

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

|                               |   |                     |
|-------------------------------|---|---------------------|
| In the Matter of              | ) |                     |
|                               | ) |                     |
| FCC Seeks Comment on Adopting | ) | GN Docket No. 13-86 |
| Egregious Cases Policy        | ) |                     |
|                               | ) |                     |

**REPLY COMMENTS**

The broadcast companies and licensees set forth on Attachment A (“Joint Broadcasters”), by their counsel, hereby submit their reply comments in connection with the above-captioned proceeding.

In their initial comments in this proceeding, Joint Broadcasters proposed that, during the lengthy period required to craft any new indecency policy, the Commission return to its former complaint processing standards and impose evidentiary standards on complainants sufficient to demonstrate their bona fides as listeners or viewers of the allegedly indecent programming and to provide the substance of their complaints. In initial comments, a number of other commenting parties agreed that increased procedural rigor is needed in the FCC’s evaluation of complaints. At the same time, many presented compelling arguments regarding substantive reform of the Commission’s indecency enforcement policies, and, as discussed below, Joint Broadcasters now endorse those substantive changes.

As Joint Broadcasters noted in their initial comments, the FCC’s extreme slowness in acting on complaints and the application “holds” that result have had significant consequences for broadcasters, whether it be delays in transactions and refinancings, the expense and uncertainty of tolling agreements, or even the need to escrow the maximum fine for a potential violation, as the Commission has sometimes required. Numerous commenting parties described

and condemned the slow pace, several pointing out that the delays themselves can have a constitutionally impermissible dimension.<sup>1</sup> Moreover, even when the Enforcement Bureau does eventually issue a Notice of Apparent Liability, the Commission's failure in many cases to take any further action means the cases are unresolved for years, and the full Commission's failure to ever act on them leaves parties without opportunity for judicial review.<sup>2</sup> The FCC's failure to act in any meaningful timeframe and its practice of treating NALs as precedent in the interim magnify the chilling effect the FCC's enforcement regime has on speech.<sup>3</sup>

Several parties agreed with Joint Broadcasters that complainants should be required to provide certain very basic information, and these parties did not limit their advocacy of complaint standards to just the interim period of this rulemaking.<sup>4</sup> Joint Broadcasters agree that, whatever substantive reforms the Commission adopts, more rigorous procedural requirements should continue. Poorly pleaded allegations put an unreasonable defensive burden on broadcasters, and, as NAB noted, "basic due process . . . requires that stations not be required to disprove inadequately supported allegations of indecency."<sup>5</sup>

Joint Broadcasters particularly endorse the complaint processing standards suggested by NBCUniversal in its comments. In addition to requiring a complainant to explain how a

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<sup>1</sup> See, e.g., Comments of NBCUniversal Media, LLC, GN Dkt. No. 13-86, filed June 19, 2013, at 33-35 ("NBCU Comments"); Comments of CBS Corporation, GN Dkt. No. 13-86, filed June 19, 2013, at 25 ("CBS Comments").

<sup>2</sup> Comments of the National Association of Broadcasters, GN Dkt. No. 13-86, filed June 19, 2013, at 24-25 ("NAB Comments"); Comments of Fox Entertainment Group, Inc. and Fox Television Holdings, Inc., GN Dkt. No. 13-86, filed June 19, 2013, at 31-32, 33-34 ("Fox Comments"); NBCU Comments at 35.

<sup>3</sup> *Id.*; Fox Comments at 35-36, 39-40.

<sup>4</sup> Joint Comments [of Americom, L.P., *et al.*], GN Dkt. No. 13-86, filed June 19, 2013, at 7-8 ("Americom, L.P., *et al.* Comments"); NBCU Comments at 30-32, 40-42; NAB Comments at 34-36.

<sup>5</sup> *Id.* at 35 (footnote omitted).

broadcast was indecent and to include a tape or detailed written description of the program, these criteria would require a complainant to certify to the following:

- that he or she viewed the programming at issue on the date and at the time stated in the complaint;
- that the programming was received via the station's over-the-air signal, and not through a subscription MVPD service, such as cable or satellite TV, or via the Internet or other online service;
- that the programming was viewed in the company of a minor child; and
- that the programming was viewed at a time outside the safe-harbor hours of 10 p.m. to 6 a.m. (with appropriate adjustments . . . for the Central and Mountain time zones).<sup>6</sup>

As NBC explains, consumers who have chosen to subscribe to pay services should be deemed to have consented to the availability of broadcast video content, and requiring that they attest to viewing by a minor is essential to meet the Commission's goal of protecting children from harm.<sup>7</sup> Commenting parties also criticized the fact that there is no time limit on the filing of complaints, and NBC specifically proposed that complaints should be submitted within 30 days of an allegedly indecent broadcast.<sup>8</sup> Complaints that fail to meet these procedural requirements should be promptly dismissed.

Joint Broadcasters' suggestion that the FCC should consider making a copy of any indecency complaint available to affected broadcasters also received support from other parties. NAB said that the FCC would bring much needed transparency to its indecency cases by notifying broadcasters of both the filing of indecency complaints and their dismissal.<sup>9</sup>

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<sup>6</sup> NBCU Comments at 40-41 (footnotes omitted). *See also* NAB Comments at 34-35.

<sup>7</sup> NBCU Comments at 41 n.134 & n.135.

<sup>8</sup> *Id.* at 41.

<sup>9</sup> NAB Comments at 35.

Echoing Joint Broadcasters' filing, many commenting parties expressed skepticism and great doubt over whether the FCC will be able to craft a constitutionally sustainable indecency policy given technological and marketplace developments over the last few decades.<sup>10</sup> If the FCC does attempt to adopt a substantive policy, Joint Broadcasters agree with the consensus in the comments that such a policy should include a clear exemption for bona fide news, documentary, and public affairs programming as well as an exemption for live programming, including sports.<sup>11</sup> To be deemed indecent under any new policy, programming should include "both (1) a clear, direct, graphic, unobscured visual or verbal depiction of a sexual or excretory organ or activity, and (2) sufficient duration or repetition of the depiction to constitute the equivalent of verbal or visual 'shock treatment.'"<sup>12</sup> At the same time, the FCC should abandon its policy of sanctioning fleeting, spontaneous expletives and nudity in live programming and return to its pre-2004 policy on this issue.<sup>13</sup> Finally, the FCC should abandon the "artistic necessity" standard, which puts the burden on broadcasters to demonstrate that challenged material is "essential" to a program.<sup>14</sup>

Only through procedural reform of the complaint process will the FCC assure that broadcasters receive the full and fair review that constitutional principles demand, and only

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<sup>10</sup> CBS Comments at 2; Comments of ABC, Inc., GN Dkt. No. 13-86, filed June 19, 2013, at 18 ("ABC Comments"); NBCU Comments at 36; Fox Comments at 3-8; Americom, L.P., *et al.* Comments at 3-4.

<sup>11</sup> ABC Comments at 25-30; NBCU Comments at 38.

<sup>12</sup> ABC Comments at 40.

<sup>13</sup> Comments of CBS Television Network Affiliates Association and NBC Television Affiliates, GN Dkt. No. 13-86, filed June 19, 2013, at 2-6; Americom, L.P., *et al.* Comments at 1-2; ABC Comments at 18-25; CBS Comments at 20-22.

<sup>14</sup> ABC Comments at 40.

through adoption of a very limited and narrow definition of what constitutes indecency will the FCC return to the enforcement practices the Constitution and judicial precedent require.

Respectfully submitted,

Allbritton Communications Company  
Block Communications, Inc.  
Cordillera Communications, Inc.  
Cox Media Group, LLC  
First Media Radio, LLC  
FoxCo Acquisition, LLC  
GoodRadio.TV, LLC  
Granite Broadcasting Corporation  
Local TV Holdings, LLC  
Media General, Inc.  
Meredith Corporation  
Midwest Television Inc.  
Palm Beach Broadcasting LLC  
WNAC, LLC

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**ATTACHMENT A**

Allbritton Communications Company

Block Communications, Inc.

Cordillera Communications, Inc.

Cox Media Group, LLC

First Media Radio, LLC

FoxCo Acquisition, LLC

GoodRadio.TV, LLC

Granite Broadcasting Corporation

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Meredith Corporation

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