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Reply to: Florida

November 24, 2009

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Consumer Inquiries & Complaints Division
445 12th Street, SW
Washington, DC 20554

Re: Complaint against the American Broadcasting Company for airing
obscene/indecent homosexual content on the American Music Awards

Dear Federal Communications Commission:

Please accept this letter as an official complaint filed by Liberty Counsel on behalf of its members and affiliate attorneys. This letter is an adaptation of FCC Form 475B. Liberty Counsel is a national organization with offices in Florida, Texas, Virginia, and Washington, D.C. Liberty Counsel has members and affiliate attorneys throughout the country, including the state of California.

November 22, 2009 at 8:00 PM, EST, the American Broadcasting Company (“ABC”), a subsidiary of the Walt Disney Company, Inc., through its affiliated television stations, broadcasted the 2009 American Music Awards. While the show was aired across the country, this complaint is based upon the broadcast as shown in Lynchburg, VA on ABC affiliate WSET Channel 13 and in the Dallas/Fort Worth area on ABC affiliate WFAA.

At the close of the show, Adam Lambert performed. The Lambert performance featured, among other things, simulated oral sex, suggestive crotch grabbing, simulated digital penetration, sadomasochistic conduct, and homosexual open-mouth kissing.

The Lambert performance was obscene. Broadcasting obscene or indecent conduct is prohibited by 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999. Conduct is obscene if: “(1) the average person, applying contemporary community standards, would find, taken as a whole, appeals to

the prurient interest; (2) depicts or describes in a patently offensive way sexual conduct; and (3) taken as a whole, lacks serious literary, artistic, political, or scientific value.” *Infinity Broadcasting Corp.*, 3 F.C.C.R. 930 (1987) (citing *Miller v. California*, 413 U.S. 15 (1973)). The Lambert performance clearly appealed to the prurient interest and depicted patently offensive sexual conduct. The performance depicted, among other things, simulated oral sex, suggestive crotch grabbing, simulated digital penetration, sadomasochistic conduct, and homosexual open-mouth kissing. The Lambert performance lacks *serious* artistic value. ABC touted the Lambert performance as “what everyone will be talking about tomorrow.” Lambert’s vocal performance was not the crux of the performance; it was the obscene sexual conduct that ABC touted. Thus, the purpose was *not* to display *serious* artistic interest.

Alternatively, the Lambert performance was indecent. Broadcasting indecent conduct between 6:00 AM and 10:00 PM is prohibited by 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999. The Lambert performance was aired on ABC affiliate WFAA Dallas/Fort Worth in the Central Time Zone before 10:00 PM. Indecent material depicts or describes sexual activities in terms patently offensive as measured by contemporary community standards for the broadcast medium. *See Industry Guidance*, 16 F.C.C.R. 7999 (2001). The FCC has set forth three factors in determining indecency: (1) the degree of explicitness; (2) whether the material dwells on or repeats the activity; and (3) whether the material is presented for shock value. *Id.* at 8003. The Lambert performance is clearly indecent under the FCC standards. The Lambert performance focused on explicit simulated sexual activity and not a mere passing reference. The performance had repeated simulated sexual acts and homosexual conduct; it did not have a fleeting gesture. Finally, the performance was touted the entire evening for its shock value. Thus, the broadcast of such a lewd performance is in clear violation of the law.

Liberty Counsel urges the Commission to take action against ABC, Inc., for airing such an outrageously lewd and filthy performance during a show and time period that is targeted for family audiences.

Sincerely,



Anita L. Staver, President
Liberty Counsel

cc: ABC, Inc.