

September 21, 2006

William H. Davenport  
Chief, Investigations and Hearings Division  
Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 4-C330  
Washington, D.C. 20554

Re: Court Remand of Section III.B of the Commission's March 2006  
Omnibus Order Resolving Numerous Broadcast Indecency Complaints

Dear Mr. Davenport:

In response to the Commission's September 7, 2006 call for comment in connection with the court remand of its March 15, 2006 *Omnibus Order* resolving various indecency complaints, TV Watch respectfully requests that the Commission, taking cognizance of the views of the great majority of Americans, reject the *Omnibus Order's* constitutionally suspect approach to indecency enforcement.<sup>1</sup> Parents, not special interest organizations or the government, should decide what is okay for their families to watch.

TV Watch is a broad-based coalition that opposes government control of television programming, preferring instead to promote the use of tools like content ratings and parental controls that empower parents to manage their families' television viewing. TV Watch provides a much needed voice to the majority of Americans who prefer personal responsibility to government regulation. TV Watch consists of 27 prominent individuals and organizations that represent more than 4 million Americans. Its diverse membership includes, among others, broadcast networks, the Minority Media & Telecommunications Council, the National Academy of Recording Artists, the US Chamber of Commerce, as well as constitutional scholars and media experts.<sup>2</sup>

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<sup>1</sup> See *FCC Announces Filing Procedures in Connection with Court Remand of Section III.B of the Commission's March 15, 2006 Omnibus Order Resolving Numerous Broadcast Television Indecency Complaints*, Public Notice, DA 06-1793 (rel. Sept. 7, 2006) (citing *Fox Television Stations, Inc. v. FCC*, No. 06-1760-AG (2d Cir. Sept. 7, 2006) ("*Remand Order*") and *In re Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, Notices of Apparent Liability & Memorandum Opinion & Order, 21 FCC Rcd 2664 (2006) ("*Omnibus Order*").

<sup>2</sup> Member organizations include: American Conservative Union; Americans for Tax Reform; Black Filmmaker Foundation; CBS; Center for Creative Voices in Media; The Creative Coalition; Center for Democracy and Technology; Media Freedom Project; The Media Institute; Minority Media & Telecommunications Council; National Academy of Recording Artists; NBC Universal; News Corporation; PSVRatings; SpeakSpeak; US Chamber of Commerce. Individual members are: Jack Balkin, First Amendment Professor, Yale Law School; Braden Cox, Technology Counsel, Competitive Enterprise Institute; Susan Crawford, Professor, Cardozo Law School; Nick Gillespie, Editor: *Reason Magazine*; Jeff Jarvis, former TV critic for *TV Guide* and *People*, and creator of *Entertainment Weekly* and blogger for *Buzzmachine.com*; Brian Murphy, Adjunct Professor, New York Law School and partner, Frankfurt Kurnit Klein & Selz; Sal Severe, PhD, and author: *How to Behave So Your Children Will Too*; Adam Thierer, Senior Fellow and Director, Center for Digital Media Freedom at The

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The coalition's guiding principles are the following: (1) Americans should determine what is seen and heard in their own homes, based on their personal tastes; and (2) the television industry should rate programs, advise viewers about the content that they are about to see, as well as promote awareness of the tools and information that allow parents to exercise control at home (through use of the V-Chip, cable and satellite parental controls, television ratings and parental involvement).

The opinions of TV Watch reflect those of most television viewers. While a significant population is concerned about content on television, most say that government regulation is not the answer.<sup>3</sup> "An overwhelming majority of respondents (87%) – including 76% of those who 'often' see objectionable content and 86% of weekly churchgoers – also agree that '*if you don't like what's on television, change the channel, but don't deny everyone else the right to watch what they want to see.*'"<sup>4</sup>

Americans simply do not want the FCC to play parent. For example, a nationwide survey conducted March 24-26, 2006 confirms that the vast majority of television viewers do not want federal regulators in their living rooms. More than three-fourths of voters would be upset if government regulation limited their programming choices.<sup>5</sup> Moreover, fully two-thirds of voters believe that the government should not make subjective decisions about when the use of explicit language is necessary, whether in educational or artistic programming, as was the case when the FCC reviewed *Saving Private Ryan*, *The Blues: Godfathers and Sons*, and other content as part of the *Omnibus Order*.<sup>6</sup>

Americans understand that not all programming is intended for children. And government regulation is having a direct impact on what we all have the opportunity to watch on television. Television programs are already being changed or not aired at all, out of fear of government fines. The FCC should not censor broadcast programming based upon its own subjective views nor should it impose regulations that will lead to the chilling of speech.<sup>7</sup> It's

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Progress & Freedom Foundation; Linda Gale White, former First Lady of Texas; Jack Myers, editor and publisher of the *Jack Myers Report*, *Media Village* and former TV executive.

See Luntz Research Companies and Peter D. Hart Research Associates, *National Survey on Decency in Television*, available at <http://www.televisionwatch.org/atf/cf/{084110DD-FDFD-481D-9E6F-755FD08705F2}/Luntz-Hart%20Survey.pdf>.

*Id.*

See TV Watch Press Release, *Survey: More Likely to Find an Adult Who Believes in Alien Abductions than a Voter who Wants the Feds to Pick What's on TV* (Mar. 29, 2006).

<sup>6</sup> *Id.*

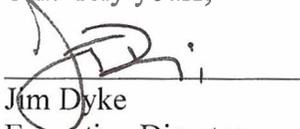
<sup>7</sup> Government regulation is in fact chilling speech and threatening viewer choice. As the attached Exhibit A makes clear, broadcasters are being forced to edit or drop programs based on fear of FCC indecency enforcement action.

what Americans don't see that may anger them as government makes decisions about what we all can and can't view.

Television content can be unpredictable at times, especially when it comes to news and live broadcasts. Live television depicts reality and events as they happen spontaneously, whether it be an overly excited fan at a sporting event, or the President of the United States engaging world leaders (as evidenced by President Bush's recent utterance of the S-word in a conversation with British Prime Minister Tony Blair, which was carried by several news organizations). Live television provides a direct link to the world and it should not be censored by the government.

TV Watch strongly encourages the Commission to consider fully the views of the vast majority of Americans and withdraw the *Omnibus Order's* constitutionally suspect approach to indecency enforcement. Responsibility and education, not more regulation, are the solution to any problem associated with children's television consumption.

Sincerely yours,



Jim Dyke  
Executive Director  
TV Watch  
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## EXHIBIT A

### THE CHILLING EFFECT

You may not know it, but TV programs are already being changed or not aired at all, out of fear of government fines. It's what Americans *don't* see that may anger them.

When CBS decided to rebroadcast the documentary *9/11*, 56 CBS affiliates – covering nearly 11% of US households – either refused to air the show or moved it to the 'safe harbor' out of fear they would be fined for the coarse words uttered by rescuers during the attacks. The program contains the only known footage of the first plane flying into the World Trade Center towers.

In response to 2006 FCC fines against a Martin Scorsese documentary about the blues and out of fear of recently increased fines, PBS has begun instructing its producers to self-censor all of its shows, including news programming like the acclaimed *Frontline*.

Scenes from the previously approved pilot of the WB series *The Bedford Diaries* were later censored by the network, against the wishes of the series director, in light of recent FCC enforcement decisions.

Garrison Keillor's national, daily five-minute poetry and history program was canceled by a Kentucky radio program after the word 'breast' was spoken during a reading. After an outcry from the community, the show was reinstated.

- ABC now alters language and images in the long-running, Emmy Award-winning *N.Y.P.D. Blue* even though the now-edited content has been a staple of the show for over a decade.
- Fearing FCC fines, more than 80 percent of PBS affiliates declined to air an unedited version of the *Frontline* documentary "A Company of Soldiers."
- Phoenix TV stations dropped coverage of a live memorial service for Pat Tillman, the former football star killed in Afghanistan, because of language used by mournful family members.

One third of the country wasn't able to watch *Saving Private Ryan* on Veteran's Day 2004, when stations declined to air it fearing action by the FCC.

- Shows like *Antiques Roadshow* must now screen items for 'indecenty,' including such pieces of Americana as famous lithographs of Marilyn Monroe and illustrations of the female form in artwork from World War II bomber planes.
- The FCC investigated NBC's coverage of the Olympic Games Opening Ceremonies in Athens because historical depictions of Greek art and dance appeared in the broadcast.

For a documentary about South Africa, scenes of Nelson Mandela at a dance event were cut out because some women in the background were partially unclothed, as is the cultural norm in Africa.

- FOX edited testimony in *The Jury* (which examines the jury system) in a program involving child sexual abuse, even though it went to the crux of the case and the jury's verdict.

In the wake of FCC enforcement decisions, an episode of *That 70s Show* that won an award for its treatment of sexual health in a responsible manner has been shelved for reruns, even though it drew no complaints when it first aired.

80 percent of PBS affiliates rejected broadcast footage from the time leading up to the Iraqi elections and the battle for Fallujah because of explicit language used by the soldiers.

A *Family Guy* episode that aired 5 without incident years ago was later edited to remove a view of an animated character's buttocks. In another episode, an animated depiction in of a character breast-feeding was also altered.

An episode of *ER* was edited to remove a brief shot of the exposed breast of an 80-year-old woman receiving emergency care.

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