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February 9, 2004

The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515-6115

Dear Mr. Dingell:

I am writing on behalf of the CBS Television Network in response to your letter of January 27, 2004 regarding indecency on broadcast network television. As part of my responsibilities at CBS, I oversee the Network's Program Practices Department.

CBS knows it is a guest in viewers' living rooms. Thus, aside from any legal and regulatory requirements that govern our content, we strongly believe that we have an obligation to remain attuned to our audience.

With respect to the first question in your letter, regarding the acceptability of transmitting programming that contains the "f-word" or similar language, it is our policy that the "f-word" and other expletives like those contained in the George Carlin monologue "Filthy Words" and which led to the Supreme Court's *Pacifica* decision should not be broadcast at any time of the day, including "safe harbor" periods — except in the rare instance where deleting such language would undermine classic creative content delivered in context. Several years ago, for example, CBS aired a live production of "On Golden Pond," in which we allowed language we would not have otherwise permitted. We also note that other networks have taken the same approach when airing movies such as "Schindler's List" and "Saving Private Ryan." When such exceptions are used, however, warnings to viewers about language are frequently interspersed within the programming. To enforce this policy, we take appropriate action, up to and including termination, against any CBS employee who violates this policy.

As to the second question of your letter, that relating to CBS's preventive mechanisms, we continue to maintain an extensive Program Practices Department that screens all scripted and reality programming, movies and commercial messages before they air. For live programming, CBS for years has employed delay equipment

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to make possible the deletion of unanticipated language. But this system is designed to catch only audio. With respect to video, the first line of defense for our network, as always at live entertainment and sporting events, has been the cut-away camera, which moves the camera away from inappropriate graphic subjects. Given the history of broadcast television up until this last Super Bowl, deleting troublesome video has never been a concern, except, perhaps, for the occasional stalker dashing across a sports field. As you are aware, the cut-away camera regrettably did not work to eliminate completely the Janet Jackson-Justin Timberlake stunt, but it did render the scene truly fleeting. The cut-away camera also, a few moments later, managed to protect completely the home audience from viewing a stalker who eluded heavy police security and darted across Reliant Stadium's field in front of 70,000 fans. But with the Jackson-Timberlake incident, we now understand that celebrities pushing the limits have outdated our first line of defense.

For the live Grammy Awards show on Sunday, February 8, 2004, CBS implemented an enhanced delay system for deletion of any inappropriate audio and video footage, had it been needed. Under this system, the broadcast of the live Grammy Awards event was delayed by a full five minutes. Developed by CBS engineers on short notice, at great cost, and under tremendous pressure, the system is groundbreaking — no other network has ever undertaken the task of creating a system that gives the capability to eliminate video from a live program. In fact, the system we used for the Grammys truly is an invention in process, and I caution that we are at the mercy of the technology and of our personnel on the scene. While we would like to commit to using this enhanced technology for all potentially problematic live network events, we are still studying how it works. However, CBS will use it or something better whenever appropriate.

We also will do everything technically and humanly possible to eliminate inappropriate language and behavior, but we do worry that anything more drastic could mean eliminating all live television. We do not think that is a good outcome for viewers of broadcast television. One further concern we have is that, with an enhanced delay system in place, some celebrities in fact may lower the bar in a belief that they now have license to say and do anything by assuming the network will catch it before it airs.

Finally, with respect to the final three questions of your letter regarding enforcement of indecency laws, we trust that the ultimate goal of any law or rule is to keep indecency from being broadcast to American listeners and viewers. Fines have a deterrent effect, for sure, and, if assessed judiciously, can also motivate broadcasters to take more precautions, which, in turn will lead to fewer indecent incidents. But it is also important that as the FCC levies fines it exercise its discretion to adjust the amounts downward for behavior that is clearly not deliberate, that is, where the broadcaster has taken all reasonable precautions to comply with the indecency rules.

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It is also important to note that vagueness is a chronic problem that is not cured by any of the proposed changes to the enforcement scheme. Before the FCC levies any fine or revokes any license, it must determine that a broadcaster has violated a rule. In the case of indecency, the rules are neither clear nor static. The precedent constantly changes and the standard is not clearly articulated to broadcasters. This concern about vagueness also extends to fines for each "utterance," as well as to license revocation, where broadcasters would be subjected to the harshest of penalties under standards that are inherently unclear.

In short, broadcasters need a much better roadmap. To that end, the FCC should undertake a full rule making proceeding in which all interested parties can participate so that the constitutional parameters of indecency enforcement can be made as intelligible as possible. The Commission has never held such a proceeding relating to indecency, nor has the FCC ever tried to establish a mechanism by which it can reliably ascertain the required *contemporary* community standard for the broadcast medium. Given the fast-paced nature of change in our society, such an updated standard is critically needed. Then the courts can decide whether the lines have been drawn in proper deference to the First Amendment.

Of course we will abide by whatever rules and enforcement scheme that the FCC, Congress and the courts mandate, but we also feel obliged to share with you some of the challenges faced by broadcasters in this difficult area.

In conclusion, we appreciate the opportunity to provide you with information as to how CBS endeavors daily to provide its viewers high quality news, information, sports and entertainment that we are proud to deliver.

We would be happy to provide you with any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin D. Franks". The signature is fluid and cursive, written in a professional style.

Martin D. Franks
Executive Vice President
CBS Television