

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

In the Matter of)
)
Remand of Section III.B of the Commission's) DA 06-1739
March 15, 2006 *Omnibus Order* Resolving)
Numerous Broadcast Television Indecency)
Complaints)

**JOINT COMMENTS OF FOX TELEVISION STATIONS, INC., CBS BROADCASTING
INC., NBC UNIVERSAL, INC. AND NBC TELEMUNDO LICENSE CO.**

Ellen S. Agress
Maureen O'Connell
FOX TELEVISION STATIONS, INC.
1211 Avenue of the Americas
New York, NY 10036
(212) 252-7204

Carter G. Phillips
R. Clark Wadlow
James P. Young
Jennifer Tatel
David S. Petron
SIDLEY AUSTIN LLP
1501 K St., N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for Fox Television Stations, Inc.

Susanna Lowy
Anne Lucey
CBS BROADCASTING, INC.
51 West 52nd Street
New York, NY 10019
(212) 975-3406

Robert Corn-Revere
Ronald G. London
Amber L. Husbands
DAVIS WRIGHT TREMAINE LLP
1500 K Street, N.W., Suite 450
Washington, DC 20005
(202) 508-6600

Counsel for CBS Broadcasting Inc.

Susan Weiner
F. William LeBeau
NBC UNIVERSAL, INC.
30 Rockefeller Plaza
New York, NY 10112

Miguel A. Estrada
Andrew S. Tulumello
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave., N.W.
Washington, DC 20036-5306
(202) 995-8500

*Counsel for NBC Universal, Inc. and
NBC Telemundo License Co.*

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To respond to the new indecency regime, many broadcasters have been forced to invest in expensive delay equipment and personnel to monitor broadcasts. *See* Allison Romano, “Reporting Live. Very Carefully.” *Broadcasting & Cable* (July 4, 2005), at 9, *available at* <http://www.broadcastingcable.com/article/CA623019.html?display=Feature> (noting that “local broadcasters are responding by altering—or halting altogether—the one asset that makes local stations so valuable to their communities: live TV” and that the costs of expensive delay equipment are prohibitive for small-market stations). The costs of delay equipment sufficient to cover all live sports and news programming, plus the personnel required to install and operate it, could run into the tens of millions of dollars.¹⁴ The significant equipment and personnel costs associated with installing, maintaining, and operating delay equipment sufficient to cover all live news, sports, and entertainment programs could conceivably exceed the net profits of a small local station for an entire year.¹⁵

that live sports programming is an example of “appointment television”); Liguori Declaration ¶ 6 (same with respect to awards shows and the like).

¹⁴ To take but a single example, equipping the 35 Fox owned-and-operated local television stations with enough delay equipment to cover all live local news, sports and entertainment originally produced by such stations would require a capital expenditure of \$3.5 million. *See* Declaration of Andrew G. Setos (Attached as Appendix XI), ¶ 4. All of this delay equipment would need to be replaced every five years. *See id.* ¶¶ 2, 4. The annual personnel costs associated with operating and maintaining sufficient delay equipment for all Fox owned-and-operated local television stations would be approximately \$16 million. *See id.* ¶ 4. This estimate is based on employing two operating positions for each local station; if local stations were to employ four operating positions, as Fox does for its network programming, the cost would be approximately \$32 million for all Fox owned-and-operated stations. *See id.* And of course, these costs represent those of only one station group. To respond at the network level to the uncertainty created by the Commission’s increasingly aggressive indecency enforcement, Fox Broadcasting Group has already increased staffing in its Broadcast Standards and Practices department by 70%, at a cost of \$1,026,000. *See* Bernard Declaration ¶ 6.

¹⁵ The median pre-tax profits for local stations in the smallest markets is only approximately \$225,000 per year. *See* NAB/BCFM, TELEVISION FINANCIAL REPORT, Table 17, at 35 (2005).

But the costs of trying to comply with the Commission's newly-expanded enforcement regime are truly secondary; the real problem is the chill on protected speech. Even with time delay equipment and the personnel to operate it, broadcasters are not assured of preventing potentially offensive words during live broadcasts. For example, during the "2003 Billboard Music Awards," a time delay effectively blocked one expletive but failed to prevent two other expletives only seconds later. *See Omnibus Order* ¶ 112 n.164 (quoting broadcast). Delaying live broadcasts so that potentially offensive words might be censored requires the quick reactions of individuals with their fingers on "dump" buttons, and human error is inevitable. *See Bernard Declaration* ¶ 7 ("[B]ecause this is an inherently human endeavor, it is impossible to ensure that content violative of the FCC's vague indecency standard will never air on live television."); *Swanson Declaration* ¶ 4 (noting inevitability of human error in using delay equipment to edit live content); *Goren Declaration* ¶ 4 (same); *Liguori Declaration* ¶ 4 (same). Broadcast standards employees are experienced network executives who undergo rigorous training about how and when to edit potentially offensive material, but despite this extensive training and preparation, perfect compliance with the network standards and practices is not possible. *See Bernard Declaration* ¶ 7. Given the possibility of not editing potentially objectionable content, broadcasters have no choice but to self-censor additional content to avoid the risk posed by massive fines. *See id.* ¶¶ 5, 9.

Worse, delaying live broadcasts to edit potentially offensive language inevitably results in overbroad censorship of appropriate material. For example, during a recent time-delayed broadcast of a music performance, a vigilant broadcast standards employee censored a portion of one song out of fear an expletive had been used; a later review found that no expletive had been uttered, but by then the television audience's enjoyment of the program had already been

APPENDIX XI

DECLARATION OF ANDREW G. SETOS

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**DECLARATION OF ANDREW G. SETOS
ON BEHALF OF FOX TELEVISION STATIONS, INC.
AND FOX BROADCASTING COMPANY**

1. My name is Andrew G. Setos. I am the President of Engineering for the Fox Group, a position that I have held since February 2002. In this role, I serve as the senior technology strategist for the company with oversight of engineering for all Fox divisions, including all film and television units. I have been with the engineering division of Fox since 1988.
2. Shortly after Congress increased the maximum potential fine for a violation of broadcast indecency regulations tenfold, I was asked by Fox executives to prepare an estimate of the economic costs of operating time delay systems for all live programming (including news and sports) broadcast over the Fox Broadcasting Company's FOX network and over all of the owned-and-operated local broadcast stations. The FOX network currently owns and operates time delay equipment used during all live entertainment programs, at an installed cost of approximately \$100,000. This equipment would be expected to require replacement every 5 years. But the network does not own sufficient equipment, nor does it employ sufficient personnel, to operate time delay systems for all sports and news programming.

3. For sports and news programming broadcast by the FOX network, it would cost approximately \$1 million to purchase and install the necessary delay equipment (with an estimated useful life of five years), plus an additional \$440,000 (approximately) per year for the personnel required to maintain and operate this equipment and for certain other support costs.

4. For the 35 owned-and-operated Fox local television stations, the cost to purchase and install the necessary delay equipment would be approximately \$100,000 for each station, or \$3.5 million in total. The equipment would be expected to require replacement every 5 years. Assuming two operating positions, the cost per year for the personnel necessary to operate and maintain this equipment for live local news, sports and entertainment originally produced by such stations would be approximately \$16 million in total for all stations. If, however, the stations were to utilize four operating systems as the network does, the approximate personnel cost per year would increase to \$32 million in total for all stations.

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct.



Andrew G. Setos
President of Engineering
Fox Group
10201 West Pico Boulevard, Room 2000
Los Angeles, CA 90035
(310) 369-1000

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