

STAMP & RETURN

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OCT 22 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

¹ This Petition is timely filed within 30 days of September 22, 2004, or by October 22, 2004.

of indecent material.² The NAL found that Viacom Inc. ("Viacom"), as the licensee or ultimate parent of the licensees of the Viacom Stations, was apparently liable for a monetary forfeiture in the aggregate amount of Five Hundred Fifty Thousand Dollars (\$550,000.00). The NAL concluded that non-Viacom-owned CBS Affiliate stations listed on Appendix B to the NAL also aired the programming, but the Commission declined to propose a monetary forfeiture or other sanction against the licensees of those stations. Two of Saga's stations; i.e., KOAM-TV, Pittsburg, Kansas, and WXVT(TV), Greenville, Mississippi, were on the list. Therefore, Saga is a "party to the proceeding" and a "person whose interests are adversely affected by [the] action taken by the Commission" eligible to file this petition under Section 1.106(b)(1) of the Commission's Rules (Title 47 C. F. R. § 1.106).

The Commission recognized that it had "no evidence that the licensee of any of the non-Viacom-owned CBS Affiliate was involved in the selection, planning or approval of the apparently indecent material. Moreover, we find that the licensee of each such station could not have reasonably anticipated that the CBS Network production of a prestigious national event such as the Super Bowl would contain material that included the on-camera exposure of Ms. Jackson's breast." Based on this, the Commission declined to impose a monetary forfeiture on the licensees of the stations listed on Appendix B. Saga agrees that the Commission took the appropriate course of action in not penalizing non-Viacom-owned affiliates, since the non-Viacom-owned CBS affiliates

² The Commission cited 18 U.S.C. § 1464; 47 C.F.R. § 73.3999; and 47 U.S.C. § 503(b).

were as surprised by the program content as the members of the viewing audience who witnessed the spectacle.³

However, in the NAL, the Commission attempted to impose a new requirement on television licensees, and Saga seeks reconsideration of this action. The Commission stated (at paragraph 25):

Nevertheless, we urge each such licensee to take reasonable precautions in the future, such as employing such delay technology to independently prescreen the network feed to prevent the broadcast of indecent programming over its licensed station.

Absent the completion of a notice and comment rulemaking proceeding, the Commission cannot impose a requirement to employ "delay technology" to prescreen network feeds. It is axiomatic that Title 5 U. S. C. §553, the Administrative Procedure Act ("APA"), requires the publication of general notice of proposed rule making in the Federal Register before a requirement such as this can be imposed on licensees. As no such notice has been issued, and members of the public have not had an opportunity to comment on the new policy, the requirement cannot be enforced against licensees.

Saga's concern is that should another such incident arise in the future, the Commission may use the failure to install such "delay technology" to Saga's prejudice as evidence that Saga did not "take reasonable precautions in the future...to independently prescreen the network feed to prevent the broadcast of indecent programming...."

The cost of installation of such "delay technology" would be burdensome. Attachment A hereto is a declaration from Gregory Urbiel, Saga's Director of

³ Saga takes no position herein on whether the Commission was correct in finding the Viacom Stations were apparently liable for forfeiture.

Engineering, indicating that a rough estimate of the cost to install such equipment and monitor it would be approximately \$129,600 per station (\$16,200 for two delay units, plus \$81,000 for the return feeds, plus \$32,400 for the dump buttons and associated monitoring modifications). He also notes that each television station has one analog and at least one digital stream to delay.

Moreover, the Commission presupposes that the licensee will have a person watching every moment of a live feed capable of within seven seconds making a decision as to what is decent and what is indecent. Failure to make the correct decision, under the Commission's proposed policy, could be viewed as a failure to take reasonable precautions to prevent the broadcast of indecent programming. Attachment B hereto is a declaration from Danny W. Thomas, the vice president and general manager of KOAM-TV, describing in detail the logistical problems the FCC's proposal would create. As Mr. Thomas, says, it "would be extremely burdensome, both from the cost and logistical point of view to employ 'delay technology' to independently prescreen the network feed to prevent the broadcast of indecent programming over its licensed station." It would be arbitrary and capricious to hold the innocent affiliate liable because that affiliate did not, for whatever reason, install or deploy "delay technology" in time to prevent the broadcast of indecent programming that the licensee had no reasonable basis to anticipate.

The Commission may not impose such a burden on licensees without first conducting a rule making proceeding as required by the APA. In its ongoing attempt to impose on radio broadcasters the requirement to make and retain audio recordings of their programs, the Commission issued a Notice of Proposed Rule Making in order to

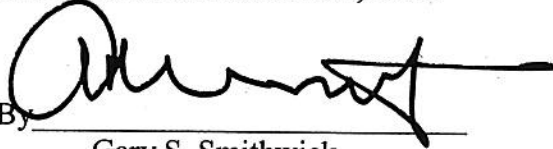
solicit comments from the public as required by the APA.⁴ The same procedure must be followed here.

For the reasons set forth herein, Saga respectfully requests the Commission to (1) reconsider the portion of its NAL that seeks to impose the "delay technology" requirement pending completion of a notice and comment rule making proceeding, and (2) state that it will not use the failure to install such equipment as a basis for imposing any sanction, or determining the degree of the sanction imposed, upon any broadcast licensee.

Respectfully submitted,

**SAGA QUAD STATES
COMMUNICATIONS, LLC**

SAGA BROADCASTING, LLC

By 

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Its Counsel

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October 22, 2004

⁴ *In the Matter of Retention by Broadcasters of Program Recordings*, 19 FCC Rcd 13323 (2004)

ATTACHMENT A
DECLARATION OF DIRECTOR OF ENGINEERING

DECLARATION OF GREGORY URBIEL

Gregory Urbiel, under penalty of perjury, declares as follows:

I am Director of Engineering for Saga Communications, Inc., the ultimate parent of Saga Quad States Communications, LLC, and Saga Broadcasting, LLC.

I have been asked to determine the burden that would be imposed by an FCC requirement that all live network programming be broadcast using "delay technology."

From the point of view of equipment cost, the price of a Prime Image 7 second analog video/audio delay device, model PL-7, is: \$8,100. The price of a Prime Image 7 second Standard Definition digital video/audio delay box, model D1-PL7, is also: \$8,100. I have not yet been able to locate a viable High Definition digital television stream delay. The digital units would service the DTV program streams.

The cost of implementation would vary dependent on format and physical plant.

Any station would have to consider the additional IFB (Interruptible Feed Back) costs to provide cuing and back monitoring to the remote talent while doing remotes. If the normal mode of operation is to use the 'off-air' signal, in conjunction with the PRO channel of the NTSC analog signal, an additional (pre-delay) signal path back to the remote is required. Any television news operation would have to supply the same to field reporters doing 'live' reportage.

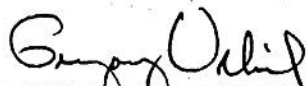
The cost of providing these return feeds would normally dwarf the cost of the delay unit proper. If new systems are required (specifically new RF radio systems to move the pre-delayed audio and video) to provide this monitoring, the costs could easily be 10 times that of the delay unit proper.

In terms of physical plant modification: I would estimate that providing 'dump' buttons and associated monitoring modifications and provisions would, as rule of thumb, be one to two times the cost of the delay unit proper.

Also, note that each television station has one analog and at least one digital stream to delay.

So, in sum, my rough estimate of the cost of hardware would be \$129,600 per station (\$16,200 for two delay units, plus \$81,000 for the return feeds, plus \$32,400 for the dump buttons and associated monitoring modifications).

Executed this 22nd day of October, 2004.



Gregory Urbiel

ATTACHMENT B
DECLARATION OF DANNY W. THOMAS
VICE PRESIDENT/GENERAL MANAGER OF KOAM-TV

DECLARATION OF DANNY W. THOMAS

Danny W. Thomas, under penalty of perjury, declares as follows:

I am vice president and general manager of KOAM-TV, Pittsburg, Kansas, which is licensed to Saga Quad States Communications, LLC.

I have been asked to determine the burden that would be imposed by an FCC requirement that all live network programming be broadcast using "delay technology."

In television, the staffing question is a challenge. Our Master Control Operators perform multiple tasks throughout their shifts. When we are in Network programming windows or airing taped syndication they are catching feeds, dubbing commercials and programming commercial breaks. During Live News Programming they are loading tapes for News. From an equipment angle, Television would also need delay stations in at least two locations for each station. During network and taped syndication, the control of what is broadcast is in Master Control. During Live News programming, control is switched to Studio control, a completely separate area.

The problem here is the people who provide us the programming like networks and syndicators are not held accountable because there is no law requiring them to insure that their program offerings are not indecent. The only programming of which we have control of the content is Local News. Even on taped network shows like Survivor, we do not receive them and then air them. They air live from the network feed. I'm not sure we can even get shows to review in advance and if we can, it would be next to impossible to pre-screen 10 hours of network programming each day 365 days a year.

It would be extremely burdensome, both from a cost and logistical point of view to employ "delay technology to independently prescreen the network feed to prevent the broadcast of indecent programming over its licensed station" as the FCC suggests.

Licensees should not be sanctioned when they make reasonable good faith efforts to prevent the broadcast of indecent matter. The source of the indecent matter, i.e., the network, should be sanctioned. Application of such sanctions at the source would go a long way toward eliminating this problem.

Executed this 22nd day of October, 2004.



Danny W. Thomas

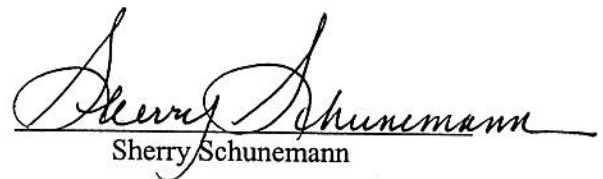
CERTIFICATE OF SERVICE

I, Sherry Schunemann, a secretary in the law offices of Smithwick & Belendiuk, P.C., hereby certify that on October 22, 2004, a copy of the foregoing "Petition for Partial Reconsideration" was sent by first class mail, postage prepaid, addressed to the following:

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