



CHAIRMAN

Federal Communications Commission

Washington, D.C.

March 2, 2004

VIA HAND -DELIVERY

The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20510

Dear Congressman Dingell:

This letter transmits my written responses to the post-hearing questions you posed in connection with my February 11, 2004 appearance before the Subcommittee on Telecommunications and the Internet regarding the "Broadcast Decency Enforcement Act of 2004."

I appreciate the opportunity to respond to the issues and concerns in which you are interested.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Powell", written over a horizontal line.

Michael K. Powell
Chairman

attachment

ATTACHMENT

I. FCC Process for Reviewing and Disposing of Consumer Complaints

1. How many complaints alleging that a broadcast contained indecent content has the Commission received during each year?

See Exhibit 1.

2. How many programs have been the subjects of such complaints during each year? Please list each program and, in each instance, please provide the station, licensee, and corporate parent.

See Exhibit 1. Information regarding specific programs prior to 2000 is not available. We can provide the requested information regarding specific programs for 2000-2004 by March 19, 2004.

3. How many complaints have been dismissed or denied each year?

See Exhibit 1.

4. How many complaints have remained pending at the end of each year?

See Exhibit 1

5. *In its 2001 Policy Statement on Industry Guidance on the Commission’s Case Law Interpreting 18 U.S.C. Sec. 1464 and Enforcement Policies Regarding Broadcast Indecency, the Commission states that in order for a complaint to be considered, “our practice is that it must generally include . . . a full or partial tape or transcript or significant excerpt . . .” If the complaint does not contain such information, the Commission states that the complaint “is usually dismissed.” During each year, how many complaints has the Commission dismissed or denied for lack of a tape, transcript, or significant excerpt?*

<u>Year</u>	<u>Dismissed/Denied for Lack of Tape/Transcript/Excerpt */</u>
2004	6
2003	18
2002	84
2001	62
2000	23
1994-1999	NA

**/* It should be noted that, as pointed out on the Commission’s website, “[t]he Commission and/or Enforcement Bureau have proposed or assessed monetary forfeitures in cases where the complaint did not include a tape or transcript of the actual broadcast.”

<http://www.fcc.gov/eb/broadcast/obscind.html>. In this regard, in a footnote to the excerpt that you quote from the Commission’s *Forfeiture Policy Statement*, the Commission refers to a forfeiture in which “[w]hile the complainant did not provide us with an exact transcript of the broadcast, we find that she has provided us with sufficient context to make the determination that the broadcast was indecent.”

6. *Is it the practice of the Commission to respond to each individual complainant once the Commission receives a complaint, informing the complainant that the complaint has been received?*

In light of the Commission’s staffing constraints and the volume of indecency complaints it receives, it is not the current practice of the Commission to notify each complainant to confirm that his or her filing has been received. However, our Consumer and Governmental Affairs Bureau is exploring technical options for automatic notification to complainants of complaints e-mailed to the Commission’s official site and we hope that such a system may be in place within the next 12 months.

7. *Is it the practice of the Commission to notify each individual complainant if his or her complaint is dismissed or denied? If not, how would a complainant know of his or her right to appeal the dismissal or denial by filing an application for review with the Commission?*

In cases in which the Commission denies or dismisses an indecency complaint, the Commission generally does so by letter to the complainant. The only exception to this procedure is in cases in which the Commission has received a substantial number of

complaints about a particular program. In such cases, for purposes of expediency and administrative economy, the Commission has historically responded only to the lead complainant or organization. More recently, with the dramatic increase in multiple complaints about a particular program, we have begun a new practice of consolidating the complaints into one order denying or dismissing the complaints. Such an order is a public document, announced by public notice, and made available on the Commission's website.

8. Has the FCC ever been unable to receive incoming e-mail complaints? If so, please provide the Committee with a list of the dates on which the Commission was unable to receive such complaints.

During the past four months, the FCC has experienced numerous high volume email events that have placed extremely heavy loads on the agency's email infrastructure. Several of these events overloaded FCC systems to the point where email to and from the Internet was disrupted and incoming mail from the Internet was not deliverable. In those instances, corrective actions were taken and normal mail flow was restored in less than 24 hours. We do not have a record of the specific dates on which these difficulties occurred.

In response to these events, the Commission implemented several configuration changes to the email infrastructure to better accommodate these high volume email events. The Commission also accelerated the migration to a new, high performance firewall infrastructure capable of handling high volumes of incoming email. These firewalls were placed into service on February 25, 2004.

Finally, there was a situation in which email complaints that were being generated by an outside entity on behalf of various individuals failed to reach intended recipients at the FCC due to a technical issue with the sender's computer network, not that of the FCC. The FCC's computer technicians worked cooperatively with the sender's technical staff to resolve the issue and facilitated the subsequent delivery of the email complaints to intended recipients at the FCC. We do not have a record of the dates on which these problems were encountered and resolved.

II. FCC Process for Issuing and Acting on Notices of Apparent Liability

1. For each year in question, please provide the number of notices of apparent liability for forfeiture (NALs) issued to enforce the Commission's policies with respect to broadcast indecency.

<u>Year</u>	<u>No. of NALs</u>
2004	2
2003	3*/
2002	7
2001	7
2000	7
1999	2
1998	7
1997	7
1996	3
1995	1
1994	6

*/ We note that, at the end of 2003, we had pending more than two dozen cases in the final stage of investigation, and anticipate enforcement action in all or most of these cases within the next few months.

2. For each NAL, please provide (1) the amount of the proposed forfeiture; (2) the program, station, and corporate parent to which the NAL was issued; and (3) the length of time it took the Commission to issue each NAL, beginning from the date on which the complaint was filed.

See Exhibit 2.

3. Is there, by statute or regulation, a time period within which the Commission must issue an NAL?

Section 503(b)(6) of the Act requires that the Commission issue an NAL by the later of: (a) one year after the date of the misconduct that is the subject of the NAL; or (b) the date on which the license for the station in question is first renewed after the license term during which the misconduct occurred.

If yes, during each year in question, how many times has the FCC been forced to dismiss or deny a complaint for failure to respond in a timely manner?

<u>Year</u>	<u>Complaints Dismissed/Denied Due to SOL</u>
2004	1
2003	0
2002	0
2001	0
2000	1
1994-1999	NA

4. Does the Enforcement Bureau routinely notify you and other commissioners prior to acting on a complaint (whether the action is issuing and NAL or dismissing the complaint)? Were you aware of the Enforcement Bureau's decision to not issue an NAL with respect to the NBC broadcast of the 2003 Golden Globe Awards, prior to the Enforcement Bureau releasing that decision?

The Enforcement Bureau consults with my staff, and notifies the staff of the other commissioners, before it takes or proposes any indecency enforcement action on delegated authority, as well as before it denies or dismisses major indecency complaints on delegated authority. Although I was not personally aware of the Enforcement Bureau's action in the Golden Globes case prior to the release of its Order, the Bureau did consult with my staff and notify the staff of the other commissioners before taking that action.

5. Please list all instances in which the FCC issued an NAL against a licensee for broadcasting language that the Commission alleged was either obscene or profane.

There are no such instances in the history of the Commission. Because it is easier to prove an indecency violation than an obscenity violation, the Commission proceeds under the indecency standard. We have recently been considering ways that the Commission may be able to apply more effectively the profanity standard.

III. FCC Process for Issuing Forfeiture Orders

1. For each year in question, please provide the number of forfeiture orders issued pursuant to Sec. 503(b) of the Communications Act for violations of the Commission's indecency policies.

<u>Year</u>	<u>No of Forfeiture Orders */</u>
2004	1
2003	1
2002	3
2001	2
2000	6
1999	0
1998	0
1997	2
1996	0
1995	0
1994	0

*/ As shown in Exhibit 2, in many cases, the licensee pays an indecency forfeiture at the NAL stage (although it is not required by law to do so) and the Commission thus need not issue a forfeiture order.

2. For each forfeiture order, please provide (1) the amount of the final forfeiture; (2) the program, station, and corporate parent to which it was issued; (3) the amount paid by the licensee; and (4) in instances where the licensee refused to pay, whether the Department of Justice brought an action in federal court to collect the penalty.

See Exhibit 2.

3. Is there, by statute or regulation; a time period within which the Commission must issue a Section 503 forfeiture order after issuing an NAL? If yes, during each year in question, how many times has the FCC been forced to dismiss or deny an NAL for failure to render a final decision on a pending NAL in a timely manner?

There is no statute or Commission rule that specifies a time period after the issuance of an NAL by which the Commission must issue a forfeiture order. However, 28 USC § 2462 provides that a suit to collect a forfeiture must be commenced within five years of the date when the claim first accrued. In light of court decisions, the Department of Justice generally construes this phrase to mean the date of the violation of the Act or the Commission's rules. When the Enforcement Bureau began in late 1999, it inherited four NAL cases involving old broadcasts dating back to as early as 1991. Given the statute of limitations issue under 28

U.S.C. § 2462, the Commission cancelled two of these NALs and the Bureau cancelled the other two. We do not anticipate difficulties in this regard with more recent cases.

IV. FCC Process for Renewing Broadcast Licenses

1. Please describe the process by which the Commission reviews and considers outstanding indecency-related complaints, NALs, and final forfeiture orders against a licensee prior to a renewal of such licensee's license.

Traditionally, the Commission considers issues of wrongdoing by broadcast renewal applicants based upon petitions to deny such applications and upon matters that are the subject of complaints or enforcement actions. In the past, the Commission has generally not considered the violation of the indecency rules to constitute a disqualifying issue at renewal. However, particularly in light of the Commission's recently expressed intention to consider license revocation as a possible sanction in more egregious indecency cases, we will give serious consideration to designating for hearing renewal applications of licensees with serious or repeated indecency violations.

It should be noted that Section 504(c) of the Communications Act of 1934, as amended, provides that, in cases in which the Commission has issued a notice of apparent liability or forfeiture order and the licensee has not paid the forfeiture, the Commission may not use the fact of such a determination against the licensee until after a final court decision. However, the Commission may take notice of the underlying facts of such a case in determining appropriate action. So, for example, if a particular renewal applicant has a series of outstanding forfeitures assessed for separate indecency violations, while the Commission cannot consider the fact that the forfeitures were assessed in the context of the licensee's renewal application, it can consider the presence of the underlying pattern of misconduct in deciding whether to designate for hearing the licensee's renewal application.

**Exhibit 1 (Responses to Questions I-1, I-2, I-3, I-4, and I-5)
Complaint Data 1994 - 2004**

Year	No. of Complaints Received During Year	No. of Programs Reflected in Such Complaints	No. of Such Complaints Denied or Dismissed by Year's End	No. of Such Complaints Pending at Year's End
2004	530,885 ¹	23	--	--
2003	240,350 ²	318	368	239,982
2002	13,922 ³	345	13,258	664
2001	346	152	242	104
2000	111	101	37	72
1999	5,853	N/A	5,793	60
1998	32,300	N/A	32,095	205
1997	828	N/A	775	53
1996	950	N/A	831	117
1995	947	N/A	872	75
1994	12,817	N/A	12,697	120

¹ This number includes 530,828 complaints regarding the Super Bowl XXXVIII halftime show.

² This number includes 239,837 complaints regarding nine specific programs.

³ This number includes 13,534 complaints regarding four specific programs.

EXHIBIT 2 (Response to Questions II-2 and III-2)
Information Regarding Indecency NALs and Forfeitures Issued 1994-2004

NAL Date	Licensee/(Parent) ⁴ /Station	Amount ⁵	Status	First Complaint Filed ⁶
1-27-2004	Clear Channel Broadcasting Licenses, Inc., Citicasters Licenses, LP, Capstar TX Limited Partnership (Clear Channel), WPLA(FM), Callahan, FL, WCKT(FM), Port Charlotte, FL, WXTB(FM), Clearwater, FL, WRLX(FM), West Palm Beach, FL	\$715,000	NAL issued; deadline for payment or response 3-4-04.	7-19-2001
1-27-2004	Young Broadcasting of San Francisco, Inc. (Young Broadcasting), KRON-TV, San Francisco, CA	\$27,500	NAL issued; response filed 2-26-04.	10-4-2002
10-02-2003	Infinity Broadcasting Operations, Inc (Viacom), 13 radio stations	\$357,500	Response received; action is expected this spring.	8-15-2002
10-02-2003	AM/FM Radio Licenses, LLC (Clear Channel), WWDC-FM, Washington, DC	\$55,000	NAL paid.	5-7-2002
4-03-2003	Infinity Broadcasting Operations, Inc. (Viacom), WKRK(FM), Detroit, MI	\$27,500	Petition for recon. pending; action expected in March.	2-5-2002
12-13-2002	Edmund Dinis, WJFD(FM), New Bedford, MA	\$22,400	NAL cancelled 2/3/04.	4-30-2000
8-02-2002	Rubber City Radio Group, WONE-FM, Akron, OH	\$7,000	NAL paid.	11-29-2000
6-28-2002	Emmis Radio License Corporation (Emmis Communications Corp.), WKQX(FM), Chicago, IL	\$7,000	FO rel. 2/18/04 (DA 04-386).	3-12-2001
6-07-2002	Infinity Broadcasting Operations, Inc (Viacom), WNEW(FM), New York, NY	\$21,000	Response received; action expected this spring.	6-20-2000
5-01-2002	GA-MEX Broadcasting, Inc., WAZX(AM) Smyrna, GA; WAZX-FM, Inc., WAZX(FM), Cleveland, GA	\$7,000	NAL paid.	6-1-2001
3-21-2002	Emmis Radio License Corporation (Emmis Communications Corp.), WKQX(FM), Chicago, IL	\$21,000	MO&O affm'g FO rel. 2/18/04 (DA 04-387)	3-10-2001
1-28-2002	Entercom Seattle License, LLC (Entercom Communications Corp.), KNDD(FM), Seattle, WA	\$14,000	Application for Review of Forfeiture Order (reduced to \$12,000) pending; action expected in March.	5-30-2001
6-01-2001	Citadel Broadcasting Company (Ciradel Broadcasting Corp.), KKMGM(FM), Pueblo, CO	\$7,000	Cancelled.	7-18-2000

⁴ As of date of violation/complaint in column entitled "First Complaint Filed."

⁵ These figures represent the proposed forfeiture amount. In some instances, the forfeiture amount was ultimately reduced or rescinded.

⁶ In some cases for which the complaint date is unavailable, we have used the earliest of the date the complaint was received, entered in the relevant database, or the date of the subject broadcast. Additionally, where an NAL addresses multiple complaints, we have provided the date of the earliest complaint.

NAL Date	Licensee/(Parent) ⁴ /Station	Amount ⁵	Status	First Complaint Filed ⁶
5-17-2001	The KBOO Foundation, KBOO-FM, Portland, OR	\$7,000	Cancelled.	2-29-2000
4-06-2001	Emmis Radio License Corporation (Emmis Communications Corp.), WKQX(FM), Chicago, IL	\$14,000	Application for Review pending; action expected in March.	5-15-2000
4-03-2001	Citicasters Co. (Clear Channel), KEGL(FM), Fort Worth, TX	\$14,000	NAL paid.	8-6-2000
3-30-2001	Telemundo of Puerto Rico License Corp., WKAQ-TV, San Juan, PR	\$21,000	NAL paid.	5-13-2000
2-08-2001	WLDI, Inc., WCOM(FM), Bayamon, PR	\$21,000	FO paid (after recon denied and reduction to \$16,800 in forfeiture order)	12-12-2000
1-18-2001	Capstar TX Limited Partnership (AMFM, Inc.), WZEE(FM), Madison, WI	\$7,000	NAL paid	8-25-2000
12-05-2000	CBS Radio License, Inc., WLLD(FM), Holmes Beach, FL	\$7,000	Application for Review pending; action expected in March.	9-23-1999
10-06-2000	Capstar TX Limited Partnership (AMFM, Inc.), KTXQ(FM), Fort Worth, TX	\$7,000	NAL paid	7-17-2000
9-26-2000	Citicasters Co. (Clear Channel), KSJO(FM), San Jose, CA	\$7,000	NAL paid	2-21-2000
9-26-2000	Citicasters Co. (Clear Channel), KSJO(FM), San Jose, CA	\$7,000	NAL paid	9-21-1999
9-07-2000	Regent Licensee of Flagstaff, Inc., KZGL(FM), Cottonwood, AZ	\$6,000	NAL paid	9-10-1999
7-14-2000	Communicast Consultants, Inc., KRXK(AM), Rexburg, ID	\$7,000	FO paid (DOJ settled for \$2,500)	2-4-1999
4-28-2000	Three Eagles of Columbus, Inc., KROR(FM), Hastings, NE	\$7,000	FO paid (after reduction to \$6,000 in forfeiture order)	4-17-1999
7-22-1999	WQAM License Limited Partnership, WQAM(AM), Naples, FL	\$35,000	FO paid (DOJ settled for full amount)	7-1-1998
3-17-1999	Back Bay Broadcasting, Inc., WWKX(FM), Woonsocket, RI	\$7,000	NAL paid.	3-16-1998
10-26-1998	LBJS Broadcasting Company, L.P. KLBJ(FM), Austin, TX	\$3,000	NAL paid.	6-12-1998
10-16-1998	Citicasters Co.(Jacor Broadcasting Corporation), WXTB(FM), Clearwater, FL	\$23,000	FO aff'ing fine paid.	5-8-1997
8-24-1998	Infinity Broadcasting Corporation of Los Angeles (CBS), KROQ(FM), Los Angeles, CA	\$2,000	FO aff'd fine. 15 FCC Rcd 10,667 (EB 2000). MO&O denied Pet. For Recon. 16 FCC Rcd 6867 (EB rel. 2/21/01). USAO declined to prosecute b/c of SOL, per memo dated 5/2/03.	4-23-1997
8-10-1998	Citicasters Co. (Jacor Broadcasting Corporation), WXTB(FM), Clearwater, FL	\$4,000	NAL paid.	6-20-1997
6-29-1998	Clear Channel Radio Licenses, Inc., KKND-FM, Port Sulphur, LA	\$6,000	NAL paid	4-25-1997
6-05-1998	Eagle Radio, Inc., KEGL(FM), Ft. Worth, TX	\$2,000	NAL paid.	3-14-1994

NAL Date	Licensee/(Parent) ⁴ /Station	Amount ⁵	Status	First Complaint Filed ⁶
1-08-1998	Citicasters Co.(Jacor Broadcasting Corporation), WXTB(FM), Clearwater, FL	\$7,000	FO paid	5-28-1998
12-17-1997	Tempe Radio, Inc.(Sandusky Newspapers, Inc.), KUPD-FM, Tempe, AZ	\$2,000	NAL paid.	8-2-1997
8-27-1997	NPR Phoenix, L.L.C., KPTY(FM), Formerly KBZR(FM), Gilbert,AZ	\$7,500	MO&O aff'd forfeiture. 13 FCC Rcd 14,070 (MMB rel. 8/6/98). Paid.	11-14-1996
6-24-1997	Grant Broadcasting System II, Inc. WJPR-TV, Lynchburg, VA, WFXR-TV, Roanoke, VA	\$2,000	NAL rescinded via unpublished MMB letter dated 8/1/97.	7-24-1993
6-24-1997	CBS Radio, WXRK(FM), New York, NY	\$6,000	MO&O rescinded NAL due to passage of time. See Sagittarius Broadcasting Corp, 16 FCC Rcd 2901 (EB rel. 2/5/01).	10-25-1995
6-24-1997	Jacor Broadcasting Corporation, WEBN(FM), Cincinnati, OH	\$4,000	FO aff'd forfeiture. 13 FCC Rcd 5825 (MMB 8-27-1997). Forfeiture paid.	2-26-1997
6-24-1997	American Radio Systems License Corp., WCMF(AM) & (FM), Rochester, NY	\$2,000	NAL paid.	8-17-1994
4-08-1997	EZ New Orleans, Inc., WEZB, New Orleans, LA	\$12,000	NAL paid.	11-22-1995
11-12-1996	Waterman Broadcasting Corp. of Texas, KTFM(FM), San Antonio, TX	\$7,500	NAL rescinded via unpublished letter on 4-15-1997 (see 13 FCC Rcd 14,070 at note 2).	1-26-1996
10-15-1996	WVGO License Limited Partnership, WBZU(FM), Richmond, VA	\$10,000	FO reduced fine to \$6,000. 12 FCC Rcd 5918 (MMB rel 5-1-1997). Paid.	10-23-1995
10-04-1996	Jencom Broadcasting, Inc.,WVIC(FM), East Lansing, MI	\$8,000	NAL cancelled 5-9-97.	6-3-1996
5-12-1995	Rich Communications Corporation, WGRF(FM), Buffalo, NY	\$4,000	NAL paid.	9-1-1993
9-14-1994	WCKS Broadcasting, Ltd., WWST(FM), Karns, TN	\$4,000	NAL paid.	4-10-1991
8-29-1994	Southern Nevada Radio, Inc., KKLZ (FM), Las Vegas, NV	\$8,000	MO&O aff'd forfeiture. 13 FCC Rcd 2787 (MMB rel. 2-9-1998). Forfeiture cancelled 6-22-99.	3-16-1994
5-20-1994	Infinity Broadcasting & Sagittarius Broadcasting Corporation, WJFK(AM), Baltimore, MD; WXRK(FM) New York, NY; WYSP(FM) Philadelphia, PA; WJFK(FM) Manassas, VA	\$200,000	Paid as part of a settlement. See 10 FCC Rcd 12,245 (9-5-1995).	1-6-1993
4-01-1994	Agape Broadcasting Foundation, Inc., KNON(FM), Dallas, TX	\$12,500	MO&O reduced forfeiture to \$2,000. 13 FCC Rcd 9262 (MMB rel. 2-10-1998). Forfeiture paid.	7-12-1992
4-01-1994	Flambo Broadcasting, Inc., KFMH-FM, Muscatine, IA	\$12,500	NAL cancelled, 15 FCC Rcd 23,429 (EB 7-27-2000).	8-30-1991
2-01-1994	Infinity Broadcasting & Sagittarius Broadcasting Corporation, WJFK(AM), Baltimore, MD; WXRK(FM) New York, NY; WYSP(FM) Philadelphia, PA; WJFK(FM) Manassas, VA	\$400,000	Paid as part of a settlement. See 10 FCC Rcd 12,245 (9-5-1995).	10-12-1994