FOR IMMEDIATE RELEASE   Contact: Susanna Zwerling
June 28, 2002   (202) 418-2000

STATEMENT OF COMMISSIONER MICHAEL J. COPPS
ON ENFORCEMENT BUREAU DISMISSAL OF COMPLAINTS
REGARDING BROADCAST OF "PHILLY"

By the attached letter and other similar letters, the Enforcement Bureau today dismissed a number of complaints against stations carrying the program "Philly" on March 12, 2002 between 9:00 and 10:00pm, within the period during which indecent material may not by law be broadcast.

The complainants called the Commission's attention to a particular comment made during the program, a comment that I believe pushes the limits of decency on broadcast television.

The Bureau seems to argue that almost any word is permissible as long as it is not used in a very specific or particular context. I disagree – some terms are in themselves indecent. Not so many years ago, the Commission thought so too.

I have said before that we seem to be in a broadcast and cable race to the bottom. I am beginning to wonder if there even is a bottom.

– FCC-

FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau, Investigations and Hearings Division
445 12th Street, S.W., Room 3-B443
Washington, D.C. 20554
June 28, 2002

In Reply Refer to:
EB-02-IH-0243/RBP
Station ID # 72119

Gail and Frank Cox
503 Teakwood Circle
Mandeville, LA 70448

Dear Mr. and Mrs. Cox:

This letter denies your complaint against television Station WGNO(TV), New Orleans, Louisiana, for airing allegedly indecent material on March 12, 2002, between 9:00 p.m. and 10:00 p.m. during the program "Philly." Specifically, you complain about a comment yelled by the district attorney "There's no way I'm gonna stand up in open court with my dick in my hand while your [client] walks out the door!"

First, it is important to note that any consideration of government action against allegedly indecent programming must take account of the fact that such speech is protected under the First Amendment. The Commission defines indecent speech as language that, *in context*, depicts or describes, *in terms patently offensive*, as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs. In making indecency determinations we consider the graphic nature or explicitness of the material, whether there is a repetitive or persistent focus on sexual or excretory material and whether the material is pandering or titillating or has shock value. The use of specific words, although offensive, is not in and of itself indecent. Applying these principles, we cannot conclude, based on the information you provided, that this material is indecent. The language of which you complain may be offensive, but it does not describe sexual or excretory organs or activities in explicit or graphic terms such that it would fall within the definition of indecency. Further, we have previously found that fleeting and isolated remarks of this nature do not warrant Commission sanction. *See, e.g., L. M. Communications of South Carolina, Inc*. (WYBB (FM), 7 FCC Rcd 1595 (MMB, 1992)). While we understand that you are offended by the programming described, it does not appear that we have any basis for action at this time. As a result, we are denying your complaint.

We appreciate and recognize your concern. One of the most effective means to affect programming is to contact station management to express your opinion.

We include an information sheet that discusses the law with respect to indecent and obscene broadcasts and our enforcement procedures.

Your interest in writing is appreciated.

Sincerely,

Charles W. Kelley
Chief, Investigations and Hearings Division
Enforcement Bureau

Enclosure