

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

In the Matter of )  
 )  
Complaints Regarding Various Television )  
Broadcasts Between February 2, 2002 and )  
March 8, 2005 )

**NOTICES OF APPARENT LIABILITY AND  
MEMORANDUM OPINION AND ORDER**

**Adopted: February 21, 2006**

**Released: March 15, 2006**

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

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## I. INTRODUCTION

1. The Commission has regulated the broadcast of indecent programming for decades, and our authority in this area has long been upheld as constitutional by the U.S. Supreme Court. During the last few years, however, we have witnessed increasing public unease with the nature of broadcast material. In particular, Americans have become more concerned about the content of television programming, with the number of complaints annually received by the Commission rising from fewer than 50 in 2000 to approximately 1.4 million in 2004. At the same time, broadcasters have sought guidance from the Commission about our rules, arguing that they lack certainty regarding the meaning of our indecency and profanity standards. The decisions we issue today respond to both of these concerns.

2. In these decisions, we address hundreds of thousands of complaints alleging that various broadcast television programs aired between February 2002 and March 2005 are indecent, profane, and/or obscene. The cases we resolve today represent a broad range of factual patterns. Taken both individually and as a whole, we believe that they will provide substantial guidance to broadcasters and the public about the types of programming that are impermissible under our indecency standard. The cases also further refine our standard regarding the use of profane language in the broadcast medium and illustrate the types of language proscribed by that standard. Overall, the decisions demonstrate repeatedly that we must always look to the context in which words or images occur to determine whether they are indecent. In addition, while we find certain highly offensive language to be presumptively profane, we also take care to emphasize that such words may not be profane in specified contexts.

3. Section II below is devoted to providing a full description of the Commission’s standards for analyzing whether programming is indecent and/or profane and referencing the legal sources upon which these standards are based. In Section II, we also fully describe our methodology for calculating proposed forfeitures against broadcast licensees when there has been an apparent violation of our prohibitions against indecency and/or profanity.

4. In Section III, we apply these indecency and/or profanity standards to the complaints before us on a case-by-case basis. We begin with cases in which we have determined that the broadcast licensee apparently aired indecent and/or profane material and propose forfeitures against the licensee. The monetary forfeitures proposed demonstrate that the

Given the core meaning of the “F-Word,” any use of that word inherently has a sexual connotation and falls within the first prong of our indecency definition.<sup>170</sup> We conclude that the material at issue clearly describes sexual and excretory activity. The material, therefore, warrants further scrutiny to determine whether or not it is patently offensive as measured by contemporary community standards for the broadcast medium. We conclude, looking at the three principal factors in our contextual analysis, that it is.

115. First, the complained-of material is quite graphic and explicit. The “F-Word” is one of the most vulgar, graphic, and explicit depictions of sexual activity in the English language. Its use invariably invokes a coarse sexual image.<sup>171</sup> Similarly, the “S-Word” is a vulgar, graphic, and explicit depiction of excretory activity. Its use invariably invokes a coarse excretory image. Consequently, we conclude that the broadcast of the “F-Word” and the “S-Word,” under the circumstances presented here, is vulgar, graphic and explicit.

116. Second, the fact that use of the words was not sustained or repeated, while relevant, is not dispositive. As the Commission indicated in the *Golden Globe Awards Order*: “[T]he mere fact that specific words or phrases are not sustained or repeated does not mandate a finding that material that is otherwise patently offensive to the broadcast medium is not indecent.”<sup>172</sup>

117. Third, and most important to our analysis in this context, Ms. Richie’s use of the “F-Word” and the “S-Word” here, during a live broadcast of a music awards ceremony when children were expected to be in the audience, was shocking and gratuitous.<sup>173</sup> Indeed, Fox admits that the tone of the material was vulgar.<sup>174</sup>

118. Like the broadcaster discussed the *Golden Globe Awards Order*, Fox was “on notice that an award presenter or recipient might use offensive language during the live broadcast, and it could have taken appropriate steps to ensure that it did not broadcast such language.”<sup>175</sup> As the previous case involving Cher demonstrates, Fox had clear notice that celebrities at this program might utter offensive expletives, including the “F-Word” during the broadcast. Moreover, the record of this broadcast shows that Fox, as the producer of the program and the network that carried it to affiliates throughout the country, deliberately sought to push the limits of decency. According to Fox, the original script called for Ms. Richie to make excretory references to “pig crap” and “cow manure,” and to substitute the euphemism “freaking” for the “F-Word.”<sup>176</sup> Under the circumstances, there was a palpable risk that Ms. Richie would use the “F-Word” and the “S-Word” instead of the euphemisms in the script.

119. Technological advances have made it possible to block the broadcast of offensive words without disproportionately disrupting a speaker’s message.<sup>177</sup> Indeed, Fox utilized a five-

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<sup>170</sup> See *Golden Globe Awards Order*, 19 FCC Rcd at 4978 ¶ 8; see also *Pacifica Foundation*, 56 FCC 2d at 99.

<sup>171</sup> See *Golden Globe Awards Order*, 19 FCC Rcd at 4979 ¶ 9.

<sup>172</sup> *Id.*, 19 FCC Rcd 4980 ¶ 12.

<sup>173</sup> *Id.* at 4979 ¶ 9.

<sup>174</sup> See Response at 13.

<sup>175</sup> 19 FCC Rcd at 4979 ¶ 10.

<sup>176</sup> Response at 6.

<sup>177</sup> See *Golden Globe Awards Order*, 19 FCC Rcd at 4980 ¶ 11.

second delay during the broadcast in question and successfully blocked Ms. Richie's first use of the "S-Word."<sup>178</sup> Fox could have avoided the indecency violation here by delaying the broadcast for a period of time sufficient to ensure that all offending words were blocked.<sup>179</sup> It did not do so. As a result, it broadcast highly offensive material within the 6 a.m. to 10 p.m. time frame relevant to an indecency determination under section 73.3999 of the Commission's rules.

120. In sum, because the material is explicit and shocking and gratuitous, we conclude that the broadcast of the material at issue here is patently offensive under contemporary community standards for the broadcast medium and thus apparently indecent. By broadcasting this material, the Fox affiliated stations whose broadcasts were the subject of viewer complaints to the Commission apparently violated the prohibitions in 18 U.S.C. § 1464 and the Commission's rules against broadcast indecency.<sup>180</sup>

121. *Profanity Analysis.* In the *Golden Globe Awards Order*, the Commission concluded that the "F-Word" constituted "profane language" within the meaning of 18 U.S.C. § 1464 because, in context, it constituted vulgar and coarse language "so grossly offensive to members of the public who actually hear it as to amount to a nuisance." In this case, we similarly find that the "F-Word" is a vulgar sexual term and the "S-Word" is a vulgar excretory term, each of which is so grossly offensive to members of the public as to amount to a nuisance and that each word accordingly is presumptively profane. For the reasons stated above, use of the "F-Word" invariably invokes a coarse sexual image and use of the "S-Word" invariably invokes a coarse excretory image. Each of these words is among the most offensive words in the English language, the broadcast of which is likely to shock the viewer and disturb the peace and quiet of the home.

122. In rare contexts, language that is presumptively profane will not be found to be profane where it is demonstrably essential to the nature of an artistic or educational work or essential to informing viewers on a matter of public importance.<sup>181</sup> We caution, however, that we will find this to be the case only in unusual circumstances, and such circumstances are not

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<sup>178</sup> See Response at 8.

<sup>179</sup> See *Golden Globe Awards Order*, 19 FCC Rcd at 4980 ¶ 11. We note that Fox has pledged, whenever possible, to air future live entertainment programming with a five-minute delay. See Response at 9. While we applaud that change in Fox's practices, it does not excuse the indecency violation in this case.

<sup>180</sup> PTC also filed a complaint concerning an exchange between musician David Grohl and "Triumph the Insult Comic Dog," a hand puppet, during the same program. See *Second PTC Complaint*. According to a partial transcript attached to the complaint, the exchange focused on whether the puppet would "poop" on various celebrities. The exchange also included the phrases "kick-ass lip-singer," "sex with a dog," "singers that suck," "a lot of crap," "my ass," and "you suck." The transcript supplied by PTC stated that the references to pooping on someone were "slang for insults." *Id.* Moreover, the word "poop" is more puerile than offensive. The other words and phrases in question are not generally considered to be as graphic, vulgar, and offensive as the "S-Word" or the "F-Word," and most are fairly commonly used in a non-sexual, non-excretory manner. Accordingly, although they may offend some people, we find that, viewed in the context in which they were used, "poop" and the other words and phrases in question were not patently offensive for the broadcast medium. See, e.g., *Complaints by Parents Television Council Against Various Broadcast Licensees Regarding Their Airing of Allegedly Indecent Material*, Memorandum Opinion and Order, 20 FCC Rcd 1931, 1938, ¶ 8 (2005) ("PTC 2") (in context, fleeting uses of words such as "penis," "dick," "testicle," "vaginal," "ass," "bastard," and "bitch" not indecent). We note, however, that in another context, such as a more graphic and explicit description of sexual or excretory organs or activities, the use of these words might contribute to a finding of indecency. We also conclude that these words were not profane in this context.

<sup>181</sup> See *Saving Private Ryan*, 20 FCC Rcd at 4512-14 ¶¶ 13-18.

present here. Although in this case, profane language may have had some communicative purpose, we do not believe that Fox has demonstrated that it was essential to informing viewers on a matter of public importance or that editing the language in question would have had a material impact on the network's function as a source of news and information.

123. It is undisputed that the complained-of material was broadcast within the 6 a.m. to 10 p.m. time frame relevant to a profanity determination under section 73.3999 of the Commission's rules. Because there was a reasonable risk that children may have been in the audience at the time the material at issue was broadcast, the material broadcast is legally actionable.<sup>182</sup>

124. *No Sanction Proposed.* Based upon our review of the record in this case, we conclude that the Fox Network affiliated stations in the Eastern and Central Time Zones whose broadcasts were the subject of viewer complaints to the Commission aired material in violation of 18 U.S.C. § 1464 and our rules. They each broadcast indecent and profane words in an awards show that aired between 6 a.m. and 10 p.m. and was watched by people of all ages. The licensees of these stations each consciously and deliberately broadcast the program in question. Accordingly, the apparent violation of 18 U.S.C. § 1464 and section 73.3999 of our rules was willful. The willful broadcast of indecent and profane material on a national network broadcast ordinarily would warrant a forfeiture under the standards announced in the *Golden Globe Awards Order*. Nonetheless, we recognize that our precedent at the time of the broadcast indicated that the Commission would not take indecency enforcement action against isolated use of expletives.<sup>183</sup> "But for the fact that existing precedent would have permitted this broadcast, it would be appropriate to initiate a forfeiture proceeding against [Fox] and other licensees that broadcast the program prior to 10 p.m."<sup>184</sup> Accordingly, we find that no forfeiture is warranted in this case.

### 3. "NYPD Blue" (various dates between January 14 and May 6, 2003)<sup>185</sup>

125. The Commission has received complaints alleging that KMBC Hearst-Argyle Television, Inc., licensee of Station KMBC-TV, Kansas City, Missouri, and other network stations affiliated with The ABC Television Network ("ABC") aired indecent material during several episodes of "NYPD Blue" broadcast between 9:00 and 10:00 p.m. Central Standard Time on various dates between January and May 2003.<sup>186</sup> The complaints allege that, in each of the identified episodes, one or more characters utter expletives in violation of the Commission's

<sup>182</sup> See *ACT III*, 58 F.3d at 660-63

<sup>183</sup> See *Golden Globe Awards Order*, 19 FCC Rcd at 4980 ¶ 12 (citing *Pacifica Foundation, Inc.*, Memorandum Opinion and Order, 2 FCC Rcd 2698, 2699 (1987)). The fact that the statement in question included two expletives is unlikely to have removed it from the former isolated use exception under Commission precedent. The only pre-*Golden Globe Awards Order* decision of which we are aware in which a forfeiture was proposed for a single phrase or statement involved the use of multiple expletives combined with a description of sexual activity. See *LBSJ Broadcasting Company*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 20956 (1998) (forfeiture paid) (finding broadcast apparently indecent for use of phrase "suck my dick you fucking cunt").

<sup>184</sup> *Golden Globe Awards Order*, 19 FCC Rcd at 4982 ¶ 15.

<sup>185</sup> FCC File No. EB-03-IH-0355.

<sup>186</sup> Collectively referred to as the "NYPD Blue Expletive Complaints."

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## I. INTRODUCTION

1. The Commission has regulated the broadcast of indecent programming for decades, and our authority in this area has long been upheld as constitutional by the U.S. Supreme Court. During the last few years, however, we have witnessed increasing public unease with the nature of broadcast material. In particular, Americans have become more concerned about the content of television programming, with the number of complaints annually received by the Commission rising from fewer than 50 in 2000 to approximately 1.4 million in 2004. At the same time, broadcasters have sought guidance from the Commission about our rules, arguing that they lack certainty regarding the meaning of our indecency and profanity standards. The decisions we issue today respond to both of these concerns.

2. In these decisions, we address hundreds of thousands of complaints alleging that various broadcast television programs aired between February 2002 and March 2005 are indecent, profane, and/or obscene. The cases we resolve today represent a broad range of factual patterns. Taken both individually and as a whole, we believe that they will provide substantial guidance to broadcasters and the public about the types of programming that are impermissible under our indecency standard. The cases also further refine our standard regarding the use of profane language in the broadcast medium and illustrate the types of language proscribed by that standard. Overall, the decisions demonstrate repeatedly that we must always look to the context in which words or images occur to determine whether they are indecent. In addition, while we find certain highly offensive language to be presumptively profane, we also take care to emphasize that such words may not be profane in specified contexts.

3. Section II below is devoted to providing a full description of the Commission’s standards for analyzing whether programming is indecent and/or profane and referencing the legal sources upon which these standards are based. In Section II, we also fully describe our methodology for calculating proposed forfeitures against broadcast licensees when there has been an apparent violation of our prohibitions against indecency and/or profanity.

4. In Section III, we apply these indecency and/or profanity standards to the complaints before us on a case-by-case basis. We begin with cases in which we have determined that the broadcast licensee apparently aired indecent and/or profane material and propose forfeitures against the licensee. The monetary forfeitures proposed demonstrate that the

enumerated in section 503(b)(2)(D) of the Act and the facts and circumstances of this case.

99. We find that the statutory maximum of \$27,500<sup>146</sup> is an appropriate proposed amount for the March 15, 2003 broadcast. The material was prerecorded, and KTVI could have edited the content prior to broadcast. In addition, as noted above, the gravity of the apparent violation is heightened here because of its shocking and gratuitous nature, involving as it does multiple gratuitous utterances of vulgar, graphic, and offensive expletives during a weekend afternoon broadcast. The Commission's prohibition of the broadcast of repeated uses of expletives such as the "S-Word" was well settled prior to its broadcast.<sup>147</sup> The program in question was replete with an expletive that is among the most vulgar, graphic, and explicit descriptions of excretory activity in the English language, but which KTVI nevertheless failed to edit out, suggesting indifference to our indecency regulations. Therefore, we find that KTVI License, Inc. is apparently liable for a proposed forfeiture of \$27,500 for its March 15, 2003 broadcast of "The Pursuit of D.B. Cooper."<sup>148</sup>

### B. Indecent And/Or Profane Broadcasts But No Forfeiture Proposed

100. In each of the following cases, we find that the broadcasts at issue are indecent and profane. Because of the specific circumstances associated with the broadcasts, however, we do not propose forfeitures. With one exception, these broadcasts preceded the Commission's decision in the *Golden Globe Awards* Order reversing precedent that had suggested that the isolated use of an offensive word like the "F-Word" is not indecent. In light of our decision not to impose a forfeiture based upon the facts of each case, we will not require the licensee of any of the stations that broadcast the material to report our finding here to us as part of their renewal applications and we will not consider the broadcast to impact adversely upon such licensees as part of the renewal process.

#### I. "The 2002 Billboard Music Awards" (December 9, 2002)<sup>149</sup>

101. *The Programming.* The Commission received a complaint concerning the December 9, 2002 broadcast of the "Billboard Music Awards" program over Fox Television Network ("Fox") stations, and specifically Station WTTG(TV), Washington, DC, between 8 and 10 p.m., Eastern Standard Time.<sup>150</sup> The complaint alleges that, during the broadcast, the

<sup>146</sup> The subject broadcasts occurred prior to the September 7, 2004, effective date of the most recent adjustment in the statutory maximum forfeiture amount. Accordingly, the appropriate maximum statutory amount here is \$27,500. See *supra* ¶ 21.

<sup>147</sup> See, e.g., *Pacifica*, 438 U.S. at 744 (upholding the Commission's finding that the broadcast of the comedy monologue "Filthy Words" featuring, among other things, repeated uses of the S-Word was patently offensive and violated the statutory prohibition on indecency).

<sup>148</sup> We do not propose forfeitures based on each of the multiple utterances of expletives in this case because the broadcast took place before the Commission warned licensees that it might treat separate indecent utterances in the same program as separate violations. See *Infinity Broadcasting Operations, Inc. (WKRK-FM)*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 6915, 6918-19, ¶ 12 (April 3, 2003) ("*WKRK NAL*"), vacated in non-relevant part, *Viacom, Inc.*, Order and Consent Decree, 19 FCC Rcd 23100, 23107, ¶ 10 (2004) (vacating all indecency forfeitures against licensee's parent company but preserving the warnings in the *WKRK NAL* that the Commission might propose forfeitures for discrete violations in a single broadcast and might propose to revoke broadcast licenses for egregious or repeat violations).

<sup>149</sup> FCC File No. EB-03-IH-0460.

<sup>150</sup> See Letter from Lara Mahaney, Parents Television Council to David Solomon, Chief, Enforcement Bureau, Federal Communications Commission (August 22, 2003).

performer Cher states, “People have been telling me I’m on the way out every year, right? So fuck ‘em.” The complaint alleges that the expletive was indecent and requests that the Commission levy sanctions against each station licensee that aired the material. The Enforcement Bureau obtained a videotape of the offending broadcast that confirms the complaint’s allegation.

102. *Indecency Analysis.* We held in the *Golden Globe Awards Order* that, given the core meaning of the “F-Word,” any use of that word inherently has a sexual connotation and falls within the first prong of our indecency definition.<sup>151</sup> Cher’s retort to her critics used language that we have found inherently describes sexual activity. The material, therefore, warrants further scrutiny to determine whether or not it was patently offensive as measured by contemporary standards for the broadcast medium. We conclude, looking at the three principal factors in our contextual analysis, that the material is patently offensive.

103. First, the complained-of material is quite graphic and explicit. As we indicated in the *Golden Globe Awards Order*, the “F-Word” is one of the most vulgar, graphic, and explicit words relating to sexual activity in the English language. Its use invariably invokes a coarse sexual image.”<sup>152</sup> We conclude that the broadcast of the “F-Word,” under the circumstances presented here, is vulgar, graphic and explicit.

104. Second, the fact that the material is not repeated or not dwelled upon at length, while relevant, is not dispositive. As the Commission indicated in the *Golden Globe Awards Order*: “[T]he mere fact that specific words or phrases are not sustained or repeated does not mandate a finding that material that is otherwise patently offensive to the broadcast medium is not indecent.”<sup>153</sup>

105. Third, and most important to our analysis in this specific context, Cher’s use of the “F-Word” here, at a live broadcast of an awards ceremony when children were expected to be in the audience, was shocking and gratuitous.<sup>154</sup> Cher chose to express her displeasure with her critics in a highly vulgar and coarse manner, and in doing so, needlessly offended unsuspecting viewers in the peace and quiet of their homes.

106. In sum, because the material is explicit and shocking and gratuitous, we conclude that the broadcast of the material at issue here is patently offensive under contemporary community standards for the broadcast medium and thus apparently indecent. Technological advances have made it possible to block the broadcast of offensive words without disproportionately disrupting a speaker’s message.<sup>155</sup> Fox could have avoided the indecency violation here by delaying the broadcast for a period of time sufficient to ensure that all offending words were blocked.<sup>156</sup> It did not do so. As a result, the Fox affiliate WTTG(TV) broadcast highly offensive material within the 6 a.m. to 10 p.m. time frame relevant to an

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<sup>151</sup> 19 FCC Rcd at 4978 ¶ 8.

<sup>152</sup> *Golden Globe Awards Order*, 19 FCC Rcd at 4979 ¶ 9.

<sup>153</sup> *Id.*, 19 FCC Rcd at 4980 ¶ 12.

<sup>154</sup> *Id.*, 19 FCC Rcd at 4979 ¶ 9.

<sup>155</sup> *See id.*, 19 FCC Rcd at 4980 ¶ 11.

<sup>156</sup> *See id.*, 19 FCC Rcd at 4980 ¶ 11. We note that Fox has pledged, whenever possible, to air future live entertainment programming with a five-minute delay. *See Response* at 9. While we applaud that change in Fox’s practices, it does not excuse the apparent indecency violation in this case.

indecent determination under section 73.3999 of the Commission's rules. By broadcasting this material, the station apparently violated the prohibitions in 18 U.S.C. § 1464 and the Commission's rules against broadcast indecency.

107. **Profanity Analysis.** The "F-Word" is a vulgar sexual term so grossly offensive to members of the public that it amounts to a nuisance and is presumptively profane. The "F-Word" is one of the most offensive words in the English language, the broadcast of which is likely to shock the viewer and disturb the peace and quiet of the home. Consistent with our decision in the *Golden Globe Awards Order*, we find here that the use of the "F-Word" in the program at issue here apparently violated 18 U.S.C. § 1464's prohibition of the broadcast of "profane" language.<sup>157</sup>

108. In rare contexts, language that is presumptively profane will not be found to be profane where its use is demonstrably essential to the nature of an artistic or educational work or essential to informing viewers on a matter of public importance.<sup>158</sup> We caution, however, that we will find this to be the case only in unusual circumstances, and such circumstances are not present here. Although in this case, the profane language used by Cher may have had some communicative purpose, we do not believe that Fox has demonstrated that the use of such language was essential to informing viewers on a matter of public importance or that editing the language in question would have had a material impact on the network's function as a source of news and information. We note again that Fox or Station WTTG(TV) could have used a delaying technique to avoid the offending broadcast.

109. It is undisputed that the complained-of material was broadcast within the 6 a.m. to 10 p.m. time frame relevant to a profanity determination under section 73.3999 of the Commission's rules. Because there was a reasonable risk that children may have been in the audience at the time the material at issue was broadcast, the material broadcast is legally actionable.<sup>159</sup>

110. **No Sanction Proposed.** In the instant case, we find that the Fox Network affiliate Station WTTG(TV) consciously and deliberately broadcast the program in question. Accordingly, we find that the station's apparent violation of 18 U.S.C. § 1464 and section 73.3999 of our rules was willful. Thus, we conclude that the Fox affiliate Station WTTG(TV) aired indecent and profane material between 6 a.m. and 10 p.m. in apparent violation of 18 U.S.C. § 1464 and our rules.

111. The gratuitous use of indecent and profane language on a national network broadcast ordinarily would warrant a forfeiture under the standards announced in the *Golden Globe Awards Order*. Nonetheless, we recognize that our precedent at the time of the broadcast indicated that the Commission would not take enforcement action against isolated use of expletives.<sup>160</sup> "But for the fact that existing precedent would have permitted this broadcast, it would be appropriate to initiate a forfeiture proceeding against [Fox] and other licensees that

<sup>157</sup> *Id.*, 19 FCC Rcd at 4981 ¶¶ 13-14.

<sup>158</sup> See *Saving Private Ryan*, 20 FCC Rcd at 4512-14 ¶¶ 13-18.

<sup>159</sup> See *ACT III*, 58 F.3d at 660-63.

<sup>160</sup> *Golden Globe Awards Order*, 19 FCC Rcd at 4980 ¶ 12 (citing *Pacifica Foundation*, 2 FCC Rcd at 2699).

broadcast the program prior to 10 p.m.”<sup>161</sup> Accordingly, we find that no forfeiture is warranted in this case.

## 2. “The 2003 Billboard Music Awards” (December 10, 2003)<sup>162</sup>

112. *The Programming.* The Commission received a number of complaints alleging that the Fox Television Network (“Fox” or “Fox Network”) aired indecent material during the “Billboard Music Awards” program on December 10, 2003 between 8 and 10 p.m., Eastern Standard Time.<sup>163</sup> The complainants allege that, during the broadcast, Nicole Richie, an award presenter, uttered vulgar expletives in violation of the Commission’s rules restricting the broadcast of indecent material.<sup>164</sup> The complainants request that the Commission levy sanctions against each station licensee that aired the remarks.

113. The Bureau sent Fox a letter of inquiry and attached a transcript of the material in question.<sup>165</sup> Fox responded on January 30, 2004.<sup>166</sup> Fox contends that the aired material is not actionably indecent and does not contain any description or depiction of sexual or excretory organs or activities in a patently offensive manner.<sup>167</sup>

114. *Indecency Analysis.* During her appearance on the “Billboard Music Awards,” Ms. Richie uttered the “F-Word” and the “S-Word.” Fox does not dispute that the “S-Word” refers to excrement.<sup>168</sup> Fox contends, however, that Ms. Richie used the “F-Word” as a mere vulgar expletive to express emphasis, not to depict or describe sexual activities.<sup>169</sup> We disagree.

<sup>161</sup> *Golden Globe Awards Order*, 19 FCC Rcd at 4982 ¶ 15.

<sup>162</sup> FCC File Nos. EB-03-IH-0617, EB-04-IH-0295, EB-04-IH-0091.

<sup>163</sup> See Letter from Lara Mahaney, Parents Television Council to David Solomon, Chief, Enforcement Bureau, Federal Communications Commission (December 11, 2003). We also deny an additional complaint from PTC regarding another segment of that same broadcast. See Letter from Lara Mahaney, Parents Television Council, to David Solomon, Chief, Enforcement Bureau, Federal Communications Commission (January 22, 2004) (“*Second PTC Complaint*”). See note 195 *infra*.

<sup>164</sup> According to Fox, the Fox affiliate stations located within the Eastern and Central Time Zones broadcast the following exchange between Paris Hilton and Nicole Richie after they walked onstage to present an award:

Paris Hilton: Now Nicole, remember, this is a live show, watch the bad language.

Nicole Richie: Okay, God.

Paris Hilton: It feels so good to be standing here tonight.

Nicole Richie: Yeah, instead of standing in mud and cow[blocked]. Why do they even call it “The Simple Life”? Have you ever tried to get cow shit out of a Prada purse? It’s not so fucking simple.

Fox advises that it edited the tape to remove the expletives before the program aired on tape delay over Fox Stations in the Mountain and Pacific time zones. See Letter from John C. Quale, Counsel to Fox Television Stations, Inc., to Investigations and Hearings Division, Enforcement Bureau (Jan. 30, 2004) (“Response”) at 3-4, 8.

<sup>165</sup> See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Fox Television Stations, Inc. (January 7, 2004).

<sup>166</sup> See *supra* note 179.

<sup>167</sup> See Response at 12-13.

<sup>168</sup> *Id.* at 13. We note, however, that even if Ms. Richie was not literally referring to cow excrement, her use of the “S-Word” would still fall within the subject matter prong of our indecency definition. The “S-Word” has an excretory connotation, however it may be used. Its use invariably invokes a coarse excretory image in any context.

<sup>169</sup> Response at 13.

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

FOX TELEVISION STATIONS, INC.

and

CBS BROADCASTING INC.,

Petitioners,

vs.

FEDERAL COMMUNICATIONS COMMISSION

and

UNITED STATES OF AMERICA,

Respondents.

No. \_\_\_\_\_

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PETITION FOR REVIEW

Pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342(1), 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure, Fox Television Stations, Inc. and CBS Broadcasting Inc. (collectively "Petitioners") hereby petition for review of the Federal Communications Commission's ("FCC" or "Commission") Notices of Apparent Liability and Memorandum Opinion & Order, *Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, FCC 06-17 (March 15, 2006) ("*Omnibus Order*"). A copy of the *Omnibus Order* is attached hereto as Attachment A.

Venue is proper in this Court pursuant to 28 U.S.C. § 2343.

Petitioners were parties to the agency proceedings that led to the *Omnibus Order* and are aggrieved by the FCC's actions in that order. The *Omnibus Order* disposed of complaints alleging that various broadcast television programs aired between February 2002 and

March 2005 were indecent, profane, or obscene, and it purported to give "substantial guidance to broadcasters and the public about the types of programming that are impermissible under our indecency standard." *Omnibus Order* ¶ 2.

Petitioners seek review of the *Omnibus Order* on the grounds that it is unconstitutional, contrary to the relevant statutes, arbitrary and capricious, and contrary to law.

Petitioners respectfully request that this Court hold unlawful and set aside the *Omnibus Order* and grant such other relief as may be deemed just and proper.

The corporate disclosure statement required by Rule 26.1 of the Federal Rules of Appellate Procedure is set forth in Attachment B hereto.

Dated: April <sup>13</sup>~~14~~, 2006

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ATTACHMENT A

Notices of Apparent Liability and Memorandum Opinion & Order, *Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, FCC 06-17  
(March 15, 2006) (“*Omnibus Order*”)

**ATTACHMENT B**

Federal Rule of Appellate Procedure 26.1 Disclosure Statement



CBS Corporation, a publicly-held company, owns an interest of 10% or more in CBS

Broadcasting Inc.

<sup>3</sup>  
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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April, 2006, I caused true and correct copies of the foregoing Petition for Review and Attachments to be served on the following parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: <sup>13</sup> April 14, 2006  
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---

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