination of radio or television communications intended to be received by the public. The verb "broadcast" may be used interchangeably with the verb "air."

"Document" shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any broadcast, radio program, advertisement, book, pamphlet, periodical, contract, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tape, disks and such codes or instructions as will transform such computer materials into easily understandable form).

**Inquiries: Documents and Information to be Provided**

1. State whether the Licensee broadcast the material described in the Complaint, including the Expletive, over the Station on December 9, 2002, during the airing of the show at approximately 8:00 p.m. local time. Provide a recording of the complained-about program on DVD or a VHS videocassette tape, to the extent the Licensee has not already furnished such material to the Bureau.
2. With regard to each broadcast referred to in the response to Inquiry 1 above, if the Complaint does not accurately describe the programming aired over the Station, describe any inaccuracies.
3. Describe all procedures employed by the Licensee to ensure that the broadcast of the 2002 Billboard Music Awards on December 9, 2002 did not contain any indecent or profane language. If the Licensee broadcast the material described in the Complaint over the Station on December 9, 2002, despite the existence of any such procedures, explain how and why such material was, in fact, broadcast.
4. Provide copies of any and all Documents relating or referring to each broadcast referred to in the response to Inquiry 1 above, and of any and all other Documents that provide the basis for or otherwise support the responses to Inquiries 1, 2 and 3 above.

Fox Television Stations, Inc.  
September 7, 2006  
Page 5

5. Describe any program ratings or other warnings that would have placed viewers on notice that the complained-of material would or might be broadcast.
6. Provide any other information relevant to the Bureau's investigation of this matter.

#### Instructions for Filing Responses

We direct the Licensee to support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the Licensee with personal knowledge of the representations provided in the Licensee's response, verifying the truth and accuracy of the information therein and that all of the information and/or recordings requested by this letter which are in the Licensee's possession, custody, control or knowledge have been produced. If multiple Licensee employees contribute to the response, in addition to such general affidavit or declaration of the authorized officer of the Licensee noted above, if such officer (or any other affiant or declarant) is relying on the personal knowledge of any other individual, rather than his or her own knowledge, provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. All such declarations provided must comply with section 1.16 of the Commission's rules<sup>8</sup> and be substantially in the form set forth therein.

To knowingly and willfully make any false statement or conceal any material fact in reply to this inquiry is punishable by fine or imprisonment.<sup>9</sup> Failure to respond appropriately to this letter of inquiry may constitute a violation of the Communications Act and our rules.<sup>10</sup>

The Licensee shall direct its response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002, to the attention of Melissa Marshall, Investigations and Hearings Division, Enforcement Bureau, Room 4-A431, with a copy to Benigno Bartolome, Investigations and Hearings Division, Enforcement Bureau, Room 4-A465, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Melissa Marshall, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 4-A431,

<sup>8</sup> See 47 C.F.R. § 1.16.


<sup>9</sup> See 18 U.S.C. § 1001; see also 47 C.F.R. § 1.17.

<sup>10</sup> See *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 9893, n. 36 (2003) (subsequent history omitted); *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (Enf. Bur. 2004); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003).

Fox Television Stations, Inc.  
September 7, 2006  
Page 6

Washington, D.C. 20554, with a copy to Benigno Bartolome, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 4-A465, Washington, D.C. 20554. The Licensee shall also, to the extent practicable, transmit a copy of the response via email to [Melissa.Marshall@fcc.gov](mailto:Melissa.Marshall@fcc.gov) and to [Ben.Bartolome@fcc.gov](mailto:Ben.Bartolome@fcc.gov).

Sincerely,



Benigno E. Bartolome  
Deputy Chief  
Investigations and Hearings Division  
Enforcement Bureau

Enclosure

cc (w/ encl.): Maureen A. O'Connell, Esq. (via facsimile)  
News Corporation  
444 North Capitol Street, NW  
Suite 740  
Washington, DC 20001  
Fax: (202) 824-6510

John Quale, Esq. (via facsimile)  
Skadden Arps Slate Meagher & Flom, LLP  
1440 New York Avenue, N.W.  
Washington, DC 20005  
Fax: (202) 661-8233

Carter Phillips, Esq. (via facsimile)  
Sidley Austin LLP  
1501 K Street, NW  
Washington, DC 20005  
Fax: (202) 736-8711



Bringing Res

ibility To The Entertainment Industry

West Coast PTC Office  
707 Wilshire Blvd. #2075 • Los Angeles, CA 90017  
Tel (213) 629-8254 • Fax (213) 629-8254  
(800) TV-COUNTS

East Coast PTC Office  
325 South Patrick Street • Alexandria, VA 22304  
Tel (703) 684-1682 • Fax (703) 682-0756

FCC ENFORCEMENT BUREAU

700 OCT -8 A 9 05

COMMUNICATIONS &  
TELEVISION

August 22, 2003

David Solomon  
FCC Enforcement Bureau  
445 12<sup>th</sup> St SW  
Washington, DC 20554

Dear Mr. Solomon,

On behalf of the Parents Television Council and its over 800,000 members, I am filing an indecency complaint against the Fox network television special, *2002 Billboard Music Awards*. The program that contained the indecent material originally aired at 8:00 p.m. EST/PT and at 7:00 p.m. CT, on December 9, 2002. This program was seen in homes across the country on the Fox network, and in Washington DC, the program aired on WTTG.

If the content is found to be indecent, then a Notice of Apparent Liability should be levied against each Fox affiliate that aired the program.

A transcript of the indecent segment follows. I would be happy to provide you with a videotape of this episode to further demonstrate the indecency of this episode.

- o The celebrity, Cher, says: "People have been telling me I'm on the way out every year, right? So fuck 'em."

I look forward to your timely judgment and response.

Sincerely,

Lara Mahoney  
Director of Corporate and Entertainment Affairs  
Parents Television Council

Cc:  
Chairman Powell  
Commissioner Abernathy  
Commissioner Copps  
Commissioner Martin  
Commissioner Adelstein

Sen. Hollings  
Sen. McCain  
Sen. Brownback  
Sen. Dorgan  
Sen. Hutchinson  
Sen. Shelby

Sen. Smith  
Rep. Tawzin  
Rep. Dingell  
Rep. Mackey  
Rep. Shimkus  
Rep. Upson

**FILE COPY**

**SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

1440 NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000  
FAX: (202) 393-5760  
www.skadden.com

**FIRM/AFFILIATE OFFICES**

BOSTON  
CHICAGO  
HOUSTON  
LOS ANGELES  
NEW YORK  
PALO ALTO  
SAN FRANCISCO  
WILMINGTON  
  
BEIJING  
BRUSSELS  
FRANKFURT  
HONG KONG  
LONDON  
MOSCOW  
MUNICH  
PARIS  
SINGAPORE  
SYDNEY  
TOKYO  
TORONTO  
VIENNA

DIRECT DIAL  
(202) 371-7200  
DIRECT FAX  
(202) 661-8233  
EMAIL ADDRESS  
JQUALE@SKADDEN.COM

September 21, 2006

**Via Hand Delivery**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
236 Massachusetts Avenue, N.E., Suite 110  
Washington, D.C. 20002

**RECEIVED**

SEP 21 2006

Federal Communications Commission  
Office of Secretary

**ATTENTION: Melissa Marshall**  
**Investigations and Hearings Division**  
**Enforcement Bureau, Room 4-A431**

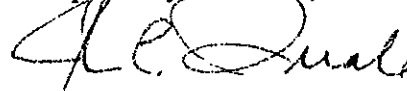
RE: Station WTTG(TV), Washington, DC  
EB-03-IH-0460

Dear Ms. Marshall:

On behalf of Fox Television Stations, Inc. ("FTS"), enclosed herewith please find FTS' response to the letter, dated September 7, 2006, from Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, with respect to the above-referenced matter.

Should you have any questions concerning this submission, please contact the undersigned.

Respectfully submitted,



John C. Quale  
Counsel to FTS

Enclosures

cc: Benigno Bartolome, FCC Room 4-A465



**RESPONSE OF FOX TELEVISION STATIONS, INC.  
TO FCC LETTER OF INQUIRY\***

1. **State whether the Licensee broadcast the material described in the Complaint, including the Expletive, over the Station on December 9, 2002, during the airing of the show at approximately 8:00 p.m. local time. Provide a recording of the complained-about program on DVD or a VHS videocassette tape, to the extent the License has not already furnished such material to the Bureau.**

ANSWER: Fox Television Stations, Inc. (the "Licensee") objects to the issuance of the LOI and to the Commission's investigation of the *2002 Billboard Music Awards* program. The Commission has historically emphasized that "it does not independently monitor broadcasts for indecent material."<sup>1</sup> Rather, "its enforcement actions are based on documented complaints of indecent broadcasting received from the public."<sup>2</sup> The Commission's reluctance to enforce the indecency rules absent a documented complaint from a viewer is inextricably linked to the FCC's longstanding recognition that indecent speech is protected by the First Amendment – "a critical Constitutional limitation that demands we proceed cautiously and with appropriate restraint."<sup>3</sup> Indeed, in upholding the Commission's indecency rules, both Justice Powell in the Supreme Court's *Pacifica* decision and the D.C. Circuit in ACT I specifically relied upon the Commission's assurances that it would act cautiously in pursuing indecency issues.<sup>4</sup>

- 
- \* See Letter, Dated September 7, 2006, to Fox Television Stations Inc., from Benigno Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau ("LOI").
- <sup>1</sup> In Re Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency, 16 FCC Rcd 7999, 8015 (2001) ("Indecency Policy Statement").
- <sup>2</sup> Id. See also In Re Infinity Broadcasting Operations, Inc., Licensee of Station WKRK-FM, Detroit, Michigan, FCC 03-71 (rel. April 3, 2003) at para. 6 ("Infinity") ("The Commission's indecency enforcement is based on complaints from the public").
- <sup>3</sup> Infinity, at para. 4 (citing Action for Children's Television v. FCC, 852 F.2d 1332, 1344 (D.C. Cir. 1988) ("ACT I") ("the FCC may regulate [indecent] material only with due respect for the high value our Constitution places on freedom and choice in what people say and hear")).
- <sup>4</sup> See FCC v. Pacifica Foundation, 438 U.S. 726, 761, n.4 (1978) ("[S]ince the Commission may be expected to proceed cautiously, as it has in the past, I do not foresee an undue 'chilling' effect on broadcasters' exercise of their rights.") (Powell, J., concurring); ACT I, 852 F.2d at 1340, n.14 ("[T]he FCC has assured

The Complaint included with the LOI, however, fails to allege that the complainant even watched the *2002 Billboard Music Awards*. By relying on a process driven by *viewer* complaints, the FCC appropriately limits governmental interference with licensees' program decision-making. Investigating a program without any evidence that the complainant actually viewed the content runs contrary to the notion of a restrained approach to enforcement. This type of over-reaching governmental oversight will continue to enhance the danger that licensees will engage in self-censorship, sacrificing their First Amendment rights.

Nonetheless, in the interest of bringing this matter to a prompt conclusion (yet subject to the objections identified in this Response), the Licensee confirms that it broadcast the *2002 Billboard Music Awards* program (including the material described in the Complaint attached to the LOI) on television station WTTG(TV), Washington, D.C., on December 9, 2002 from approximately 8 p.m. until approximately 10 p.m.

The Licensee is not providing a DVD or VHS videocassette tape of the *2002 Billboard Music Awards* to the Commission as part of this Response because the Enforcement Bureau already has a copy of the program.<sup>5</sup>

2. **With regard to each broadcast referred to in the response to Inquiry 1 above, if the Complaint does not accurately describe the programming aired over the Station, describe any inaccuracies.**

ANSWER: To the extent that the Complainant attached to the LOI characterizes the *2002 Billboard Music Awards* program as "contain[ing] indecent material," the Licensee believes that the Complainant's description of the programming is inaccurate. As set forth more fully below, the Licensee contends that the *2002 Billboard Music Awards* did not contain any indecent content. (See response to Inquiry 6, below.)

3. **Describe all procedures employed by the Licensee to ensure that the broadcast of the 2002 Billboard Music Awards on December 9, 2002 did not contain any indecent or profane language. If the Licensee broadcast the material described in the Complaint over the Station on December 9, 2002,**

---

this court, at oral argument, that it will continue to give weight to reasonable licensee judgments when deciding whether to impose sanctions in a particular case. Thus, the potential chilling effect of the FCC's generic definition of indecency will be tempered by the Commission's restrained enforcement policy.")

<sup>5</sup> See In re Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005, Notices of Apparent Liability and Memorandum Opinion & Order, FCC 06-17, ¶ 101 (rel. March 15, 2006) (noting that the "Enforcement Bureau obtained a videotape" of the *2002 Billboard Music Awards* broadcast.).

**despite the existence of any such procedures, explain how and why such material was, in fact, broadcast.**

ANSWER: The Licensee objects to Inquiry 3 to the extent that it seeks to inquire into the process by which the Licensee creates and produces content. The creative process and the creation of content lie at the heart of the First Amendment's protections.<sup>6</sup> The FCC's request in Inquiry 3 seriously impinges upon the Licensee's First Amendment rights and conflicts with the FCC's obligation to proceed cautiously when enforcing indecency regulations.<sup>7</sup> The Licensee's procedures for ensuring that its content complies with its own standards and with the Commission's indecency and obscenity rules necessarily implicate the creative process. In addition, the Licensee objects to Inquiry 3 insofar as it implies that the material described in the Complaint was indecent. As the Licensee's response to Inquiry 6 makes clear, the material described in the Complaint was not indecent.

The FCC has long recognized that indecent speech is protected by the First Amendment – "a critical Constitutional limitation that demands we proceed cautiously and with appropriate restraint."<sup>8</sup> The investigation represented by Inquiry 3 is wholly inconsistent with the notions of caution and restraint. The government's effort to compel a licensee to divulge information about the creation and production of content threatens to chill the speech of both broadcasters and members of the creative community.

If broadcasters are faced with governmental interference in the creative process, they will undoubtedly engage in self-censorship. The intrusive questions posed by Inquiry 3 thrust the government into the inner workings of the creative process, threatening to stifle creativity while breeding an atmosphere of mistrust. Rather than expose themselves to governmental interference, broadcasters may sacrifice their First Amendment rights and avoid taking the risks necessary to produce innovative and interesting programming. In addition, members of the creative community will shun broadcasting for unregulated media – particularly cable. The FCC's invasive approach stands in direct conflict with the Supreme Court's admonition that the government's "exercise of the power of compulsory process be carefully circumscribed when the investigative process

---

<sup>6</sup> See Zachini v. Scripps-Howard Broadcasting Co., 433 U.S. 562, 578 (1977) ("There is no doubt that entertainment, as well as news, enjoys First Amendment protection. It is also true that entertainment itself can be important news").

<sup>7</sup> See Infinity, at para. 4 (citing ACT I, 852 F.2d at 1344 ("the FCC may regulate [indecent] material only with due respect for the high value our Constitution places on freedom and choice in what people say and hear")).

<sup>8</sup> Id.

tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas . . . ."<sup>9</sup>

In sum, if the government is permitted to scrutinize the creative process, the negative effect on programming will be profound. The ultimate harm will be felt by viewers of free, over-the-air television, who will have fewer options and less diversity in broadcast programming.

Nonetheless, in the interest of bringing this matter to a prompt conclusion (yet subject to the foregoing objections), the Licensee has attached hereto the Declaration of Kevin Spicer, Executive Director of Broadcast Standards at Fox Broadcasting Company ("FBC").<sup>10</sup> The Spicer Declaration describes the technical procedures employed by FBC to ensure that indecent and profane material did not appear in the broadcast of the *2002 Billboard Music Awards*. As the Spicer Declaration makes clear, FBC takes very seriously its commitment to ensure that offensive, indecent, profane and obscene material does not appear in any FBC-produced programming.<sup>11</sup>

With the immediacy of live television comes the possibility that performers will spontaneously do or say something that is offensive to some viewers. Accordingly, at the time of the broadcast of the *2002 Billboard Music Awards*, FBC utilized a five-second delay during the production of live entertainment programming. In addition, FBC ensured that a member of its Broadcast Standards division monitored all live broadcasts for offensive, indecent or obscene material. FBC assigned a Broadcast Standards employee to oversee a

---

<sup>9</sup> See Sweezy v. New Hampshire, 354 U.S. 234, 245 (1957); see also Federal Election Commission v. Machinists Non-Partisan Political League, 655 F.2d 380, 389 (D.C. Cir. 1981) (cert. denied, 454 U.S. 897 (1981)) ("[B]efore a state or federal body can compel disclosure of information which would trespass upon first amendment freedoms, a 'subordinating interest of the State' must be proffered, and it must be 'compelling.'" (citing NAACP v. Alabama, 357 U.S. 449, 463 (1958))).

<sup>10</sup> See Declaration of Kevin Spicer, Executive Director of Broadcast Standards for Fox Broadcasting Company (the "Spicer Declaration"), attached hereto.

<sup>11</sup> The Licensee emphasizes, however, that its response to Inquiry 3 does not in any way constitute an admission that the material described in the Complaint attached to the LOI was indecent, profane or violative of any other Commission rule or policy. The procedures discussed in the response to Inquiry 3 are designed to deal not only with indecent or profane programming, but also with programming that FBC feels may be offensive to some viewers. FBC's effort to eliminate or edit certain aspects of the material described in the Complaint attached to the LOI are a reflection of its belief that some of the dialog contained in the program was offensive – even though none of it was indecent or profane.

"delay button" that enabled the employee to attempt to edit out objectionable content before it appeared on viewers' televisions. FBC also ensured that an additional Broadcast Standards representative was assigned to all live entertainment events. This representative oversaw the event throughout its production – reviewing in advance the script, attending dress rehearsals and remaining physically present at the site of the live event.<sup>12</sup>

Although the above-described procedures had been effective for a number of years in preventing objectionable material from appearing during live entertainment broadcasts, the system relied on human beings and it therefore was not perfect. During the broadcast of the *2002 Billboard Music Awards*, the above-described procedures proved insufficient to permit the editing of an objectionable word spontaneously uttered by the singer Cher.<sup>13</sup> Although the Broadcast Standards employee working during the *2002 Billboard Music Awards* made a good faith effort to edit the expletive spoken by Cher, he failed to act quickly enough and accidentally wound up editing out dialog that was aired just after Cher's utterance.<sup>14</sup> (FBC did edit out the objectionable language from its tape delayed broadcast of the *2002 Billboard Music Awards* for viewers in the Mountain and Pacific time zones.<sup>15</sup>)

FBC believes that at the time of the *2002 Billboard Music Awards* program, Cher's utterance was the first incident of its kind to be broadcast on the FOX network. Following the FBC broadcast of the *2003 Billboard Music Awards*, in which a similar incident occurred despite FBC's good faith effort to prevent it, FBC implemented several changes to its time delay procedures in an effort to reduce the risks associated with human error during live entertainment broadcasts. First, FBC now uses a total of four delay buttons for all live broadcasts of entertainment programming. These additional delay buttons are operated by Broadcast Standards employees at separate locations, so as to build in redundancy and enable each employee to serve as a back-up set of eyes and ears in case one of the other individuals fails to react quickly enough to edit objectionable content.<sup>16</sup>

---

<sup>12</sup> See Spicer Declaration.

<sup>13</sup> The Spicer Declaration confirms that the dialog contained in the Complaint attached to the LOI, including the Expletive, did not appear either in the script or on the TelePrompTer for the *2002 Billboard Music Awards*. See id. Indeed, the dialog contained in the Complaint was spontaneously delivered by Cher, who as an award winner (as opposed to a host or presenter) had no scripted lines during the program.

<sup>14</sup> See id.

<sup>15</sup> See id.

<sup>16</sup> See id.

Regardless of the procedures, however, any system that relies on split-second timing and decisions made based on inherently vague standards is susceptible to being both under- and over-inclusive. There will be circumstances when broadcast standards employees are unable to edit objectionable words or phrases during live broadcasts, and at the same time, employees inevitably will edit out some perfectly legitimate content.

In addition, FBC recognizes that certain performers may present more risk of spontaneous objectionable content during live performances than others. Where feasible, FBC has begun to tape in advance certain performances to air during otherwise "live" broadcasts.<sup>17</sup>

In sum, FBC has been responsible and conscientious when broadcasting live entertainment programming. At the time of the broadcast of the *2002 Billboard Music Awards*, it had utilized a time delay system that had been quite effective at keeping objectionable material off the air. Nonetheless, in the last few years FBC has worked diligently to improve its system to further reduce the risks associated with broadcasting events live.

- 4. Provide copies of any and all Documents relating or referring to each broadcast referred to in the response to Inquiry 1 above, and of any and all other Documents that provide the basis for or otherwise support the responses to Inquiries 1, 2 and 3 above.**

ANSWER: Copies of the Documents that Licensee has relating to or referring to the broadcast identified in Inquiry 1 are attached hereto. The Licensee does not have any other documents that provide the basis for or that otherwise support the response to Inquiries 1, 2 and 3. See Declaration of Molly Pauker, Vice President of Fox Television Stations, Inc., attached hereto.

- 5. Describe any program ratings or other warnings that would have placed viewers on notice that the complained-of material would or might be broadcast.**

ANSWER: FBC rated the program TV-PG, indicating that parental guidance was suggested and that the program contained material that parents may find unsuitable for younger children. The TV-PG rating icon appeared on-screen at the beginning of the broadcast of *2002 Billboard Music Awards*, and data reflecting this rating was embedded in the broadcast to enable V-chip enabled television sets to block the program from those homes that had chosen to utilize this feature.

---

<sup>17</sup> See id.

6. **Provide any other information relevant to the Bureau's investigation of this matter.**

ANSWER: The material described in the Complaint attached to the LOI is not actionably indecent. The Licensee submits that the LOI is improper and violative of its First Amendment rights.<sup>18</sup> In the interest of bringing this matter to a prompt conclusion, but without waiving its objection to the inquiry, the Licensee hereby demonstrates why the material described in the Complaint is not indecent.

*The Indecency Rules*

The Commission's indecency rule states: "No licensee of a radio or television station shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent."<sup>19</sup> The FCC has indicated that its evaluation of indecency involves 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.<sup>20</sup>

At the time of the broadcast of the *2002 Billboard Music Awards*, the Commission had a long and uninterrupted history of emphasizing that "[t]he use of specific potentially offensive words is not per se indecent."<sup>21</sup> Rather, a fundamental prerequisite of an indecency

---

<sup>18</sup> Furthermore, as the Licensee demonstrates in its response to the Commission's public notice inviting comments in connection with remand proceedings from the United States Court of Appeals for the Second Circuit, the current indecency regime, as it relates to potentially offensive words, is unconstitutionally vague and impermissibly chills protected speech. See Comments of Fox Television Stations, Inc., In Re Remand of Section III.B of the Commission's March 15, 2006 Omnibus Order Resolving Numerous Broadcast Television Indecency Complaints, DA 06-1739 (submitted Sept. 21, 2006), which are hereby incorporated by reference and made a part of this submission.

<sup>19</sup> 47 C.F.R. § 73.3999.

<sup>20</sup> See Indecency Policy Statement, at 8002 (emphasis in original) (citation omitted).

<sup>21</sup> Id.; see also Peter Branton, 6 FCC Rcd 610 (1991) (subsequent history omitted) ("[n]o terms are per se indecent").

finding was that the language depict or describe sexual or excretory organs or activities. Thus, the Commission had held that "speech that is indecent must involve more than an isolated use of an offensive word."<sup>22</sup> The Supreme Court, in affirming the FCC's limited authority to regulate indecency, relied upon the fact that the Commission's definition of indecency requires a sufficient nexus between content and a sexual or excretory description or depiction.<sup>23</sup> Indeed, the Supreme Court specifically emphasized the narrowness of its holding: "We have not decided that an occasional expletive . . . would justify any sanction . . . ."<sup>24</sup>

The Commission had repeatedly embraced this limited approach. When confronted with words that can serve both as an expletive and as a sexual reference, the FCC analyzed the context to determine whether it can make the threshold finding required by the indecency definition.<sup>25</sup> For example, the Commission found that a radio station had not broadcast indecent material where the word "prick" was "not used to 'describe or depict' a sexual activity or organ, but was instead used as a vulgar insult."<sup>26</sup> In short, offensive words, if wholly detached from any sexual or excretory meaning, had never been characterized as indecent.<sup>27</sup>

Even when the FCC was satisfied that content met the threshold definition of indecency, the Commission had made clear that "the determination as to whether certain programming is patently offensive is

---

<sup>22</sup> In Re The Regents of the University of California, 2 FCC Rcd 2703 (1987) (citing In Re Pacifica Foundation, Inc., 2 FCC Rcd 2698, 2699 (1987)).

<sup>23</sup> See FCC v. Pacifica Foundation, 438 U.S. at 745 (the "question in this case is whether a broadcast of patently offensive words *dealing with sex and excretion* may be regulated because of its content") (emphasis added). In its decision below, the Commission had made clear that the "concept of 'indecent' is intimately connected . . . to language that describes . . . sexual or excretory organs or activities . . . ." Citizen's Complaint Against Pacifica Foundation Station WBAI(FM), 56 F.C.C.2d 94, 98 (1975).

<sup>24</sup> FCC v. Pacifica Foundation, 438 U.S. at 750.

<sup>25</sup> See, e.g., In Re Entercom Buffalo License, LLC, 17 FCC Rcd 11997, 11999 (2002).

<sup>26</sup> Id.

<sup>27</sup> In addition, at the time of the broadcast of the *2002 Billboard Music Awards*, the Commission did not separately enforce its content rules with respect to so-called "profanity."



not a local one and does not encompass any particular geographic area."<sup>28</sup> The Commission reviewed the content from the perspective of the average broadcast viewer – not the sensibilities of any individual complainant.<sup>29</sup> In determining whether material is patently offensive, the FCC laid out three principal factors for evaluation: (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 the descriptions or depictions; and (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.<sup>30</sup> The Commission emphasized that, as part of any determination of whether material is patently offensive, the "*full context* in which the material appeared is critically important."<sup>31</sup> None of the three principal factors alone is controlling. Rather, these criteria, and other case-specific factors, are reviewed in the aggregate.

Furthermore, the Commission had held that even when speech met the threshold definition of indecency (*i.e.*, it depicted or described sexual or excretory organs or activities), it was not actionably indecent if the speech was only a "fleeting and isolated utterance" – especially if the speech occurred within the context of live and spontaneous programming.<sup>32</sup> In fact, in its reconsideration decision in the *Pacifica* case that established the current indecency definition, the Commission pointed out that, under circumstances in which "public events likely to produce offensive speech are covered live," it would be "inequitable for us to hold a licensee responsible for indecent language."<sup>33</sup>

---

<sup>28</sup> Indecency Policy Statement, at 8002 (citation omitted).

<sup>29</sup> See *id.* at n.15. Indeed, the "purpose of 'contemporary community standards' was to ensure that material is judged neither on the basis of a decisionmaker's personal opinion, nor by its effect on a particularly sensitive or insensitive person or group." *Id.* (citing *Hamling v. United States*, 418 U.S. 87, 107 (1974), *reh'g denied* 419 U.S. 885 (1974)).

<sup>30</sup> See Indecency Policy Statement, at 8003.

<sup>31</sup> *Id.* at 8002 (emphasis in original).

<sup>32</sup> See, e.g., L.M. Communications of South Carolina, Inc., 7 FCC Rcd 1595 (1992); see also Steve Bridges, 9 FCC Rcd 1681 (1994) ("given the brief, live and unscripted nature of the material as well as its outside source, we will take no further action with respect to this broadcast").

<sup>33</sup> In Re "Petition for Clarification or Reconsideration" of a Citizen's Complaint Against Pacifica Foundation, 59 F.C.C.2d 892, 893, n.1 (1976). The Supreme Court in *Pacifica* took specific note of the Commission's decision in this regard. See *FCC v. Pacifica*, 438 U.S. at 732-33 & n.7.

### Analysis

First and foremost, the Licensee emphasizes that the objectionable dialog contained in the Complaint attached to the LOI does not depict or describe sexual or excretory organs or activities and therefore does not fall within the subject matter scope of the Commission's indecency definition. At most, the phrase "fuck 'em" constituted a vulgar expletive directed as an insult toward an individual or group against whom the speaker held deep-seated feelings of ill-will. Indeed, in context, Cher was responding to critics who had declared her career over; she was not suggesting that she wanted to have sexual relations with anyone. In short, the phrase was not used to convey any type of sexual meaning whatsoever.

Because the phrase "fuck 'em" was not used in the *2002 Billboard Music Awards* to depict or describe sexual or excretory organs or activities, the factors for considering whether the broadcast was patently offensive are inapposite. Even assuming that the Commission were to conclude, and it should not, that the word did constitute a description or depiction of sexual or excretory activity, none of the three factors weighs in favor of a finding of patent offensiveness.

As to the first factor (explicitness or graphic nature), the dialog contained at most the passing use of an expletive used to convey an insult. As to the second factor (whether the material dwells on or repeats at length depictions or descriptions), the dialog lasted only a couple of seconds out of a two-hour program. Finally, the Licensee did not use the dialog to pander to or titillate the audience, nor did it present the dialog for "shock value." To the contrary, the Licensee diligently attempted to edit out all the offensive language during the live broadcast of the *2002 Billboard Music Awards* shown to viewers in the Eastern and Central time zones. Moreover, the Licensee immediately edited the offensive language out of the tape delayed broadcast of the *2002 Billboard Music Awards* shown to viewers in the Mountain and Western time zones.

As the Commission has noted, the *full context* in which the material appeared is critically important.<sup>34</sup> The language contained in the Complaint attached to the LOI constitutes a fleeting and isolated utterance delivered during live programming. Moreover, the expletive was not scripted but was rather a spontaneous outburst by Cher upon winning an award.<sup>35</sup> Thus, the material contained in the Complaint attached to the LOI is not actionably indecent.

---

<sup>34</sup> See Indecency Policy Statement, at 8002.

<sup>35</sup> See Steve Bridges, 9 FCC Rcd at 1681 ("given the brief, live and unscripted nature of the material as well as its outside source, we will take no further action with respect to this broadcast").

Conclusion

The First Amendment is a critical constitutional limitation that demands that the Commission "proceed cautiously and with appropriate restraint."<sup>36</sup> Indecency determinations are difficult as evinced by the Commission's struggles in recent years to define with clarity what is in fact indecent. Ultimately, however, the outcome of this case is clear: Commission precedent and the Constitution require that the FCC deny the complaint filed against the Licensee and take no further action.

Dated: September 21, 2006

---

<sup>36</sup> In Re KBOO Foundation; Licensee of Noncommercial Educational Station KBOO-FM, Portland, OR, 18 FCC Rcd 2472, para. 5 (2003) ("KBOO") (citing United States v. Playboy Entertainment Group, Inc., 529 U.S. 803, 813-15 (2000); Action for Children's Television, 852 F.2d 1332, 1344 (D.C. Cir. 1988)).

## DECLARATION

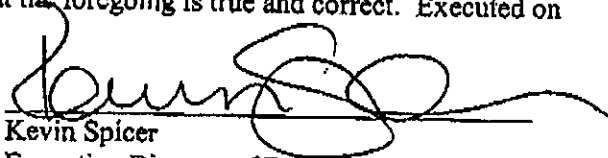
I, Kevin Spicer, hereby state as follows:

1. I am Executive Director of Broadcast Standards for Fox Broadcasting Company ("FBC"). I am a 26-year veteran in the field of network television broadcasting and have spent 24 years as a network standards executive. I have reviewed tens of thousands of hours of television programming to assess its accuracy, appropriateness for various audiences and potential for positive or negative impact. I have been employed by FBC for 12 years. In my position with FBC, I have responsibility for ensuring that the programming produced and aired by FBC meets FBC's internal standards and complies with the Federal Communications Commission's indecency, profanity and obscenity rules. One aspect of my responsibilities includes oversight of the time delay procedures employed by FBC to edit objectionable content from live broadcasts.
2. I submit this Declaration in response to the FCC Letter of Inquiry, dated September 7, 2006, to Fox Television Stations, Inc. from Benigno Bartolome, Deputy Chief, Investigations and Hearings Division.
3. Historically, FBC has utilized a five-second delay during the production of live entertainment programming. At the time of the broadcast of the *2002 Billboard Music Awards*, FBC required that a member of its Broadcast Standards division monitor programs from its control center. This representative had access to a "delay button" that enabled the employee to try to edit out objectionable content before it appeared on viewers' televisions. FBC also required that an additional Broadcast Standards employee review in advance the script for the program and attend dress rehearsals. Prior to the *2002 Billboard Music Awards*, FBC utilized these procedures successfully to edit objectionable material during hundreds of hours of live programming.
4. During the live broadcast of the *2002 Billboard Music Awards* on December 9, 2002, the above-described procedures proved insufficient to permit the editing of an objectionable word uttered by the performer Cher. At the time, I believed that the procedures described above were adequate to catch and remove the material, and that the Broadcast Standards employee working in the control center on the night of the broadcast acted in good faith to try to do so. The employee attempted to edit the objectionable content spoken by Cher, but he failed to act quickly enough and accidentally wound up editing out dialog that was aired just after Cher's objectionable utterance during the live broadcast of the program shown to viewers in the Eastern and Central time zones. FBC immediately edited the tape of the *2002 Billboard Music Awards* to

remove the objectionable content before the material aired on tape delay in the Mountain and Pacific time zones.

5. I believe that at the time of the *2002 Billboard Music Awards* program, Cher's utterance was the first incident of its kind to be broadcast on the FOX network. As the result of its experiences during the *2002 Billboard Music Awards* and the *2003 Billboard Music Awards* broadcasts, FBC has implemented several significant changes to its time delay procedures. First, FBC now uses a total of four "delay buttons" for all live broadcasts of entertainment programming. These additional delay buttons are operated by Broadcast Standards employees from separate locations, so as to build in redundancy and enable each employee to serve as a back-up set of eyes and ears in case one of the other individuals fails to react quickly enough to edit objectionable content. Regardless of the procedures, however, any system that relies on split-second timing and decisions made based on inherently vague standards will remain an imperfect endeavor.
6. In addition, where feasible during otherwise "live" broadcasts, FBC will tape in advance the performances of certain performers that present a heightened risk of speaking spontaneous objectionable content.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 20, 2006.



Kevin Spicer  
Executive Director of Broadcast Standards  
Fox Broadcasting Company  
P.O. Box 900  
Beverly Hills, CA 90213  
(310) 369-3883

## DECLARATION

I, Molly Pauker, hereby state as follows:

1. I am Vice President of Fox Television Stations, Inc. (the "Licensee").
2. I have read the foregoing Response of FTS to FCC Letter of Inquiry, dated September 21, 2006 (the "Response"), which is responsive to the letter, dated September 7, 2006, to Fox Television Stations Inc. from Benigno Bartolome, Deputy Chief, Investigations and Hearings Division (the "LOI").
3. Except with respect to those portions of the Response that rely upon the other Declaration attached to the Response, I have personal knowledge of the facts contained in the Response and declare that such facts are true and correct.
4. I declare that the attached documents (which are listed in the production log attached to the Response as Exhibit 1) are in the possession, custody or control of the Licensee and are responsive to Inquiry 4 of the LOI.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 20, 2006.



Molly Pauker  
Vice President, Fox Television Holdings, Inc.  
5151 Wisconsin Avenue, N.W.  
Washington, D.C. 20015  
(202) 895-3088

EXHIBIT I

<u>Bates Range</u>	<u>Inquiry</u>	<u>Custodian</u>	<u>Author</u>	<u>Recipient</u>	<u>Date</u>	<u>Title / Description</u>
FCC-X01-001	4		FBC Network Operations/ Mark Watson	Program Directors, Traffic Directors, Chief Engineers & Master Control Operators	December 9, 2002	E-mail / Operational Notes
FCC-X01-002 to FCC-X01-005	4		Anne Swartz, Scheduling	General Managers, General Sales Managers, Program Directors, Promotion Managers & Traffic Managers	December 3, 2002	E-mail with List of Billboard Awards Finalists
FCC-X01-006 to FCC-X01-009	4		Anne Swartz; Scheduling	General Managers, General Sales Managers, Program Directors, Promotion Managers & Traffic Managers	November 14, 2002	E-mail with Press Release Re: Billboard Music Awards Information
FCC-X01-010 to FCC-X01-011	4		Network Distribution	General Managers, General Sales Managers, Program Directors, Promotion Managers & Traffic Managers	November 20, 2002	E-mail with Press Release Re: Billboard Music Awards Information

EASYLINK #12.29

TO: PROGRAM DIRECTORS, TRAFFIC DIRECTORS, CHIEF ENGINEERS  
AND MASTER CONTROL OPERATORS

FR: FBC NETWORK OPERATIONS / MARK WATSON 310/369-9033

DT: 12/9/02

RE: 2002 BILLBOARD MUSIC AWARDS 12-9-02 / OPERATIONAL NOTES

TONIGHT, WE WILL AIR THE 2002 BILLBOARD MUSIC AWARDS FROM LAS VEGAS NEVADA. AS IN THE PAST, THIS IS A LIVE SHOW, SO ALL AFFILIATES SHOULD TAKE THEIR ROLL CUES FOR LOCAL BREAKS FROM THE NETWORK PROMO/BUMPER IMMEDIATELY PRECEDING THEIR LOCAL BREAK (CHECK FINAL LOG FOR ACTUAL LENGTHS).

ALL STATIONS MUST TAKE THE BILLBOARD MUSIC AWARDS USING THEIR NETWORK SATELLITE RECEIVERS.

AS WITH ANY LIVE SHOW, THERE EXISTS THE POSSIBILITY THAT THE SHOW MAY COME UP SHORT OR RUN LONG.

IF WE RUN SHORT WE WILL FILL UNTIL THE SCHEDULED OFF TIME. IN THE EVENT WE RUN LONG, WE WILL WRAP ASAP AND GET OFF THE AIR. THERE WILL BE NO OVERRUN BREAKS.

WE WILL GUARANTEE PROGRAMMING TO 9:59:50P ET.

SATELLITE PROBLEMS - 310/369-6116



EASYLINK 12.08

To: GENERAL MANAGERS; GENERAL SALES MANAGERS; PROGRAM DIRECTORS  
PROMOTION MANAGERS; TRAFFIC MANAGERS

Fr: ANNE SCHWARZ, SCHEDULING

Da: DECEMBER 3, 2002

Re: BILLBOARD AWARDS FINALISTS

The following press release is going out this morning:

Begin Press Release

\*\*\*\*\*

**FINALISTS ANNOUNCED FOR 'THE 2002 BILLBOARD MUSIC AWARDS'  
AIRING LIVE DEC. 9 ON FOX**

**Plus a Special All-Star Tribute To Run-D.M.C.**

THE 2002 BILLBOARD MUSIC AWARDS announces finalists in categories scheduled to be honored this year live from the MGM Grand Garden Arena in Las Vegas Monday, Dec. 9 (8:00-10 PM ET Live/PT Tape Delayed) on FOX.

In addition, THE 2002 BILLBOARD MUSIC AWARDS will pay a special tribute to Jason "Jam Master Jay" Mizell, formerly of Run-D.M.C., who was tragically murdered Oct. 30 in his Queens, N.Y., recording studio. His death marked the end of the trio known for hits including "My Adidas," "King of Rock," "Down With the King," and "Walk This Way." The Billboard Music Awards appearance is expected to be one of the last together by Joseph "Run" Simmons and Darryl "D.M.C." McDaniels. This will be an all-star tribute with appearances by Steven Tyler and Joe Perry of Aerosmith, Nelly and Nas. Additional artists will be announced soon.

Among finalists, Nelly leads with 10 categories, including Album of the Year for "Nellyville," Hot 100 Single of the Year for "Hot in Herre" and Male Artist of the Year. Newcomer Ashanti follows with nods in nine categories (seven on her own and two as featured artist), including Female Artist of the Year and New Artist of the Year. Other artists competing in multiple categories include Puddle of Mudd in five, Eminem and Alan Jackson in four and Ja Rule, Usher, Creed, Nickelback, Ludacris and Garth Brooks in three.

The only show of its kind, THE 2002 BILLBOARD MUSIC AWARDS honors this year's No. 1 artists and songs as determined by record sales and radio airplay. Winners are decided by the 2002 year-end charts, which reflect the weekly charts that Billboard publishes from December 2001 through November 2002. Based on sales data from Nielsen SoundScan and radio information compiled by Nielsen Broadcast Data Systems, Billboard charts are the world's most authoritative music charts. The show celebrates those artists whose chart positions are outstanding, creating a true souvenir of the year in music.

(Lists are alphabetical by artist)

**FEMALE ARTIST of the YEAR**

ASHANTI  
AVRIL LAVIGNE  
JENNIFER LOPEZ  
PINK

**MALE ARTIST of the YEAR**

EMINEM  
JA RULE  
NELLY  
USHER

**NEW ARTIST of the YEAR**

ASHANTI  
VANESSA CARLTON  
AVRIL LAVIGNE  
THE CALLING

**ADULT CONTEMPORARY ARTIST of the YEAR**

CELINE DION  
ENYA  
FIVE FOR FIGHTING  
ENRIQUE IGLESIAS

**ADULT CONTEMPORARY SINGLE of the YEAR**

"A NEW DAY HAS COME" CELINE DION  
"SUPERMAN" FIVE FOR FIGHTING  
"HERO" ENRIQUE IGLESIAS  
"IF YOU'RE GONE" MATCHBOX TWENTY

**MALE R&B/HIP HOP ARTIST of the YEAR**

EMINEM  
LUDACRIS  
NELLY  
USHER

**FEMALE R&B/HIP HOP ARTIST of the YEAR**

AALIYAH  
ASHANTI  
MARY J BLIGE  
FAITH EVANS

**NEW R&B/HIP HOP ARTIST of the YEAR**

ASHANTI  
B2K  
CLIPSE  
TWEET

**R&B/HIP HOP SINGLE of the YEAR**

"FOOLISH" ASHANTI  
"HALF CRAZY" MUSIQ  
"HOT IN HERRE" NELLY  
"U DON'T HAVE TO CALL" USHER

**R&B/HIP HOP ALBUM of the YEAR**

"ASHANTI" ASHANTI  
"THE EMINEM SHOW" EMINEM  
"WORD OF MOUTH" LUDACRIS  
"NELLYVILLE" NELLY

**RAP ARTIST of the YEAR**

FAT JOE  
JA RULE  
LUDACRIS  
NELLY

**RAP TRACK of the YEAR**

"WHAT'S LUV?" FAT JOE FEATURING ASHANTI  
"ALWAYS ON TIME" JA RULE FEATURING ASHANTI  
"HOT IN HERRE" NELLY  
"DILEMMA" NELLY FEATURING KELLY ROWLAND

**COUNTRY SINGLES ARTIST of the YEAR**

GARTH BROOKS  
ALAN JACKSON  
TOBY KEITH  
TIM MCGRAW

**MALE COUNTRY ARTIST of the YEAR**

GARTH BROOKS  
KENNY CHESNEY  
ALAN JACKSON  
TOBY KEITH

**FEMALE COUNTRY ARTIST of the YEAR**

SARA EVANS  
FAITH HILL  
MARINA McBRIDE  
JO DEE MESSINA

**COUNTRY DUO/GROUP of the YEAR**

BROOKS & DUNN  
DIXIE CHICKS  
LONESTAR  
RASCAL FLATTS

**COUNTRY ALBUM of the YEAR**

"SCARECROW" GARTH BROOKS  
"HOME" DIXIE CHICKS  
"DRIVE" ALAN JACKSON  
"O' BROTHER WHERE ART THOU" SOUNDTRACK

**COUNTRY SINGLE of the YEAR**

"THE GOOD STUFF" KENNY CHESNEY  
"GOOD MORNING BEAUTIFUL" STEVE HOLY  
"DRIVE" ALAN JACKSON  
"LIVING AND LIVING WELL" GEORGE STRAIT

**ROCK ARTIST of the YEAR**

CREED  
NICHELBACK  
PUDDLE OF MUDD  
STAIN'D

**ROCK TRACK of the YEAR**

"WASTING MY TIME" DEFAULT  
"I STAND ALONE" GODSMACK  
"BLURRY" PUDDLE OF MUDD  
"FOR YOU" STAINED

**MODERN ROCK ARTIST of the YEAR**

HOOBASTANK  
INCUBUS  
PUDDLE OF MUDD  
SYSTEM OF A DOWN

**MODERN ROCK TRACK of the YEAR**

"THE MIDDLE" JIMMY EAT WORLD  
"IN THE END" LINKIN PARK  
"BLURRY" PUDDLE OF MUDD  
"BY THE WAY" RED HOT CHILI PEPPERS

**HOT 100 SINGLE of the YEAR**

"FOOLISH" ASHANTI  
"HOT IN HERRE" NELLY  
"DILEMMA" NELLY FEATURING KELLY ROWLAND  
"HOW YOU REMIND ME" NICKELBACK

**GROUP of the YEAR**

CREED  
LINKIN PARK  
NICKELBACK  
PUDDLE OF MUDD

**ALBUM of the YEAR**

"WEATHERED" CREED  
"THE EMINEM SHOW" EMINEM  
"NELLYVILLE" NELLY  
"MISSUNDAZTOOD" PINK

\*\*\*\*\*

End Press Release

EASYLINK 11.37

To: GENERAL MANAGERS  
GENERAL SALES MANAGERS  
PROGRAM DIRECTORS  
PROMOTION MANAGERS  
TRAFFIC MANAGERS

Fr: ANNE SCHWARZ, SCHEDULING

Da: NOVEMBER 14, 2002

Re: BILLBOARD MUSIC AWARDS INFORMATION

Two press releases are going out today with information on performers and honorees for the upcoming BILLBOARD MUSIC AWARDS.

Begin Press Releases

\*\*\*\*\*

JUSTIN TIMBERLAKE AND FAITH HILL TO PERFORM AT 'THE 2002 BILLBOARD MUSIC AWARDS' MONDAY, DEC. 9 ON FOX

B2K, Keith Urban, LL Cool J, Nivea and  
Shannon Elizabeth Will Make Special Appearances

Pop sensation Justin Timberlake and country music superstar Faith Hill will perform at THE 2002 BILLBOARD MUSIC AWARDS, airing live from the MGM Grand Garden Arena in Las Vegas, Monday, Dec. 9 (8:00-10:00 PM ET/PT) on FOX. They join previously announced Avril Lavigne, Creed, Nelly and Puddle of Mudd.

Having sold over 27 million albums in the U.S. with \*NSYNC and having earned ten Top 40 singles on the Billboard Hot 100, Justin Timberlake has temporarily branched out as a solo artist with his newly released album "Justified" which is No. 2 this week on the Billboard 200. The first single "Like I Love You," climbed to No. 11 on the Billboard Hot 100. His second single "Cry Me A River" hit airwaves Nov. 11.

Faith Hill has sold over 25 million records worldwide and has garnered five top ten Billboard Hot 100 hits, eight No. 1 country singles, two No. 1 country albums and two No. 1 Billboard 200 Albums. Nearly three years removed from album "Breathe," Hill recently released her fifth studio recording, "Cry" which debuted at No. 1 on the Billboard 200 and Top Country Albums charts.

B2K, Keith Urban, LL Cool J, Nivea and Shannon Elizabeth will make special appearances along with previously announced artists Nick Carter, JC Chasez, Joe, Master P and Lil' Romeo.

The BILLBOARD MUSIC AWARDS has been televised exclusively on FOX since the show's inception 13 years ago. The host(s) along with award contenders will be announced soon.

The only show of its kind, THE 2002 BILLBOARD MUSIC AWARDS honors this year's No. 1 artists and songs as determined by record sales and radio airplay. Winners are decided by the 2002 year-end charts, which reflect the weekly charts that Billboard publishes from December 2001 through November 2002. The show celebrates those artists whose chart positions are outstanding, creating a true souvenir of the year in music.

Now in its 109th year of publication, Billboard magazine is the world's premiere music industry publication. It is read weekly by more than 150,000 people in 110 countries. Billboard publishes the most trusted charts and offers unrivaled reporting about the latest music and entertainment issues and trends. Billboard is the flagship property for the Billboard Music Group, which also consists of Airplay Monitor, Amusement Business, Music & Media, Billboard Bulletin, Billboard.com and Billboard licensing. The Group is a unit of VNU Business Media, a worldwide media company that provides specialized publications, electronically delivered data, expositions and marketing services and is owned by VNU Inc., a wholly owned subsidiary of Netherlands-based VNU, an international publishing and information company.

MGM Grand, "The City of Entertainment," features 5,034 newly renovated, art deco-themed guest rooms and suites, world-class entertainment venues, signature restaurants with celebrity chefs, the must-see Lion Habitat and the \$100 million Conference Center for meetings/conventions. MGM Grand is a wholly owned subsidiary of MGM MIRAGE. For room availability and information, call (800) 929-1111 or (702) 891-7777 or log onto the World Wide Web at [www.mgmgrand.com](http://www.mgmgrand.com).

Bob Bain returns for his seventh year as executive producer of the special. Bruce Gowers will direct and Greg Sills as supervising producer. Paul Flattery and Michael Levitt are producers and Wyleen May is the executive in charge of production.

\*\*\*\*\*

**CHER TO RECEIVE THE ARTIST ACHIEVEMENT AWARD ON THE 2002  
BILLBOARD MUSIC AWARDS MONDAY, DEC. 9 ON FOX**

Oscar and Grammy Award winner Cher will be honored with the Artist Achievement Award on THE 2002 BILLBOARD MUSIC AWARDS airing live from the MGM Grand Garden Arena in Las Vegas Monday, Dec. 9 (8:00-10:00 PM ET/PT) on FOX.

The Artist Achievement Award recognizes an extraordinary artist who has redefined the landscape of popular music and has excelled in Billboard chart accomplishments. Since 1993, the award has been bestowed upon a select number of artists including Aerosmith, Garth Brooks, Madonna, Janet Jackson, Eric Clapton and Rod Stewart.

Like few other artists, Cher has remained popular through five decades of recording, performing and acting. She was an instant success when she debuted with her former husband Sonny Bono in the '60s. She has since become a world-class performer and international superstar. Her performance in "Moonstruck" earned her an Academy Award for Best Actress and her single "Believe" won her a Grammy Award for Best Dance Recording.

The multi-platinum album "Believe" once again propelled Cher to the top and reestablished her popularity. When the title track "Believe" went to No. 1 on the Billboard charts in March 1999, it extended her chart topping era to 33 years and seven months, beginning with "I Got You Babe" in 1965.

She has proved to be unstoppable with 32 Top-10 hits and five No. 1 singles. Not only has Cher had a Top-40 album on the Billboard Charts in the '60s, '70s, '80s, '90s and the current decade, she has also had a Top-10 hit in every decade from the '60s to the '90s.

Cher's most recent album, "Living Proof," debuted in the Billboard Top 10. She is currently on the final tour of her career, "Living Proof – The Farewell Tour." She is also set to tape a similarly titled special in November, which will air sometime next year.

Artists scheduled to perform at THE 2002 BILLBOARD MUSIC AWARDS include Avril Lavigne, Creed, Faith Hill, Justin Timberlake, Nelly and Puddle of Mudd with appearances by Nick Carter, JC Chasez, Joe, Master P, Lil' Romeo, B2K, Keith Urban, LL Cool J, Shannon Elizabeth and Nivea.

Returning for its 13th year, the BILLBOARD MUSIC AWARDS recognizes the No. 1 artists and songs of the year, as determined by sales and radio play. The biggest names in pop, alternative, R&B, rap and country music will come together to celebrate the hottest albums and songs of 2002. FOX has exclusively televised the show since its debut in 1989.

Now in its 109th year of publication, Billboard magazine is the world's premiere music industry publication. It is read weekly by more than 150,000 people in 110 countries. Billboard publishes the most trusted charts and offers unrivaled reporting about the latest music and entertainment issues and trends. Billboard is the flagship property for the Billboard Music Group, which also consists of Airplay Monitor, Amusement Business, Music & Media, Billboard Bulletin, Billboard.com and Billboard licensing. The Group is a unit of VNU Business Media, a worldwide media company that provides specialized publications, electronically delivered data, expositions and marketing

services and is owned by VNU Inc., a wholly owned subsidiary of Netherlands-based VNU, an international publishing and information company.

MGM Grand, "The City of Entertainment," features 5,034 newly renovated, art deco-themed guest rooms and suites, world-class entertainment venues, signature restaurants with celebrity chefs, the must-see Lion Habitat and the \$100 million Conference Center for meetings/conventions. MGM Grand is a wholly owned subsidiary of MGM MIRAGE. For room availability and information, call (800) 929-1111 or (702) 891-7777 or log onto the World Wide Web at [www.mgmgrand.com](http://www.mgmgrand.com).

Bob Bain returns for his seventh year as executive producer of the special. Bruce Gowers will direct and Greg Sills as supervising producer. Paul Flattery and Michael Levitt are producers and Wyleen May is the executive in charge of production.

\*\*\*\*\*

End Press Releases



EASYLINK 11.46

TO: GENERAL MANAGERS  
GENERAL SALES MANAGERS  
PROGRAM DIRECTORS  
PROMOTION MANAGERS  
TRAFFIC MANAGERS

FR: NETWORK DISTRIBUTION

DA: NOVEMBER 20, 2002

RE: BILLBOARD MUSIC AWARDS INFORMATION

BEGIN PRESS RELEASE  
\*\*\*\*\*

**CEDRIC 'THE ENTERTAINER' TO HOST  
'THE 2002 BILLBOARD MUSIC AWARDS' MONDAY, DEC. 9 ON FOX**

**Additional Appearance by Steven Tyler**

**Multi-talented actor and comedian Cedric "The Entertainer" (CEDRIC THE ENTERTAINER PRESENTS) will host THE 2002 BILLBOARD MUSIC AWARDS airing live from the MGM Grand Garden Arena in Las Vegas Monday, Dec. 9 (8:00-10:00 PM ET Live/PT Tape Delayed) on FOX. Steven Tyler will make a special appearance, along with previously announced B2K, JC Chasez, Joe, Keith Urban, LL Cool J, Master P, Lil' Romeo, Nick Carter, Nivea and Shannon Elizabeth. Avril Lavigne, Creed, Faith Hill, Justin Timberlake, Nelly and Puddle of Mudd will perform.**

Cedric "The Entertainer" recently starred in box office smash "Barbershop" and also starred in the hit film "The Original Kings of Comedy," the documentary feature about the successful comedy tour of the same name directed by Spike Lee. He is currently the star of the new FOX comedy CEDRIC THE ENTERTAINER PRESENTS. A viewing audience of more than 144 million witnessed Cedric nab the No. 1 commercial spot for Anheuser-Busch's Bud Light brand during the broadcast of the 2001 Super Bowl (USA Today dubbed him "Madison Avenue's Most Valuable Player"). Cedric will soon co-star opposite George Clooney and Catherine Zeta-Jones in the Coen brothers comedy feature "Intolerable Cruelty."

The only show of its kind, THE 2002 BILLBOARD MUSIC AWARDS honors this year's No. 1 artists and songs as determined by record sales and radio airplay. Winners are decided by the 2002 year-end charts, which reflect the weekly charts that Billboard publishes from December 2001 through November 2002. The show celebrates those artists whose chart positions are outstanding, creating a true souvenir of the year in music.

**Now in its 109th year of publication, Billboard magazine is the world's premiere music industry publication. It is read weekly by more than 150,000 people in 110 countries. Billboard publishes the most trusted charts and offers unrivaled reporting about the latest music and entertainment issues and trends. Billboard is the flagship property for the Billboard Music Group, which also consists of Airplay Monitor, Amusement Business, Music & Media, Billboard Bulletin, Billboard.com and Billboard licensing. The**

**Group is a unit of VNU Business Media, a worldwide media company that provides specialized publications, electronically delivered data, expositions and marketing services and is owned by VNU Inc., a wholly owned subsidiary of Netherlands-based VNU, an international publishing and information company.**

MGM Grand, "The City of Entertainment," features 5,034 newly renovated, art deco-themed guest rooms and suites, world-class entertainment venues, signature restaurants with celebrity chefs, the must-see Lion Habitat and the \$100 million Conference Center for meetings/conventions. MGM Grand is a wholly owned subsidiary of MGM MIRAGE. For room availability and information, call (800) 929-1111 or (702) 891-7777 or log onto the World Wide Web at [www.mgmgrand.com](http://www.mgmgrand.com).

Bob Bain returns for his seventh year as executive producer of the special. Bruce Gowers will direct and Greg Sills as supervising producer. Paul Flattery and Michael Levitt are producers and Wylleen May is the executive in charge of production.

**END PRESS RELEASE**  
\*\*\*\*\*