



# PUBLIC NOTICE

Federal Communications Commission  
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## 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

**Response Due Date: September 21, 2006**

**Introduction.** By this Public Notice, the Commission announces a two-week filing period for parties wishing to submit comments concerning the four indecency decisions noted below that were remanded to the Commission by the United States Court of Appeals for the Second Circuit.<sup>1</sup> The decisions were part of the Commission's order in *Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, Notices of Apparent Liability and Memorandum Opinion and Order, FCC 06-17 (hereinafter "*Omnibus Order*").<sup>2</sup> Further details of the filing procedures are provided below.

**Background.** The *Omnibus Order* resolved a number of indecency complaints pending against broadcasters based on television programs aired between February 2002 and March 2005. In the only portion of the Order at issue here – Section III.B – the Commission found that episodes of four television programs (*i.e.*, *NYPD Blue*, *The Early Show*, *2002 Billboard Music Awards*, and *2003 Billboard Music Awards*) aired by certain broadcast stations apparently violated the statutory and regulatory prohibitions on broadcast of indecent and profane material.<sup>3</sup> The Commission, however, did not propose to fine any of the licensees and made clear that it would not use the findings as a basis for taking adverse action against them, such as considering the findings in the license renewal process.<sup>4</sup>

Following the Commission's release of the *Omnibus Order*, Fox Television Stations, Inc. ("Fox") and CBS Broadcasting, Inc. ("CBS") filed a joint petition for review in the United States Court of Appeals for the Second Circuit ("Second Circuit") challenging Section III.B of the *Omnibus Order*.<sup>5</sup> Similarly, ABC Television Network ("ABC") and Hearst-Argyle Television, Inc. ("Hearst") filed a joint petition for review in the United States Court of Appeals for the D.C. Circuit ("D.C. Circuit"), which later transferred the petition to the Second Circuit. The Second Circuit consolidated all petitions on June 14, 2006.<sup>6</sup>

<sup>1</sup> See *Fox Television Stations, Inc. v. FCC*, No. 06-1760-AG (2d Cir. Sep. 7, 2006) ("*Remand Order*").

<sup>2</sup> See 21 FCC Rcd 2664 (2006) ("*Omnibus Order*"), *pets. for review pending*, *Fox Television Stations, Inc. v. FCC*, No. 06-1760-AG (2d Cir. filed Apr. 13, 2006).

<sup>3</sup> See *Omnibus Order*, 21 FCC Rcd at 2690-2700.

<sup>4</sup> See *id.* at 2690.

<sup>5</sup> See *supra* note 2 (noting pending petitions for review).

<sup>6</sup> The Second Circuit also granted motions to intervene in the Fox-CBS case by NBC Universal, Inc., NBC Telemundo License Co., NBC Television Affiliates, FBC Television Affiliates Association, CBS Television Network Affiliates Association, and the Center for the Creative Community, Inc. Prior to transferring the ABC-Hearst case, the D.C. Circuit granted ABC Television Affiliates Association's motion to intervene in the ABC-Hearst case.

Several parties in the case complained to the Commission that they were not provided with an opportunity to be heard by the Commission before the decisions in Section III.B of the Order were adopted. Accordingly, on July 5, 2006, the Commission asked the Court to suspend its briefing schedule for 60 days and remand the case to the Commission to give any interested parties an opportunity to comment on the broadcasts discussed in Section III.B of the Order and ensure that all licensees are afforded a full opportunity to be heard before the Commission issues a final decision. On September 7, 2006, the Court granted the Commission's motion. Under the Court's Order, the case has been remanded to the Commission for a period of sixty days "for the entry of a further final or appealable order of the FCC following such further consideration as the FCC may deem appropriate in the circumstances."<sup>7</sup>

**Filing Procedures.** Any interested party shall file comments (an original and four copies) no later than September 21, and direct them, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002, marked for the attention of William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to 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. Parties filing comments shall also, to the extent practicable, transmit a copy via email to [William.Davenport@fcc.gov](mailto:William.Davenport@fcc.gov).

**Enforcement Bureau Contact:** Robert Ratcliffe, Deputy Chief, (202) 418-7450

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<sup>7</sup> *Remand Order* at 2.