

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

In the Matter of)	
)	
Complaints Against Various)	File No. EB-03-1H-0110
Broadcast Licensees Regarding)	
Their Airing of the “Golden)	
Globe Awards” Program)	

TO: The Commission

**COMMENTS OF THE CBS TELEVISION NETWORK AFFILIATES
ASSOCIATION ON PETITION FOR RECONSIDERATION**

The CBS Television Network Affiliates Association (the “CBS Affiliates”) supports the petition for reconsideration filed in this docket by Viacom, the owner of the CBS Television Network. It files these limited comments not to supplement the legal arguments set out in the Viacom petition, but to point out the particular challenges that the Commission’s decision in the above-referenced docket imposes upon local broadcasters and, in particular, network affiliates.¹

The *Order*, if it is not corrected, will fundamentally alter the manner in which local broadcasters engage in newsgathering. It also will change the relationship between networks and affiliates. The *Order* held, contrary to longstanding precedent, that even “isolated and fleeting” occurrences of a single word can subject a station to significant fines, as well as a finding that a licensee has violated the Commission’s rules and a federal law.² In some circumstances, it may even lead to the commencement of license revocation proceedings. The Commission entered this finding against a network

¹ See *Complaints Against Various Broadcast Licensees Regarding Their Airing of the “Golden Global Awards” Program*, Memorandum Opinion and Order, 19 FCC Rcd. 4975 (2004) (the “*Order*”).

² See *id.* at ¶ 12.

and its affiliates in a case in which the network was covering a major event live, and affiliates of that network had no practical ability to avoid broadcasting the expletive that led to the Commission's holding. The *Order* also imposed a strict liability, "zero tolerance" approach to a single word that had been considered, in decades of past cases, within the context in which it was broadcast. And it did so in a manner that indicates clearly that the Commission may take a similarly strict view toward the broadcast of other words in future cases.

These comments will not restate the legal and constitutional underpinnings for the arguments expressed by Viacom, with which the CBS Affiliates are in agreement. The CBS Affiliates also agree that the Commission has an obligation to consider significant changes in the law such as those contemplated in the *Order* in a proper rulemaking proceeding subject to notice and comment. This process would take into account all of the circumstances of a new approach, rather than using an isolated and fact-bound complaint process to reverse decades of precedent. Opening a rulemaking in this matter would have revealed significant difficulties with the Commission's new approach that actually threaten, rather than enhance, local broadcasting.

In particular, the imposition of strict liability on broadcast licensees by virtue of their transmission of a single, isolated and fleeting expletive by the subject of a live television program means that live newsgathering outside of the safe harbor will be a risk that many licensees cannot take. Creating disincentives to provide coverage of local events – such as demonstrations, disputes, live sports and other occasions when the language of the subjects of news coverage may be unpredictable – diminishes the methods by which local broadcasters can serve their communities. And this particular

method, live television broadcasting, is an important tool by which local broadcasters provide immediate and highly demanded coverage of events to their audiences.

Moreover, the holding of the *Order* alters the relationship between networks and affiliates. Network affiliates have no technical or legal ability to alter programming provided to them by networks that affiliates have committed to accept.³ Contractual provisions often limit affiliates' discretion to decide against accepting certain network programming, and some network affiliation agreements do not provide that networks will indemnify affiliates when the network is found to have violated the Commission's rules in programming created by the network and ultimately broadcast by the affiliate. Even if a network agrees to indemnify its affiliates, however, this remedy can be a hollow one because an adjudicated finding of indecency against an affiliated station, which could lead to the commencement of license revocation proceedings, is a substantial burden regardless of which party is responsible for defense and any forfeiture (a burden that may increase dramatically under legislation pending before Congress). In this new environment, network affiliates may be unable to rely on their networks' ability to provide "safe" programming – even major awards shows and high-profile sporting events will present significant levels of risk.

³ Some affiliation agreements, for example, do not permit affiliates to "tape delay" network programming, and it is not clear that such a system would be workable in any event.

For the foregoing reasons, the CBS Affiliates urge the Commission to either reverse the *Order*'s expansion of the Commission's indecency regulation mandate or explore these issues in a proper rulemaking proceeding before engaging in wholesale revisions to longstanding law and policy.

Respectfully submitted,

Jonathan D. Blake
Kurt Wimmer
Amy L. Levine

COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 662-6000

*Counsel to the CBS Television Network
Affiliates Association*

May 4, 2004

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of the CBS Television Network Affiliates Association on Petition for Reconsideration was sent via first-class, U.S. mail on this 4th day of May, 2004, to the following:

KALB-TV

Media General Communications, Inc.
333 East Franklin Street
Richmond, VA 23219

KARE

Multimedia Holdings Corporation
7950 Jones Branch Drive
McLean, VA 22107

KARK-TV

909 Lake Carolyn Parkway, #1450
Irving, TX 75039

KATV

KATV, LLC
Post Office Box 77
Little Rock, AR 72203

KBTV-TV

Nexstar Broadcasting of Beaumont/Port Arthur
909 Lake Carolyn Parkway, #1450
Irving, TX 75039

KCBD

Libco, Inc.
639 Isbell Road, #390
Reno, NV 89509

KCEN-TV

Channel 6, Inc.
Post Office Box 6103
17 South Third Street
Temple, TX 76503

KCNC-TV

CBS Television Stations, Inc.
2000 K Street, NW, #725
Washington, DC 20006

KCRA-TV

KCRA Hearst-Argyle Television, Inc.
888 Seventh Avenue
New York, NY 10106

KETK-TV

KETK Licensee L.P.
Shaw Pittman (K.R. Schmeltzer)
2300 N Street, NW
Washington, DC 20037

KFDM-TV

Freedom Broadcasting of Texas, Inc.
Post Office Box 7128
Beaumont, TX 77706

KFOR-TV

New York Times Management Services
Corp. Center 1
2202 NW Shore Boulevard, #370
Tampa, FL 33607

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 Company
400 South Record Street
Dallas, TX 75202

KKCO

Eagle III Broadcasting, LLC
2325 Interstate Avenue
Grand Junction, CO 81505

WNBC, *et al.*
National Broadcasting Company, Inc.
1299 Pennsylvania Avenue, NW, 11th Floor
Washington, DC 20004

KOB-TV
KOB-TV, LLC
3415 University Avenue
Atten: L. Wefring
St. Paul, MN 55114

KPRC-TV
Post-Newsweek Stations, Houston, LP
8181 Southwest Freeway
Houston, TX 77074

KRIS-TV
KVOA Communications, Inc.
409 South Staples Street
Corpus Christi, TX 78401

KSDK
Multimedia KSDK, Inc.
c/o Gannett Co., Inc.
7950 Jones Branch Drive
McLean, VA 22107

KSNF
Nexstar Broadcasting of Joplin, LLC
909 Lake Carolyn Parkway, #1450
Irving, TX 75039

KTIV
KTIV Television, Inc.
3135 Floyd Boulevard
Sioux City, IA 51105

KWES-TV
Midessa Television Company
Post Office Box 60150
Midland, TX 79711

KYTV
KY3, Inc.
999 West Sunshine Street
Springfield, MO 65807

KOAA-TV
Sangre de Cristo Communications, Inc.
2200 Seventh Avenue
Pueblo, CO 81003

KPNX
Multimedia Holdings Corporation
7950 Jones Branch Drive
McLean, VA 22107

KRBC-TV
Mission Broadcasting, Inc.
544 Red Rock Drive
Wadsworth, OH 44281

KTGF
MMM License LLC
900 Laskin Road
Virginia Beach, VA 23451

KSHB-TV
Scripps Howard Broadcasting Company
312 Walnut Street
Cincinnati, OH 45202

KTEN
Channel 49 Acquisition Corporation
Post Office Box 549
Hampton, VA 23669

KUSA-TV
Multimedia Holdings Corporation
c/o Gannett Co.
7950 Jones Branch Drive
McLean, VA 22107

KWWL
Raycom America, Inc.
RSA Tower, 20th Floor
201 Monroe Street
Montgomery, AL 36104

WANE-TV
Indiana Broadcasting, LLC
4 Richmond Square
Providence, RI 02906

WAVE
Libco, Inc.
639 Isbell Road, #390
Reno, NV 89509

WBOY-TV
West Virginia Media Holdings, LLC
Post Office Box 11848
Charleston, WV 25339

WCNC-TV
WCNC-TV, Inc.
400 South Record Street
Dallas, TX 75202

WCYB-TV
Appalachian Broadcasting Corp.
101 Lee Street
Bristol, VA 24201

WDSU
New Orleans Hearst-Argyle Television, Inc.
888 Seventh Avenue
New York, NY 10106

WFIE
Libco, Inc.
639 Isbell Road, #390
Reno, NV 89509

WFMJ-TV
WFMJ Television, Inc.
c/o Shaw Pittman, LLP
2300 N Street, NW
Washington, DC 20037

WHDH-TV
WHDH-TV Government Center
7 Bulfinch Place
Boston, MA 02114

WHO-TV
New York Times Management Services
Corporate Center 1
2202 NW Shore Boulevard, #370
Tampa, FL 33607

WBBH-TV
Waterman Broadcasting Corp. of Florida
3719 Central Avenue
Fort Myers, FL 33901

WBRE-TV
Nexstar Broadcasting of NE PA, LLC
909 Lake Carolyn Parkway, #1450
Irving, TX 75309

WCSH
Pacific & Southern Co., Inc.
c/o Gannett Co.
7950 Jones Branch Drive
McLean, VA 22107

WDIV-TV
Post-Newsweek Stations, Michigan, Inc.
550 West Lafayette Boulevard
Detroit, MI 48226

WESH
Orlando Hearst-Argyle Television, Inc.
888 Seventh Avenue
New York, NY 10106

WFLA-TV
Media General Communications, Inc.
333 East Franklin Street
Richmond, VA 23219

WGAL
WGAL Hearst-Argyle Television, Inc.
888 Seventh Avenue
New York, NY 10106

WHEC-TV
WHEC-TV, LLC
c/o Hubbard Broadcasting, Inc.
3415 University Avenue
St. Paul, MN 55114

WILX-TV
Gray MidAmerica TV Licensee Corp.
500 American Road
Lansing, MI 48911

WJFW-TV
Northland Television, Inc.
Post Office Box 858
Rhineland, WI 54501

WLWT
Ohio/Oklahoma Hearst-Argyle TV, Inc.
Post Office Box 1800
Raleigh, NC 27602

WMFE-TV
Community Communications, Inc.
11510 East Colonial Drive
Orlando, FL 32817

WMTV
Gray MidAmerica TV Licensee Corp.
615 Forward Drive
Madison, WI 53711

WNYT
WNYT-TV, LLC
c/o Hubbard Broadcasting, Inc.
3415 University Avenue
St. Paul, MN 55114

WOWT-TV
Gray MidAmerican TV Licensee Corp.
3501 Farnam Street
Omaha, NE 68131

WPXI
WPXI-TV Holdings, Inc.
3993 Howard Hughes Parkway, #250
Las Vegas, NV 89109

WRIC-TV
Young Broadcasting of Richmond, Inc.
301 Arboretum Place
Richmond, VA 23236

WSAZ-TV
Emmis Television License Corporation
3500 West Olive Avenue, #300
Burbank, CA 91505

WKYC-TV
WKYC-TV
c/o Gannett Co., Inc.
7950 Jones Branch Drive
McLean, VA 22107

WMC-TV
Raycom America, Inc.
RSA Tower, 20th Floor
201 Monroe Street
Montgomery, AL 36104

WMGT
Endurance Broadcasting, LLC
c/o Dan Smith
104 North Main Street
Stillwater, MN 55082

WNDU-TV
Michiana Telecasting Corp.
Post Office Box 1616
South Bend, IN 46634

WOOD-TV
Wood License Company, LLC
120 College Avenue, SE
Grand Rapids, MI 49503

WPMI
Clear Channel Broadcasting Licenses, Inc.
2625 South Memorial Drive, #A
Tulsa, OK 74129

WRCB-TV
Sarkes Tarzian, Inc.
205 North College Avenue
Bloomington, IN 47402

WSAV-TV
Media General Communications, Inc.
333 East Franklin Street
Richmond, VA 23219

WSFA
Libco, Inc.
639 Isbell Road, #390
Reno, NV 89509

WSMV-TV
Meredith Corp. Television Stations
1716 Locust Street
Des Moines, IA 50309

WTMJ-TV
Journal Broadcast Corporation
3355 South Valley View Boulevard
Las Vegas, NV 89102

WVLA
Knight Broadcasting of Baton Rouge Lic. Corp.
700 St. John Street, #301
Lafayette, LA 70501

WWLP
WWLP Broadcasting, LLC
4 Richmond Square
Providence, RI 02906

WYFF
WYFF Hearst-Argyle Television, Inc.
888 Seventh Avenue
New York, NY 10106

Brent Bozell
Parents Television Council
707 Wilshire Boulevard, Suite 2075
Los Angeles, CA 90017

Robert Corn-Revere
Ronald G. London
Davis Wright Tremaine, L.L.P.
1500 K Street, NW, Suite 450
Washington, DC 20005

F. William LeBeau
National Broadcasting Company, Inc.
1299 Pennsylvania Avenue, NW, 11th Floor
Washington, DC 20004

WTHR
VideoIndiana, Inc.
1000 North Meridian Street
Indianapolis, IN 46204

WTVY
Gray MidAmerica TV Licensee Corp.
Post Office Box 1089
Dothan, AL 36302

WWBT
Jefferson-Pilot Communications Co. of VA
Post Office Box 12
Richmond, VA 23218

WXIA-TV
Gannett Georgia, LP
c/o Gannett Co., Inc.
7950 Jones Branch Drive
McLean, VA 22107

Robert R. Sparks, Jr., Esq.
Herge, Sparks & Christopher
6862 Elm Street, Suite 360
McLean, VA 22101

Kathleen A. Kirby
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006

Margaret L. Tobey
Morrison & Foerster, LLP
2000 Pennsylvania Avenue, NW, Suite 5500
Washington, DC 20006

Amy L. Levine