

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
NBC TELEMUNDO LICENSE CO.)	File Nos. EB-03-IH-0539
)	EB-03-IH-0562
Licensee of Station WRC-TV)	EB-03-IH- 0683
Washington, D.C.)	Facility ID No. 47904

MEMORANDUM OPINION AND ORDER

Adopted: October 1, 2004

Released: November 23, 2004

By the Commission:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we deny four individual complaints (the “*Complaints*”) from the Parents Television Council (“PTC”) and 44 related complaints¹ alleging that NBC Telemundo License Co., licensee of Station WRC-TV, Washington, D.C., and various other affiliates of the NBC Television Network (“NBC”) aired episodes of the NBC program “Coupling” on September 25 and October 2, 9 and 23, 2003, in violation of federal restrictions regarding the broadcast of indecent material.²

II. BACKGROUND

2. The *Complaints* allege that, at 9:00 p.m. Eastern Standard Time, on September 25, and October 2, 9 and 23, 2003, Station WRC-TV broadcast episodes of the “Coupling” program that contained allegedly indecent material.³ According to the *Complaints*, which are attached hereto, the episodes at issue “contained . . . indecent material” and were also “seen in homes across the country.”⁴

III. DISCUSSION

3. The Federal Communications Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the Commission’s rules and applicable statutory provisions concerning the operation of those stations. The Commission’s role in overseeing program content is very limited. The First Amendment to the United States Constitution and section 326 of the Communications Act of 1934, as amended, (the “Act”) prohibit the Commission from censoring program

¹ To date, the Commission has received a total of 48 complaints concerning the September 25 and October 2, 9 and October 23, 2003, episodes of the program broadcast by the NBC affiliates.

² See 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999.

³ See Letters from Parents Television Council (“PTC”) to Federal Communications Commission, dated November 24, 2003, and October 29, 2003. The *Complaints* state that the “Coupling” episodes at issue were broadcast over Station WRC-TV and stations of other NBC affiliates across the country.

⁴ See *id.*; Attachments A-D (emphasis in original).

material and from interfering with broadcasters' freedom of expression.⁵ The Commission does, however, have the authority to enforce statutory and regulatory provisions restricting indecency and obscenity. Specifically, it is a violation of federal law to broadcast obscene or indecent programming. Title 18 of the United States Code, Section 1464 prohibits the utterance of "any obscene, indecent or profane language by means of radio communication."⁶ In addition, section 73.3999 of the Commission's rules provides that radio and television stations shall not broadcast obscene material at any time, and, consistent with a subsequent statute and court case,⁷ shall not broadcast indecent material during the period 6 a.m. through 10 p.m.⁸

A. Indecency Analysis

4. Any consideration of government action against allegedly indecent programming must take into account the fact that such speech is protected under the First Amendment.⁹ The federal courts consistently have upheld Congress's authority to regulate the broadcast of indecent material, as well the Commission's interpretation and implementation of the governing statute.¹⁰ Nevertheless, the First Amendment is a critical constitutional limitation that demands that, in indecency determinations, we proceed cautiously and with appropriate restraint.¹¹

5. The Commission defines indecent speech as language that, in context, depicts or describes sexual or excretory activities or organs in terms patently offensive as measured by contemporary community standards for the broadcast medium.¹²

Indecency findings involve at least two fundamental determinations. First, the material alleged to be indecent must fall within the subject matter scope of our indecency definition—that is, the material must describe or depict sexual or excretory organs or activities. . . . Second,

⁵ U.S. CONST., amend. I; 47 U.S.C. § 326 (2002).

⁶ 18 U.S.C. § 1464.

⁷ Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (1992) (setting the current safe harbor of 10 p.m. to 6 a.m. for the broadcast of indecent material); *see also Action for Children's Television v. FCC*, 58 F. 3d 654 (D.C. Cir. 1995) (*en banc*) ("ACT IIP"), *cert. denied*, 516 U.S. 1072 (1996) (affirming restrictions prohibiting the broadcast of indecent material between the hours of 6 a.m. and 10 p.m.).

⁸ *See* 47 C.F.R. § 73.3999. We note that to the extent complainants in the Eastern and Pacific time zones objected to broadcasts of the "Coupling" episodes after 10:00 p.m. in those areas, those broadcasts were outside the time period covered by our indecency rules. *See supra* n. 9 and accompanying text.

⁹ U.S. CONST., amend. I; *see Action for Children's Television v. FCC*, 852 F.2d 1332, 1344 (D.C. Cir. 1988) ("ACT I").

¹⁰ 18 U.S.C. 1464; *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). *See also ACT I*, 852 F.2d at 1339; *Action for Children's Television v. FCC*, 932 F.2d 1504, 1508 (D.C. Cir. 1991), *cert. denied*, 503 U.S. 914 (1992) ("ACT II"); *ACT III*, 58 F. 3d 654.

¹¹ *ACT I*, 852 F.2d at 1344, 1340 n.14 ("Broadcast material that is indecent but not obscene is protected by the First Amendment; the FCC may regulate such material only with due respect for the high value our Constitution places on freedom and choice in what people may say and hear."); *see id.* at 1340 n.14 ("...the potential chilling effect of the FCC's generic definition of indecency will be tempered by the Commission's restrained enforcement policy.").

¹² *Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705 (1987)(subsequent history omitted) (*citing Pacifica Foundation*, 56 FCC 2d 94, 98 (1975), *aff'd sub nom. FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)).

the broadcast must be *patently offensive* as measured by contemporary community standards for the broadcast medium.¹³

The complained-of material aired during the episodes of the “Coupling” program depicts or describes sexual activities and organs, and therefore, warrants further scrutiny to determine whether it is patently offensive as measured by contemporary community standards. For the reasons set forth below, however, we conclude that the material is not patently offensive, and therefore, not indecent.

6. In our assessment of whether broadcast material is patently offensive, “the *full context* in which the material appeared is critically important.”¹⁴ Three principal factors are significant to this contextual analysis: (1) the explicitness or graphic nature of the description; (2) whether the material dwells on or repeats at length descriptions of sexual or excretory organs or activities; and (3) whether the material appears to pander or is used to titillate or shock.¹⁵ In examining these three factors, we must weigh and balance them to determine whether the broadcast material is patently offensive because “[e]ach indecency case presents its own particular mix of these, and possibly, other factors.”¹⁶ In particular cases, the weight of one or two of the factors may outweigh the others, either rendering the broadcast material patently offensive and consequently indecent,¹⁷ or, alternatively, removing the broadcast material from the realm of indecency.¹⁸

7. After reviewing the transcripts and videotapes of the episodes provided by PTC, we conclude that the complained-of material is not sufficiently explicit or graphic to be indecent. The episodes in question deal with the interconnected relationships of the six regular characters in the series, three men and three women.¹⁹ The complained-of material is primarily the dialogue between the characters, which involves conversations exploring their relationships. The material presents a close case. The dialogue includes sustained and repeated use of sexual innuendo and double entendre, with sex the constant theme of the program episodes. The cumulative effect of such repeated references appear to render the material shocking, titillating, or pandering to the viewing audience. We conclude that our findings with respect to these two factors are outweighed in this instance by the first component of our analysis, lack of explicit or graphic depiction or description. The episodes in question do not explicitly depict sexual activities or organs (other than kissing). Rather, the characters’ conversations together with the set-up of the scenes make clear that sexual activity has occurred. Further, despite repeated references to sexual activities and organs, which we find troubling, none of the episodes contains graphic descriptions of sexual activities and organs or uses language that is so graphic as to qualify as indecent or profane. Consequently, we conclude that the material, in context, is not patently offensive as measured

¹³ *Industry Guidance on the Commission’s Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency (“Indecency Policy Statement”)*, 16 FCC Rcd 7999, 8002, ¶¶ 7-8 (2001) (emphasis in original).

¹⁴ *Id.*, at 8002, ¶ 9 (emphasis in original).

¹⁵ *Id.*, at 8002-15, ¶¶ 8-23.

¹⁶ *Id.*, at 8003, ¶ 10.

¹⁷ *Id.*, at 8009, ¶ 19 (citing *Tempe Radio, Inc (KUPD-FM)*, 12 FCC Rcd 21828 (MMB 1997) (forfeiture paid) (extremely graphic or explicit nature of references to sex with children outweighed the fleeting nature of the references); *EZ New Orleans, Inc. (WEZB(FM))*, 12 FCC Rcd 4147 (MMB 1997) (forfeiture paid) (same)).

¹⁸ *Id.*, at 8010, ¶ 20 (“the manner and purpose of a presentation may well preclude an indecency determination even though other factors, such as explicitness, might weigh in favor of an indecency finding”).

¹⁹ *See Complaints.*

by contemporary community standards for the broadcast medium and, therefore, not indecent.²⁰

III. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED, that the complaints alleging that Station WRC-TV and other licensees airing NBC programming violated the indecency prohibition by broadcasting the September 25 and October 2, 9 and 23, 2003, episodes of the “Coupling” program, ARE HEREBY DENIED.

9. IT IS FURTHER ORDERED, that copies of this *Memorandum Opinion and Order* shall be sent by Certified Mail Return - Receipt Requested to Parents Television Council, 707 Wilshire Boulevard, Suite 2075, Los Angeles, California 90017, and to NBC Telemundo License Co., licensee of Station WRC-TV, 1299 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁰ The “contemporary standards for the broadcast medium” criterion is that of the average broadcast listener and with respect to Commission decisions, does not encompass any particular geographic area. *See id.*, 16 FCC Rcd at 8002, ¶ 8.