

Government appeals ruling on FCC indecency rule

August 26 2010, By JOELLE TESSLER , AP Technology Writer

(AP) -- Federal regulators are appealing a recent court decision that struck down a 2004 government policy that says broadcasters can be fined for allowing even a single curse word on live television.

A three-judge panel of the 2nd U.S. Circuit Court of Appeals in New York threw out the [Federal Communications Commission](#) policy last month, saying it was unconstitutionally vague and left broadcasters uncertain of what programming the agency will find offensive.

The FCC and the Justice Department asked the court Thursday to reconsider that decision, warning that the ruling appears to invalidate the FCC's entire approach to regulating indecency over the airwaves. In a statement, FCC General Counsel Austin Schlick said the ruling raises "serious concerns about the commission's ability to protect children and families from indecent broadcast programming."

The FCC wants the three-judge panel or the full court to reconsider the decision.

The commission has stepped up broadcast indecency enforcement in recent years - issuing record fines for violations - spurred in part by widespread public outrage following Janet Jackson's breast-baring performance during the 2004 Super Bowl halftime show.

The agency also put its so-called "fleeting expletive" policy in place in 2004 after U2 lead singer Bono uttered the phrase "f----- brilliant"

during a January 2003 NBC broadcast of the Golden Globes awards show. The FCC said the F-word in any context "inherently has a sexual connotation" and can lead to sanctions.

The Fox television network, owned by Rupert Murdoch's News Corp., and other broadcasters challenged the policy in 2006 after the FCC said a number of [television broadcasts](#) from 2002 to 2005 had violated the rules. Those included a December 2002 broadcast of the Billboard Music Awards in which singer Cher used the phrase "F--- 'em," and a December 2003 Billboard awards show in which reality show star Nicole Richie said, "Have you ever tried to get cow s--- out of a Prada purse? It's not so f-----simple."

In its ruling last month, the 2nd Circuit panel said the FCC policy inhibits speech by forcing broadcasters to "choose between not airing or censoring controversial programs and risking massive fines or possibly even loss of their licenses."

The ruling came after the Supreme Court last year upheld the FCC policy on procedural grounds and returned it to the 2nd Circuit for consideration of constitutional arguments. The case is widely expected to go back to the Supreme Court.

In their filing on Thursday, the FCC and Justice Department said the 2nd Circuit decision is at odds with the landmark 1978 Supreme Court ruling that upheld the FCC's reprimand of a New York radio station for airing George Carlin "Filthy Words" monologue, containing a 12-minute string of expletives, in the middle of the afternoon.

The Parents Television Council, a group that supports strong broadcast-indecency rules, praised the FCC's decision to appeal.

"The importance of the broadcast-decency law has become abundantly

apparent as the broadcast networks demonstrate their desire to push ever-more graphic content at all times of the day," Tim Winter, the group's president, said in a statement. "The airwaves have become a battleground for networks to out-cuss, out-sex and out-gore each other; and sadly it is children and families who are in the crossfire."

Both Fox and the National Association of Broadcasters had no comment.

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