

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

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In the Matter of :
:
COMPLAINTS AGAINST VARIOUS : File No. EB-03-IH-0110
BROADCASTING LICENSEES :
REGARDING THEIR AIRING OF :
THE "GOLDEN GLOBE AWARDS" :
PROGRAM :

To: The Commission

**OPPOSITION BY PARENTS TELEVISION
COUNCIL TO PETITION FOR RECONSIDERATION**

In accordance with 47 C.F.R. § 1.106(g), Parents Television Council, by counsel, hereby files this Opposition to NBC's Petition for Partial Reconsideration and the Petition for Reconsideration filed by the ACLU, et al.

In its March 18, 2004 Order in *Golden Globe Awards*, the Commission made clear that when it came to policing indecency on the airwaves, the old way of doing things had not worked. Based on the Commission's past rulings on broadcast indecency, radio and television broadcasters had come to believe they could safely broadcast whatever they wanted over the public airwaves, no matter who might see or hear it, no matter what time of day, and no matter how offensive it might be to those subjected to it. No more.

The Commission has rightly recognized that the Supreme Court's reference to "context" in its *Pacifica* decision is not a shield against any effective regulation of what broadcasters choose to put on the air, although that is the way the broadcasters have used it up to now. Petitioners claim they are shocked that a statute that has been on the books for decades is now to be read and enforced in a common sense manner. No longer will they be permitted to broadcast the F-word in prime time so long as it is used merely as what NBC has called "an intensifier." The Commission has announced a bright line rule that is easy to follow: do not use the F-word, in any form, intensifier or not.

From that simple premise petitioners have spun a litany of horrors that they claim threatens to make live broadcasts a thing of the past and has even curtailed the playing of Golden Oldies on the radio.¹ Petitioners are overreacting, and they know it. The Commission's ruling was not as broad as petitioners pretend it to be. For example, the Commission did not extend the new rule to

¹ NBC's complaint about the Commission's suggestion - and it was only that - that broadcasters could avoid indecency problems by using delay technology is too rich to ignore. *NBC Petition* at 5. For years, the broadcasters and their defenders have smugly advised their critics to use v-chips or just change the channel if they did not like what was being broadcast. Now that the Commission has merely suggested that broadcasters consider using a little technology of their own, they are indignant.

every conceivable type of broadcast. Thus, there should be no concern that, for example, an expletive heard on a live news broadcast uttered by a fevered participant in the heat of the moment will lead to a fine or license revocation. The Commission was careful to limit the rule to "situations such as this." Order ¶ 8.

"This" was a live awards program broadcast by NBC stations, before 10 p.m. in some cases. NBC should not have been surprised about what happened. It was on fair notice that those who appeared on the Golden Globe Award show might utter the F-word, among others. After all, Cher had done just that the year before on a similar show. NBC clearly recognized the risk, for it warned participants that proper decorum was expected of them during the Golden Globe broadcast.

In order to discourage an overwrought reading of the reach of its Order, the Commission highlighted in the Conclusion to its Order that broadcasters who ran afoul of the new rule risked potential enforcement actions "in situations such as that here." *Id.* ¶ 17. There is therefore no cause for NBC and others to fret that the

Order is ambiguous about whether it applies, for example, to news programming.²

It is alarming enough that petitioners say they want the Commission to reverse itself in this case and to provide other associated relief related to the Order at issue. But that is not really what this case is about. For the broadcasters, this case is the opening salvo in a campaign aimed at stripping away any limits on what they can broadcast. They believe that they should not have to labor under the constraints of 18 U.S.C. § 1464.

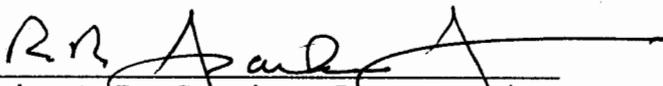
There can be no doubt about that. NBC, for example, refers to "the broad availability of television programming not subject to Section 1464" as a reason for the Commission to back off its Order. *NBC Petition* at 2. The ACLU petitioners claim that the rise of cable television and the Internet have undone the vitality of the holding of *Pacifica*, suggesting that the Commission's power to regulate broadcasting has been overtaken by events. For the ACLU petitioners, the state of the law even *before* the Order issued in this case was evidently too much. *ACLU Petition* at 7-8 n. 14. Simply put, the broadcasters want to broadcast over the public airwaves the same kind of fare

² In another example of studied confusion, Petitioners ACLU, et al. at one point even pretend that they do not understand just what "F-word" the Commission has in mind in its Order. *ACLU Petition* at 10-11.

that now appears on cable. For them, a return to the *status quo ante* is not enough. They want to be unshackled altogether from 18 U.S.C. § 1464.

If the broadcasters and others really believe that the Commission's right to regulate broadcast indecency has been undercut by the advance of other media, then they should tell it to Congress. If they want to argue for a constitutional right to broadcast the F-word into millions of homes in prime time, they should do so before a court. The Commission, though, should not reverse its March 18 Order. The Commission is on the right side of this issue, and it should stay there.

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 28th day of April 2004, the foregoing pleading was sent via first-class U.S. mail to the attached list of broadcasters and to:

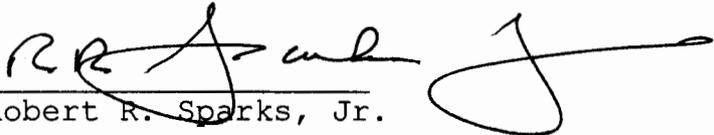
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KCNC-TV
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KCRA-TV
KCRA HEARST-ARGYLE
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KETK-TV
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KFDM-TV
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KFOR-TV
NEW YORK TIMES
MANAGEMENT SERVICES,
CORP. CNTR 1
2202 N.W. SHORE BLVD. #370
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KGW
KING BROADCASTING
COMPANY
400 SOUTH RECORD STREET
DALLAS, TX 75202

KHAS-TV
GREATER NEBRASKA
TELEVISION, INC.
6475 OSBORNE DRIVE WEST
HASTINGS, NE 69801

KING-TV
KING BROADCASTING
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KPRC-TV
POST-NEWSWEEK STATIONS,
HOUSTON, LP
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KRBC-TV
MISSION BROADCASTING, INC.
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KRIS-TV
KVOA COMMUNICATIONS, INC.
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WAVE
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RENO NV 89509

WBBH-TV
WATERMAN BROADCASTING
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WBOY-TV
WEST VIRGINIA MEDIA
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WBRE-TV
NEXSTAR BROADCASTING OF
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WCYB-TV
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WHO-TV
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MANAGEMENT SERVICES
CORPORATE CNTR 1, 2202
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WILX-TV
GRAY MIDAMERICA TV
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WPXI
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WRIC-TV
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