

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

In the Matter of	)	
	)	
Complaints Against Various Television Licensees	)	File No. EB-04-IH-0589
Regarding Their Broadcast on November 11,	)	
2004, of the ABC Television Network's	)	
Presentation of the Film "Saving Private Ryan"	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 3, 2005**

**Released: February 28, 2005**

By the Commission: Chairman Powell issuing a separate statement; Commissioner Martin issuing a separate statement at a later date.

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, we deny complaints filed by members of the American Family Association ("AFA") and by others (collectively, the "Complainants") alleging that certain television stations affiliated with the ABC Television Network ("ABC")<sup>1</sup> broadcast indecent and profane material on November 11, 2004, from approximately 8:00 to 11:00 p.m. Eastern Standard Time, during the ABC presentation of the film "Saving Private Ryan." After our review of the complaints and the videotape of the broadcast of the film so aired by these stations,<sup>2</sup> we find that the material does not violate the applicable indecency and profanity prohibitions.

**II. BACKGROUND**

2. On November 11, 2004, certain stations that are affiliates of ABC aired a special Veterans Day presentation of the 1998 award-winning<sup>3</sup> World War II motion picture "Saving Private Ryan." The film relates the story of a mission by eight U.S. soldiers to rescue Private James Francis Ryan, a soldier and the sole surviving son from a family of four brothers, three of whom were lost while also serving in the war. At the commencement of the broadcast, the film is introduced by Dr. Harold Baumgarten, a World War II veteran who survived the Allies' D-Day landing at Normandy Beach, which

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<sup>1</sup> For purposes of this *Memorandum Opinion and Order*, "ABC Network Stations" are those stations that are affiliates of ABC and aired the film "Saving Private Ryan" on November 11, 2004. As explained below, not all ABC affiliates aired the film.

<sup>2</sup> The videotape contains a running reference to the time of the broadcast by hour, minute and second, commencing at 8:00 p.m., presumably the Eastern Standard Time of the broadcast.. All references herein to the tape will be to the "Videotape" and provide the time designation of the material so referenced.

<sup>3</sup> "Saving Private Ryan" was the recipient of the 1999 Golden Globe awards for best motion picture-drama and best direction. That same year, the film received Academy Awards for best direction, cinematography, film editing, sound and sound effects editing. <http://www.casenet.com/movie/savingprivateryan.htm>.

is depicted in the opening scenes of the film. Dr. Baumgarten, now in his eighties, was, at 19 years of age, a soldier who was wounded five times during 32 hours of combat at Normandy.<sup>4</sup> He is joined in introducing the film by United States Senator John McCain, a distinguished Navy veteran who served in Vietnam.

3. Senator McCain notes in his introductory remarks that the broadcast of the film is “an extraordinary tribute to a generation of brave men like Dr. Baumgarten,” who fought to protect American freedom.<sup>5</sup> The Senator expresses his opinion that it is important to present this “intense, emotional film unedited, with limited commercial interruption,” because “[i]f we don’t remember the past, we run the risk of repeating it.”<sup>6</sup> However, he also states that “the R-rated language and graphic content [of the film] is for mature audiences and not appropriate for children.”<sup>7</sup> Following this introduction, the text of an additional viewer advisory is aired,<sup>8</sup> along with the letters “TV MA LV,” the voluntary industry code warning parents that the broadcast is for mature audiences only and unsuitable for children due to the presence of violence and unacceptable language.<sup>9</sup> Such warnings and codes are also aired after each of the 10 commercial breaks during the broadcast<sup>10</sup> and were posted on the ABC website in advance of the broadcast.<sup>11</sup>

4. The Commission’s Enforcement Bureau has previously ruled that Veterans Day broadcasts in 2001 and 2002 of the unedited version of the film did not violate the Commission’s indecency prohibitions.<sup>12</sup> Nevertheless, according to news reports, approximately 66 of a total of 225

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<sup>4</sup> Videotape at approximately 8:00:12-46 p.m.

<sup>5</sup> *Id.* at approximately 8:00:48-58 p.m.

<sup>6</sup> *Id.* at approximately 8:01:11-15 p.m.

<sup>7</sup> *Id.* at approximately 8:01:05-10 p.m.

<sup>8</sup> The warning is accompanied by audio delivery of the following: “This film contains prolonged depictions of graphic, realistic WWII violence, as well as intense adult language. The original content of the film has not been altered for this TV broadcast. Parental and viewer discretion is strongly advised.”

<sup>9</sup> In addition to serving as a warning, the presence of these codes allows parents to lock out the telecast on sets equipped with the V-chip. <http://www.fcc.gov/cgb/consumerfacts/vchip.html>. See also *Implementation of Section 551 of the Telecommunications Act of 1996, Video Programming Ratings*, 13 FCC Rcd 8232 (1998); *Technical Requirements to Enable Blocking of Video Programming Based on Program Ratings*, 13 FCC Rcd 11248 (1998).

<sup>10</sup> In connection with each of the viewer advisories that follow commercial breaks, the following appears on screen: “This film is being presented uncut with graphic violence and intense adult language. Viewer discretion is strongly advised.” Audio accompanying this text repeats the admonition that “viewer discretion is strongly advised.” The viewer advisories containing the warning, along with the program codes, appear at approximately 8:37:05, 9:09:32, 9:19:28, 9:30:30, 9:44:52, 9:57:16, 10:12:38, 10:21:59, 10:35:13, and 11:01:37. See Videotape, *passim*.

<sup>11</sup> See <http://abc.go.com/movies/savingprivateryan.html> (“Due to graphic violence and intense adult language, viewer discretion is strongly advised.”)

<sup>12</sup> See, e.g., Letter from Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, to Mr. and Mrs. John Schmeling, Jr., dated December 19, 2002, EB-02-IH-0838; Letter from Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, to Tim Wildmon, Vice President, American Family Association, dated June 7, 2002, EB-02-IH-0085.

stations affiliated with ABC declined to air the film, citing their uncertainty as to whether it contained indecent material, reportedly based, in part, on Commission indecency rulings subsequent to these previous broadcasts of the film.<sup>13</sup> Following the November 11, 2004, broadcast, the Commission received the complaints, alleging that the aired film contains indecent or otherwise actionable material. The Complainants generally cite, among other things, film dialogue containing expletives including: “fuck,” and variations thereof; “shit,” “bullshit,” and variations thereof; “bastard,” and “hell.” In addition, the Complainants cite the presence in the film of other allegedly offensive language, such as “Jesus,” and “God damn.” They also object to the film’s graphic depiction of wartime violence. Accordingly, the Complainants argue that the ABC Network Stations should be sanctioned for airing material that violates federal indecency and profanity restrictions.

### III. DISCUSSION

5. 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 Act prohibit the Commission from censoring program material and from interfering with broadcasters’ freedom of expression.<sup>14</sup> The Commission does, however, have the authority to enforce statutory and regulatory provisions restricting indecency. Specifically, it is a violation of federal law to broadcast obscene, indecent or profane 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.”<sup>15</sup> In addition, section 73.3999 of the Commission’s rules, which was promulgated for the civil enforcement of that statute and section 16(a) of the Public Telecommunications Act of 1992,<sup>16</sup> as modified by a subsequent court decision,<sup>17</sup> provides that radio and television stations shall not broadcast obscene material at any time, and shall not broadcast indecent material during the period 6 a.m. through 10 p.m.

6. Any consideration of government action against allegedly indecent programming must take into account the fact that such speech is protected under the First Amendment.<sup>18</sup> The federal courts consistently have upheld Congress’s authority to regulate the broadcast of indecent speech, as well as the Commission’s interpretation and implementation of the governing statute.<sup>19</sup> Nevertheless, the First

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<sup>13</sup> See David Bauder, “66 ABC affiliates chose not to run ‘Saving Private Ryan,’” THE DETROIT NEWS, November 13, 2004, [www.detnews.com/2004/screens/0411/18](http://www.detnews.com/2004/screens/0411/18). However, all 10 ABC-affiliated stations owned and operated by ABC, Inc. did air the film. *Id.*

<sup>14</sup> See 47 U.S.C. § 326.

<sup>15</sup> 18 U.S.C. § 1464.

<sup>16</sup> Pub. L. No. 102-356, § 16(a), 106 Stat. 949, 954 (1992).

<sup>17</sup> *Action for Children’s Television v. FCC*, 58 F.3d 654 (D.C. Cir. 1995) (*en banc*), *cert. denied*, 516 U.S. 1043 (1996) (“*ACT III*”).

<sup>18</sup> U.S. CONST., amend. I; See *Action for Children’s Television v. FCC*, 852 F.2d 1332, 1344 (D.C. Cir. 1988) (“*ACT I*”).

<sup>19</sup> *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978) (“*Pacifica*”). 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*.

Amendment is a critical constitutional limitation that demands that, in such determinations, we proceed cautiously and with appropriate restraint.<sup>20</sup>

7. 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.<sup>21</sup>

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, the broadcast must be *patently offensive* as measured by contemporary community standards for the broadcast medium.<sup>22</sup>

8. The complained-of material contained in the broadcast of the film includes at least one word (*i.e.* “fuck” and its variations) which falls within the first prong of our indecency definition.<sup>23</sup> Therefore, the material 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, in context, is not patently offensive, and therefore, not indecent.

9. In making indecency determinations, the Commission has indicated that the “*full context* in which the material appeared is critically important,”<sup>24</sup> and has articulated three “principal factors” for its analysis: “(1) the *explicitness or graphic nature* of the description or depiction of sexual or excretory organs or activities; (2) whether the material *dwells on or repeats at length* descriptions of sexual or excretory organs or activities; (3) *whether the material appears to pander or is used to titillate*, or

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<sup>20</sup> *ACT I*, 852 F.2d at 1344 (“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 the people may say and hear.”); *id.* at 1340 n.14 (“the potentially chilling effect of the FCC’s generic definition of indecency will be tempered by the Commission’s restrained enforcement policy.”)

<sup>21</sup> *Infinity Broadcasting Corporation of Pennsylvania*, Memorandum Opinion and Order, 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)).

<sup>22</sup> *Industry Guidance on the Commission’s Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency*, Policy Statement, 16 FCC Rcd 7999, 8002 (2001) (“*Indecency Policy Statement*”) (emphasis in original).

<sup>23</sup> *Complaints Against Various Broadcast Licensees Regarding Their Airing Of The “Golden Globe Awards” Program*, Memorandum Opinion and Order, 19 FCC Rcd 4975, 4978, ¶ 8 (2004) *petitions for stay and reconsideration pending* (“*Golden Globe Awards Order*”) (“[g]iven the core meaning of the “F-Word,” any use of that word, or a variation, in any context, inherently has a sexual connotation and therefore falls within the first prong of our indecency definition”).

<sup>24</sup> *Id.* (emphasis in original). In *Pacifica*, the Court “emphasize[d] the narrowness of [its] holding and noted that under the Commission rationale that it upheld, “context is all-important.” 438 U.S. at 750. In so holding, the Court observed that “indecency is largely a function of context – it cannot be adequately judged in the abstract.” *Id.* at 742.

whether the material appears to have been presented for its shock value.”<sup>25</sup> 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.”<sup>26</sup> In particular cases, one or two of the factors may outweigh the others, either rendering the broadcast material patently offensive and consequently indecent,<sup>27</sup> or, alternatively, removing the broadcast material from the realm of indecency.<sup>28</sup>

10. Contextual considerations are critical in making indecency determinations for two reasons, both of which implicate the First Amendment interests at stake. First, context is important in determining the potential impact of the allegedly indecent material on children – the compelling governmental interest that the Supreme Court held justified regulation of broadcast indecency. As the Supreme Court noted in *Pacifica*:

The Commission’s decision [in *Pacifica*] rested entirely on a nuisance rationale under which context is all-important. The concept requires consideration of a host of variables. The time of day was emphasized by the Commission. The content of the program in which the language is used will also affect the composition of the audience...

*Pacifica* at 750. Thus, the Court observed that the broadcast of an Elizabethan comedy or one of Chaucer’s *Canterbury Tales* might raise different considerations than the broadcast at issue in *Pacifica*.<sup>29</sup> The Court explained: “Even a prime-time recitation of Geoffrey Chaucer’s *Miller’s Tale* would not be likely to command the attention of many children who are both old enough to understand and young enough to be adversely affected . . .”<sup>30</sup> Thus, the content of the program, as well as the time period during which it is broadcast, may affect how many children are likely to be in the audience and the material’s impact on them.

11. Second, we must consider context in order to minimize intrusion into broadcasters’ speech. Although the courts have upheld Congress’ authority to regulate the broadcast of indecent speech and the Commission’s implementation of the governing statute,<sup>31</sup> we must nevertheless proceed with “due respect for the high value our Constitution places on freedom and choice in what the people say and

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<sup>25</sup> *Indecency Policy Statement*, 16 FCC Rcd at 8003 (emphasis in original).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 8009 (citing *Tempe Radio, Inc (KUPD-FM)*, Notice of Apparent Liability, 12 FCC Rcd 21828 (Mass Media Bur. 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))*, Notice of Apparent Liability, 12 FCC Rcd 4147 (Mass Media Bur. 1997) (forfeiture paid) (same).

<sup>28</sup> *Indecency Policy Statement*, 16 FCC Rcd 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”).

<sup>29</sup> *Id.* at 750 and n. 29.

<sup>30</sup> *Id.* at n. 29.

<sup>31</sup> *Pacifica*, 438 U.S. 726. See also *ACT I*, 852 F.2d at 1339; *ACT II*; *ACT III*.

hear.”<sup>32</sup> Our decisions reflect this restraint. Thus, we do not find indecent every depiction or description of sexual or excretory organs or activities. Rather, as discussed above, we find material indecent only if it is patently offensive based on an examination of the material’s explicit or graphic nature, whether it is dwelled upon or repeated, and whether it appears to pander or is intended to titillate or shock the audience. In connection with the third factor, we consider whether the material has any social, scientific or artistic value, as finding that material has such value may militate against finding that it was intended to pander, titillate or shock.<sup>33</sup> Of course, as the D.C. Circuit has stated, “merit is properly treated as a factor in determining whether material is patently offensive, but it does not render such material *per se* not indecent.”<sup>34</sup>

12. As discussed below, contextual considerations are important in evaluating “Saving Private Ryan” for both reasons.

13. The film, as aired by the ABC Network Stations on November 11, 2004, contains numerous expletives and other potentially offensive language generally as part of soldiers’ dialogue, some of which is cited by the Complainants. Such language includes: “fuck,” and its variations; “hell”; “ass” and “asshole”; “crap”; “son of a bitch”; “bastard”; “shit” and its variations, including “bullshit” and “shitty”; “prick”; and “pee.” For the purpose of this discussion, we will assume *arguendo*, that this material meets the first and second components to our analysis of whether it is patently offensive, in that at least some of the language is graphic and explicit, and is repeated throughout the course of the three and a half-hour broadcast of the film. Nevertheless, for the reasons discussed below, in light of the overall context in which this material is presented, we conclude that such findings with respect to the first two factors are outweighed in this instance by the third component of the analysis. For the following reasons, here, the complained-of material, in context, is not pandering and is not used to titillate or shock.

14. The subject matter of the film, the portrayal of a mission to save the last surviving son of an Iowa farm family, involves events that occurred during World War II. As stated in the introduction to the broadcast, in relating this story, the motion picture realistically depicts the fierce combat during the Normandy invasion, including, according to a veteran who participated in and witnessed these events, “things that no one should ever have to see.”<sup>35</sup> Essential to the ability of the filmmaker to convey to viewers the extraordinary conditions in which the soldiers conducted themselves with courage and skill are the reactions of these ordinary Americans to the barbaric situations in which they were placed. The expletives uttered by these men as these events unfold realistically reflect the soldiers’ strong human

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<sup>32</sup> *ACT I*, 852 F.2d at 1344. See also *id* at 1340 n. 14 (“the potentially chilling effect of the FCC’s generic definition will be tempered by the Commission’s restrained enforcement policy.”)

<sup>33</sup> See *WPBN/WTOM License Subsidiary, Inc. (WPBN-TV and WTOM-TV)*, Order on Review, 15 FCC Rcd 1838 (2000). See also *Golden Globe Awards Order*, 19 FCC Rcd at 4979, ¶ 9 (use of the word “fuck” during a live awards ceremony telecast was “shocking and gratuitous”).

<sup>34</sup> See *ACT I*, at 1340 (“since the overall value of a work will not necessarily alter the impact of certain words or phrases on children, the FCC’s approach is permissible under controlling case law; merit is properly treated as a factor in determining whether material is patently offensive, but it does not render such material *per se* not indecent”).

<sup>35</sup> Videotape at approximately 8:00:43 p.m. One reviewer characterized the scenes in the film depicting the landing at Normandy, in which the majority of the expletives are uttered by the soldiers, as “a chaos of noise, mud, blood, vomit and death.”  
<http://rogerebert.suntimes.com/apps/pbcs.dll/article?AID=/19980724/REVIEWS/807240>.

reactions to, and, often, revulsion at, those unspeakable conditions and the peril in which they find themselves. Thus, in context, the dialogue, including the complained-of material, is neither gratuitous nor in any way intended or used to pander, titillate or shock. Indeed, it is integral to the film's objective of conveying the horrors of war through the eyes of these soldiers, ordinary Americans placed in extraordinary situations. Deleting all of such language or inserting milder language or bleeping sounds into the film would have altered the nature of the artistic work and diminished the power, realism and immediacy of the film experience for viewers. In short, the vulgar language here was not gratuitous and could not have been deleted without materially altering the broadcast. In this context, we must proceed with caution and exercise restraint given "the high value our Constitution places on freedom and choice in what the people say and hear."<sup>36</sup>

15. Moreover, the presentation by the ABC Network Stations is not intended as family entertainment, a fact clearly and explicitly stated in the introduction that precedes the film and is repeated in the aural and visual viewer advisory and voluntary parental code that follow each commercial break during the broadcast. Thus, parents had ample warning that this film contained material that might be unsuitable for children and could have exercised their own judgment about the suitability of the language for their children in the context of this film.

16. The Commission has found similar material depicting an historical view of World War II and wartime atrocities to be not patently offensive, and thus not actionably indecent.<sup>37</sup> We see no reason to conclude otherwise with respect to the film at issue here. Thus, in light of the overall context of the film, including the fact that it is designed to show the horrors of war, its presentation to honor American veterans on the national holiday specifically designated for that purpose, the introduction, which articulated the importance of presenting the film in its unedited form, and the clear and repeated warnings provided by ABC, not only in the introduction but also at each commercial break, we find that the complained-of material is not patently offensive as measured by contemporary community standards for the broadcast medium, and, therefore, not indecent. For the same reasons, and based on the same contextual analysis, we conclude that the language referred to above is not profane in context here.<sup>38</sup>

17. Further, we conclude that uses of the words "Jesus," "Jesus Christ," "God," "God damn" and its variations, and "damn" and its variations, are not actionable under section 1464 for the reasons set forth in *Raycom America, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 4186 (2003). Finally,

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<sup>36</sup> *ACT I* at 1344. In any event, we also note that ABC was apparently barred by the copyright holder from altering the film in any way. See <http://abc.go.com/movies/savingprivateryan.html>.

<sup>37</sup> See *WPBN/WTOM License Subsidiary, Inc.*, 15 FCC Rcd 1838 (2000), in which the Commission found not to be patently offensive and accordingly not indecent adult frontal nudity depicted during a broadcast of the film "Schindler's List." In that decision, the Commission held that the staff of the then-Mass Media Bureau had properly concluded that the broadcast was not patently offensive as measured by contemporary community standards for the broadcast medium, based upon the full context of its presentation, including the subject matter of the film, the manner of presentation, and the warnings that accompanied the broadcast of the film. The staff determined, and the Commission agreed that, in the particular broadcast of the film at issue, the depiction of adult frontal nudity was incidental to the broadcast material's rendering of a historical view of World War II and wartime atrocities, which, viewed in context, was not presented in a pandering, titillating or vulgar manner. *Id.* at 1839-40, ¶¶ 3, 13. See also *Peter Branton*, Letter By Direction of the Commission, 6 FCC Rcd 610 (1991) (concluding that repeated use of "fuck" in a recorded news interview program not indecent in context).

<sup>38</sup> See *Golden Globe Awards Order*, 19 FCC Rcd at 4981, ¶¶ 13-14 (defining profanity for purposes of section 1464).

although some of the Complainants also reference the violence depicted in the film, the Commission's current standard for determining whether material falls within the prohibitions of section 1464 is not applicable to violent programming.<sup>39</sup>

18. In so concluding, we find that this case is distinguishable from that in which we previously found the use of the word "fucking" during the broadcast of the 2003 Golden Globe Awards ceremony to be indecent and profane in context.<sup>40</sup> The contextual differences between the expletives contained in the broadcast of the film here and that contained in the 2003 broadcast of the Golden Globe Awards ceremony are critical to our analysis under section 1464. The utterance of the word "fucking" by a performer during the Golden Globe Awards telecast occurred in the context of a live awards program in which use of the word was shocking and gratuitous, where no claim of "any political, scientific or other independent value" was made, and during which children were expected to be in the audience.<sup>41</sup> Consequently, we concluded that, in context, the use of the word "fucking" in that instance was indecent and profane.<sup>42</sup> In contrast, and as discussed above, in the different context presented here, the complained-of material broadcast during the presentation of the film "Saving Private Ryan" is not indecent or profane.

#### IV. ORDERING CLAUSES

19. ACCORDINGLY, IT IS ORDERED, that the Complaints filed against the licensees of the ABC Network Stations regarding their broadcast on November 11, 2004, of the film "Saving Private Ryan" ARE HEREBY DENIED.

20. IT IS FURTHER ORDERED that a copies of this *Memorandum Opinion and Order* shall be sent by Certified Mail Return Receipt Requested to Donald E. Wildmon, American Family Association, P.O. Drawer 2440, Tupelo, Mississippi 38803, to Susan L. Fox, Vice President, Government Relations, The Walt Disney Company, 1150 17<sup>th</sup> Street, N.W., Suite 400, Washington, D.C. 20036 and to John W. Zucker, Senior Vice President, Law & Regulation, ABC, Inc., 77 West 66<sup>th</sup> Street, New York, N.Y. 10024.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>39</sup> We note, however, that the Commission has issued a *Notice of Inquiry* to seek comment on issues relating to the presentation of violence on television, including whether the agency should restrict such programming. *Violent Television Programming And Its Impact on Children*, Notice of Inquiry, 19 FCC Rcd 14394 (2004).

<sup>40</sup> See *Golden Globe Awards Order*, 19 FCC Rcd 4975. We note that the Commission made clear in this Order that its holding related specifically to the context at issue. *Id.* at 4975, ¶ 2, 4979, ¶ 9, 4982, ¶¶ 16-17 (indecenty), 4981, ¶¶ 13-14 (profanity).

<sup>41</sup> *Id.* at 4979, ¶¶ 9, 10.

<sup>42</sup> *Id.* at 4979-81, ¶¶ 9-13.



**STATEMENT OF  
CHAIRMAN MICHAEL K. POWELL**

*Re: Complaints Against Various Licensees Regarding Their Broadcast on November 11, 2004, of ABC Television Network's Presentation of the Film "Saving Private Ryan,"*

Today, we reaffirm that content cannot be evaluated without careful consideration of context. *Saving Private Ryan* is filled with expletives and material arguably unsuitable for some audiences, but it is not indecent in the unanimous view of the Commission.

This film is a critically acclaimed artwork that tells a gritty story—one of bloody battles and supreme heroism. The horror of war and the enormous personal sacrifice it draws on cannot be painted in airy pastels. The true colors are muddy brown and fire red and any accurate depiction of this significant historical tale could not be told properly without bringing that sense to the screen. It is for these reasons that the FCC has previously declined to rule this film indecent.

This, of course, is not to suggest that legal content is not otherwise objectionable to many Americans. Recognizing that fact, it is the responsible broadcaster that will provide full and wide disclosure of what viewers are likely to see and hear, to allow individuals and families to make their own well-informed decisions whether to watch or not. I believe ABC and its affiliated stations made a responsible effort to do just that in this case.

Fair warning is appropriately an important consideration in indecency cases. In complaints you often find that Americans are not excessively prudish, only that they are fed up with being ambushed with content at times and places they least expect it. It is insufficient to tell consumers not to watch objectionable content, if the "shock" value is dependent on the element of surprise. This is particularly true in broadcast television, where viewers are accustomed and encouraged to order their viewing by parts of the day—morning shows, daytime TV and late night have long been the zones in which expectations are set. When those lines are blurred, the consumer loses a degree of control, a degree of choice.

Context remains vital to any consideration of whether profanity or sexual content constitutes legally actionable indecency. The Commission must stay faithful to considering complaints within their setting and temper any movement toward stricter liability if it hopes to give full effect to the confines of the First Amendment.