

FCC Asks for Comment on Indecency Policies

April 2, 2013

On April 1, 2013, the Enforcement Bureau (Bureau) and the General Counsel of the Federal Communications Commission (FCC or Commission) issued a Public Notice seeking comment on whether the full Commission "should make changes to its current broadcast indecency policies or maintain them as they are." The Public Notice was issued in response to FCC Chairman Genachowski's previous directive that the staff of the Commission review the broadcast indecency policies and enforcement in the wake of the Supreme Court's decision in *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307 (2012), to ensure that the agency's actions in this area "are fully consistent with vital First Amendment principles." (Our prior alert concerning the Supreme Court's decision in *Fox II* can be found here.)

The Notice gives two examples of the policies upon which comment is sought: (1) the extent to which "fleeting expletives" should be actionable, and (2) whether isolated (non-sexual) nudity should be treated the same as or differently from isolated expletives. The Public Notice states, however, that it does not alter the Commission's current indecency policies, and that the Bureau is continuing to actively investigate "egregious" cases of broadcast indecency during the pendency of the proceeding initiated by the Public Notice.

In the same Public Notice, the Bureau announced that it has reduced the backlog of pending broadcast indecency cases by 70% since September 2012. The reduction was made possible by the Bureau's efforts to close pending complaints that were beyond the statute of limitations or too stale to pursue, that involved cases outside FCC jurisdiction, that contained insufficient information, or that were "foreclosed by settled precedent."

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Comments are due 30 days after the Public Notice is published in the *Federal Register*. Reply Comments are due 60 days after *Federal Register* publication.