

CHARACTER-RELATED ALLEGATIONS WERE RAISED (I) IN A PETITION TO DENY ('WXYT PETITION TO DENY') FILED ON SEPTEMBER 1, 2004 BY RIGHT TO DECENCY, INC. ('RTD') AND AMERICAN DECENCY ASSOCIATION ('ADA') AGAINST THE APPLICATION FOR RENEWAL OF LICENSE FOR STATION WXYT-FM (FORMERLY WKRK-FM), DETROIT, MICHIGAN, FCC FILE NO. BRH-20040601BHZ AND (II) IN AN INFORMAL OBJECTION ('WXRK INFORMAL OBJECTION') FILED ON MAY 24, 2006 ALSO BY RTD AND ADA AGAINST THE APPLICATION FOR RENEWAL OF LICENSE FOR STATION WXRK(FM) (FORMERLY WFNY-FM), NEW YORK, NY, FCC FILE NO. BRH-20060201BAP. THE LICENSEE OF WXYT-FM AND WXRK(FM) (CBS RADIO EAST INC.) AND THE LICENSEE OF THE APPLICANT ARE COMMONLY OWNED. IN THE WXYT PETITION TO DENY THE PETITIONERS SUGGESTED THAT THE LICENSEE OF WXYT-FM LACKED THE BASIC CHARACTER QUALIFICATIONS TO BE A COMMISSION LICENSEE BECAUSE OF ALLEGED VIOLATIONS OF THE COMMISSION'S RULE ON THE BROADCAST OF INDECENT MATERIAL. IN THE WXRK INFORMAL OBJECTION, RTD AND ADA INCORPORATED BY REFERENCE THE WXYT PETITION TO DENY, REFERENCED THE PROGRAMMING AT ISSUE IN INFINITY BROADCASTING OPERATIONS, INC., NOTICE OF APPARENT LIABILITY FOR FORFEITURE, 18 FCC RCD 19954 (2003) ('OPIE AND ANTHONY NAL'), AND SUGGESTED THAT THE LICENSEE OF WXRK(FM) LACKED THE BASIC CHARACTER QUALIFICATIONS TO BE A COMMISSION LICENSEE BECAUSE OF ALLEGED VIOLATIONS OF THE COMMISSION'S RULE ON THE BROADCAST OF INDECENT MATERIAL.

ON NOVEMBER 23, 2004, THE FCC APPROVED A CONSENT DECREE ('2004 CONSENT DECREE') ENTERED BY VIACOM INC. (NOW KNOWN AS CBS CORPORATION) WHICH RESOLVED ALL ALLEGATIONS THAT VIACOM INC. AND ITS LICENSEE SUBSIDIARIES HAD VIOLATED THE BROADCAST INDECENCY LAWS WITH RESPECT TO ANY MATERIAL BROADCAST BEFORE THAT DATE, WITH THE EXCEPTION OF THE CBS TELEVISION NETWORK'S COVERAGE OF THE SUPER BOWL HALFTIME SHOW ON FEBRUARY 1, 2004. IN ITS ORDER APPROVING THE 2004 CONSENT DECREE, THE COMMISSION STATED THAT 'THERE ARE NO SUBSTANTIAL AND MATERIAL QUESTIONS OF FACT IN REGARD TO THESE MATTERS AS TO WHETHER VIACOM POSSESSES THE BASIC QUALIFICATIONS, INCLUDING ITS CHARACTER QUALIFICATIONS, TO HOLD OR OBTAIN ANY FCC LICENSES OR AUTHORIZATIONS.' IN THE MATTER OF VIACOM INC., ET AL., 19 FCC RCD 23100 (REL. NOV. 23, 2004), RECON. DENIED 21 FCC RCD 12223 (REL. OCT. 17, 2006) ('2006 ORDER ON RECONSIDERATION'). ALTHOUGH THE WXRK INFORMAL OBJECTION WAS FILED AFTER THE 2004 CONSENT DECREE, THE ALLEGATIONS SET FORTH IN THE WXRK INFORMAL OBJECTION WERE VAGUE AND GENERALLY RELATED TO ALLEGED VIOLATIONS OF THE COMMISSION'S RULE ON THE BROADCAST OF INDECENT MATERIAL (A) THAT AROSE PRIOR TO THE EFFECTIVE DATE OF THE 2004 CONSENT DECREE (NOV. 23, 2004) AND (B) THAT WERE GOVERNED BY THE 2004 CONSENT DECREE AND 2006 ORDER ON RECONSIDERATION (ISSUED AFTER THE WXRK INFORMAL OBJECTION WAS FILED). SEE 2006 ORDER ON RECONSIDERATION, 21 FCC RCD AT 12225-26 ('THE COMMISSION... AGREED NOT TO USE THE FACTS OF THE [2004] CONSENT DECREE, THE FORFEITURE ORDERS, THE PENDING INQUIRIES OR COMPLAINTS, 'OR ANY SIMILAR COMPLAINTS' REGARDING PROGRAMMING AIRED BEFORE THE [2004] CONSENT DECREE'S EFFECTIVE DATE [(NOV. 23, 2004)] FOR ANY PURPOSE RELATING TO VIACOM OR ITS STATIONS, AND TO TREAT ALL SUCH MATTERS AS NULL AND VOID.'). ISSUES RELATING TO THE 2004 SUPER BOWL HALFTIME SHOW HAVE NOW BEEN RESOLVED WITHOUT ADVERSE CONSEQUENCE TO CBS-OWNED STATIONS. SEE CBS CORP. V FCC, 663 F. 3D 122 (3D CIR. 2011), CERT. DENIED, FCC V. CBS CORP., 567 U.S. ___, 2012 U.S. LEXIS 4880 (2012).