

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN,
APPROVING IN PART AND DISSENTING IN PART**

Re: Complaints Against Various Television Licensees Concerning Their February 1, 2004, Broadcast of the Super Bowl XXXVIII Halftime Show

Based on a careful review of the record, I find today's remedy totally inadequate. After all the bold talk, it's a slap on the wrist that can be paid with just 7½ seconds of Super Bowl ad time. The \$550,000 fine measures up to only about a dollar per complaint for the more than 542,000 complaints that flooded into the FCC after the broadcast.

The Commission is required by Congress to enforce federal restrictions against the broadcast of indecent material, and I agree with the indecency finding here. We were deluged with a record number of complaints about the Super Bowl halftime show, and took the unusual step of launching an investigation. But after a major announcement and months of investigation, today's enforcement action goes out of its way to focus narrowly on the exposure of Janet Jackson's breast on twenty CBS-owned stations.

Most troubling, this decision sets a puzzling precedent by failing to hold all licensees responsible for the material broadcast over their stations. Why announce such a thorough investigation if we just let some of the stations that broadcast this material completely off the hook? It is true that the CBS affiliates are as much the innocent victims as the families who were stunned to see such gratuitous nudity during a family viewing event. In this case CBS affiliates – like the general public – had no idea what was coming, but this is true for most live programming. This aspect of today's action shows the lack of a coherent long-term framework that should form the basis of all our indecency enforcement efforts.

Compliance with federal broadcast decency restrictions is the responsibility of the station that chooses to air the programming, not the performers. Less than a week before the Super Bowl, the Commission fined a television station for a similar case of gratuitous brief on-camera nudity. Since the Super Bowl outcry, Viacom has acted responsibly by apologizing, by instituting measures such as time delays to keep indecency off the airwaves, and by cooperating fully with our investigation. Viacom should be commended for these steps. Nevertheless, subsequent actions cannot excuse the fact that indecent material was broadcast to 100 million viewers, including one in five American children.

While the Commission must always proceed cautiously in broadcast decency cases, this type of graphic and gratuitous nudity is not a close call. The millions of our nation's children who were ambushed by the Super Bowl halftime show deserve better protection. A fine of 7½ seconds of ad time is scarcely any deterrent. The shockwaves are still being felt by this shameful episode. I fear that today we're responding to a "wardrobe malfunction" with a regulatory malfunction.