

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

In the Matter of)
)
Complaints by Parents Television Council) File No. EB-03-IH-0357, *et al.*¹
Against Various Broadcast Licensees)
Regarding Their Airing Of)
Allegedly Indecent Material)

MEMORANDUM OPINION AND ORDER

Adopted: December 8, 2004

Released: January 24, 2005

By the Commission: Commissioner Copps approving in part, dissenting in part and issuing a statement; Commissioner Martin approving in part, dissenting in part and issuing a statement at a later date.

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we deny 21 complaints filed by the Parents Television Council (“PTC”) against various television broadcast licensees alleging violations of the federal restrictions regarding the broadcast of indecent material.² PTC provided a transcript of the segments it considers indecent and provided videotapes of each of the programs referenced in the complaints. PTC asks that, should the Commission find the material in each complaint indecent, it issue a notice of apparent liability for forfeiture against the licensee and every other licensee that aired the material. After reviewing the material provided by PTC, we conclude that the complained of material is not patently offensive pursuant to contemporary community standards for the broadcast medium and is therefore not indecent.

II. DISCUSSION

2. It is a violation of federal law to broadcast obscene, indecent or profane programming. Specifically, title 18 of the United States Code, section 1464 prohibits the utterance of “any obscene, indecent or profane language by means of radio communication.”³ The Federal Communications Commission, which is authorized to license radio and television broadcast stations, is responsible for enforcing the statutory and regulatory provisions restricting obscenity, indecency and profanity.⁴ Consistent with a subsequent statute and court case,⁵ section 73.3999 of

¹ See Appendix for a listing of the complaints addressed in this *Order*, filed between July 3, 2003, and February 17, 2004. Other pending PTC complaints will be addressed separately.

² See 18 U.S.C. § 1464 (2002); 47 C.F.R. § 73.3999 (2002).

³ 18 U.S.C. § 1464.

⁴ Federal courts consistently have upheld Congress’s authority to regulate the broadcast of indecent speech, as

the Commission's rules 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 The Commission may impose a monetary forfeiture, pursuant to section 503(b)(1) of the Communications Act of 1934, as amended⁷ (the "Act"), upon a finding that a licensee has broadcast obscene, indecent or profane material in violation of 18 U.S.C. § 1464 and section 73.3999 of the rules.

3. The Commission's role in overseeing program content is limited, however, by the First Amendment to the United States Constitution and section 326 of the Act, which prohibit the Commission from interfering with broadcasters' freedom of expression and from censoring program material.⁸ Thus, any consideration of government action against allegedly indecent programming must take into account the fact that such speech is protected under the First Amendment, and demands that we proceed cautiously and with appropriate restraint when considering enforcement action in such matters.⁹

4. 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.¹⁰

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

well the Commission's interpretation and implementation of the governing statute. *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). See also *Action for Children's Television v. FCC*, 852 F.2d 1332, 1339 (D.C. Cir. 1988) ("*ACT I*"); *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*"); *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*").

⁵ Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (1992), as modified by *ACT III*, 58 F.3d 654.

⁶ See 47 C.F.R. § 73.3999.

⁷ See 47 U.S.C. § 503(b)(1). See also 47 U.S.C. § 312(a)(6) (authorizing license revocation for indecency violations).

⁸ U.S. CONST., amend. I; 47 U.S.C. § 326.

⁹ *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 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.").

¹⁰ *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)).

community standards for the broadcast medium.¹¹

None of the broadcasts described below meets the second part of our standard.¹²

5. In determining whether material is patently offensive, the Commission has indicated that the “*full context* in which the material appeared is critically important,”¹³ 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 *whether the material appears to have been presented for its shock value*.”¹⁴ 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.”¹⁵ In particular cases, one or two of the factors may outweigh the others, either rendering the broadcast material patently offensive and consequently indecent,¹⁶ or, alternatively, removing the broadcast material from the realm of indecency.¹⁷

6. Outlined below is a description of the allegedly indecent material cited in PTC’s complaints.

a. “Everwood,” September 16, 2002, 9 p.m. EST: a character remarks to another: “I got this black eye because of you, dick.”¹⁸

b. “Fastlane,” September 18, 2002, 9 p.m. EST: one character threatens another by stating: “...in my next life I’m coming back as a pair of pliers and pull off your nutsack.”¹⁹

¹¹ *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).

¹² Because we deny the complaints due to their failure to meet the “patently offensive” factor in our indecency analysis, we need not address whether any of the complaints fail to depict or describe sexual or excretory organs or activities.

¹³ *Indecency Policy Statement* (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.

¹⁴ *Indecency Policy Statement* at 8003 (emphasis in original).

¹⁵ *Id.*

¹⁶ *Id.* at 8009 (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)).

¹⁷ *Indecency Policy Statement* at 8010 (“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”).

¹⁸ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated August 22, 2003 (EB-03-IH-0463).

c. “Girls Club,” October 21, 2002, 9 p.m. EST: a young female attorney says to an older male attorney: “. . . those power dicks are going to start giving me trials.” The attorney responds: “Is that what you call us? Power dicks?”²⁰

d. “Girls Club,” October 28, 2002, 9 p.m. EST: a female character remarks: “I’m not feeling too sexual these days . . . Especially here, I’m having a little trouble with one of the power dicks.”²¹

e. “Dawson’s Creek,” October 30, 2002, 8 p.m. EST: one character remarks to another: “Listen, I know that you’re pissed at your dad for flaking on you. It doesn’t mean he’s a bad dad, and it doesn’t mean he doesn’t love you.”²² Another character responds: “No, it just means he’s a dick.”²³

f. “Dawson’s Creek,” December 11, 2002, 8 p.m. EST: one character tells another: “. . . you’re being a dick.”²⁴

g. “Austin Powers: The Spy Who Shagged Me,” January 8, 2003, 8 p.m. EST: musical number during which the title character’s naked torso and genital area are blocked by objects, furniture, and, in one instance, by his hands.²⁵ Later scenes include the use of the phrase “fat bastard,” and the word “testicles.”²⁶ In another scene from this film, a male and a female character are in bed together, but no sexual or excretory organs or activities are depicted or discussed.²⁷

h. “NYPD Blue,” April 8, 2003, 9 p.m. CST: a character states: “That dickhead in a wheelchair.”²⁸

¹⁹ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated August 22, 2003 (EB-03-IH-0405).

²⁰ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated August 22, 2003 (EB-03-IH-0462).

²¹ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated August 22, 2003 (EB-03-IH-0461).

²² See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated August 22, 2003 (EB-03-IH-0464).

²³ *Id.*

²⁴ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated August 22, 2003 (EB-03-IH-0465).

²⁵ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated August 22, 2003 (EB-03-IH-0406).

²⁶ *Id.*

²⁷ *Id.*

²⁸ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated July 3, 2003 (EB-03-IH-0357).

i. “Friends,” May 1, 2003, 8 p.m. EST: a female character and her husband encounter the husband’s former girlfriend at a medical office.²⁹ After a conversation concerning fertility treatment, the female character says that she has to go because she’s got “an invasive vaginal exam to get to.”³⁰

j. “The Diary of Ellen Rimbauer,” May 12, 2003, 9 p.m. EST: one scene depicts two female characters and one male character in bed together; all three are under the covers and there are no sexual or excretory organs or activities depicted.³¹ Another scene depicts a male character tying a female character to a bed and then applying ice to her abdomen. The female character moans and writhes. A third scene depicts a maid undressing while a male character surreptitiously watches. A portion of the side of the maid’s breast is shown, but her nipple is not exposed.³²

k. “Jamie Kennedy Experiment,” October 23, 2003, 8:30 p.m. EST: the title character Jamie pulls a prank on the mother of one of his friends. The mother believes that she is participating in a serious television interview about Jamie.³³ The interviewer, who is in on the prank, mentions that Jamie reported that the “hottest night of his life” occurred when he became “intimate” with the mother, and that Jamie and the woman’s son used to play a game called “you show me yours, I’ll show you mine.”³⁴ Later, the woman confronts her son and tells him that Jamie said he’d “had sex” with her. She asks her son “you didn’t show [Jamie] your penis or something, did you?”³⁵ When the joke is revealed, the woman calls Jamie a “bastard” and threatens to “kick his ass.” In another scene, involving a fake funeral home, Jamie says “it’s gonna be my ass.”³⁶

l. “Run of the House,” October 23, 2003, 9 p.m. EST: a female character teases her brother about dating a woman who looks like his mother and, after her brother and his girlfriend have been in the hot tub, tells him “I know what you’re doing.”³⁷

²⁹ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated August 27, 2003 (EB-03-IH-0456).

³⁰ *Id.*

³¹ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated July 3, 2003 (EB-03-IH-0364).

³² *Id.*

³³ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated November 3, 2003 (EB-03-IH-0682).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated November 3, 2003 (EB-03-IH-0679).

m. “Scrubs,” November 13, 2003, 9:30 p.m. EST: in one scene, there is a discussion among a male character, his fiancée, and her brother in which the male character antagonizes the brother by telling the fiancée he wants to “love her up and down and all around,” and that they should “go put some more of your footprints on the ceiling.”³⁸ The brother reacts angrily, saying “that’s it you son of a bitch.”³⁹ In another scene, a male doctor tells a female resident that he would rather listen to her “go on and on about the joys of dolphin sex.”⁴⁰

n. “Gilmore Girls,” November 18, 2003, 8 p.m. EST: in one scene, a character’s grandfather reminisces about college pranks involving nudity; in another scene, two current college students discuss the night the male student spent nude in a dorm hallway.⁴¹ There is also another scene in which a female character listens to a brief message on her answering machine in which a male caller makes a reference to “growing a pair.”⁴²

o. “One Tree Hill,” November 18, 2003, 9 p.m. EST: in a school hallway, a male character tells a female character, “I’ve got something for you,” and she replies, “I know you do, gorgeous.”⁴³ He then gives her a book, telling her she might want to “check it out,” and she replies, “Oh, I definitely want to check it out. I suppose I could read the book, too.”⁴⁴

p. “Steve Harvey’s Big Time,” November 20, 2003, 8 p.m. EST: a fully clothed contortionist appears and manipulates his body, including twisting his upper body around and between his legs, and stepping through a tennis racquet frame such that he reaches between his legs to move the racquet so that he can step out of it.⁴⁵ The show’s host remarks that the contortionist is a “skinny-ass little dude” and grabs his genital area as the contortionist pushes his body through the tennis racquet frame.⁴⁶

q. “Will & Grace,” November 20, 2003, 9 p.m. EST: a male character studying to

³⁸ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated November 24, 2003 (EB-03-IH-0667).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated November 24, 2003 (EB-03-IH-0680).

⁴² *Id.*

⁴³ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated November 24, 2003 (EB-03-IH-0669).

⁴⁴ *Id.*

⁴⁵ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated December 4, 2003 (EB-03-IH-0711).

⁴⁶ *Id.*

become a nurse remarks to a male friend that he's taken his own blood pressure many times, to which the friend replies, "yeah, and how many times on your arm?"⁴⁷ Later, the nursing student tells his fellow students that "he can name all the bones in the human penis."⁴⁸

r. "Scrubs," November 20, 2003, 9:30 p.m. EST: a male character and a female character is depicted in bed, under the covers.⁴⁹ The male character asks the female character if it's "a good time to start talking about a nickname for [his] penis."

s. "Charmed," November 23, 2003, 8 p.m. EST: three female characters are talking, one remarks that she's late because she was "tied up," and another asks "where, at Richard's?"⁵⁰ Later, one of the female characters talks about being afraid to "take it to the next level" with her boyfriend, and another character tells her to "relax and let it happen." She replies: "That's easy for you to say, you weren't the one sleeping with an angel for three years."

t. "Gilmore Girls," February 10, 2004, 9 p.m. EST: one character says to another: "you're a dick."⁵¹

u. "Angel," February 11, 2004, 9 p.m. EST: one character says to another: "you're still a dick."⁵²

7. To support a finding of indecency, we must first determine whether any of the material cited by PTC meets the Commission's definition of "patently offensive" – namely, does any of the material graphically or explicitly depict or describe sexual organs or activities, does any of the material dwell on or repeat depictions or descriptions of sexual organs or activities, and is any of the material designed to pander, titillate, or shock. Based on our review of the programs listed above, we find that none of the material referenced in PTC's complaints rises to the level of being patently offensive under our indecency definition.

8. A number of complaints cite isolated uses of the word "dick" or variations thereof. In context and as used in the complained of broadcasts, these were epithets intended to denigrate or criticize their subjects. Their use in this context was not sufficiently explicit or graphic and/or sustained to be patently offensive. Although use of such words may, depending on the nature of the broadcast at issue, contribute to a finding of indecency, their use here was not patently offensive and therefore not indecent. Similarly, we find that the fleeting uses of the words "penis," "testicle," "vaginal," "ass," "bastard" and "bitch," uttered in the context of the programs cited in the

⁴⁷ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated December 4, 2003 (EB-03-IH-0716).

⁴⁸ *Id.*

⁴⁹ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated December 4, 2003 (EB-03-IH-0712).

⁵⁰ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated December 4, 2003 (EB-03-IH-0713).

⁵¹ See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated February 17, 2004 (EB-04-IH-0167).

⁵² See Letter from Lara Mahaney, Director of Corporate and Entertainment Affairs, PTC, to David Solomon, Chief, Enforcement Bureau, dated February 17, 2004 (EB-04-IH-0168).

complaints, do not render the material patently offensive under contemporary community standards for the broadcast medium.

9. Several complaints cited material that depicted partial nudity. Many of these complaints involved characters whose sexual and/or excretory organs were covered by bedclothes, household objects, or pixilation, however, and none of the material cited in the complaints actually depicted sexual or excretory organs. In context, we do not find the material to be sufficiently graphic or explicit, or sustained, to rise to the level of being patently offensive.

10. The remaining complaints focus on vague references or innuendo to sexual organs or activities. In context, the references and innuendos cited in the complaints were not sufficiently graphic or explicit and were not repeated or dwelled upon.

III. CONCLUSION

11. For the reasons discussed above, we find that none of the material contained in the 21 PTC complaints is patently offensive as measured by contemporary community standards for the broadcast medium. We therefore conclude that none of the material in the 21 complaints is indecent.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, that the 21 complaints listed in the Appendix are hereby DENIED.

13. IT IS FURTHER ORDERED that a copy of this *Memorandum Opinion and Order* shall be sent by Certified Mail Return Receipt Requested to The Parents Television Council, 707 Wilshire Boulevard, Los Angeles, California 90017, and to the licensees that are the subject of the instant complaints.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

CASE NUMBER	CALL SIGN/ COMMUNITY OF LICENSE	LICENSEE	Program/Air Date/Time
EB-03-IH-0463	WBDC-TV Washington, DC	WBDC Broadcasting, Inc.	Everwood, September 16, 2002, 9 p.m. EST
EB-03-IH-0405	WTTG(TV) Washington, DC	Fox Television Stations, Inc.	Fastlane, September 18, 2002, 9 p.m. EST
EB-03-IH-0462	WTTG(TV) Washington, DC	Fox Television Stations, Inc.	Girls Club, October 21, 2002, 9 p.m. EST
EB-03-IH-0461	WTTG(TV) Washington, DC	Fox Television Stations, Inc.	Girls Club, October 28, 2002, 9 p.m. EST
EB-03-IH-0464	WBDC-TV Washington, DC	WBDC Broadcasting, Inc.	Dawson's Creek, October 30, 2002, 8 p.m. EST
EB-03-IH-0465	WBDC-TV Washington, DC	WBDC Broadcasting, Inc.	Dawson's Creek, December 11, 2002, 8 p.m. EST
EB-03-IH-0406	WTTG(TV) Washington, DC	Fox Television Stations, Inc.	Austin Powers: The Spy Who Shagged Me, January 8, 2003, 8 p.m. EST
EB-03-IH-0357	KMBC-TV Kansas City, KS	Hearst-Argyle Television, Inc.	NYPD Blue, April 8, 2003, 9 p.m. CST
EB-03-IH-0456	WRC-TV Washington, DC	NBC Telemundo License Co.	Friends, May 1, 2003, 8 p.m. EST
EB-03-IH-0364	WJLA-TV Washington, DC	ACC Licensee, Inc.	The Diary of Ellen Rimbauer, May 12, 2003, 9 p.m. EST
EB-03-IH-0682	WBDC-TV Washington, DC	WBDC Broadcasting, Inc.	Jamie Kennedy Experiment, October 23, 2003, 8:30 p.m. EST
EB-03-IH-0679	WBDC-TV Washington, DC	WBDC Broadcasting, Inc.	Run of the House, October 23, 2003, 9 p.m. EST
EB-03-IH-0667	WRC-TV Washington, DC	NBC Telemundo License Co.	Scrubs, November 13, 2003, 9:30 p.m. EST
EB-03-IH-0680	WBDC-TV Washington, DC	WBDC Broadcasting, Inc.	Gilmore Girls, November 18, 2003, 8 p.m. EST
EB-03-IH-0669	WBDC-TV Washington, DC	WBDC Broadcasting, Inc.	One Tree Hill, November 18, 2003, 9 p.m. EST
EB-03-IH-0711	WBDC-TV Washington, DC	WBDC Broadcasting, Inc.	Steve Harvey's Big Time, November 20, 2003, 8 p.m. EST
EB-03-IH-0716	WRC-TV Washington, DC	NBC Telemundo License Co.	Will & Grace, November 20, 2003, 9 p.m. EST
EB-03-IH-0712	WRC-TV Washington, DC	NBC Telemundo License Co.	Scrubs, November 20, 2003, 9:30 p.m. EST
EB-03-IH-0713	WBDC-TV Washington, DC	WBDC Broadcasting, Inc.	Charmed, November 23, 2003, 8 p.m. EST

EB-04-IH-0167	WBDC-TV Washington, DC	WBDC Broadcasting, Inc.	Gilmore Girls, February 10, 2004, 9 p.m. EST
EB-04-IH-0168	WBDC-TV Washington, DC	WBDC Broadcasting, Inc.	Angel, February 11, 2004, 9 p.m. EST

**STATEMENT OF COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART, DISSENTING IN PART**

*Re: Complaints by Parents Television Council against Various Broadcast Licensees
Regarding Their Airing of Allegedly Indecent Material*

We continue to hear from citizens who are concerned about sexually explicit and profane programming on the airwaves and the potentially detrimental effects of this programming on our children. As an initial matter, I would note that this Commission has a solemn obligation to respond to consumer complaints. These complaints are increasing exponentially from a few hundred only a couple of years ago to over 1 million in 2004. And in the last few years, complaints about television broadcasts have equaled or exceeded those about radio broadcasts. Yet, although the Commission recently has begun to take action against indecency on television, some citizens remain concerned that the FCC summarily dismisses their complaints. At the same time, some broadcasters contend that the Commission has not been adequately clear about how it determines whether a broadcast is indecent. Today's rather cursory decisions do little to address any of these concerns.

In these two Orders, the Commission combines 36 unrelated complaints with no apparent rhyme or reason other than that they concern television broadcasts. The Commission then denies these complaints with hardly any analysis of each individual broadcast, relying instead on generalized pronouncements that none of these broadcasts violates the statutory prohibition against indecency on the airwaves. I believe that some of these broadcasts present a much closer call. Exemplary of the complaints that should not have been summarily denied is one concerning *The Diary of Ellen Rimbauer*, which I believe may very well violate the statutory prohibition against indecency.

Although it may never be possible to provide 100 percent certainty because we must always take into account the specific context, developing guidance and establishing precedents are critically important Commission responsibilities. We serve neither concerned consumers nor the broadcast industry with the approach adopted in today's item.