



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

December 30, 2004

In Reply Refer to:
EB-04-IH-0497

Dear _____

This letter responds to your complaint in which you allege that unlawful programming was broadcast over an ABC affiliated television station during its airing of the Miami-Florida State football game on September 10, 2004 at approximately 6:30 p.m. You stated that a USC player was interviewed wearing a sweatshirt "that clearly showed the obscenity message 'F ____ the NCAA.'" Although we appreciate your concern, the information that you have submitted to us concerning this broadcast does not provide us with a legal basis to take action. Accordingly, for the following reasons, we deny your complaint.

The Federal Communications Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the Commission's rules and applicable statutory provisions restricting obscene or indecent broadcasts. Specifically, title 18 of the United States Code, section 1464, prohibits the utterance of "any obscene, indecent or profane language by means of radio communications." 18 U.S.C. §1464. Consistent with a subsequent statute and court case, section 73.3999 of the Commission's rules provides that no radio or television station shall broadcast indecent material during the period 6 a.m. through 10 p.m. See 47 C.F.R. § 73.3999.

We note that the Commission's role in overseeing program content is limited, however, by the First Amendment to the United States Constitution and section 326 of the Communications Act of 1934, as amended (the "Act"), which prohibit the Commission from censoring program material and from interfering with broadcasters' freedom of expression. See 47 U.S.C. § 326. Therefore, consistent with relevant court decisions, the Commission must exercise great care when evaluating programming for possible indecent material.

Because the standard for proving that programming is indecent is less rigorous than that for proving obscenity, when considering broadcast complaints, the Commission generally focuses its analysis on indecency. The Commission defines indecent speech as

language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs. In determining whether the complained-of material is patently offensive, three factors are particularly relevant: (1) the explicitness or graphic nature of the description or images; (2) whether the material dwells on or repeats at length descriptions of sexual or excretory organs or activities; and (3) whether the material appears to pander or is used to titillate or shock. The Commission applies these three factors as part of a balancing test to determine if the material is indecent. *See In the Matter of Industry Guidance On the Commission's Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency*, 16 FCC Red 7999 (2001).

We recognize that the material that you have cited may well be offensive to you, and we have analyzed your complaint carefully. However, your complaint does not provide us with the basis by which we may take action. Specifically, the material in your complaint, in context, is not sufficiently graphic and/or sustained to meet the Commission's standard for indecency. One of the letters on the player's sweatshirt was replaced by a depiction of a USC helmet, so there was no expletive on the sweatshirt.

We appreciate and recognize your concern. To assist you further, we include an information sheet that discusses the law with respect to indecent and obscene broadcasts and our enforcement procedures. We also encourage you to convey your concerns directly to station management, because this can be an effective method to influence a station's programming decisions.

Thank you for your interest.

Sincerely,



William H. Davenport
Chief
Investigations and Hearings Division
Enforcement Bureau

Enclosure

cc(w/o enclosure): Susan L. Fox
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(complainant information redacted)