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Supreme Court Extends Deadline for Profane Responses

High Court Won't Consider FCC Appeal of Lower-Court Decision on Swearing During Fox's *Billboard Music Awards* Until at Least January

By John Eggerton -- *Broadcasting & Cable*, 12/3/2007 3:27:00 PM

Fox

won't be weighing in on the Federal Communications Commission's profanity-ruling challenge until at least January, according to the parties involved, which are primarily Fox and [Media Access Project](#).



Monday was the deadline for filing responses to the FCC's and Justice Department's decision to seek Supreme Court review of the lower-court decision on swearing on Fox's *Billboard Music Awards*. But Fox sought, and the court granted, a 30-day extension that will take everyone past the holidays.

The extension applies to all of the parties including MAP, which hopes to file jointly with Fox and will oppose cert, according to MAP president [Andrew J. Schwartzman](#).

That's because the Second Circuit Court of Appeals, in a stinging rebuke to the FCC, ruled that the commission had not produced "any evidence that suggests that a fleeting expletive is harmful." The appeals court also had problems with the FCC's argument that the words always had a sexual connotation.

The Fox case involved the network's 2002 and 2003 airings of the *Billboard Music Awards*, which included airing the words "shit" and "fucking" from Nicole Richie and Cher, respectively. The FCC found the words indecent as aired. Fox appealed, and the Second Circuit Court of Appeals concluded that the FCC's decision was arbitrary and capricious and that the commission had not sufficiently defended what was a change in policy on so-called fleeting expletives.

Such extensions are fairly routinely asked for and granted around the holidays. The FCC itself had gotten two extensions for its filing seeking cert from the original Sept. 2 date to its [final filing Nov. 1](#) that the court had aired, that it had justified its decision and that as the court let it stand, broadcasters have a pass to swear at will, and the FCC's ability to regulate indecency at all is at stake -- an issue it says the High Court needs to resolve.

The FCC's profanity-enforcement policy is likely to remain in limbo through much of 2008. The Supreme Court won't decide whether to take the case until sometime early next year, if them. If it doesn't take the appeal -- and it is likely not to -- the FCC is under orders, but no timetable, to defend its initial policy to the Second Circuit Court of Appeals, the lower court that found that decision arbitrary and capricious.

While Fox wound up not filing anything Dec. 3, the [American Family Association](#) -- which is looking to give the [Parents Television Council](#) a run for its money in the indecency-battling department -- sent out an e-mail call to its members.

AFA asked them to push for passage of [Sen. Jay Rockefeller's \(D-W. Va.\) bill](#), introduced last summer, which would give the FCC explicit authority to regulate fleeting profanities -- in essence making the FCC's case to the Second Circuit court for it, at least for future cussing.

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