

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
COMPLAINTS AGAINST VARIOUS)
BROADCAST LICENSEES)
REGARDING THEIR AIRING OF)
THE "GOLDEN GLOBE AWARDS")
PROGRAM)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
File No. EB-03-IH-0110

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

I. INTRODUCTION

National Broadcasting Company, Inc. ("NBC"), by its attorneys and pursuant to Section 1.106(b) of the Commission's rules, hereby petitions on behalf of itself and its owned and operated affiliated stations for reconsideration of certain aspects of the Commission's Memorandum Opinion and Order in *Complaints Against Various Broadcast Licensees Regarding Their Airing of the "Golden Globe Awards" Program*, FCC 04-43 (March 18, 2004) (the "Order").

The Commission was correct in ruling that there was no legal basis for imposing a forfeiture or any other penalty, either now or in the future, against NBC or NBC affiliates because of the airing of the 2003 Golden Globe Awards program in which U2 lead singer Bono exclaimed the f-word. The Commission refused to fine NBC for multiple reasons, including fundamental issues of notice and retroactivity. This decision was solidly grounded in common sense and a long line of constitutional and administrative precedent.

The remainder of the *Order*, however, raises serious constitutional, policy, and regulatory concerns. In previous decisions upholding the FCC's past efforts to regulate indecency as

developed in *FCC v. Pacifica*¹ and subsequent rulings,² the courts have imposed a high hurdle for what constitutes permissible content regulation. In particular, the courts have stressed that even in the context of the broadcast medium, the FCC must identify a compelling governmental interest that warrants regulation and must explain how the regulations were narrowly tailored to serve those interests effectively.³ Remarkably, the *Order* significantly expands content regulation without even attempting to meet this judicial standard or acknowledging all the relevant changes in the broadcasting environment since *Pacifica*, including v-chip blocking technology and the broad availability of television programming not subject to Section 1464.⁴ In particular,

1. The *Order* contradicted years of precedent by creating strict liability for certain offensive words regardless of their fleeting nature or context. This policy reversal is ambiguous as to whether it preserves the Commission's long-standing news programming safe harbor and appears not to protect other forms of time-critical or informative programming.
2. The *Order* suggested a sweeping new definition of profane utterance that has never been cited in any prior Commission case involving allegedly offensive language, even those in which no action was taken under the Commission's indecency policy.

¹ 438 U.S. 726 (1978).

² See, e.g., *Action for Children's Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988) ("*ACT I*"); *Action for Children's Television v. FCC*, 932 F.2d 1504 (D.C. Cir. 1991), cert. denied, 503 U.S. 913 (1992) ("*ACT II*").

³ *ACT I*, 852 F.2d at 1343 n.18; *ACT II*, 932 F.2d at 1508-09; see also *Sable Communications of California, Inc. v. FCC*, 492 U.S. 115 (1989) ("The Government may, however, regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest") (holding unconstitutional blanket ban on indecent commercial telephone message services).

⁴ Cf. *United States v. Playboy Entertainment Group Inc.*, 529 U.S. 803 (2000). As the Commission is aware, the v-chip has been required on all television sets 13 inches or larger manufactured since January 1, 2000. Recent studies suggest that between 6-10% of parents use the v-chip in combination with program ratings to block particular programming. See, e.g., The Annenberg Public Policy Center, University of Pennsylvania Washington, *Parents' Use of the V-Chip to Supervise Children's Television Use* (Apr. 2003); Ad Council News Release, *The Advertising Council and the Four Major Broadcast Television Networks Announce Unprecedented Partnership to Educate Parents About the V-Chip* (Mar. 30, 2004).

