

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Complaints Against Various Broadcast Licensees Regarding Their Airing of
the "Golden Globe Awards" Program; Memorandum Opinion and Order*

The Commission today takes a major step in safeguarding the well-being of our nation's children. By reversing the Bureau order, we deliver a loud and clear decree that gratuitous broadcasts of the F-word will not be tolerated on our airwaves. Many studies show that the use of the F-word and other vulgarities is becoming more prevalent in our society, and in our media. Broadcasters have a responsibility to serve the public interest, and fail to meet it if they contribute to this trend.

By today's action, the Commission steps up to its responsibility to enforce statutory and regulatory provisions restricting broadcast indecency and profanity. Recognizing that the First Amendment requires a delicate balance, the Supreme Court has held that the Commission can constitutionally regulate indecent broadcasts in the interests of protecting children from vulgarities broadcast over public airwaves to the public at large. The same statute also proscribes broadcast profanity, and I am pleased that we apply a profanity definition endorsed by the courts to give meaning to our statutory directive.¹ While we have historically interpreted "profane" to mean blasphemy, I support our application of the statute to the F-word, a highly offensive and commonly understood "profanity."

I agree with the courts that what is indecent is largely a function of context, and cannot adequately be judged in an abstract, or per-se, manner. In large part, the character of an act is informed by the circumstances in which it is done. Yet, even for live award shows, where technology allows for the removal of isolated words, the gratuitous broadcast of the F-word is not justified. The tens of thousands of emails, calls and letters that poured in to the Commission opposing this broadcast are telling of the sexual connotation and offensiveness of that word. And its offensiveness does not depend on whether it is used as an adjective, adverb, verb or gerund.

Today's action does not fail to appreciate the cultural creativity and pluralism of our society. There was no suggestion that the use of the F-word in this case was traced to any literary, artistic, political or scientific value. Its use here was both gratuitous and easily avoidable.

There should be no doubt, my strong preference here would have been to assess a fine against the licensees in this case. Despite this preference, as a legal matter, today's action can be said to represent a departure from a previous line of cases issued before I joined the Commission. Those cases routinely failed to take action against isolated uses of the F-word, an approach that was endorsed in our April 2001 Policy Statement.² Our action today also represents a fresh, new

¹ See *Tallman v. United States*, 465 F.2d 282, 286 (7th Cir. 1972).

² See, e.g., *Pacifica Foundation, Inc.*, 2 FCC Rcd 2698, 2699 (1987); *Infinity Broadcasting Corporation of Pennsylvania, Inc.*, 2 FCC Rcd 2705 (1987); *Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency*, 16 FCC Rcd 7999 (2001) (2001 Policy Statement) and cases cited in note 32 of this decision. Included in these examples is a broadcast of Cher saying the F-word on the 2002 Billboard Awards Ceremony which was found not indecent.

approach to enforcing our statutory responsibility with respect to profane broadcasts.³ Regardless of my personal view, in such instances, licensees should have fair notice that the use of this language in a setting such as this would be found actionably indecent and profane. Given the delicate authority the courts have permitted us under the First Amendment to enforce the indecency laws, the Commission must exercise care in affording licensees firm yet fair treatment. Nonetheless, it should be abundantly clear from today's action that we are setting a clear line to broadcast indecency and profanity to which all licensees should adhere and which from now on will result in forfeitures and other enforcement sanctions.

Broadcasters, themselves, bear much of the responsibility to keep our airwaves decent. As stewards of the public airwaves, they are in the position to showcase the best of our country's tremendous cultural heritage. Their choices will ultimately guide our future enforcement, as their transgressions will result in increasingly severe and swift action.

³ See *2001 Policy Statement* (stating that “[p]rofanity that does not fall under one of the above two categories [obscenity or indecency] is fully protected by the First Amendment and cannot be regulated.”).