

PROTECTING CHILDREN FROM VIOLENT AND INDECENT PROGRAMMING

HEARING

BEFORE THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

FEBRUARY 11, 2004

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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PROTECTING CHILDREN FROM VIOLENT AND INDECENT PROGRAMMING

WEDNESDAY, FEBRUARY 11, 2004

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m. in room SR-253, Russell Senate Office Building, Hon. John McCain, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

The CHAIRMAN. Good morning. I welcome the Federal Communications Commission and Chairman Powell, and I thank them for appearing before the Committee today to discuss the pervasiveness of violent and indecent programming on broadcast television. And I'd like to make it very clear this Committee had scheduled this hearing before the Super Bowl aired due to Members' concerns about increasingly violent and indecent programming.

By now, there isn't a person in this room who's unfamiliar with CBS and the NFL's fumble during the Super Bowl halftime show last week, which was viewed by an estimated 140 million Americans, including millions of young children. And then, in an instant, this issue became the subject of national debate, and rightfully so.

This discussion should remind us that broadcasters have been given spectrum for free. As Americans who own that spectrum, we have every right to expect something in return. We call it the "public interest." We expect broadcasters to make the best use of that spectrum by providing news and information about our society and political campaigns, children's programming, and even entertainment. But what constitutes entertainment clearly lies in the eye of the beholder.

Forty years ago, Jack Paar famously walked off the Tonight Show because a network had censored a joke he told involving a "water closet." From censoring a water closet joke to airing nudity, we've come a long, long way. However, that is exactly what makes it so difficult to draw a line between what is and what is not appropriate within the boundaries of the First Amendment.

Before the Super Bowl, CBS sister company, MTV, hyped the halftime show as one that would provide a, "shocking moment," and grab viewers' attention. Well, they've succeeded. They now have the attention of the Chairman of the Federal Communications Commission and more than several Members of Congress. Chairman Powell has called for a thorough and swift investigation of the

incident. Senators Allen, Brownback, and Lindsey Graham have introduced a bill, S. 2056, that would increase fines for indecency violations.

I remind my colleagues that last summer Senator Hollings and I introduced our FCC reauthorization bill, S. 1264, that would not only raise fines tenfold for broadcasters, but also direct the FCC to count each incident—utterance individually and encourage license revocation proceedings in certain circumstances. The bill was reported out of this Committee 7 months ago, and it's unfortunate that the Senate leadership has not seen fit to bring the bill to the floor for consideration and passage. These fines have not been raised since 1989. Now is the time, so companies don't continue to accept these fines as the cost of doing business.

I note, finally, the scope of all these bills are limited to broadcast television. All these bills, the scope is limited to broadcast television. More than 85 percent of Americans now receive their television programming from cable and satellite television. In fact, for the first time ever, cable's combined prime-time viewership recently surpassed that of broadcast.

Gene Kimmelman, my old friend Gene Kimmelman, of Consumer's Union, wrote to Senators this week urging Congress to address indecent content on cable and satellite television. Mr. Kimmelman calls for Congress to take a new approach to offensive content aired over pay television. Quote, "Instead of forcing customers to buy service from tiers of 40, 50, or 75 channels, which include networks they never watch or channels they find offensive, Congress should require cable and satellite operators to offer à la carte programming, let people pick and pay for only those channels they want in order to save consumers money and empower those who are offended by some of today's program offerings. Mr. Kimmelman's à la carte suggestion sounds familiar to me, and more persuasive than ever in providing parents control over their television sets. But I suspect we'll hear more about these issues in the weeks to come.

Again, I thank the Commissioners for being here with us this morning. I would ask my colleagues if they could make their opening comments brief, and then Senator Graham would like to make a brief opening comment, and we will move forward.

Senator Breaux?

I'm sorry, Senator Boxer was here before Senator Breaux.

Senator Boxer?

**STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM CALIFORNIA**

Senator BOXER. Thank you, Mr. Chairman.

Well, clearly, we were right, in this Committee, in June. I thank you and Senator Hollings for being ahead of the curve here when we voted to increase fines for obscenity ten times. And we were also right to follow Senator Hollings' lead, in terms of looking at each offense as a separate one, and also to even look at license revocation. I'm glad that you called our attention to this issue of Mr. Kimmelman's point that picking and paying, I think, is the way you phrased it, seems to make a lot of sense when you look at

these packages, because you're sometimes getting channels that you really are stunned to find.

I want to quickly just talk about the halftime deal, because I was, as most of Americans, or a lot of Americans, watching the entire Super Bowl and the halftime. Great family day. We were with our family and friends. There were nine kids in the house. They were very little kids, and they happened to be upstairs watching Shrek, which was fortunate for us.

What I found, Mr. Chairman, the end of the halftime show was shocking, but the whole halftime show was shocking. And, for me—I guess because I don't watch MTV, it was shocking. I guess for people who watch it, like the youngsters who were—the young people who were at this home watching with us, they said, "Well, this is what you get all the time on MTV." Well, I think—let's just say it opened a lot of eyes.

I think, here, that maybe, as a result of this and the fact that hundreds of thousands of people contacted the FCC, it does spur us to really enforce the law.

I want to make one last point, Mr. Chairman, because this was an issue that awakened us, but I want to take advantage of this moment to talk to the Commissioners here. I want to also thank you all for—a lot of you, for speaking out intelligently on this, and, also, one of the Commissioners actually went and met with the creative community—and I think it was you—and it was very important that that be done, because the onus is on them. I believe, in our society, they need to take responsibility.

But the last point I want to make to the Commissioners is this. As outrageous as this was, it doesn't come close to what happens on peer-to-peer networks, the child pornography that our kids are seeing when they click onto something that says Britney Spears or the Beatles. What is going on in the peer-to-peer is sickening. And I hope—and I'm going to continue to raise this with this Committee. And, as far as I'm concerned, I hope you will begin to take immediate action in that area, because it's a frightening circumstance what is going on there, unsuspecting children getting images that are illegal and could scar them for life.

So, Mr. Chairman, we do have a lot of work to do. Thank you for your leadership.

The CHAIRMAN. Thank you.

Senator Brownback?

Oh, sorry. Senator Burns? That's twice.

Senator Burns? Sorry.

Senator BURNS. Who cares?

[Laughter.]

The CHAIRMAN. Some do.

[Laughter.]

Senator BURNS. I know.

[Laughter.]

**STATEMENT OF HON. CONRAD BURNS,
U.S. SENATOR FROM MONTANA**

Senator BURNS. I glean more from other people's statements than I do from my own, anyway, so maybe I should be moved down to come up with an idea.

Mr. Chairman, thanks for holding this hearing. We were all shocked and dismayed at the—and disappointed by the inappropriate stunt that happened at the Super Bowl, and those responsible should be severely punished for such a—it was just a vulgar, tasteless act.

That said, in my opinion this sort of high profile, well-publicized incident could prompt Congress to go too far in this situation on what we think—levy fines and this type thing. I think we have to approach it—kind of, be guided with some principles here, also.

When I saw on the marquee that the halftime show was “compliments of MTV,” I didn’t even see it. I immediately flipped over and watched the poker tournament from Las Vegas. What would CBS or the NFL expect, if you’ve ever watched MTV? I said, way back in 1990 and 1991, that if there ought to be a pay channel, it should be MTV. And I still say that today. And it has gotten worse. And I didn’t think it could get any worse, but it has. I’m just being very outspoken about this. I just think it’s inappropriate, and does not portray the average community across America.

You know, in my opinion, private industry should be held accountable for their programming standards, and I think they should reflect more about the values of American communities. This has been a widespread move to increase finds of indecency. And, of course, somebody define that, and I’ll put in with them. But I’m concerned at the potential unintended effects such moves could make if fines are increased. Individual affiliates should not be punished for simply broadcasting content of which they have no control. We have to look at that. But it would look like, if they would look into the community of arts, or whatever you want to call it, or imagination, or whatever, and would have a history, and just wouldn’t program such stuff—in the case of the Super Bowl incident, for example, many affiliates were furious that their viewership was exposed to such a spectacle. Ultimately, however, no matter what the penalties are or how strictly or regularly they are levied, the media is going to need to demonstrate some responsibility on its own.

So I think, you know, as we look at this—and I think everybody was shocked—is fines the right direction? I don’t know. I think that—in the court of public opinion, that the image of those involved and the companies involved and the organization that was involved has been tarnished, and they may suffer greater fines there than we could levy from a governmental organization. And you can make a case—if you were an attorney, you could probably make a case both ways. So our approach on this—we should, you know, approach it responsibly. I’m not—I think what the Chairman of this Committee and the Ranking Member introduced and passed out of this Committee, I think, is probably a pretty good start in that direction. But I also fear overreaction, too.

And so thank you, Mr. Chairman, for holding this hearing and at least giving some of us an opportunity to vent our disapproval of what happened at the Super Bowl this year. And thank you.

The CHAIRMAN. Thank you, sir. And, again, I request my colleagues abbreviate their opening statements because Senator Graham has to leave and we have our five Commissioners waiting. Senator Breaux?

**STATEMENT OF HON. JOHN B. BREAUX,
U.S. SENATOR FROM LOUISIANA**

Senator BREAUX. Thank you, Mr. Chairman. And thank the Commissioners for being with us.

I watched the Super Bowl, as most Americans did, and I thought that whoever—at least in my opinion, whoever booked the halftime show probably should be fired, if nothing else because of the marketing—target audience that was in the stadium, certainly people pretty much my age or maybe in that neighborhood, who could afford a \$2,000 ticket.

Senator BURNS. That old?

Senator BREAUX. Most of those people had no idea who Kid Rock was or P. Diddy was or Justin Timberlake was, and could care less. So I really think that they really missed the audience completely. That show would have been something that you could expect at a rock concert, perhaps, but certainly not in the audience that was watching the Super Bowl. So, number one, I think they missed their audience, really, completely.

The other issue of the content is something that I think deserves our attention in the overall perspective. Seeing Janet Jackson's breast for 2 seconds pales in comparison to some of the things that we see on television on a regular basis. If you look at some of the reality shows where you dump people in a tub of worms and ask them to eat cockroaches, or you get people to jump off tall buildings in very dangerous physical situations, which young people tend to copy and injure themselves, when you look at other things that are on cable, whether it's the programs—the new “L” word show times—lesbian-themed shows, *Queer As Folk*, MTV, *Sex in the City*—all of that is an explosion of things that we should be concerned about.

It seems interesting that we say, well, if it's on the broadcast network, we're going to look at the most detailed of violations of the decency standards, but if it's on just a higher channel number, which you can get just by clicking your channel-changer, well, we're not—we're going to ignore it and not pay any attention to it. Well, that's because it's on cable. Well, I think the distinction between cable and the broadcast—like I think the Chairman started to say and move in that direction, is something we look at—ought to look at the whole spectrum of what we get over our televisions.

It's very disturbing that we thought we had this problem somewhat solved with the V-chips. Less than 7 percent of families use V-chips. Parents should be the ultimate sensors of what their children watch; but, unfortunately, that is not being done.

So I thank you for the opportunity for this hearing.

The CHAIRMAN. Thank you.

Senator Brownback?

**STATEMENT OF HON. SAM BROWNBACK,
U.S. SENATOR FROM KANSAS**

Senator BROWNBACK. Thank you, Mr. Chairman, for holding this. By my quick count, memorywise, I think this is about our twelfth hearing on this topic. You've been on it, faithful to point out and deal with these issues for a long period of time. I've been meeting with the creative community basically since I've been in the Senate

to urge them to address these issues of vulgarity, sexual material, violent material. By my count, we have over 2,000 studies and reports—over 2,000 studies and reports—on the effect of violent entertainment on children, virtually all of them bad. They're saying that you watch a lot of violent material, your child's going to be more violent.

We're now into these brain-mapping studies, where people do MRIs while children watch violent entertainment, and see that the brain, where it's firing, shows that—early on, that the cognitive part, the thinking part of the brain is being depressed and slowed down the more of this material that they watch, so that they just react.

Mr. Chairman, I think the—this is a good hearing. I'm delighted we're having it. It's time to act on this. It's not as if this is something new to any of us, or that this is something that just suddenly has come on the TV screen because of Janet Jackson. This has been out there for a long period of time. And I have two suggestions. I'm on Senator Graham's bill, that we increase, by tenfold, the fines, because I think maybe that'll send a signal. It's time to act and it's time to move this.

The other thing that we did get the creative community's attention on was the FTC study that we did on their target marketing of violent material to children. And we showed there that they were actually doing sample groups of studying 9 to 12-year-old children, taking violent R-rated material and saying, "What will attract them," and they were doing focus groups. And we started to get them to turn a little bit, saying if you're going to rate it as violent material, then don't target-market it to the very group that you've rated and say it's not appropriate for.

Well, I think we need to do the same thing with the FTC with sexual material, then. If they're going to say it's not appropriate material for an under age 18 audience, then why are you target-marketing it to that under age 18 audience?

We had MTV go on halftime in the Super Bowl. Everybody up here is saying, well, this is what's been on MTV. Well, who watches MTV? Who is this target-marketed to? Well, I think we need to have the FTC do something, again, similarly, and find out, are these organizations target-marketing this to kids of inappropriate material? And if so, let's get a stop to it.

But we have this toxic entertainment media environment now in this country where you just can't afford to let your child freely watch the television, for violent or sexual material. And this is hurting us, and it's—I'm glad we're holding the hearing, but it is time to act. We've got to move this on forward.

I congratulate the Chairman for looking into this, but it's time to move, and we need to do it now.

Thank you.

The CHAIRMAN. Thank you, sir.

Senator Hollings?

**STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA**

Senator HOLLINGS. Well, I thank you, Mr. Chairman, very much for the hearing.

Let me, in the first instance, commend our colleague from Kansas. I finally found someone else on the other side of the aisle now that's just as exercised about violence as I am. This thing has been going on for years.

First, let me ask that the distinguished Senator from West Virginia, Senator Rockefeller's, statement be included——

The CHAIRMAN. Without objection.

Senator HOLLINGS.—and mine, in its entirety.

The CHAIRMAN. Without objection.

Senator HOLLINGS. And let me try to shorten, or cut it short as much as I possibly can.

[The prepared statement of Senator Hollings follow:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA

Thank You, Mr. Chairman. I want to thank Senator McCain for his leadership in calling this hearing to consider the harmful effects that a barrage of indecent and violent programming is having on our Nation's youth. Despite the explosion of attention in recent days occasioned by the now infamous "wardrobe malfunction" during this year's Super Bowl halftime show, this committee has, for some time, expressed growing concern regarding the rapid decline in standards for radio and television programming. Already in the 108th Congress, this committee has reviewed recent research documenting the harmful effects of media violence on child-viewers. In addition, we have reported out legislation as part of S. 1264, the FCC Reauthorization Bill, that would increase maximum fines for indecent broadcasts by a factor of 10 and would provide the FCC with additional enforcement tools to stop indecent broadcasts.

Today's hearing, however, is fundamentally about accountability and responsibility. In the first instance, the accountability and responsibility we require from those licensees entrusted with public resources—through grants of government spectrum and public right of ways—to deliver radio and television programming to America's children. In the second instance, the accountability and responsibility we demand of regulators to vigorously enforce our laws prohibiting the utterance of "any obscene, indecent, or profane language by means of radio communication." Unfortunately, in this Senator's opinion, we are falling short of the mark in both cases.

Despite over 50 years of inquiries and an overwhelming amount of evidence demonstrating the link between media violence and aggressive behavior in children, Congress continues to battle an industry, at best, in denial, and at worst indifferent. Because money talks and violence sells, violent acts in prime time have become more frequent and more graphic. According to a recent report by the Parent Television Council entitled *TV Bloodbath: Violence on Prime Time Broadcast TV*, depictions of violence in prime time increased on the six major broadcast networks by 41 percent during the 8 p.m. hour and by 134.4 percent during the 9 p.m. hour between 1998 and 2002.

Additionally, our continuing efforts to assist parents by requiring blocking technologies like the V-Chip have largely been ineffective. According to a 2001 Kaiser Foundation Survey, while 40 percent of parents had TVs equipped with this technology, only 7 percent used the V-Chip to block programs. In light of this failure, it is time that the Committee get serious about protecting children from violent programming by adopting safe harbor legislation (S. 161). This legislation that I have again introduced with Senators Inouye, Dorgan, and Hutchinson has widespread support and has been reported out of Committee multiple times—most recently by a vote of 17 to 1.

But in addition to legislating new protections, we must ensure that our rules prohibiting the broadcast of indecent material on radio and television are vigorously enforced to deter wrongful conduct. As consolidated media companies grow ever larger, the ability of the FCC promote responsible conduct may be diminishing. In other words, when radio behemoths like Clear Channel and Infinity Broadcasting have annual revenues of \$3.4 and \$2.1 *billion*, respectively, or when CBS sells Super Bowl commercials for \$2.3 *million* for each 30 second spot, how much deterrence will the statutory maximum fine of \$27,500 buy?

In light of this fact, I support the efforts of the Committee to increase maximum fines and to add other tools to the FCC's arsenal in combating indecent programming. It is my hope that these provisions will soon be enacted into law. But even

a bigger hammer will have little effect, if the Commission is reluctant to swing it. As a result, it is my hope that the FCC's new-found fervor in getting serious about cleaning up the public airwaves will maintain its intensity and put radio and television stations on notice that the days of "anything goes" are over.

I thank the Chair, and look forward to the testimony of the witnesses.

Senator HOLLINGS. Right to the point, last night, Mr. Chairman, this Committee got a correspondence, a copy of a letter from the Chairman of the Federal Communications Commission, the Honorable Michael Powell to Leslie Moonves of the CBS, and in that letter, what he asked for, and I read, "To that end, I challenge the broadcast community to reinstate a voluntary code of conduct." There's nothing about the responsibility of the broadcast media to get to be voluntary. Indecency is not a voluntary proposition.

It started in the original, Mr. Chairman, Act of 1927; restated again in the 1934 Federal Communications Act; then codified in the Criminal Code in 1948, in Section 1464; and, finally, in the decision of *Pacifica versus FCC*—or FCC, rather, versus *Pacifica*, in 1978, the Supreme Court of the United States found the responsibility constitutional in the FCC. And now here we're going to all of a sudden start off with this "voluntary code."

I have toyed with that "voluntary code" on the most extreme of all indecency, namely violence, Senator. And after 10 years of that—we've been on this thing for 20 years—this Committee has reported out three bills, almost unanimously. The last one was 17 to 1. And after that, they then got the cable boys, in addition to trying to get all that voluntary—my friend, Jack Valenti used to always come up and—"We're going to be voluntary. We're going to be voluntary." I hope we can get his act one more time, because it's worthwhile.

[Laughter.]

The CHAIRMAN. We will.

Senator HOLLINGS. Yes, thank you very much, Mr. Chairman.

But then the national TV spent—cable industry, rather—spent three and a half million, and they put their National Parent Teacher Association head and the head of the National Education Association on the Council, but then they packed the court with the American Federation of Television and Radio Artists, the Producers Guild of America, the Writers Guild of America, the Caucus for Producers, Writers, and Directors, and Gene Reynolds of the Directors Guild of America. And to the surprise, Senator, of everyone—and I won't read them all, but just three—they made a finding. It threw them in shock, because they had spent the money to really dissemble and begin again, or put off for this particular Committee.

They found, one, nearly two out of three TV programs contain some violence, averaging about six violent acts per hour. Two, violence was found to be more prevalent in children's programming, 69 percent, than in any other types of programming, 57 percent. And the average child, who watches 2 hours of cartoons a day, may see nearly 10,000 violent incidents each year. And on and on.

I just ask, Mr. Chairman—we've got a record. It starts with 1949, in *Man Against Crime*. I'm reading from "The History of Broadcasting," and this is what, in 1949, the writers directed the—instructions went out to the writers, and I quote, "It has been found that we retain audience interest best when our story is con-

cerned with murder. Therefore, although other crimes may be introduced, somebody must be murdered; preferably early, with the threat of more violence to come"—

[Laughter.]

Senator HOLLINGS.—end quote. Now, that's not Hollings, that's "The History of Broadcasting," and everybody knows it pays. We in the Committee know it's paid. And every time we get the bill out on the floor—and that's why I'm so happy to see the leadership of Senator Brownback; otherwise, they put me off. I put it on another—"Oh, I'm with you, but I had to vote against it because it wasn't germane or it just hurt the passage of the other bill and everything else of that kind."

So this has been going on for 20 years, and I hope we can bring it to a head this year and pass it, Mr. Chairman, under your leadership, and Senator Brownback.

And let me welcome my colleague from South Carolina, Senator Graham. We're glad to have him.

The CHAIRMAN. Thank you, sir.

Senator Snowe?

**STATEMENT OF HON. OLYMPIA J. SNOWE,
U.S. SENATOR FROM MAINE**

Senator SNOWE. Thank you, Mr. Chairman. And very briefly. First of all, I want to thank you for holding this hearing and your persistent leadership on this issue throughout the years as Chairman of this Committee, and Senator Hollings, as well, and the Senator from Kansas and Senator Graham, for all their efforts on this issue.

I think it's undeniable that television is a major force in our daily lives. And with the influence of television, wields obviously certain responsibilities, particularly when it comes to certain members of our society, and that's obviously children. And that's what brings us to this point here today, is what children are exposed to on television.

Now, obviously, the picture coming across on television is one that's saturated with violence and indecent programming. According to a recent study—and it buttresses what Senator Hollings just mentioned—by the Parents Television Council, the average child spends 25 hours per week watching television. This is more time devoted than attending school, playing sports, and virtually any other activity other than sleeping.

And what have these children been watching? The study estimated that the average child, upon reaching 18, has witnessed 40,000 murders and 200,000 other acts of violence on TV. More disturbingly, TV programming has become more violent, and these are obviously disturbing and troubling trends.

Over the past 5 years, violent broadcasts have increased at every single time slot, and has increased by upwards of 41 percent during the traditional family between 8 o'clock and 9 o'clock. Commenting on that report from a paper in Maine, they noted that during the two week sweeps period in November 1998, there were 292 violent incidents on primetime TV. During that same sweeps period in 2002, the number of violent scenes on television between 8 and 11 o'clock had increased to 534. I think that that is a broad illustra-

tion of the types of trends that continue to evolve over time that are moving in the wrong direction.

Finally, on indecent broadcasting, as everybody has indicated here, it was certainly well in evidence by the infamous halftime show at the Super Bowl. But I think, as the Commissioners know well, that millions and millions of Americans were watching that program at that point in time are calling for action as a result of these events. The FCC alone has received more than 240,000 complaints in 2003 regarding indecent and violent TV programs. And just because the CBS Super Bowl broadcast—that alone has generated more than 200,000 in complaints already.

So obviously people are demanding the type of action that is being called for by Members of this Committee and by the Commission and the leadership of the Commission. I know that, under Chairman Powell, record fines have been given. In the past 14 months, they've handed down fines of more than a million dollars. But perhaps we have to do more. It's a very delicate situation in navigating between the interests of the First Amendment and, obviously, protecting children from harmful programming. That's the balance that we obviously have to strike, and I'm looking forward to the testimony from the Commission in terms of what are the regulatory procedures, whether or not enhancing penalties will be sufficient to deter this type of programming, and, in particular, at a time in which the children are watching television.

And, finally, one other issue. One local affiliate wrote to me recently stating the pressures on local affiliates to preempt programming that violates their community standards. And he said to me, the right to reject or preempt unsuitable programming has eroded over time. It has eroded because networks have deployed their greater bargaining power with their affiliates to require affiliates to relinquish these rights by contract.

Again, in light of the media consolidation and the prevalence of direct ownership affiliates by their parent networks, how are local broadcast stations supposed to enforce their local community standards? Again, this is another dimension of the problem that, again, I think has an impact on the type of programming that young people are witnessing and watching today.

Thank you, Mr. Chairman.

The CHAIRMAN. I'll tell my colleagues we've been in session now for a half an hour. We have four more Senators. I do not want to cutoff any Senator, but I will exercise the prerogatives of the Chair, because we have Senator Graham and we have the Commissioners here. Please abbreviate your opening statements.

Senator Lautenberg.

**STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. Thank you, Mr. Chairman. I'll be brief, and would ask that my full statement be included in the record.

The CHAIRMAN. Without objection. I thank you, Senator Lautenberg.

[The prepared statement of Senator Lautenberg follows:]

PREPARED STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY

Mr. Chairman:

Let me start by apologizing for my appearance—I had a “wardrobe malfunction” this morning.

In all seriousness, I understand that today’s hearing was scheduled *before* Super Bowl 38 but that putrid broadcast certainly highlighted the need for this investigation of television and radio programming and its effects on children.

During the Super Bowl, we were bombarded with ads featuring flatulent horses, crotch-biting dogs, and a monkey making sexual advances to a woman.

During halftime, saw Justin Timberlake ripping off Janet Jackson’s clothes while he sang lyrics such as: “I’ll have you naked by the end of this song.”

I’m not a prude, but I *am* a grandfather of ten. And what I saw was deeply offensive.

CBS officials “apologized” for Janet Jackson’s bared breast, saying “the moment did not conform to CBS broadcast standards.” What a joke!

Isn’t it interesting that CBS and MTV Networks, which produced the halftime debacle, are both owned by Viacom?

And isn’t it interesting that Viacom is one of two media giants that benefited from the provision slipped into the Fiscal Year 2004 Omnibus appropriations bill at the insistence of the White House to lift media ownership limits?

And isn’t it interesting that CBS refused to air *MoveOn.org*’s ad, “Child’s Pay”? That ad has one line suggesting that our children and grandchildren will have to pay off the enormous public debt that President Bush’s economic and fiscal policies have created—which happens to be *true*. The ad wasn’t pornographic. It wasn’t vulgar. It wasn’t tasteless. I guess that’s why it “didn’t conform to CBS broadcast standards.”

How does all of this relate to TV and radio programming and children? I’ll tell you how. Lifting the ownership limits for companies like Viacom and Fox and Clear Channel and Infiniti will make them less *accountable* to the public and to the FCC.

Any fines the FCC might impose on these giants will be like pin pricks on an elephant’s hide.

We need to remember that the airwaves constitute a *public asset* to be managed in the *public interest*. That’s not happening anymore, and it’s not just our children who are suffering. It’s our entire society.

Mr. Chairman, I ask unanimous consent that a column about the Super Bowl in the February 2 *Washington Post* by TV critic Tom Shales and a February 4 letter to all Senators from Gene Kimmelman and the Consumers Union appear in the hearing record following my remarks.

Thank you, Mr. Chairman.

Senator LAUTENBERG. It’s my understanding, Mr. Chairman, that today’s hearing was scheduled before Super Bowl 38, but that putrid broadcast certainly highlighted the need for this investigation of television and radio programming and its effects on kids.

During this supermarket: that’s what it is, supermarket of filth—during the Super Bowl, we were bombarded with ads featuring flatulent horses, crotch-biting dogs, a monkey making sexual advances to a woman, and, during halftime, we saw Justin Timberland rip off Janet Jackson’s clothes while he sang lyrics that said, “I’ll have you naked by the end of this song.” This was no freak accident. And the lame excuse that they used, that something was wrong with their wardrobe, just doesn’t go.

I’m a grandfather of ten children, the oldest of whom is ten, and I don’t want those children to think that this is standard behavior or acceptable conduct. CBS apologized for Janet Jackson’s bare breast, saying that “the moment did not conform to CBS broadcast standards.” And that’s a joke, because I fear that their standards are something even worse than that which we saw.

It’s interesting that CBS and MTV networks, which produced the halftime debacle, are owned by Viacom. And isn’t it interesting that

Viacom is one of the two media giants that benefited from the provisions slipped into the Fiscal Year 2004 omnibus appropriations bill, at the insistence of the White House, to lift media-ownership limits? And it's interesting, further, that CBS refused to air *MoveOn.org's* ad, "Child's Pay." Now, that ad had one line suggesting that our children and grandchildren will have to pay off the enormous public debt that's accumulating and challenged the current economic and fiscal policies that have created this debt, which happens to be true. The ad wasn't pornographic, it wasn't vulgar, it wasn't tasteless, and I guess that's why it didn't conform to CBS broadcast standards.

How does all of this relate to TV and programming and the children? And, Mr. Chairman, I think rather than just express our indignation here, we have to connect it to something that we're doing here or something that we want to do. Well, it relates to TV and programming and children by lifting the ownership limits for companies like Viacom and FOX and Clear Channel and Infinity, it'll make them less accountable to the public and to the FCC, and any fines that the FCC might impose on these giants will be like pinpricks on an elephant's hide.

We've got to remember that the airwaves constitute a public asset, to be managed in the public interest. And that's not happening anymore. It's not just our children who are suffering. It's our entire society.

So, Mr. Chairman, I ask unanimous consent that a column about the Super Bowl in the February 2 *Washington Post*, by TV critic, Tom Shales, and a February 4 letter to all Senators from Gene Kimmelman and the Consumer's Union appear in the hearing as if read.

The CHAIRMAN. Without objection.

[The newspaper article and letter referred to follow:]

The Washington Post—February 2, 2004 Monday

INCOMPLETE!

BYLINE: Tom Shales

Viewers who tuned in expecting a big-time football game saw the Super Bowl of Sleaze instead. Sexy and violent commercials that included jokes about flatulence and bestiality mercilessly interrupted the CBS telecast of Super Bowl XXXVIII from Houston last night, making it a dubious choice for family viewing.

But it was the unexpected climax of the MTV-produced halftime show that shocked viewers and set the CBS switchboard ablaze. As a musical number ended, out popped one of Janet Jackson's breasts. Fellow performer Justin Timberlake clearly exposed it to the crowd in Reliant Stadium and to the audience of millions watching at home by reaching over and yanking off part of her costume.

Jackson, her nipple covered by a piece of costume jewelry, has not been shy about revealing herself in public appearances and magazine photographs, but bare breasts are not commonly considered acceptable fare on broadcast network television, especially early in the evening during what used to be called the "family hour." CBS rushed out an apology, but there were reports that MTV had hinted during its afternoon programming that Jackson's appearance would be one for the record books. MTV and CBS are both owned by media conglomerate Viacom.

"CBS deeply regrets the incident that occurred during the Super Bowl halftime show," the statement said. "We attended all rehearsals throughout the week and there was no indication that any such thing would happen. The moment did not conform to CBS broadcast standards, and we would like to apologize to anyone who was offended."

A trio of witless commentators failed to make reference to the Jackson incident, but when the second half of the game was delayed by someone dancing around near-

ly naked on the field, the announcers joked in the booth about the “raw, naked football” certain to be just ahead. CBS cameras that had earlier shown Jackson’s exposed breast avoided the streaker, and the director clung instead to a static shot of a man at the game. The incident wasn’t fully explained to viewers, but finally an announcer said, “Well, the midfield disturbance has been dispensed with,” apparently by a squad of security personnel.

An exciting game—by Super Bowl standards—between the New England Patriots and the Carolina Panthers was upstaged not only by its halftime show but also by the “edgy” and often crude humor of the commercials. Over the years—partly because of the huge expense involved—Super Bowl commercials have become widely ballyhooed events in themselves, and this year some sponsors, paying up to \$2.9 million for a 30-second spot, went the smut route in order to stand out in the crowd.

Early in the evening, a supposedly hilarious beer commercial featured a dog that was trained to bite men in the crotch and hold on. The man being bitten moaned and grimaced in pain and finally surrendered his can of Bud Light.

As it happened, Bud Light set the standards for tastelessness and self-congratulatory humor. A later commercial, stealing a joke from a classic episode of the sitcom “Seinfeld,” involved a flatulent horse. The animal, tied to a carriage, emitted an outburst from beneath its tail that caused a candle to burst into flame and burn the hair of the woman holding it. A loud sound effect made it clear that the horse was suffering digestive distress.

Many of the other Super Bowl commercials seemed conspicuously inappropriate for an event that is a national rite and the kind of rare TV attraction that brings families together in front of the set. CBS chose to air a spot advertising the upcoming horror movie “Van Helsing” even though it contained extremely disturbing and graphic images of brutality and gore and despite the fact that it has yet to be rated by the Motion Picture Association of America. If the film were eventually to be rated NC-17, it would be contrary to network policy to carry any commercials for it.

Based on excerpts shown, “Van Helsing” will earn an R, or Restricted, rating, meaning the film is considered suitable for those under 17 only if they are accompanied by a parent or other adult. The ad was wall-to-wall with monsters baring fangs and implied horrific violence.

The negative vibes given off by so many off-color or violent commercials put a soggy cloud over what was supposed to be an evening of wholesome fun. Some of the spots were funny; Jessica Simpson and the Muppets had a high time in their commercial for Pizza Hut, and Homer Simpson starred in a funny spot.

But the ghastly output from Bud Light included a commercial in which a chimpanzee talked to a beautiful girl as they sat together on a couch while she waited for her date to return from the kitchen. The monkey made a pass at the girl and asked, “So, how do you feel about back hair?” There was also an excess of commercials for drugs designed to help men suffering from erectile dysfunction.

Maybe the Super Bowl will have to move from the broadcast networks to the Playboy Channel if its commercials are going to be so dirty that they embarrass parents watching with their kids.

CONSUMERS UNION
Washington, DC, April 6, 2004

Dear Senator:

As the Senate prepares to take up S. 2056, the Broadcast Decency Enforcement Act, we urge you to preserve the important media ownership and TV violence provisions in the bill as part of an overall solution to stemming the increase of indecency, obscenity and violence in broadcast programming. In addition, we ask you to consider a new approach to addressing inappropriate content on cable television—the cable a la carte option. By allowing consumers to pick and pay only for the cable channels they want in their homes through this option, you will ensure that the market is more responsive to families’ concerns about indecency and violence on television.

While the increased fines in S. 2056 for violations of the Federal Communication Commission’s indecency rules are an important step in addressing inappropriate broadcast programming, they do not solve the larger problem. Higher fines may periodically deter programming excesses, but it is difficult to see how they will be truly effective when the media giants are capable of hiring an army of lawyers to fend off whatever enforcement actions the FCC can afford to pursue. As such, families likely will continue to be inundated with programming they find offensive or inappropriate.

We believe that any effort to give families and local communities a say in what is broadcast on their public airwaves, and what programming comes into their homes, must address the growing threat of media consolidation. Realistic media ownership rules must be in place to lessen the influence of massive corporations on local broadcast content, as well as to ensure public debate in the local media. Overturning the lax FCC rules, and developing sensible media ownership rules that allow for diverse programming that reflects local community interests and values is a critical first step in restoring balance between American consumers and corporate media giants.

As S. 2056 requires, the FCC's media ownership rules should not, among other reasons, be implemented until the impact of media consolidation on indecent programming can be thoroughly studied by the General Accounting Office. When addressing the problem of indecency on our airwaves, it is important to ensure that the growing concentration of media ownership in our country has not made the situation worse.

It is also important to require violent broadcast programming be limited to the hours when children are not likely to be watching television, unless that programming is specifically rated on its violent content so it is blockable by electronic means. This will empower parents to have more control over the violent broadcast programming that their children may watch, and ensure families are not forced to put up with gratuitous violence during the few evening hours they can gather together and enjoy television.

Choice and control also should be available to consumers of cable and satellite programming by giving families an a la carte option—the opportunity to pick and pay only for the channels they want in their homes. Because the industry offers consumers only tiers or packages of cable channels, a family must block a cable channel it finds offensive, yet still must pay a subscription fee for that channel. That fee is then passed along to the programmer—a situation that is insulting and unfair, since the family is being forced to subsidize the producers of content they consider inappropriate.

To end this practice, we ask you to request the FCC begin creating pilot projects or other incentives for cable operators to offer an a la carte option. By allowing consumers the option to pick and pay only for channels they want (while still having the choice of purchasing a package of channels), you will ensure that the market is responsive to families' concerns about indecency and violence.

The cable industry will likely argue that the equipment necessary to offer a la carte would increase prices for consumers. However, it is hard to imagine that an industry that can offer "plug and play" equipment to prevent piracy, and digital boxes to deliver pay-per-view and other packages of services, cannot at the same time offer consumers the right to pick the channels they want with this equipment. This argument becomes more dubious considering all of Canada's large cable companies offer digital cable customers an a la carte option, with the right to pick and pay individually for those channels offered in packages.

It is also important to remember consumers on average watch only between 12 and 18 cable channels, and the right to select the channels they want may save many of them money on their skyrocketing cable bills. Cable rates have increased three times the rate of inflation since the industry was deregulated in 1996, and the a la carte option should provide consumers some relief from the spiraling rates charged for cable channel packages.

We urge you to support S. 2056, including the media ownership and TV violence provisions, and the cable a la carte option as a means of addressing inappropriate programming aired over both broadcast and cable/satellite networks.

Respectfully submitted,

GENE KIMMELMAN,
Senior Director of Public Policy and Advocacy.

Senator LAUTENBERG. Thank you very much, Mr. Chairman.
The CHAIRMAN. Thank you, Senator Lautenberg.
Senator Wyden?

**STATEMENT OF HON. RON WYDEN,
U.S. SENATOR FROM OREGON**

Senator WYDEN. Thank you, Mr. Chairman.

Just one point. I think it's important for the Committee to explore whether the rise of the vulgar, overly violent media can be

linked to the loss of local ownership and accountability in the media. It just seems to me that when the people who choose these shows have to go shopping next to the people they may offend, that is more likely to generate the kind of responsible programming that we're all concerned about. Plus, it seems to me that if media consolidation rushes ahead, there's a risk that the debate that we're having today, which is so important to the American people, is going to be muffled, because when you have newspapers owning broadcast stations and the kind of joint ownership issue we've been exploring, it seems to me it is more—it's less likely that there'll be the kind of robust debate about these issues that is warranted.

This Committee has spent a lot of time looking at the question of concentration in the media. I just think that there is a link between the rise of vulgar, overly violent media with the fact that we've lost a lot of local ownership, and I hope we'll explore it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Wyden.
Senator Nelson?

**STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Mr. Chairman, may I enter my statement in the record?

The CHAIRMAN. Without objection.

[The prepared statement of Senator Nelson follows:]

PREPARED STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

Mr. Chairman, I take special interest in this issue because the next Super Bowl will be played in my home state of Florida, specifically in Jacksonville. I am curious whether one year from now we will be seeing the same sort of halftime show.

It is more evident than ever that Americans are concerned about the indecent and violent programming being broadcast over the public airwaves. The recent Super Bowl halftime show is only the latest in a long line of increasingly indecent programming.

Far too often, people lose sight of the fact that the airwaves used by television and radio broadcasters are owned by the public. Because of this, the law is clear that broadcasters have the responsibility to act in the public interest.

The outpouring of anger we have seen in the last 10 days since the Super Bowl has helped to crystallize this issue. Millions of families were gathered to enjoy the American pastime of watching the Super Bowl and the halftime entertainment. CBS instead provided viewers with a highly sexualized halftime show that ended in a very inappropriate manner.

That type of programming simply was not suitable for family-hour television viewing. Some say: if parents don't like what's being shown on the television, then turn the station. That is not the answer. Parents have an expectation that Super Bowl programming will be suitable for everyone in the family to watch.

I appreciate hearing today from the FCC's Commissioners. I know that the FCC has attempted to strengthen its indecency enforcement in several ways. This Committee has tried to give the FCC enhanced tools to do that important work, such as allowing much higher fines to be levied against broadcasters. Frankly, broadcasters also should do their part to exercise some better self-censorship.

Also, I note that I will continue to examine whether higher levels of consolidation in media ownership have played a role in indecent and violent programming.

Broadcasters must realize that the government has given them the privilege of using the public's airwaves. Continued abuse of that privilege will take us down a road that no one wants to travel.

I thank the Chair and look forward to hearing the testimony of the witnesses today.

Senator NELSON. And I'll just state to the Commissioners, in addition to what's been said here, I have a personal interest in this because the Super Bowl is going to be in Jacksonville next year and I don't want this kind of stuff in the state of Florida. And you all have a responsibility to draw the line in the sand and stop the trend that we're on. And I would suggest that it's not only about this kind of stuff, activities that are questionable to be broadcast, but it's the whole thing of this consolidation, and increasing the percentage of the total audience that folks can have, and cross-ownership.

Just today, an economic earthquake was announced, that Comcast is now going to try to acquire Disney and ABC. So here we go, the trend of consolidation is continuing. And you've got to have a regulatory authority that will do something about it and set some boundaries.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Nelson.

Senator Dorgan?

**STATEMENT OF HON. BYRON L. DORGAN,
U.S. SENATOR FROM NORTH DAKOTA**

Senator DORGAN. Mr. Chairman, I assume everything has been said. I've been at a different hearing. And I'm pleased to be here. Thank you for holding this hearing.

Let me also say, this is not just about the Super Bowl. It's not about censorship. There is a healthy dose of common sense that's needed, in my judgment, about what should be broadcast over airwaves that belong to the American people, in radio and television. And I think every parent in this country knows that the voices of indecency—obscenity, violence, and profanity—grow louder and louder and louder on broadcast television and radio, and parents are furious, and should be.

Now, the hood ornament on bad judgment, in my opinion, was when a Federal agency recently ruled that the "F" word can be used on broadcast television as long as it is used only as an adjective. I understand there's some work now to try to overturn that ruling. But when I read about it, I thought, "Have we lost all common sense?" What on earth is happening?

Let me just make this point. None of this is new. We're here because of a halftime performance at the Super Bowl, but none of this is new. You, Mr. Chairman, Senator Hollings, myself, and many others on this panel have talked about these issues and the diminished standards and the more coarse language and what is happening in broadcast television and radio for years and years and years. At some point, common sense has to intervene.

Again, I hope, whether it's a regulatory agency taking a look at an issue that is so simple, such as the use of the "F" word on broadcast television, or issues such as the amount of money that ought to be levied as fines, revocation hearings, or allowing local affiliates to choose to preempt programming that they find indecent or offensive to their communities, I hope we finally perhaps over this issue will begin to make some progress.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Dorgan.

We welcome our colleague, Senator Graham, to the Committee. Please proceed, Senator Graham.

**STATEMENT OF HON. LINDSEY O. GRAHAM,
U.S. SENATOR FROM SOUTH CAROLINA**

Senator GRAHAM. Thank you, Mr. Chairman, and I'll be very brief.

I appreciate the opportunity to testify. And I find it a bit ironic that those of us in politics, we've tried to clean our own house, because political debate and discourse in advertising has gotten to be trash, and we finally acted, because of Senator McCain's leadership and others, and we're trying to regulate ourselves. I think it's a great idea that if you run a political commercial explaining why your opponent's a scumbag in 20 different ways, you've got to end the commercial saying, "I approved this ad."

So I think it's time for us all to take a hard look at ourselves, and the public needs to take a hard look at itself. We're up here—you know, never let it be said that I wasn't part of political piling on. That's why I'm here today. This is a big issue. I'm working with Senator Brownback, who's been a leader on this. Senator Hollings has been talking about it for a long time, about what to do.

But at the end of the day, as Senator Breaux said, people watch this because—well, people make the product, because people want to watch it. Every show has a production cost, and they figure there are enough people who want to watch this stuff, so they produce it.

And consumers need to not feel so helpless. I think we've gotten to a state in America where if the government doesn't act, there's nothing we can do. Abercrombie & Fitch had a advertising magazine that was sent to homes, and people rebelled, and they stopped. So my message here to the public is, don't sit on the sidelines yourselves. If you don't like what you see, let people know. Call the Commission, call the advertisers. Sex sells. It always has, and it always will. But let me tell you, it has gotten to the point to where it really is hurting families.

The reason I'm here—and I'm, by no means, a prude; and there's some hypocrisy about all of us preaching about this stuff, to hear the "F" word and not to use it, but you're right, there should be some boundaries. And Senator Boxer was talking about children. That's why I'm here. I was at the ball game with some friends, and—I don't have any kids, but there were two pre-teens in the crowd, and it just made everybody uncomfortable.

And why are we doing this? Money. The only reason this works is because of money. There's a lot of money in sensationalizing on television, and they should have to pay a lot more money. And I think the artists should assume some liability. The whole argument is that the television network didn't know; this was made up at the end. Well, then maybe the artists should sign a form that, "If I do anything indecent, I'm going to have to pay, myself." So we need to bring consequences to the table.

And my final thought, this Committee, Mr. Chairman, under your leadership, with Senator Hollings, acted last summer. This is not a new issue. It would be political malpractice for the leadership of the Senate, Republican and Democrat, not to bring a bill to the

floor. People have had it. And if we put this off for another day, woe be unto us.

So I hope our leadership's got the message. We need to vote, and we need to vote soon.

Thank you for having me.

[The prepared statement of Senator Graham follows:]

PREPARED STATEMENT OF HON. LINDSEY O. GRAHAM,
U.S. SENATOR FROM SOUTH CAROLINA

Good morning Mr. Chairman, Senator Hollings, and members of the Committee. I appreciate the opportunity to appear before you today and I commend you for holding this hearing to address the indecent and obscene material that continues to flood television and radio broadcasts.

For a long time, I've been concerned about the growing number of indecent, obscene, and profane material that shows up on our public airwaves. The Super Bowl halftime show is only the most recent and widely publicized incident of this problem. An estimated 90 million people watched the Super Bowl. Many of those viewers were probably young children, excited about the chance to watch their favorite NFL player score a touchdown, and instead were witness to a deplorable stunt. I, like many others, was offended by this classless act. I applaud the Federal Communications Commission (FCC) and support its decision to launch an investigation into this broadcast. It is encouraging that the FCC is looking into punishing those responsible for broadcasting this type of offensive material, particularly during a time when many families are watching television together.

Of course, we all know about the incident that occurred during last year's NBC broadcast of the Golden Globes, when U2's lead singer, Bono, used profanity during a speech. Although the FCC ruled that the expletive was not used in an obscene or profane way, I am encouraged that Commission Chairman Powell has asked other members to overturn the decision. I was disappointed with the initial decision and encourage the FCC to implement stricter enforcement of indecency standards. I do note that the FCC will have issued 18 proposed indecency forfeitures for a total of \$1.4 million in proposed fines since Chairman Powell took office in January 2001. This total significantly exceeds the \$850,000 in proposed fines handed down during the prior seven years under two prior commissions. This may be a result of the FCC's increased enforcement or declining standards by the networks. Whichever it is, there is still much more that needs to be done and I recognize that it is Congress' job to enable the FCC with sufficient tools to better fight indecency on our airways.

The halftime show and Golden Globes are just two high profile examples of the inappropriate, offensive, and embarrassing material broadcasted on our airwaves every single day. We have stood on the sidelines for too long and therefore, we have let indecent programming get out of hand. As lawmakers, we need to do more to protect the public from indecent programming. We must take strong measures to rid the public airways of indecency, obscenity, and profanity.

Yesterday, Senator Brownback and I introduced S. 2056, the "Broadcast Decency Enforcement Act of 2004." This bill was introduced in the House by Representative Fred Upton, whom I've been working with for some time in efforts to fight against the broadcasting of indecent material. S.2056 would allow the FCC to issue fines ten times greater than they can issue now for violations of broadcast decency standards. The maximum fine for a violation would increase from \$27,500 to \$275,000, and those that commit continuing violations could be fined up to \$3 million. This bill will cause broadcasters to think twice before allowing material on the airwaves that may be indecent.

The current maximum fine of \$27,500 is no longer punitive in nature. A \$27,500 fine is equivalent to one eightieth the cost of a thirty second Super Bowl ad. By imposing larger penalties, broadcasters will be less likely to take chances in airing material that may violate our indecency laws.

We need to make sure broadcasters air appropriate programming, especially when children are likely to be in the audience. There is a high standard all Americans should expect. This standard not only applies to local programming, but large networks as well. Large networks also need to realize that they are not immune from tough penalties. It is our job to make sure broadcasters live up to that standard by passing laws that will serve as an effective deterrent to those who consider airing obscene, indecent, and profane material.

I am encouraged by the widespread support the "Broadcast Decency Enforcement Act" has received. The FCC has endorsed this bill, as well as the Administration.

Family groups such as Focus on the Family have also expressed their support. I urge my colleagues to join in the fight to clean up our airwaves. The FCC has an important role in protecting Americans, especially children, from indecent programming. We must give the FCC the necessary tools to enforce indecency restrictions in the most effective manner possible.

Mr. Chairman, once again I applaud the Committee for holding this hearing and for your commitment to protect America's children from indecent broadcasting.

The CHAIRMAN. Thank you very much, Senator Graham, and we appreciate your patience, and we appreciate your testimony.

We'd now like to hear from the Honorable Michael Powell, who's the Chairman of the Federal Communications Commission, and the other Commissioners, who are the Honorable Kathleen Abernathy, the Honorable Michael Copps, the Honorable Kevin Martin, and the Honorable Jonathan Adelstein.

I welcome the Commissioners. I think that the Commissioners understand the mood here, and perhaps in their remarks they could respond to some of the comments of the Members of the Committee. And I thank all of you for coming today. Chairman Powell, it's always a pleasure to have you here before the Committee, and we look forward to your statement.

We'll begin with you, Chairman Powell.

**STATEMENT OF HON. MICHAEL K. POWELL, CHAIRMAN,
FEDERAL COMMUNICATIONS COMMISSION**

Chairman POWELL. Thank you, Mr. Chairman. Good morning to you and the distinguished Members of the Committee. It's always a pleasure to be here with my colleagues.

The infamous Super Bowl show, which I think I agree with Senator Boxer, was more than just the final incident, but was outrageous throughout. Not only was it outrageous and offending to children, I think it's important to note it's enormously degrading to women to suggest that was proper behavior. But it is just the latest example in what we've noted is a growing list of deplorable incidents on the Nation's airwaves. The increasing concern about coarseness has resulted in a dramatic rise in public concern. We've received 200,000 complaints on the Super Bowl incident alone. A recent Time/CNN study found that 47 percent of Americans said the incident marked, quote, "a new low in bad taste." I couldn't agree more, as a parent of two young sons, about the erosion of common decency standards on television.

As a member of the FCC, I can assure all Americans here today that the Commission will continue to protect children and respond to the public's concerns. Under our authority, and consistent with the First Amendment, we will continually vigorously enforce our indecency rules. To punctuate that point, within hours of the Super Bowl incident, we launched our investigation into whether it violated the law. This investigation will be thorough and swift. In addition, a decision to propose to overturn the bureau's decision in the Golden Globe case about the "F" word is imminent.

Protecting children and giving parents the tools to restrict inappropriate programming from unexpectedly invading our family rooms requires action, however, on all fronts. The efforts first begin with the Commission. This Commission, me and my colleagues, are pushing what I think is the most aggressive enforcement regime in decades. This Commission alone has proposed nearly ten times the

level of indecency fines of the previous Commission, and two times the two previous Commissions combined. But it is not enough, and we are continuing to work to sharpen our enforcement blade even more.

Let me just list some of the things we have done, and are doing. First, we recognize that \$27,500 fines constitute peanuts to a multimillion dollar operation, and we are seeking ways to increase penalties on our own against those who engage in lasting and repetitive incidents by taking steps routinely to impose the statutory maximum for serious violations. We also have put broadcasters on notice that we will, as you recommended, treat multiple incidents and utterances, if in a single programming, as constituting multiple indecency violations. We have also put broadcasters on notice in recent decisions that we will begin license revocation proceedings for egregious and continuing disregard of decency laws. We will pursue indecent programming on television more aggressively. We will continue to work aggressively to answer complaints in a timely manner. Just in the last 2 years, we've made significant progress on backlogs. Of the 14,000 complaints filed in 2002, only 30 remain pending, and many of them are on the way to the Commission now. And we will continue to vigorously monitor industry developments to see if they, indeed, meet the challenge.

The Commission has already begun wielding our sword in several important respects. We proposed some of the largest fines in indecency enforcement history, including a proposed forfeiture of over \$350,000 in the case of a vile and disgusting broadcast on sexual content in Saint Patrick's Cathedral in New York. We recently proposed a fine reaching nearly \$750,000 levied against Clear Channel stations for over 20 indecency violations. And, finally, last month we opened a new front in our efforts to protect children, fining a San Francisco television station the maximum when it aired a program in which a performer exposed himself in front of the camera, making it one of the first fines against television in the Commission's history. And just last week, we took steps to challenge the broadcasting industry to commit themselves to protecting children.

Senator Hollings, we don't believe voluntary efforts are the sole answer. Enforcement is an important answer. But broadcasters have their own responsibility to take charge of their own industry, and we've challenged them to do so. There was a long, proud tradition of the broadcasting industry having a code of conduct that was used and faithfully employed. It was struck down in the courts. I think there are ways to revive it, and we challenge them to do so.

We also agree with many of the comments here today that you can't have an honest conversation about content in the media if you're not willing to talk about the cable industry. We've also written to them, challenging them to look for new ways to protect their interests, and we ask the Committee to lead a debate about the proper ways to consider the concerns with cable, understanding different legal and First Amendment status.

But to succeed fully in protecting our children from the proliferation of inappropriate and excess vile content, Congress also has a critical role to play, and I applaud the efforts of Senator Brownback, Senator Graham, Senator Hollings, other Members of

this Committee and the Chairman, for trying to move bills that are important on this issue.

We definitely need the increased enforcement authority. We have said so repeatedly. And, as this Committee has recognized, it is an important component to effective deterrence. The time has come—to echo the words of Senator Brownback—the time has come for the Commission, Congress, and the industry, and the public, as Senator Graham said, to take the necessary steps to prevent allowing the worst of television and all that it has to offer from reaching unsuspecting children. I commit to you that this Commission, me and my colleagues, will continue to put our resources into vigorously enforcing the rules. And I urge Congress to assist us in that effort and urge the Commission to do its part—urge the industry to do its part to protect our children.

Thank you, and I await your questions.

[The prepared statement of Chairman Powell follows:]

PREPARED STATEMENT OF HON. MICHAEL K. POWELL, CHAIRMAN,
FEDERAL COMMUNICATIONS COMMISSION

Good morning, Mr. Chairman and distinguished Members of the Committee. It is my pleasure to come before you today with my colleagues on the Commission to discuss our collective efforts to protect children from sexual, violent and profane content.

The now infamous display during the Super Bowl halftime show, which represented a new low in prime time television, is just the latest example in a growing list of deplorable incidents over the Nation's airwaves. This growing coarseness on television and radio has resulted in a dramatic rise in public concern and outrage about what is being broadcast into their homes. Over 200,000 concerned citizens and counting have filed complaints with the Commission on the Super Bowl incident alone. As a parent, I share the displeasure and fatigue of millions of Americans about the erosion of common decency standards on television.

As the Federal agency responsible for punishing those who peddle indecent broadcast programming, I can assure all Americans that my colleagues and I will continue to protect children and respond to the public's concerns. Under our authority, and consistent with the First Amendment, we will continue to vigorously enforce our indecency rules. To punctuate the point, within hours of the Super Bowl incident, we launched our investigation into whether there was a violation of the law. This investigation will be thorough and swift.

The Rise of Public Concern

Although the Super Bowl halftime show was a new low for broadcast television (a recent poll found 47 percent of Americans said the incident marked “a new low in bad taste”), a quick flip around the dial during what was once considered the family hour, reveals coarse content, wholly inappropriate for a time when children can be expected to be watching. There are reality and dating shows with heavy sexual themes or scripted programs that feature gratuitous violence and increasing profanity. Turn the channel and you are likely to see a new program trying to push the envelope—all in an effort to try and grab ratings and keep viewers.

Indeed, as new technologies have afforded the public with an abundance of programming in recent years, audiences, especially in television continue to fragment. A recent Commission study found that the average television household had 82 channels available to it in 2001, up from merely 10 channels in 1980. Over the last two years, that number has only increased. In fact, last year marked the second consecutive year where more viewers were watching cable programming during the prime time hours than they were broadcast programming. This hyper-competition for audience share and ratings has tempted broadcasters to capture share by resorting to ever more crass, sexual or violent programming.

As evidenced by the rise in the number of complaints at the Commission, Americans are taking unfavorable notice. In addition to the over 200,000 complaints we received regarding the Super Bowl, 2003 saw the most indecency complaints in the Commission's history. Over 240,000 complaints were filed at the Commission last year. As complaints have risen dramatically, however, the actual number of programs that our citizens complained about to the Commission actually declined from

2002 to 2003 (from 389 programs to 375 programs). Furthermore, indecency complaints have historically been focused on broadcast radio programming. Indeed, only in the last two years has the Commission received more television than radio complaints. Television complaints have largely focused on the broadcast medium (217), outpacing cable (36) complaints over six to one.

At the Commission, we have increased our indecency enforcement efforts to protect our children against the increase in coarse programming and in response to the growing concerns expressed by the public about the content being broadcast over our airwaves. Protecting children and giving parents the tools to prevent inappropriate programming from invading our family rooms requires action on all fronts.

The Commission's Strong Enforcement Stance

The effort begins with the Commission. This Commission boasts the most aggressive enforcement regime in decades, proposing nearly ten times the level of indecency fines than the previous Commission. And, we are taking additional steps to sharpen our enforcement blade:

- Recognizing that \$27,500 fines constitute peanuts to multi-million dollar operations, we will actively seek ways to increase penalties against those who engage in lasting and repetitive indecent programming, including taking steps to impose the statutory maximum for serious violations of the law (up from \$7,000 fines of previous Commissions);
- We will treat multiple indecent utterances with a single program as constituting multiple indecency violations. I commend Commissioner Martin for his leadership on this issue;
- We will begin license revocation proceedings for egregious and continuing disregard of decency laws. Commissioner Copps' efforts on this issue are particularly noteworthy;
- We will pursue indecent programming on television more aggressively—including our proposal to overturn the Enforcement Bureau's decision in the Golden Globes case—a decision by the Commission in that case is imminent;
- We will continue to work aggressively to answer complaints in a timely manner (of the 14,000 complaints filed in 2002 only 30 remain pending) and bring more cases up to the full Commission for review; and
- We will continue to vigorously monitor industry developments to see if they, indeed, meet the challenge of their responsibilities to protect our children.

Indeed, the Commission has already begun wielding our sword in several important respects. We have proposed some of the largest fines in our indecency enforcement history, including a proposed forfeiture of over \$300,000 in the case of a broadcast of sexual conduct in St. Patrick's Cathedral in New York and a proposed fine of over \$700,000 levied against various Clear Channel stations for over 20 indecency violations.

In addition, last month, we opened a new front in our effort to protect children by fining a San Francisco television station the statutory maximum of \$27,500 when it aired a program in which a performer exposed himself in front of the camera—marking one of the first ever fines against a television station in Commission history. Just this week, I have personally called on the broadcast and cable industry step to the forefront and take affirmative steps to commit themselves to protecting children. Specifically, I have challenged broadcasters to re-institute a voluntary Code of Conduct and urged the broadcast and cable industries to work with the public to take other steps, such as educational and outreach campaigns and providing for a delay for live entertainment performance events.

As the Commission continues to strengthen its enforcement, it needs the help of both Congress and the industry in the fight for our children. I urge, in the strongest terms, Congress to adopt legislation that will increase the statutory maximum of our forfeiture penalties at least ten-fold. I commend Congressman Upton and Senator Brownback and those Members supporting their respective bills for their leadership on this issue. We need this increased authority to ensure that our enforcement actions are meaningful deterrents and not merely a cost of doing business. Additionally, this deterrent effect can also spread to other types of coarse or inappropriate programming not suitable for our children, such as excessive violence.

A Call to Action

The Commission, Congress and the public cannot stand alone in this fight to protect our children. Indeed, action must be taken by the entire television and radio industry to heed the public's outcry and take affirmative steps to curb the race to the bottom. This industry simply must help clean up its own room.

I have written the broadcast industry, the major television networks and the cable industry and challenged them to take affirmative steps consistent with antitrust law and within the limits of the First Amendment, to curb indecent, inappropriate and violent programming.

The industry has the ability to join our efforts to protect children, and it must. Specifically, I have challenged the National Association of Broadcasters and the network's owned and operated stations to work with their broadcast members and the public to reinstate a voluntary code of conduct. Such a code is necessary to establish effective guidance and best practices to local broadcasters so that they can best address the needs and concerns of parents, children and local communities.

I believe these steps would also give the public a meaningful standard by which to measure performance of the industry over time and demonstrate broadcasters' unwavering commitment to serving the needs of local communities and to help stem the surging tide of offensive programming.

In addition, I have asked that the networks themselves continue to take affirmative steps to better protect the public. I am heartened by recent efforts to reinstitute a delay into live broadcasts of award shows to prevent unwarranted profanity from infiltrating our airwaves and urge the industry to make this routine practice. Their actions, however, can and must not stop there.

Finally, like the broadcasters, I have challenged the cable industry to engage and educate the public about the best family-friendly programming that cable has to offer and how best to use the technological tools available to prevent those channels and programs that are inappropriate for children from reaching their eyes and ears. I have asked all interested parties to inform me of their progress on this front within the next thirty days. Commissioner Abernathy's leadership in developing the FCC's Parent's Page is an important beginning in these efforts.

The rise of cable and satellite programming and the development of new broadcast networks have brought our citizens the very best television and radio programming that it has had to offer in its seventy-five year history. We have also, however, seen some of the worst. The time has come for us to work collectively—the Commission, the Congress, the industry and the public to keep the seedy worst of television from reaching our children and to help parents make the choices that are best for them. I commit to you that this Commission will continue to put our resources into vigorously enforcing our indecency rules. I urge Congress to assist us in these efforts and look for the industry to step up and do its part to protect our Nation's children. I look forward to working together with my Commission colleagues to advance the public interest on these important issues.

Thank you, I will be happy to answer any of your questions.

The CHAIRMAN. Thank you very much.
Ms. Abernathy?

**STATEMENT OF HON. KATHLEEN Q. ABERNATHY,
COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION**

Commissioner ABERNATHY. Good morning, Mr. Chairman, Senator Hollings, and distinguished Members of the Committee. I appreciate the opportunity to appear before you this morning to discuss the FCC's efforts to protect children from indecent and violent programming.

This hearing is a most timely response to an increasingly urgent set of problems, and the Super Bowl halftime show was perhaps the most notorious, but only the most recent, example of a progressive coarsening of our culture, as reflected in broadcasting and cable and video games. And it is not simply an issue with regard to excessive sexual content in mainstream programming; it is also reflected in the excessively violent content of material distributed to children via broadcasting and the Internet, as pointed out by Senator Boxer. This has occurred despite the Commission's vigorous enforcement of the indecency laws, despite our announcement that these efforts would be further intensified by per-utterance fines, despite our putting broadcasters on notice that they're

putting their licenses at risk, and despite pending Congressional legislation to increase our forfeiture authority.

Clearly, some broadcasters have forgotten their public interest obligations and the critical role that they play in forming and shaping our society. In light of this environment, the FCC must be given the ability to impose meaningful fines that will deter the future airing of indecent programming. Therefore, I wholeheartedly support your efforts to increase our forfeiture authority. As already pointed out, the current statutory maximum of \$27,500 is simply a slap on the wrist.

The FCC also must do more to clarify the legal parameters regarding the broadcast of indecent material. Unfortunately, prior Commissions failed to take up this issue, and we are now forced to reconsider prior precedent and provide new guidance to broadcast licensees. So, for example, relying on past Commission rulings, the enforcement bureau recently issued a decision determining that Bono's language used during the Golden Globes was not indecent. While I don't want to comment on what action the full Commission may ultimately take, I will say this. It's very hard to imagine many contexts where the particular obscenity would not be patently offensive under contemporary community standards.

We must also recognize, however, that our enforcement-based measures, at their best, are necessarily after the fact, and monetary penalties alone may not fully prevent future misconduct, especially when it comes to live broadcast radio or TV programming. Therefore, in addition to current, and even enhanced, enforcement measures, we should improve and amplify forward-looking safeguards.

Our laws try to help parents understand and control the programs their children watch in several different ways. Although our rules limit the hours during which indecent programming may be broadcast, it is perhaps even more important to understand what options are available to protect children from the adult programs that broadcast during the main part of the day, programs that may not be indecent, but include excessive violence, excessive sexual content, or are simply inappropriate for children. The V-chip and the programs ratings legislation that Congress passed are intended to help parents understand the content of broadcast programs and control access into the homes.

Is this system working well? Clearly not. Most parents do not understand how to use the V-chip and are unaware that a TV ratings system exists. And the shortcomings of these early warning systems are even more troubling as applied to violent programming, which, unlike indecency, is not subject to FCC enforcement sanctions. This is not because violence is less prevalent on television than indecency. On the contrary. As pointed out by Senator Hollings, a recent report by the Kaiser Family Foundation found that nearly two out of three programs contained some violence, averaging six violent acts per hour.

I know that you've grappled with the many legal and practical issues involved in attempting to legislatively define and limit televised violence, but, in the absence of statutory authority, the Commission is reaching out to the public to help make parents aware of the V-chip and the program rating system and how to use them.

I've tried to address this problem by working with the FCC's Consumer and Governmental Affairs Bureau to create a new website, the FCC's Parents Place. Parents Place explains the ratings systems, including what they mean and when the ratings are displayed, and directs parents to websites that identify age-appropriate programming by locality. It also explains the V-chip and other blocking tools, including lock-boxes.

But any system based on giving advance notice to parents will only work when advance notice and information is, in fact, made available. As last week's Super Bowl incident showed, this system simply won't work in the face of surprise. So we must also consider ways to eliminate the kind of surprise indecency that thwarts the best efforts of even the most vigilant parents.

Because such unwelcome surprises seem most apt to happen during live broadcasts, we should begin by evaluating the effectiveness of audio and video delays on the broadcast of live entertainment events. This type of safeguard has already been implemented by a number of broadcasters, and it would seem to offer the best real-time protection.

I also believe we'll need to enlist the help of broadcasters if we are ultimately to address the core of consumer concerns, because the issues encompass more than simply what is or is not indecent programming.

Mr. Chairman, if there is anything positive at all to be said about what's happened, it may be that all of us now appreciate the significant challenges we face in ensuring that our children are protected from indecent or violent programming and while also continuing to tap into the best of what broadcasting has to offer.

In response to these challenges, I fully support both the expanded enforcement efforts by the Commission, as well as the possibility of improving the existing safeguards. And I welcome the opportunity to discuss any additional matters this Committee may wish.

Thank you.

[The prepared statement of Commissioner Abernathy follows:]

PREPARED STATEMENT OF HON. KATHLEEN Q. ABERNATHY, COMMISSIONER,
FEDERAL COMMUNICATIONS COMMISSION

Good morning Mr. Chairman, Senator Hollings, and distinguished Members of the Committee. I appreciate the opportunity to appear before you this morning to discuss the FCC's efforts to protect children from indecent and violent broadcast programming.

A recent study found that even the youngest of children—those under the age of six—are immersed in today's media world, and a vast majority of parents have seen their children imitate behavior they have seen on television.¹ This comes as no surprise: children are a part of the broadcast audience for a substantial part of the broadcast day. Moreover, media has a profound impact on our perception of the world and gives us an impression of what is "normal" or acceptable in our society.

The law holds that broadcasters, because they make licensed use of publicly owned airwaves to provide programming to the general public, have a statutory obligation to make sure that their programming serves the needs and interests of the local audience. These local audiences inevitably include parents and children. The courts have upheld the existence of a compelling government interest in the well-being of children, as well as the prerogative of parents to supervise their children in furtherance of that well-being. Those simple and straightforward legal principles

¹Zero to Six, *Electronic Media in the Lives of Infants, Toddlers and Preschoolers*, Fall 2003, The Henry J. Kaiser Family Foundation.

are the foundation of the laws and regulations that limit the broadcast of indecent programming, and make available to parents means to help them control the programming available to their children.

Notwithstanding these well-established legal principles and the steps taken in furtherance of them, this hearing is a most timely response to an increasingly urgent set of problems. The recent Super Bowl halftime show was perhaps the most notorious, but only the most recent, example of a progressive coarsening of our culture as reflected in broadcasting, cable, and video games. And it is not simply an issue with regard to excessive sexual content in many mainstream programs; it is also reflected in the excessively violent content of material distributed to children via broadcasting and the Internet.

It finally appears that the level of public tolerance is waning for artists who regard any live appearance on broadcast television as an opportunity for indecent utterances or actions. And it is also waning for broadcasters who, despite all the surprise and contriteness they display *after* an indecent incident has occurred, seem bereft of the common sense and control needed to prevent such action *before* it happens.

It is particularly surprising that some more recent incidents have occurred *despite* this Commission's vigorous enforcement of the indecency laws as described by Chairman Powell, *despite* our announcement that these efforts would be further intensified by the prospect of levying higher fines and subjecting each separate utterance to a separate fine, *despite* our putting broadcasters on notice that we would not hesitate to designate licenses for revocation if the circumstances warranted, *despite* pending congressional legislation to increase our forfeiture authority, and *despite* the Administration's support for that legislation.

Historically the FCC's indecency rules and enforcement efforts have generally been effective at balancing broadcasters' First Amendment rights with society's right to protect its children from material that is unsuitable for them. Our rules and precedents have allowed us to calibrate our evaluations to the specific circumstances of particular broadcasts and to reach results that, hopefully, reflect the judgment an average broadcast viewer or listener would make. But with the advent of new technologies that deliver hundreds of channels into consumers' homes and an increased desire to target marketing to those elusive viewers aged 18 to 24, it appears that some radio and TV broadcasters have lost their footing and must be reminded not only of their public interest obligations but also of the critical role they play in forming and shaping society.

In light of this environment, the FCC must be given the ability to impose meaningful fines that will deter the future airing of indecent programming. Therefore, I strongly support your efforts to increase our forfeiture authority. Our current statutory maximum of \$27,500 could be perceived as a mere slap on the wrist. In contrast, for any violation of Title II of the Act, we are authorized to fine up to \$120,000 for a single violation, and \$1.2 million for continuing violations. The well-being of our children is just as important as Title II violations and our authority should be expanded to demonstrate this commitment.

The FCC also must do more to clarify the legal parameters regarding the broadcast of indecent material and encourage best practices by the industry. For example, relying on its understanding of past Commission rulings, the Enforcement Bureau staff recently issued a decision determining that Bono's use of the "f word" during a live telecast of the Golden Globes was not indecent. The full Commission is reviewing this staff decision. And while I would not want to comment on what action the full Commission may ultimately take, I will say that it is difficult to imagine very many contexts where the knowing broadcast of this obscenity would not be patently offensive under contemporary community standards.

Moreover, I am aware that concerns have been raised about the processes currently used to handle indecency complaints, including how these are enumerated and reported, the standard of documentation that must be met even to file a complaint, and the length of time it has taken us to resolve them. I support an expeditious reexamination of these matters. If these or any other procedural rules are unintentionally discouraging the public from filing otherwise credible complaints, they can and must be changed.

Nevertheless, these enforcement-based measures, at their best, are necessarily after the fact. And although I strongly support pending legislation to increase the amount the FCC may fine broadcasters for violating the indecency rules, monetary penalties alone may not fully prevent future misconduct, especially when it comes to the live broadcast of radio or TV programming. Therefore, in addition to current and enhanced enforcement measures, it may also be appropriate to consider improving and amplifying our complement of forward-looking safeguards as well.

Currently, these forward-looking safeguards consist of laws and regulations whose intent is to enable parents to limit their children's television viewing to those programs consistent with whatever value system the parents are striving to teach. Gone forever are the days when a parent could simply sit a child down in front of the TV and leave that child in the hands of the broadcast babysitter. Television viewing today requires that responsible parents be proactive in selecting and in monitoring the material their children are permitted to watch.

Our laws try to help parents understand and control the programs their children watch in several different ways, especially when it comes to pre-recorded material. The rule restricting indecent broadcasts to the hours of 10 p.m. to 6 a.m. puts parents on notice that they must exercise particular care in supervising the material that children watch or listen to during those hours. But it is perhaps even more important to understand what options are available to protect children from adult programs that broadcast during the main part of the broadcast day—programs that may not be indecent but include excessive violence or sexual content or are simply inappropriate for young children. The V-chip and program ratings legislation that Congress has passed is intended to help parents understand the content of broadcast programs, thereby assuring that the values they are attempting to instill in their children won't be compromised by exposure to programming at odds with those values.

Is this system working as well as one would wish? No, it is not. Most parents do not understand how to use the V-chip and are unaware that a TV ratings system exists.² At the same time, broadcasters are trying to retain audiences that have been deserting them in droves in favor of cable programming that is not subject to any indecency restrictions. As a consequence broadcast licensees are constantly pushing the programming envelope in an attempt to be more like cable.

The shortcomings of the present parent advisory-based system are more troubling, especially when it comes to facilitating the screening of violent programming which, unlike indecency, is not subject to FCC enforcement sanctions. This is not because violence is less prevalent on television than indecency; on the contrary, a recent report by the Kaiser Family Foundation found that nearly two out of three programs contained some violence, averaging about six violent acts per hour. Moreover, identifiable harm resulting from televised violence has been documented: laboratory experiments have found that exposure to media violence increases children's tolerance for real-life aggression.³

This Committee has grappled with the many legal and practical issues involved in attempting legislatively to define and limit televised violence. In the absence of statutory authority, the Commission is reaching out to the public to help make parents aware of the V-chip and the program ratings system, and how to use them. I have tried to address this problem by working with the FCC's Consumer and Governmental Affairs Bureau to create an FCC website called *Parents Place*. *Parents Place* explains the rating systems, including what the ratings mean and when and where the ratings are displayed and directs parents to websites that identify age-appropriate programming. It also explains the V-chip is and how it works. In addition, I dedicated an issue of my consumer newsletter, *Focus on Consumer Concerns*, to how parents can protect children from objectionable programming on television. This newsletter also includes details on the V-chip technology and ratings system, as well as other blocking tools, including lockboxes.

Nevertheless, any system based on giving advance notice to parents, however it is constituted, will work only when advance notice and information is, in fact, made available. As last week's Super Bowl debacle showed, these early warning systems simply won't work in the face of surprise. Whatever we may be able to do about either improving the existing system or informing more parents how to use it, both efforts are meaningless unless we also consider ways to eliminate the kind of surprise indecency that thwarts the best efforts of even the most vigilant parent.

Because such unwelcome surprises seem most apt to happen during live-broadcast entertainment or awards shows, we could begin by evaluating the effectiveness of a five-or ten-second audio and video delay on the broadcast of live entertainment events. This type of safeguard has already been implemented by a number of broadcasters, and it would seem to offer the best assurance against the recurrence of the kind of unfortunate spur-of-the-moment displays that we are increasingly being subjected to.

I also believe we will need to enlist the help of broadcasters if we are to ultimately address consumer concerns because the issues encompass more than simply what is or is not indecent programming. I am somewhat heartened that broad-

²See, e.g., Parents and the V-Chip 2001, July 2001, The Henry J. Kaiser Family Foundation.

³*TV Violence*, Spring 2003, The Henry J. Kaiser Family Foundation.

casters are finally getting the message. Just last week I spoke at a conference organized by Fox Entertainment Group for their creative executives. All of senior management were there, from Rupert Murdoch on down, and the focus of the conference was how their producers and programmers can balance creativity and responsibility. I discussed not only what the law requires with respect to indecency on the airwaves, but how they, as broadcasters, cable programmers, and filmmakers, can and should go beyond the letter of the law to ensure that their programming reflects the values of the communities they serve. My remarks were followed up by a series of panels that included parents and their children, producers, government officials, and members of such groups as Kaiser Family Foundation and the Parents Television Council. The goal was to have an open and frank discussion about media content, the FCC's indecency rules and the networks responsibility to its viewers.

Mr. Chairman, if there is anything at all positive to be said about what has happened, it may be that all of us now appreciate the significant challenges we face in ensuring that our children are protected from indecent or inappropriate programming while continuing to tap into the best of what broadcasting has to offer. In response to these challenges, I fully support both the expanded enforcement efforts by the Commission as well as the possibility of improving the existing safeguards, and I welcome the opportunity to discuss any additional matters the Members of this Committee may wish.

The CHAIRMAN. Thank you very much.
Dr. Copps?

**STATEMENT OF HON. MICHAEL J. COPPS, COMMISSIONER,
FEDERAL COMMUNICATIONS COMMISSION**

Dr. COPPS. Mr. Chairman, Senator Hollings, Members of the Committee, thank you for having us up here this morning to talk about an issue that has all America talking. This is not the first time I have expressed my concern to this Committee on the important issue of indecent and violent programming on the public's airwaves. America has a problem. And this Committee has responded to that problem with vision and vigor, and that's exactly what this battle against indecency requires.

There is frustration out there, and there is anger. I saw the people's anger all last year, when Commissioner Adelstein and I took to the road in our media ownership forums. And I saw it again just 2 weeks ago, before the Super Bowl, when all the Commissioners were in San Antonio. Parents lined up to talk from their heart about programming's addiction to sex, violence, and profanity. People all across this land of ours are demanding action—action now—to stop the increasing sex and violence bombarding our airwaves.

Certainly, there have been a couple of high-profile incidents that have garnered widespread attention, none more so than last week's shameful halftime display at the Super Bowl. But they're just the tip of the iceberg. The real test for the FCC is how we address the thousands of other complaints pertaining to hundreds of other programs. And, so far, we don't have any results to crow about, and the airwaves keep deteriorating.

To tackle the problem of sex and violence on our airwaves, I am all for additional authority from Congress. We need all the help and all the push that you can give us. But, in the meantime, I want to see the Commission use the arrows we already carry in our quiver. Accordingly, I'm asking my colleagues to take the following five concrete steps.

Number one, use our full authority to punish transgressors—license revocation, license non-renewal, and higher fines. We need to send the more outrageous transgression and repeat offenders to li-

cense-revocation hearings. We need to do it now. The Commission has never used this authority, and nothing would send so powerful a message to those who produce these programs. We need to impose meaningful fines for each utterance, rather than more mere cost of doing business fines.

We need to get serious about enforcing the profanity part of the statute. It sits there, ignored. Let's also look at advertisements, as well as programs.

And we need to establish an effective license-renewal process that meets our responsibility not to renew the licenses of those who traffic in indecent and violent programming. Companies that do not serve the public interest should not hold a public license.

Two, reform the complaint process. The Commission should commit to addressing all complaints within a specific timeframe, such as 90 days. It's the Commission's responsibility to investigate complaints that the law has been violated, not the citizen's burden to prove the violation. There is much we can do to make the complaint process user-friendly, and Commissioners themselves, rather than the bureau, should be making the important indecency calls.

Three, tackle graphic violence. Compelling arguments have been made that excessive violence is every bit as indecent as the steamiest sex. Senator Hollings, Senator Brownback, and others on this Committee have been eloquent champions of action on this front. The Commission needs to move on this now.

Four, convene an industry summit that includes broadcasting, cable, and DBS. Industry does need to step up to the plate to tackle the issues of indecent and violent programming. I'll bet there isn't one executive sitting in this room today, who has not heard my personal plea on this over the past two and a half years, and I'm pleased to learn that the Chairman is joining me in this effort. Broadcasters used to police themselves with a voluntary code. It wasn't perfect, but it was credible. Why can't they try to do it again? This summit needs to include—absolutely must include—cable and satellite providers. Perhaps cable could explore such options as offering a family tier. My colleague, Commissioner Martin, has made positive suggestions about this. Cable could also make sure that family channels offer all family friendly programming. And broadcasters could commit to family hours during prime time. I'm mindful of Senator Hollings' admonition that voluntary is no substitute for us doing our job and for us enforcing the law; nor can it be allowed to let anybody off the hook. Still, I believe it could contribute.

Five, affirm the rights of local broadcasters to control their programming. In 2001, local broadcasters filed a petition alleging that networks are hindering affiliates' ability to preempt broadcast network programming not suitable for their communities. This petition has sat unaddressed for over 2 years. The Commission needs to issue a decision.

One other thought, and I think it's important. At the same time that we have not been adequately enforcing indecency laws, the Commission has been loosening media concentration protections without considering whether there is a link between increasing media consolidation and increasing indecency. It makes sense that as media conglomerates grow ever bigger and control moves further

away from the local community, community standards go by the board. We opened the doors to unprecedented levels of media consolidation, and what do we get in return? More filth, less real news, and a lot of programming that our kids just should not be experiencing. We should have examined this last year before we opened the doors to more concentration.

The consolidation locomotive continues to steam down the track. As was already mentioned, the wires reported this morning a bid by Comcast to take over Disney. And I think we'll all need to think about how that could affect the ability to control both distribution and content.

In closing, I want to see this Commission really step forward and focus on the things we can do with the authority you long ago gave us. This is about the public interest, responsible broadcasting, and the well-being of our kids. This is about telling millions of Americans that we're going to see this job through.

So thank you for this hearing. It's a true public service. Thank you for the commitment and leadership so many of you on this Committee bring to this legal and moral issue. And I look forward to hearing your comments and further thoughts on all of this.

[The prepared statement of Commissioner Copps follows:]

PREPARED STATEMENT OF HON. MICHAEL J. COPPS, COMMISSIONER,
FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman, Senator Hollings, Members of the Committee, I am honored to appear before you again this morning. This is not the first time that I have addressed this Committee on the important issue of indecent and violent programming on the public's airwaves. I appreciate the attention you have devoted to this issue and for inviting me to share some of my perspectives, and more importantly, to hear yours.

Every time I boot up my FCC computer, every time I visit a town or city across America, I hear the same refrain from people: we are fed up with the patently offensive programming—the garbage—coming our way so much of the time. I saw the people's anger all last year when Commissioner Adelstein and I took to the road in our media ownership forums, and I saw it again just two weeks ago when all the Commissioners were in San Antonio—parents lined up to express their frustration with programming's addiction to sex, violence and profanity. We even heard from children who were fed up with what they're seeing and hearing. People all across this land of ours are demanding action—action now—to stop the increasing sex and violence bombarding their airwaves.

Indecency was the subject of my first statement when I arrived at the FCC in 2001. For much of the past two and a half years, it has been an uphill battle. I am pleased that the Commission now seems to be coming around to the idea that we need to take action against indecency. I hope we will now also get serious about our obligation to enforce the profanity part of the statute. In any event, I will know the Commission is serious about tackling indecency when we compile a record to match our rhetoric. We are not there yet.

Certainly there have been a couple of high profile incidents that have garnered widespread attention, none more so than last week's shameful half-time display at the Super Bowl, as probably a quarter billion people around the world watched us celebrate what should have been an all-American evening of sports and artistic creativity for the entire family. We got something far different. This latest episode has had a galvanizing effect both within and outside the Commission. Sometimes one incident can spark a revolution, but the seeds of this revolution have been building—and have been painfully obvious—for a long, long time.

The real test for the FCC is not how we address this particular incident, although what we do and how quickly we do it will be instructive. The real test is how the Commission addresses the thousands of other complaints pertaining to hundreds of other programs. And we have so far failed this test. Let's look at the facts. Under the FCC numbers, which at that time significantly under-counted the number of complaints we actually received, there were almost 14,000 complaints about 389 different programs in 2002. Yet, of those hundreds of programs, we issued a mere

seven notices of apparent liability (NALs) that year—and only two of those have been fully resolved. In 2003, the number of complaints jumped to over 240,000 and concerned 375 different programs. Yet, this past year we issued only *three* NALs. If I was a Big Media executive or an advertising consultant figuring out how to attract all those 18–34 year old eyeballs to shows so I could sell them products, I wouldn't exactly be quaking in my boots that the big hammer of the FCC was about to cause me serious pain. I'd say: "There aren't any torpedoes, full speed ahead." Too many indecency complaints from consumers and an avalanche of truly indecent broadcasts are falling through the cracks. Concerned parents are paying the price. Worse, our kids are paying a price they shouldn't have to pay.

"Why don't those parents just turn the set off?" I have been told as I push to get some action on indecency. But are we supposed to just turn off the all-American Super Bowl? The half-time show gives the lie to that one. "Let the V-Chip handle it" is another refrain I hear. Don't get me wrong, I like the V-Chip. But it was irrelevant that Sunday night. How do you warn against half-time shows or slimy ads or sensation-seeking previews of coming movie and television attractions?

Not enough has changed over the past few years in the FCC's enforcement of the indecency laws. And at the same time, I believe that some of the Commission's actions pretty much guarantee that things will get even worse. Instead of enforcing indecency laws, the Commission recently rewarded giant station owners by dismantling media concentration rules that provided at least some protection against too few Big Media companies owning too many broadcasting outlets. We open the door to unprecedented levels of media consolidation and what do we get in return? More garbage, less real news and progressively crasser entertainment. Should we really be surprised that two of the very biggest media conglomerates—Viacom and Clear Channel—alone accounted for more than 80 per cent of those fines that were proposed for indecency? We weakened our concentration rules without even considering whether there is a link between increasing media consolidation and increasing indecency on our airwaves. It makes intuitive sense that there is. As media conglomerates grow ever bigger and control moves further away from the local community, it stands to reason that community standards go by the boards. Who is going to be more attuned to community standards—the national owner who is driven by Wall Street and Madison Avenue, or a broadcaster closer to the local scene and who, in some communities, you still see at church, at the store, and around town? I begged for us to study what relationship exists between the rising tide of media consolidation and the rising tide of media indecency before we voted on June 2 to loosen the ownership safeguards. I thought we owed that to our kids. Maybe now the rising tide of public anger will force some action.

We know this: there is a law against indecency. The courts have upheld it. And each one of us at this table has an obligation to enforce that law in a credible and effective way. Each of us has a mandate to protect children from obscene, indecent and profane programming.

Some have argued that the Commission needs additional authority from Congress so that it can make a serious effort to stop indecency. I am all for more authority. But in the meantime, let us use the arrows we already hold in our quiver. Accordingly, I am asking my colleagues to take the following five steps, all of which can be done under our current statutory authority and which would send a strong message that the FCC is serious about eliminating indecency on our television sets and radios.

1. *Use Our Full Authority to Punish Transgressors—License Revocation, License Non-Renewal and Higher Fines:* We need to send some of the more outrageous transgressions and repeat offenders to license revocation hearings. Taking some blatant offender's license away would let everyone know that the FCC had finally gotten serious about its responsibilities, and I think we would see an almost instantaneous slamming on of the brakes in the race to the bottom. The Commission has never used this authority.

If the Commission can't bring itself to do this, we should at least be imposing meaningful fines. "Cost of doing business fines" will never stop Big Media's slide to the bottom. We should have long since been fining violators for each utterance on a program, rather than treating the whole program as just one instance of indecency. All of the fines we have imposed against Viacom could be paid for by adding one commercial to the Super Bowl—and the company would probably end up with a profit. Fining every utterance could lead to significantly higher fines. We have long had the authority to take this step. We should have been using this authority years ago.

The Commission should also establish an effective license renewal process under which we would once again actually consider the manner in which a sta-

tion has served the public interest when it comes time to renew its license. It is our responsibility not to renew the licenses of those who air excessive amounts of indecent and violent programming. We need to take our job seriously in the license renewal process. It all comes down to this: station owners aren't given licenses to use the public's airwaves to peddle smut. They are given licenses to serve the public interest. When they no longer serve the public interest, they should no longer hold a public license.

2. *Reform the Complaint Process:* The process by which the FCC has enforced the indecency laws has for too long placed inordinate responsibility upon the complaining citizen. That's just wrong. It is the *Commission's* responsibility to investigate complaints that the law has been violated, not the citizen's responsibility to prove the violations.

The Commission should commit to addressing all complaints within a specific time-frame such as 90 days. Today, when complaints often languish, the message is loud and clear that the FCC is not serious about enforcing our Nation's laws. Recent cases such as Infinity's repulsive WKRK-FM case, Infinity's Opie and Anthony show and Clear Channel's "Bubba the Love Sponge" all took more than a year for an initial decision. Congress expected action from the FCC, but all too often our citizens' complaints seem buried in bureaucratic delay or worse. I would add here that some of this material goes beyond the indecent to the obscene. We ought to treat it as such and move against it or, if we're still timorous about it, send it over to the Department of Justice with a recommendation for criminal proceedings.

Lack of complete information about what was said and when it was broadcast should not be allowed to derail our enforcement of the laws. The Commission appears to be coming around to the idea that a tape or transcript is not required. Yet, the Commission's website still seems to indicate that this information is needed or a complaint will be dismissed without an investigation. I have suggested that broadcasters *voluntarily* retain tapes of their broadcasts for a reasonable period of time. Many broadcasters already retain such recordings, but I believe that *all* broadcasters should do so. That way, when someone complains about what went out on the public airwaves we can have a record to see how those airwaves were used—or abused.

And, in matters of such importance, I believe the Commissioners themselves, rather than the Bureau, should be making the decisions. Issues of indecency on the people's airwaves are important to millions of Americans. I believe they merit, indeed compel, Commissioner-level action.

3. *Tackle Graphic Violence:* It's time for us to step up to the plate and tackle the wanton violence our kids are served up every day. Senator Hollings, Senator Brownback and others on this Committee have been eloquent champions of this for years. Compelling arguments have been made that excessive violence is every bit as indecent as anything else that's broadcast. Those arguments are strong enough to demand our attention. We don't need more studies. Over the years, dozens of studies have documented that excessive violence has hugely detrimental effects, particularly on young people. I don't say this is a simple problem to resolve, because it is not. But that's no excuse to run away from it. Wanton violence on the people's airwaves has gone unaddressed too long. Here too, we pay a high price, especially the kids.
4. *Convene an Industry Summit that includes Cable and DBS:* I have long suggested, without much success, that broadcasters voluntarily tackle the issues of indecent and violent programming. I'll bet there is not one industry executive sitting in this room today who hasn't heard my plea on this over the past two-and-a-half years. Many of you will remember the Voluntary Code of Broadcaster Conduct that for decades saw the industry practicing some self-discipline in the presentation of sex, alcohol, drug abuse and much else. It didn't always work perfectly, but at least it was a serious and credible effort premised on the idea that we can be well-entertained without sinking further into the bottomless depths of indecency. The issue here is not forcing industry to do this; it's a question of why doesn't industry step up to the plate and have a conversation with itself that tens of millions of Americans want it to have.

This summit must include cable and satellite providers. Eighty-five percent of homes get their television signals from cable or satellite. Most people don't recognize the difference as they flip channels between a broadcast station and a cable channel. Because cable and satellite are so pervasive, there is a compelling government interest in addressing indecency when children are watching. The courts have already applied this to cable.

It would be infinitely preferable, and far quicker, to have industry step up to the plate rather than have to go the route of legislation and regulation that can take a long time and is likely to be contested every step of the way. Perhaps cable could explore such options as offering a family tier so that families don't need to receive channels like MTV in order to get the Disney Channel. My colleague Commissioner Martin has made positive suggestions about this. Cable could also make sure that family channels offer all family-friendly programming. And broadcasters could commit to family hours during prime time. I believe that with encouragement from Congress and from the Commission, and to the applause of most Americans, our radio, television, cable and satellite chieftains could come together to craft a new code of conduct that would serve the needs of their businesses as well as those of concerned families. And I'll bet they could get it done this very year. Where is the industry leader who will do this?

5. *Affirm the Rights of Local Broadcasters to Control Their Programming:* I was struck at our recent Charlotte localism hearing when I asked both a local broadcaster and a representative from one of the stations owned by a national network how often they had preempted a show based on community standards. The national station representative admitted he had never done so. The local owner stated that he frequently took the initiative—and this isn't easy—and he refused to run shows like *Married by America*, *Cupid*, and others.

In 2001, local broadcasters filed a petition asking the Commission to affirm a local broadcaster's autonomy in making programming decisions for its station. I think we should be concerned about allegations that networks are hindering affiliates' ability to refuse to broadcast network programming that is not suitable for their communities. Yet, this petition has sat unaddressed for over two years. The Commission should issue its decision promptly.

Mr. Chairman, Senator Hollings, distinguished Members of this Committee, these are a few concrete steps that I advocate our taking to demonstrate that this Commission is finally dead serious about taking a firm stand against indecency as the level of discourse on the public's airwaves deteriorates and stations continue to push the envelope of outrageous programming and promotions ever further. I don't know what the precise mix of legislative initiative, regulatory enforcement and voluntary industry action should be here, but millions of Americans are asking us to get on with the job. Today we have the best of television and we have, undeniably, the worst of television. When it is good, it is very, very good; and when it is bad, it is horrid. It is also shameful. I don't believe this is what the great pioneers of the broadcast industry had in mind when they brought radio and television to us.

This is about the public interest, responsible broadcasting, and providing programming that appeals to something other than the lowest common denominator. There needs to be inviolable space out there that appeals to the better angels of our nature and that carves out a safe harbor for our kids. That may become harder and harder to do as technology evolves, but our public interest responsibility does not evolve. It is a constant. And if we are true to it here, we will find a way to translate all the concern and anger over this issue into policies and procedures that can yet vindicate what the public airwaves can do for us all. We need to do this *now*.

This hearing is a public service and I appreciate the opportunity to testify. I am pleased that this Committee is on the job and has already demonstrated its commitment and leadership on several of the specific items I have discussed here this morning. I look forward to hearing your comments and further thoughts on all this.

The CHAIRMAN. Thank you very much.
Mr. Martin?

STATEMENT OF HON. KEVIN J. MARTIN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Commissioner MARTIN. Thank you, Mr. Chairman and distinguished Members, for the invitation to be with you this morning.

Most consumers today can choose among hundreds of television channels, including some of the best programming ever produced. But television today also contains some of the coarsest and most violent programming ever aired, and, unfortunately, more and more of it. Indeed, the networks appear to be increasing the

amount of programming designed to push the envelope and the bounds of decency.

For instance, a recent study found that the use of profanity during the family hour had increased 95 percent from 1998 to 2002. At the FCC, we used to receive indecency complaints by the hundreds. Now they come in by the hundreds of thousands. Clearly, consumers, and particularly parents, are increasingly frustrated and, at times, outraged. Parents who want to watch television together with their children too often feel they have too little to watch, and the broadcast networks become edgier to compete with cable. Prime time on broadcast television has become less family friendly.

Cable and satellite television offer some great family oriented choices, but parents cannot subscribe to those choices alone; rather, they are forced to buy the channels they do not want their families to view in order to obtain the family friendly channels they desire. They must buy the Touch the Hooker episode of Spike TV's Joe Schmo show in order to get the Discovery Channel. We need to provide parents with better tools to help them navigate the entertainment waters.

A year ago, I wrote a law review article about the need to provide parents such tools, and I request that the article be submitted into the record today. I'm even more concerned about this issue today.

I support Chairman Powell and his recent efforts with respect to the Super Bowl halftime show. I also agree with him that the enforcement bureau is wrong when it finds profanities acceptable merely because they are used as adjectives. I also agree with him that our Nation's children, parents, and citizens deserve better. We, at the FCC, can be more responsive to these complaints and frustrations. We need to provide parents with more tools to enable them to watch television as families and to protect their children from violent and indecent programming.

We need to do more. And I believe there are four steps we should take now to begin to address this problem. First, we should more aggressively enforce the law. Congress has charged the Commission with protecting families from obscene, indecent, and profane material. Our rules need to serve as a significant deterrent to media companies considering the airing of such programming. And to achieve that goal, we need serious fines coupled with aggressive enforcement. I strongly support the pending legislation to increase fines for airing inappropriate material. Indeed, in almost every indecency case that has come before us, I have found the fine inadequate and urged the Commission to do more. In fact, I have argued that there is action we can take now, within our existing authority, to get tougher on broadcasters who violate the law.

Last March, I began urging the Commission to use our full statutory authority to fine broadcasters per utterance, rather than per show. Using this approach, I would have fined the Detroit Radio Show, for example, \$247,000, instead of only \$27,000 last year.

In addition, the FCC should use its statutory authority to address the broadcast of profanity. The indecency statute we enforce prohibits obscene, indecent, and profane language. Profanity on television and radio appears to be widespread, yet I have not found

even a single instance in which the Commission concluded a broadcast was profane.

Finally, we should respond to the thousands of complaints that are pending, and make quick responses a matter of course and within a specific deadline.

Two, we should affirm the local broadcaster's ability to reject inappropriate programming. Several years ago, local broadcasters complained that the networks were restricting their ability to reject inappropriate programming. This ability is critical to those local broadcasters that want to keep coarser programming off the air in their communities. In this respect, the affiliates provide a natural check on the control of network programming in the marketplace rather than through the direct government oversight of network content. We should clarify immediately that local broadcasters have, not only this opportunity, but this obligation of serving their local communities.

Third, we should urge broadcasters to reinstate the family hour. Over a year ago, I called on broadcasters to reestablish the family hour, devoting the first hour of prime time to family friendly programs that parents and children could enjoy together. Such a family hour used to be standard. But when the broadcasters' old code of conduct was abandoned, the family hour went with it. And broadcasters should bring back this family time.

While I will continue to call for the industry to action, the industry can take action on its own. A year ago, Paxson Communication urged the Commission to issue a notice on a public interest code of conduct, which included the concept of a family hour. We should put this request out for comment and publicly endorse the concept of a family hour and the importance of it.

Fourth, we should address cable and satellite programming. Broadcast cannot be the end of the story. Children today do not distinguish between channels 4 and 40. In a world in which more than 85 percent of homes receive their television programming from cable and satellite providers, we need a comprehensive solution. Over a year ago, I urged cable and satellite operators to take action. I continue to believe something needs to be done to address this issue.

As I have suggested, I think cable and satellite operators could offer an exclusively family friendly programming tier as an alternative to the expanded basic tier on cable or the initial tier on DBS. Parents could get Nickelodeon and Discovery without having to buy MTV and other adult-oriented fare. A choice of a family friendly package would provide valuable tools to parents wanting to watch television with their families, and it would help them protect their children from violent and indecent programming.

Alternatively, cable and DBS operators could offer programming in a more a la carte manner. For example, they could permit parents to request not to receive certain channels, and reduce the package price accordingly.

Finally, I am sympathetic to many people asking why our indecency regulations apply only to broadcast. Indeed, today programming that broadcast networks reject because of concerns about content may end up competing on basic cable networks, and radio per-

sonalities that we have fined for indecency violations have just moved to satellite radio.

Increasingly, I hear a call for the same rules to apply to everyone for a level playing field. If cable and satellite operators continue to refuse to offer parents more tools, basic indecency and profanity restrictions may be a viable alternative that should be considered.

In conclusion, I share your concern about the increase in coarse programming on television and radio today, and I believe something needs to be done. I hope that the proposals for action that I have made today can help, and I welcome your guidance.

Thank you, and I look forward to your questions.

[The prepared statement of Commissioner Martin follows:]

PREPARED STATEMENT OF HON. KEVIN J. MARTIN, COMMISSIONER,
FEDERAL COMMUNICATIONS COMMISSION

Thank you for this invitation to be here with you this morning. I look forward to listening to your comments and to answering any questions you may have.

Most consumers today can choose among hundreds of television channels, including some of the best programming ever produced. But television today also contains some of the coarsest and most violent programming ever aired—and, unfortunately, more and more of it. Indeed, the networks appear to be increasing the amount of programs designed to “push the envelope”—and the bounds of decency. For instance, a recent study found that the use of profanity during the “Family Hour” increased 95 percent from 1998 to 2002.¹ Another study found that two-thirds of television shows in the 2001–2002 season had sexual content.² This trend becomes even more disturbing in light of the studies that have documented the harm that such programming, particularly violent television, can have on young people. At the FCC, we used to receive indecency complaints by the hundreds; now they come in by the hundreds of thousands. Clearly, consumers—and particularly parents—are increasingly frustrated and, at times, outraged.

Parents who want to watch television together with their children too often feel that, despite the large number of viewing choices, they have too little to watch. As the broadcast networks become “edgier” to compete with cable, prime time on broadcast television has become less family friendly. Cable and satellite television offer some great family-oriented choices, but parents cannot subscribe to those channels alone. Rather, they are forced to buy the channels they do not want their families to view in order to obtain the family-friendly channels they desire (e.g., they must buy the “Touch the Hooker” episode of Spike TV’s *Joe Schmo* show in order to get the Discovery Channel).

We need to provide parents with better tools to help them navigate the entertainment waters. A year ago, I gave a speech and wrote an article about the need to provide parents such tools, and I have attached that article for your consideration. I am even more concerned about this issue today.

I support Chairman Powell and his recent efforts with respect to the Super Bowl half time show. I also agree with Chairman Powell that the Enforcement Bureau is wrong when it finds profanities acceptable merely because they are used as adjectives. I also agree with him that our Nation’s children, parents and citizens deserve better.

We at the FCC can be more responsive to these complaints and frustrations. We need to provide parents with more tools to enable them to watch television as a family and to protect their children from violent and indecent programming. We need to do more. I believe there are four steps we should take now to begin to address this problem.

1. We Should Aggressively Enforce the Law. Congress has charged the Commission with protecting families from obscene, indecent, and profane material. Our rules need to serve as a significant deterrent to media companies considering the airing of such programming. To achieve that goal, we need serious fines coupled with aggressive enforcement.

¹See Nell Minow, “Standards for TV language rapidly going down the tube,” *Chicago Tribune*, Oct. 7, 2003 at C2 (discussing study by the Parents Television Council).

²Kaiser Family Foundation, “Sex On Television 3: Content And Context, Biennial Report Of The Kaiser Family Foundation” at 14 (Feb. 2003).

I strongly support the pending legislation to increase fines for airing inappropriate material, and I believe such authority is critical to making the decision to air indecent or profane language a bad business decision. Indeed, in almost every indecency case that has come before us, I have found the fine inadequate and urged the Commission to do more. I have argued that there is action we can take *now*—within our existing authority—to get tougher on broadcasters who violate the law. Last March, I began urging the Commission to use our full statutory authority to fine broadcasters “per utterance,” rather than per show. Using such an approach, the fines I proposed were several times higher than the fines the majority imposed. For instance, in a Notice of Apparent Liability from last April dealing with a Detroit radio show, the fine would have been \$247,500 instead of only \$27,500; in the most recent Notice of Apparent Liability against Clear Channel, the fine would have been well over a million dollars.

In addition, the FCC should use its statutory authority to address the broadcast of profanity. The indecency statute we enforce prohibits “obscene, indecent and profane language,” but the Commission appears to have read the last word out of the statute. I have not yet found even a single instance in which the Commission concluded a broadcast was profane. Yet, profanity on television and radio appears to be widespread.

Finally, we should respond to the thousands of complaints that are pending—and make quick responses a matter of course. Last year, the Commission and the Enforcement Bureau combined issued only three notices of liability, and only one forfeiture order. Yet we received tens of thousands of complaints. It doesn’t matter how tough our fining authority is if we don’t actually enforce the rules. Consumers should not have to wait years to have their complaints heard. And broadcasters should expect that if they violate our rules, we will respond swiftly.

2. *We Should Affirm Local Broadcasters’ Ability to Reject Inappropriate Programming.* Several years ago, local broadcasters, through the Network Affiliated Stations Alliance, complained that the networks were restricting their ability to reject inappropriate programming. They asked us to clarify our rules and reaffirm this right and responsibility. Our rules should protect a broadcaster’s ability to refuse to air programming that is unsuitable for its local community. This ability is critical to those local broadcasters that want to keep coarser network programming off the air in their communities. Last week, for example, there were news reports of ABC, CBS, and NBC affiliates pressuring their networks to use tape delays in upcoming Awards shows and not to air certain programming so that indecent material and profanity could be avoided. In this respect, the affiliates provide a natural check on the control of network programming in the marketplace, rather than through direct government oversight of network content. We should grant the broadcasters’ request, clarifying immediately that local broadcasters have this opportunity—and obligation—when serving their local communities.

3. *We Should Urge Broadcasters to Reinstate the Family Hour.* Over a year ago, I called on broadcasters to reestablish the Family Hour, devoting the first hour of prime time to family-friendly programs that parents and children could enjoy together. Such a Family Hour used to be standard and was even incorporated into the National Association of Broadcasters’ Code of Conduct. When the Code was abandoned due to unrelated antitrust concerns, the Family Hour went with it. Broadcasters should bring back the Family Hour. They should give families at least one hour, five days a week, when they can turn to broadcast television with comfort, confidence, and enthusiasm.

While I will continue to call for this industry action, the Commission can take action on its own. A year ago, Paxson Communications urged the Commission to issue a notice on a voluntary “Public Interest Code of Conduct,” which included the concept of a Family Hour. Broadcasters could voluntarily opt into this Code and the accompanying public commitments. The Code also could include a commitment to provide a certain amount of family programming and to limit coarse programming to certain hours. We should put this request out for comment and publicly endorse the importance of the Family Hour. Such a voluntary code could serve as an easy indicator for parents searching for a way to determine which channels are appropriate for family viewing.

4. *We Should Address Cable and Satellite Programming.* I believe the previous steps could help address the amount of indecent and otherwise coarse programming on broadcast television, but broadcast cannot be the end of the story. Today, children do not distinguish between channels 4 and 40, and cable and broadcast programming compete aggressively for the same viewers and advertisements. In a world in which more than 85 percent of homes receive their television programming from cable and satellite providers, we need a comprehensive solution.

Over a year ago, I urged cable and satellite operators to take action. Thus far, there has been no response. I continue to believe something needs to be done to address this issue.

As I suggested, cable and satellite operators could offer an exclusively family-friendly programming package as an alternative to the “expanded basic” tier on cable or the initial tier on DBS. This alternative would enable parents to enjoy the increased options and high-quality programming available through cable and satellite without having to purchase programming unsuitable for children. Parents could get Nickelodeon and Discovery without having to buy MTV and other adult-oriented fare. A choice of a family friendly package would provide valuable tools to parents wanting to watch television with their families, and would help them protect their children from violent and indecent programming. Other subscribers, meanwhile, could continue to have the same options they have today.

Alternatively, cable and DBS operators could offer programming in a more a la carte manner. For example, they could permit parents to request not to receive certain channels and reduce the package price accordingly. Under this second option as well, parents would be able to receive (and pay for) only that programming that they are comfortable bringing into their homes.

Finally, I am sympathetic to the many people asking why our indecency regulations apply only to broadcast. Indeed, today programming that broadcast networks reject because of concerns about content may end up on competing basic cable networks, and radio personalities that we have fined for indecency violations just move to satellite radio. Increasingly, I hear a call for the same rules to apply to everyone—for a level playing field. If cable and satellite operators continue to refuse to offer parents more tools such as family-friendly programming packages, basic indecency and profanity restrictions may be a viable alternative that also should be considered.

In conclusion, I share your concern about the increase in coarse programming on television and radio today. Something needs to be done. I hope that the proposals for action that I have made today can help. I also welcome your guidance.

Thank you, and I look forward to answering any questions you may have.

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FAMILY-FRIENDLY PROGRAMMING: PROVIDING MORE TOOLS FOR PARENTS

Kevin J. Martin *

Since then-Chairman of the Federal Communications Commission Newton Minow dubbed television a “vast wasteland” in 1961, the medium has changed dramatically. Consumers today have so many programs from which to choose that the complaint is rarely a lack of high-quality television shows. Rather, the concern for many consumers is how to navigate these teeming waters. This course-plotting can be a particular challenge for parents who desire to watch television together with their children. I therefore encourage the television industry to provide these parents more navigational tools.

Consumers today have exponentially more viewing options, and they can choose from a remarkable array of programs, both on broadcast and on subscription television. They can view these programs using digital technology that produces a crisp, clear *color* picture far surpassing the fuzzy black-and-white world of 1961. Importantly, the burgeoning competition among television networks has resulted in some of the best programming ever produced. It also has enabled such diversity that niche channels, which devote 100 percent of their time to science, art, or history, can be successful.

Television today, however, also presents some of the coarsest programming ever aired. Parents who want to watch television together with their children too often feel that, despite the increased number of viewing choices, they have too little to watch. Prime time on broadcast television has become less family friendly. Cable and Direct Broadcast Satellite (“DBS” or “satellite”) do offer new family-oriented choices, but parents cannot subscribe to those channels alone. Rather, they must take the channels they do not want their families to view along with the Disney Channel and Discovery Channel.

* Commissioner, Federal Communications Commission. Commissioner Martin was nominated to be a member of the FCC by President George W. Bush on April 30, 2001, and was sworn in on July 3, 2001. Mr. Martin serves a five-year term expiring in June 2006. The Author thanks Catherine Bohigian, his legal advisor on media issues, for her assistance on the preparation of this Essay.

I believe it is time for our culture to rethink our approach to family-friendly programming. Parents should have the tools to help their children take advantage of the *good* that television can offer. Certainly, broadcasters, cable, and satellite operators enjoy significant First Amendment rights to choose the content they deliver to our homes. But these companies can take it upon themselves to improve the tools they provide parents, so that parents are able to enjoy the diversity television today has to offer, yet still protect their children from content they believe inappropriate for family viewing.

I therefore propose two challenges to the industry: I urge broadcasters to create a “Family Viewing Hour” during the first hour of prime time. I also urge cable and satellite operators to offer a family-friendly programming package. Together, these steps would empower parents and enhance the value that television can offer.

Marketplace Developments

When Chairman Minow observed a “vast wasteland,” consumers generally had three choices for television programming—ABC, NBC, and CBS—and thus these three national broadcast networks dominated the television marketplace.¹ Even with the few independent stations available in some of the larger markets, television audiences were presented with a limited amount of viewing options. Cable television, formerly known as Community Antenna Television (or CATV), was still in its infancy; by 1963, about 1 million homes subscribed to cable,² but the service was largely used to extend the reach of broadcast signals, not to offer different programming.

Over the last four decades, the television landscape has changed dramatically. Broadcast television options have grown considerably. Just since 1980, the number of full-power television stations has increased almost 70 percent.³ With the introduction of the Fox Television network in 1986, the collection of dominant networks—once known as the “Big Three”—became referred to as the “Big Four.” The path then was paved for the entrance of additional new networks. In January 1995, the fifth and sixth networks were born: Turner Broadcasting System launched the WB Network, and Paramount Television launched the United Paramount Network (“UPN”). These networks currently reach 88 percent and 97 percent of U.S. television homes, respectively.⁴ More recently, Paxson Communications launched PAX TV in 1998, reaching 85 percent of the country.⁵

The current transition to digital television now offers viewers not only more choices, but new opportunities. Broadcasters are beginning to take advantage of the many benefits digital will bring to consumers—a markedly sharper picture resolution and better sound; an astounding choice of video programming, including niche programs and movies on demand; CD-quality music channels of all genres; interactivity; sophisticated program guides; and new, innovative services.

The most remarkable development since the 1960s, however, may be the explosion in the number of television networks, made possible by the development of multi-channel video programming distributors (“MVPDs”), including cable and satellite.⁶ Today consumers can choose among more than 230 national cable networks and more than 50 regional networks—an almost unimaginable sum to a television viewer of the 1960s.⁷

In addition, the number of households accessing these multi-channel services has increased significantly since the 1960s. In 1976, there were still only 17 percent of U.S. households—fewer than 10 million homes—served by cable.⁸ By 2002, cable

¹C. Edwin Baker, *Media Concentration: Giving Up on Democracy*, 54 Fla. L. Rev. 839, 867 (2002).

²*Cable History*. The Cable Center, <http://www.cablecenter.org/history/timeline/decade.cfm?start=1960> (last visited Feb. 27, 2003).

³2002 Biennial Reg. Review Before the FCC—Review of the Comm’n’s Brdcast. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomm. Act of 1996, *Notice of Proposed Rulemaking*, 17 F.C.C.R. 18503, para. 53 (2002) [hereinafter 2002 Review].

⁴See WB Website, at <http://www2.warnerbros.com/web/all/link/partner.jsp?url=http://www.thewb.com> (last visited Feb. 27, 2003); Viacom Website, at <http://www.viacom.com/thefacts.tin> (last visited Feb. 27, 2003).

⁵See Pax Communications Website, at <http://www.pax.tv/about/> (visited Feb. 27, 2003).

⁶In addition to cable and satellite, MVPD technologies include home satellite dishes, wireless cable systems, and satellite master antenna television systems.

⁷2002 Review, *supra* note 3, para. 25.

⁸Florence Setzer & Jonathon Levy, Broadcast Television in a Multichannel Marketplace, *OPP Working Paper No. 26*, 6 F.C.C.R. 3996, 4008–09 (providing percentage of homes served by cable); *HBO, Inc. v. FCC*, 567 F.2d 9, 24 (D.C. Cir.), *cert. denied*, 434 U.S. 829 (1977) (providing number of households served by cable).

reached 96 percent of television viewing homes, with 73 million subscribers.⁹ DBS is available nationwide and now has nearly 19.8 million subscribers.¹⁰ Today, 85.3 percent of households subscribe to a MVPD.¹¹

Long gone are the days when broadcasters commanded 100 percent of the viewing audience. From July 2001 to June 2002, broadcast television averaged only a 53.0 audience share, while cable networks' share had increased to 58.3.¹² Other sources indicate the shift may be even more dramatic, with broadcast drawing only 37 percent, and cable programming drawing 53 percent of TV viewers.¹³ Nevertheless, the role of television broadcasters remains a significant one. Broadcast television has lost its monopoly on the viewing audience. Meanwhile, the broadcast networks, with only a handful of channels, continue to rival the cable networks for viewers, particularly during prime time, the period during which the American television audience is at its highest.¹⁴

In summary, the advances in television and the development of competing providers of video programming have resulted in unprecedented choice for consumers, particularly the vast majority that subscribe to a MVPD. Moreover, some of the best television ever produced is aired today. Yet, as discussed below, the picture is not entirely rosy. For families, the situation can be somewhat of a Catch-22. If you subscribe to a MVPD, you can get a significant selection of high-quality, family-friendly programming, but you also are forced to buy some of the most family-unfriendly programming produced for television. If you take the route of allowing only broadcast television into your home, you avoid some of the programming that may concern you the most, but your primetime viewing options as a family may be few and shrinking, and you will have missed out on the great programming that cable and satellite have to offer. As I explain below, broadcasters and MVPD operators can help parents out of this situation, and I urge them to do so.

Broadcast Challenge: Family Viewing Hour

To the dismay of many parents, the increased competition for viewership has led broadcasters to increase markedly the amount of coarse programming and decrease the family-friendly programming they provide their viewers. This shift is particularly notable during primetime viewing hours, when families are most likely to gather around the television together.

Studies have documented this unfortunate trend. A report on the 1999–2000 television season found that two out of every three shows included sexual content, an increase from about half of all shows during the 1997–1998 season.¹⁵ The subsequent report for the 2001–2002 season revealed that the amount of sexual content on television remained high, with two-thirds of all shows continuing to include some sexual content.¹⁶ Another organization reports that from the fall 1989 season to the fall 1999 season, the incidence of sexual material, coarse language, and violence during prime time increased three-fold.¹⁷

As a result, parents wanting to watch broadcast television with their children at the end of the day—when most viewers *do* still turn to broadcast television—may

⁹ Cable History, The Cable Center, at <http://www.cablecenter.org/history/index.cfm> (last visited Feb. 27, 2003).

¹⁰ Satellite TV Subscriber Counts, Sky Report, at http://www.skyreport.com/dth_counts.htm (last visited Feb. 27, 2003).

¹¹ Annual Assessment of the Status of Competition in the Mkt. for the Delivery of Video Programming, *Ninth Annual Report*, 28 Comm. Reg. (P & F) 159, para. 5 (2002) [hereinafter *Ninth Video Competition Report*].

¹² *Id.* para. 24 (citing Nielsen Media Research, *Total Day 24 Hours 6 am–6 am: Total U.S. Ratings by Viewing Source July 2000–June 2002*, Oct. 2002). “A share is the percent of all households using television during the time period that are viewing the specified station(s) or network(s). The sum of reported audience shares exceeds 100 percent due to simultaneous multiple set viewing.” *Id.* para. 24 n.39.

¹³ Charlie McCollum, *Network Programs Play it Safe: Familiar Formulas—Family Comedies, Cop Dramas—Dominate; Some Shows Are Outright Remakes*, San Jose MERCURY NEWS, Sept. 15, 2002. The varying numbers may be due to the rise and fall of broadcast audience during different parts of the television season.

¹⁴ Between July 2001 and June 2002, broadcast television averaged a 59.4 audience share during prime time; cable averaged a 56.5 share. *Ninth Video Competition Report*, *supra* note 11, para. 24 (citing Nielsen Media Research, *Primetime Monday–Saturday 8–11 PM Sunday 7–11 PM: Total U.S. Ratings by Viewing Source July 2000–June 2002*, Oct. 2002).

¹⁵ KAISER FAMILY FOUND., SEX ON TV(2): A BIENNIAL REPORT TO THE KAISER FAMILY FOUNDATION 16–18 (Feb. 2001), available at <http://www.kff.org>.

¹⁶ KAISER FAMILY FOUND., SEX ON TELEVISION 3: CONTENT AND CONTEXT, BIENNIAL REPORT OF THE KAISER FAMILY FOUNDATION 14 (Feb. 2003).

¹⁷ Press Release, Parents Television Council, What a Difference a Decade Makes: A Comparison of Prime Time Sex, Language, and Violence in 1989 and '99 (Mar. 30, 2000), available at <http://www.parentstv.org/PTC/publications/release/2000/pr033000.asp>.

feel like they have fewer options, despite all the growth over the last decades. I do not dispute that parents could respond by turning the television off, but there should be a better answer. Accordingly, I challenge broadcasters to devote the first hour of prime time to family-friendly programs—programs that parents and children can enjoy together.¹⁸

The notion of a family-oriented viewing hour is not a new one. In fact, lawmakers, regulators, and members of the television industry recognized such a need almost thirty years ago. In 1974, the Federal Communications Commission (“FCC”) received nearly 25,000 complaints about violent or sexually oriented programming.¹⁹ That same year, responding in part to a finding by the Surgeon General about the adverse effects of televised violence on certain members of society,²⁰ Congress instructed the FCC to outline actions it had taken or planned to take to protect children from excessive violence and obscenity.²¹ The FCC staff recommended several options, including issuing notices of inquiry, notices of proposed rulemaking, and policy statements.²² Then-Chairman Wiley, concerned that such formal measures by the FCC could pose significant First Amendment concerns, opted instead to encourage industry representatives to take voluntary actions to regulate the amount of violent or sexually oriented content that aired during those hours when children normally watch television.²³

In April 1975, the National Association of Broadcasters (“NAB”) responded to the growing concern about television content by announcing a family viewing policy, which it incorporated into the NAB Code of Conduct for Television.²⁴ The family viewing amendment provided in relevant part that “entertainment programming inappropriate for viewing by a general family audience should not be broadcast during the first hour of network entertainment programming in prime time and in the immediately preceding hour.”²⁵

¹⁸The Family Friendly Programming Forum, a group of more than 40 major national advertisers, defines family-friendly programs as those which are “relevant and interesting to a broad audience; contain no elements that the average viewer would find offensive or that the average parent is embarrassed to see with children in the room, and ideally embody an uplifting message.” Family Friendly Programming Forum Website, Questions/Answers, at <http://www.ana.net/family/default.htm> (last visited Feb. 27, 2003).

¹⁹Report on the Brdcast. of Violent, Indecent, and Obscene Material, *Report*, 51 F.C.C.2d 418, 419, 32 Rad. Reg.2d (P & F) 1367 (1975) [hereinafter *Report*]; *Writers Guild of Am. v. ABC*, 609 F.2d 355, 359 (9th Cir. 1979).

²⁰See generally *Surgeon General’s Report by the Scientific Advisory Committee on Television and Social Behavior: Hearing Before the Senate Comm. on Commerce, Subcomm. on Communications*, 92d Cong., 2d Sess. (1972).

²¹H.R. REP. NO. 93–1139, 93d Cong., 2d Sess. 15 (1974); S. REP. NO. 93–1056, at 19 (1974) (these two reports were issued during congressional debates on the appropriations legislation for Fiscal Year 1975, Pub. L. No. 93–414).

²²*Writers Guild of Am.*, 609 F.2d at 359.

²³*Id.*

²⁴The Writers Guild of America brought an action against the major networks and the FCC challenging the validity of the family viewing policy. *Writers Guild of Am. v. FCC*, 423 F. Supp. 1064 (C.D. Cal. 1976). Although the District Court found that the FCC (through the statements of the Chairman) had violated the First Amendment and the Administrative Procedure Act (“APA”), the Ninth Circuit Court vacated this judgment on jurisdictional grounds and remanded the case back to the FCC. *Writers Guild of Am.*, 609 F.2d at 356. Although the appellate court did not rule on the First Amendment issue, language from the holding suggests that even an FCC-mandated family viewing hour might be constitutionally permissible:

It simply is not true that the First Amendment bars *all* limitations of the power of the individual licensee to determine what he will transmit to the listening and viewing public. At issue in this case is whether a family viewing hour imposed by the FCC would contravene the First Amendment. This is a considerably more narrow and precise issue than is the district court’s bedrock principle and with respect to which the FCC’s expertise and procedures could provide enormous assistance to the judiciary.

Id. at 364. On remand, the FCC concluded that the NAB freely and voluntarily had chosen to adopt the family viewing policy as part of its code, and therefore the informal FCC action did not violate the First Amendment or the APA. Primary Jurisdiction Referral of Claims Against Gov’t Defendant Arising from the Inclusion in the NAB TV Code of the “Family Viewing Policy,” *Report*, 95 F.C.C.2d 700 (1983). This ruling was not challenged.

²⁵*Writers Guild of Am.*, 609 F.2d at 358 n.2. The amendment continued:

In the occasional case when an entertainment program in this time period is deemed to be inappropriate for such an audience, advisories should be used to alert viewers. Advisories should also be used when programs in later prime time periods contain material that might be disturbing to significant segments of the audience.

These advisories should be presented in audio and video form at the beginning of the program and when deemed appropriate at a later point in the program. Advisories should also be used

Continued

In 1983, the Department of Justice brought suit against the NAB, challenging the NAB Code on antitrust grounds.²⁶ Although the suit involved only the code's restrictions on television commercials,²⁷ the NAB Board of Directors ultimately cancelled the Code of Conduct in its entirety, eliminating all regulations—even those not addressed by the suit, such as those dealing with violent, indecent, and sexually explicit content. The requirements for a family viewing hour were thereby rescinded.

Recently, there have been efforts to reinstitute family viewing policies. In 2001, twenty-eight members of Congress signed a letter to the presidents of the major television broadcast networks asking them to voluntarily restore the Family Hour.²⁸ That same year, Senator Brownback introduced a bill whose express purpose was to “permit the entertainment industry . . . to develop a set of voluntary programming guidelines similar to those contained in the Television Code of the National Association of Broadcasters.”²⁹

Advertisers also are taking steps to encourage the development of family-friendly programming. A group of more than forty major national advertisers, working through the Association of National Advertisers, have formed the Family Friendly Programming Forum to address two concerns: “the dwindling availability of family friendly television programs during prime viewing hours”; and “the TV imagery, role models, themes and language to which our young people are exposed.”³⁰ The Forum has begun a concerted effort to encourage the entertainment community to provide “more movies, series, documentaries and informational programs, aired between 8:00 and 10:00 p.m., that are relevant and interesting to a broad audience and that parents would enjoy viewing together with a child.”³¹ This effort includes a script development fund—in which CBS, ABC, NBC, and WB participate—to finance new family-friendly television scripts, a scholarship program for students who work on family-friendly projects, and the Annual Family Television Awards to recognize outstanding family television. I applaud the work the Forum is doing, and I congratulate the winners of the most recent awards, as well as the networks that aired the shows: CBS (three awards), WB (two awards), ABC (two awards), and PBS (one award).³²

Even more promising, ABC appears to be embracing the idea of the family viewing hour. This year it launched its “happy-hour” strategy, in which the network airs family-friendly programs from 8 p.m. to 9 p.m., in an attempt to capture a broad family audience. The reception thus far has been positive, as the network has rebounded from a 23 percent drop in viewership last season.³³

In sum, I believe a voluntary commitment by broadcasters to devote the first hour of prime time to family-friendly programming will be good for families (and, one might think, good for business, as well). I urge broadcasters to join this endeavor and collectively create at least one hour, five days a week, when a family can turn to broadcast television with comfort, confidence, and enthusiasm.

Cable and Satellite Challenge: Family-Friendly Programming Package

Broadcast, however, cannot be the end of the story. In a world in which more than 85 percent of homes receive their television programming through pay-TV, programming from these distributors clearly has become pervasive. I believe cable and satellite, too, must rethink their level of responsibility to the viewing public.

Certainly, cable and satellite operators carry a significant amount of family-friendly programming. In fact, these providers offer parents more options than ever before, such as Disney Channel, Nickelodeon, ABC Family, Discovery Channel, The History Channel, and Hallmark Channel. Thus, at all hours of the day, households

responsibly in promotional material in advance of the program. When using an advisory, the broadcaster should attempt to notify publishers of television program listings.

Special care should be taken with respect to the content and treatment of audience advisories so that they do not disserve their intended purpose by containing material that is promotional, sensational or exploitative. Promotional announcements for programs that include advisories should be scheduled on a basis consistent with the purpose of the advisory.

Writers Guild of Am., 609 F.2d at 358 n.2.

²⁶ *United States v. NAB*, 536 F. Supp. 149 (D.D.C. 1982).

²⁷ *Id.*

²⁸ Press Release, Office of Representative Chris Smith, Smith Rallies Congressional Backing for Family Friendly TV Programming (Oct. 5, 2001), available at <http://www.house.gov/chris-smith/press2001/pr1005001tvfamilyhour.html>.

²⁹ Children's Protection Act of 2001, S. 124, 107th Cong. § 3(a) (2001).

³⁰ Family Friendly Programming Forum Website, FFP Mission, at <http://familyprogramawards.com> (last visited Feb. 27, 2003).

³¹ *Id.*

³² *Id.* at Family TV Awards.

³³ Associated Press, *ABC Gets a Feliz Navidad*, *NEWSDAY*, Dec. 11, 2002, at B31.

that subscribe to these services should be able to find programming that is suitable for parents and children alike.

Unfortunately, that does not mean that subscription to a pay-TV service is the complete solution. Because of the practice of “packaging” channels, when a parent purchases these services, that parent necessarily buys a number of channels that are not intended for children.

The advent of technological tools that could block objectionable content was hailed as a potential panacea to this problem. The V-chip (“violence” chip), introduced in 1999, allows parents to use a rating system to block a significant set of programs with violent or sexual content. Since January 2000, the V-chip has been included in all new television sets larger than 13 inches. To date, however, the V-chip has not been as effective as its supporters had hoped. Recent studies have shown that few parents know about the V-chip, and far fewer have figured out how to make it work. Although more than 40 percent of American parents now own a television equipped with a V-chip, less than 7 percent of those parents use it to block programs with violent or sexual content.³⁴ Thus, while the V-chip ultimately may prove to be an effective long-term solution, it currently is not serving as an effective tool for parents.

Digital cable and satellite systems offer another tool for parents to protect their children from certain content. Most providers employ technology that enables a parent to limit access to whole channels through use of a password. Fortunately, this function appears to be easier to use than the V-chip. The number of digital cable and satellite subscribers, however, is still relatively small. As a result, it is still too soon to know whether most parents will actually learn about this technology, whether they will use it, or whether it will be circumvented too easily.

Accordingly, many parents today still may have concerns about purchasing cable or satellite services. While most still choose to subscribe, they nevertheless remain concerned about much of the immediately accessible content. I therefore believe cable and satellite operators would provide a valuable service to American families if they would offer an exclusively family-friendly programming package as an alternative to the “expanded basic” on cable, or the initial tier on DBS.³⁵ Existing family-oriented premium channels could be offered as well, either as part of the package or as an additional purchase. As a result, subscribers who are interested only in programming that they can enjoy with their family would finally have a way to purchase only that programming. Other subscribers, meanwhile, could continue to have the same options they have today.

The availability of a family-friendly package would enable parents to enjoy the increased options and high-quality programming available through cable or satellite without being required to purchase programming less suitable for children. I believe it would provide a better tool to parents to enable them to enjoy excellent programming options, yet it should not require significant change to existing cable or satellite practices or regulatory intervention.

Alternatively, cable and DBS operators might choose to offer relevant programming networks in a more a la carte manner. They could permit parents to request not to receive certain programming that is sold as part of a package, and reduce the package price accordingly. Under this second option as well, parents would be able to receive (and pay for) only that programming that they are comfortable bringing into their home.

Under either of these two approaches, cable and DBS operators would be empowering all parents—enabling them to bring multi-channel video into their home without worrying about the channels their children might fall upon while “channel surfing.” I believe such a tool would be a significant benefit to parents, and I therefore encourage cable or satellite providers to take up this challenge.

Conclusion

Over the last four decades, television has developed into a vastly expanded medium, with more choice and excellent content. Certainly, viewers are better off today. The viewing picture nevertheless leaves something to be desired by parents who seek family-friendly programming. Broadcasters and MVPDs can change this picture, and I encourage them to provide parents with more options and better tools to find such programming. We all will benefit.

³⁴ News Release, Kaiser Family Foundation, Few Parents Use V-chip to Block TV Sex and Violence, but More Than Half Use TV Ratings to Pick What Kids Can Watch (July 24, 2001), available at <http://www.kff.org/content/2001/3158/V-Chip%20release.htm>.

³⁵ The existing package or “tier” could remain the same; the operator could merely select certain family-friendly channels from the existing tier and *also* offer them as a standalone “family-friendly” alternative package. An analogy could be made to the way cable operators package the broadcast channels as part of “basic” package as well as the “expanded basic” package.

The CHAIRMAN. Thank you very much.
Mr. Adelstein?

**STATEMENT OF HON. JONATHAN S. ADELSTEIN,
COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION**

Mr. ADELSTEIN. Thank you, Mr. Chairman.

Mr. Chairman, Senator Hollings, Members of the Committee, I appreciate your outstanding leadership on this issue in holding this hearing and all the work you've done over the years on this. Like many of you, I watched the Super Bowl with my family; and, like millions of others, I was really appalled by what I saw during the halftime show, not just for the shock value of the stunt that happened at the end, but for the overall crude performance in front of so many children, one in five American children. And the advertising set a new low for what should air during family time. A special occasion for our families was truly disrespected.

Senator Brownback, Senator Hollings, I appreciate the work you've done over the years on violence, and you talked about it eloquently this morning. One of the ads I thought that was most offensive personally, and hurt me the most, was a violent trailer that aired for a horror movie. It showed terrifying monsters, with huge fangs, attacking people. I literally had to jump out of my chair to get in front of my child so he didn't see what was happening on television. Other parents told me—friends of mine—that they couldn't get to their remote controls fast enough. I wonder how those who chose to broadcast such violence can sleep at night when so many children went to bed that night having nightmares. No parent should have to jump in front of the TV to block their children from those kinds of images. We need to help parents navigate the increasingly difficult environment they face in today's media. They're crying out for our help. Complaints are exploding that our airwaves are increasingly dominated by graphic and shocking entertainment.

Some have observed that broadcasters are only responding to competition from cable programming. Take MTV, a cable network known for pushing the envelope. It's owned by Viacom, which owns CBS, as Senator Lautenberg pointed out. It's no coincidence that MTV produced the halftime show, but the network thoughtlessly applied the cable-programmer's standards to the Super Bowl, the ultimate family event.

As a musician myself, I understand there's a role for things like MTV in our society, but many might prefer that MTV's more explicit offerings not intrude into the mainstream of American family life. Parents who purchase cable television have the legal right to block any channel they don't consider appropriate for their children, and that choice just isn't available on over-the-air television, and parents were certainly taken by surprise.

As a parent and an FCC Commissioner, I share the public's disgust with the increasingly crude radio and television content that we're seeing. I've only served on the Commission for about a year, but I'm proud that in that time we've really stepped up our enforcement efforts. We need to ramp it up even further. In my view, gratuitous use of swear words and nudity have no place in broadcasting. We need to attack profanity head on. We need to use that

authority that Congress gave us. We need to reverse the bureau's decision to allow profane words just because they're in the form of an adjective.

I have supported going to the statutory maximum for fines, but even this is woefully inadequate, and I welcome efforts by you, Mr. Chairman and other Members of this Committee, in the legislation that was approved by this Committee to let us increase fines substantially across all of our areas of jurisdiction.

In the meantime, I have pushed for new approaches to deter indecency. These include fining for each separate utterance and revocation hearings in serious repeated cases. I worked last April to have the FCC put broadcasters on notice that we were beginning this stronger enforcement regime. And now we need to act more quickly when we get complaints.

But there are limits to what the FCC can do. We must balance strict enforcement of the indecency laws with the First Amendment. If we overstep, we risk losing the narrow constitutional authority we now have to enforce the rules. So it may take more than the FCC to turn this around.

Broadcasters have a big role to play. They need to show more corporate responsibility. We grant them use of the public airwaves to serve the public interest. They must rise above commercial pressures and recognize the broader social problems they may be compounding.

One question I have often asked myself is whether the coarsening of our media is responsible for the coarsening of our culture, or if it's vice versa. I think it's both. I think they feed on each other. And I think media consolidation only intensifies the pressures. Fast-growing conglomerates focus on the bottom line above all else. Last summer, the FCC weakened its media-ownership rules, and I think we need to reconsider that decision and restore those protections.

Local broadcasters also need the ability to reject network programming that doesn't meet their community's standards. The back and forth local affiliates have with networks is critical in the fight against indecency. Time and again, we see them fighting the networks, saying, "You can't put that on. You can't be serious." And we see that the networks respond and pull back. The FCC has got to preserve that balance.

And, on the positive side, we've got to do more to protect families. We should complete a 3-year-old rule-making on children's television obligations in the digital age. This will help meet educational needs and give parents tools they need to help their children make appropriate viewing choices.

During the Super Bowl and on far too many other occasions, people feel assaulted by what's broadcast at them. My job, and our job here on the Commission, is to protect our families from the broadcast of this kind of material. It's also our job to promote healthy fare for children. After all, the airwaves are owned by the American people, and the public is eager to take some control back.

I'd be happy to answer any questions that you have.

[The prepared statement of Commissioner Adelstein follows:]

PREPARED STATEMENT OF HON. JONATHAN S. ADELSTEIN, COMMISSIONER,
FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman, Mr. Ranking Member, and members of the Committee, thank you for inviting me to testify.

Like many of you, I sat down with my wife and children to watch the Super Bowl. I was expecting a showcase of America's best talent, both on and off the field, and the apotheosis of our cultural creativity during the entertainment and advertising portions. Instead, like millions of others, I was appalled by the halftime show—not just for the shock-value stunt at the end, but for the overall raunchy performance displayed in front of so many children—one in five American children were watching, according to reports. And the advertising set a new low for what should air during family time.

The Super Bowl is a rare occasion for families to get together to enjoy a national pastime everyone should be able to appreciate. Instead, a special family occasion was truly disrespected.

I could highlight any number of tasteless commercials that depicted sexual and bodily functions in a vile manner. Any sense of internal controls appeared out the window, so long as the advertiser paid the multi-million dollar rate.

One commercial that really stung my family, and many other parents with whom I spoke, was a violent trailer for an unrated horror movie. It showed horrible monsters with huge fangs attacking people. I literally jumped out of my chair to get between the TV and my three-year old. Other parents told me they couldn't reach for the remote control fast enough. I wonder how those who chose to broadcast such violence can sleep at night when they gave so many American children nightmares.

No parent should have to jump in front of the TV to block their children from such images, whether during a commercial or a halftime show. No parent should feel guilty for not being with their child every single moment in case they need to block the TV during what most would consider to be a family viewing event.

The entire Super Bowl broadcast was punctuated by inappropriate images that were an embarrassment for our country. The halftime show, with its global appeal, was a wasted opportunity to showcase the best that U.S. culture has to offer. The U.S. has the world's greatest musical culture to promote across the globe, and that includes the many artists who performed at the event. Our musicians and artists offer a vibrant musical melting pot that expands our horizons and enriches our culture. As a musician myself, I am proud of artists who everyday express their creativity without trying to one up each other in shock value. There is plenty of magnificent talent here for the whole family to enjoy. It is those performances that broadcasters should showcase. Instead, the halftime show needlessly descended into lewdness and crassness.

This latest incident is only the tip of the iceberg. There is nearly universal concern about the state of our public airwaves. I personally received more than 10,000 e-mails last week, and the FCC received more than 200,000. But that pales in comparison to the number of people who over the past year expressed their outrage to me about the homogenization and crassness of the media. The public is outraged by the increasingly crude content they see and hear in their media today. They are fed up with the sex, violence, and profanity flooding into our homes. Just this month at an FCC hearing in San Antonio, a member of the audience expressed concern with indecency on Spanish-language television novellas.

Complaints are exploding that our airwaves are increasingly dominated by graphic and shocking entertainment. Some observe that broadcasters are only responding to competition from cable programming. Take MTV, a cable network known for pushing the envelope. It's owned by Viacom, which also owns CBS. It's no coincidence that MTV produced the halftime show. But the network thoughtlessly applied the cable programmer's standards during the Super Bowl—the ultimate family event.

As a musician, I recognize that channels like MTV have a place in our society. I also understand and respect that many would prefer that they not intrude into the mainstream of American family life. Parents who purchase cable television have the legal right to block any channel they don't consider appropriate for their children. More parents should be made aware of this right. Free over-the-air broadcasting, however, offers no such alternative to parents. For broadcast material designed for mature audiences, it's a matter of the right time and place.

Enough is enough. As a parent and an FCC Commissioner, I share the public's disgust with increasingly crude radio and television content.

I've only served on the Commission for about a year, but I'm proud that we've stepped up our enforcement in that time. And we need to ramp it up even further. In my view, gratuitous use of swear words or nudity have no place in broadcasting.

We need to act forcefully now. Not surprisingly, complaints before the FCC are rising rapidly, with more than 240,000 complaints covering 370 programs last year. In the cases on which I have voted, I have supported going to the statutory maximum for fines. But even this statutory maximum—\$27,500 per incident—is woefully inadequate. I welcome the efforts by Congress to authorize us to increase fines substantially across all our areas of jurisdiction.

Awaiting such authority, I've pushed for new approaches to deter indecency. We can increase the total amount of fines by fining for each separate utterance within the same program segment. And we need to hold hearings to consider revoking broadcasters' licenses in serious, repeated cases. I worked last April to have the FCC put broadcasters on notice that we were taking these steps to establish a stronger enforcement regime. Our challenge now is to act more quickly when we get complaints, and to ensure that our complaint procedures are as consumer-friendly as possible.

But there are limits to what the FCC can do. We must balance strict enforcement of the indecency laws with the First Amendment. If we overstep, we risk losing the narrow constitutional authority we now have to enforce the rules. Nevertheless, many cases I have seen in my tenure are so far past any boundary of decency that any broadcaster should have known the material would violate our rules.

So it may very well take more than the FCC to turn this around. We are not the only ones with a public trust to keep the airwaves free from obscene, indecent and profane material. Broadcasters are given exclusive rights to use the public airwaves in the public interest. The broadcasters themselves bear much of the responsibility to keep our airwaves decent. As stewards of the airwaves, broadcasters are in the position to step up and use their public airwaves in a manner that celebrates our country's tremendous cultural heritage. Or they can continue down the path of debasing that heritage. Their choices ultimately will guide our enforcement.

Serving local communities is the cornerstone of the broadcaster's social compact with the public. When people choose to become licensed broadcasters, they understand that a public service responsibility comes with that privilege. In his famous remarks lamenting the "vast wasteland" of television, Newton Minow rightly observed that, "an investment in broadcasting is buying a share in public responsibility."¹ Every broadcaster should take that to heart. Public responsibility may mean passing up an opportunity to pander to the Nation's whims and current ratings trends when it is more important to stand up and meet the needs of the local community.

Broadcasters need to show more corporate responsibility. They must rise above commercial pressures, and recognize the broader social problems they may be compounding.

Many factors set the cultural and moral tone of our society. I welcome the attention that our indecency enforcement is receiving. I don't think of it as silly or overblown, as some have suggested. The question before America is whether the coarsening of our media is responsible for the coarsening of our culture, or vice versa. My answer is both. They feed on each other.

Media consolidation only intensifies the pressures. Fast-growing conglomerates focus on the bottom line above all else. The FCC should reconsider its dramatic weakening of media ownership limits last summer.

Local broadcasters also need the ability to reject network programming that doesn't meet their communities' standards. The FCC must preserve the critical back-and-forth local affiliates have with the networks in the fight against indecency.

In terms of taking positive steps, the FCC can do more to help families. Because our particular focus today is on children, one vital step is completing a pending rule-making on children's television obligations of digital television. The FCC started this proceeding more than three years ago, yet it remains unfinished. We should quickly complete this proceeding to help meet children's educational needs, and give parents tools to help their children make appropriate viewing choices.

During the Super Bowl, and on far too many other occasions, people feel assaulted by what is broadcast at them. My job is to protect our families from the broadcast of obscene, indecent or profane material. That also means promoting healthy fare for our children. After all, the airwaves are owned by the American people, and the public is eager to take some control back.

The CHAIRMAN. Thank you very much, Mr. Adelstein.

¹ Newton N. Minow, "Television and the Public Interest" Speech Before the National Association of Broadcasters (May 9, 1961).

Chairman Powell, I mentioned in my comment about the fact that 85 percent of Americans now receive their television program from cable and satellite. And, by the way, Mr. Kimmelman suggests that perhaps people should be able to purchase their channels a la carte, the same way we are able to function when we go to the grocery store. We are not required to buy additional commodities when we want to buy a loaf of bread. I wonder if you could talk just a little bit about that aspect of this issue.

Chairman POWELL. I would agree that's one thing to explore, and it has two sides to it. One, do you have to buy it in the first place? And, two, if you get it as part of the package, are you empowered with some control to deny that from coming through? For example, most cable companies, I think Commissioner Adelstein mentioned, have a legal obligation to be able to block a channel or service from coming into your home if you don't want it, even if it's part of your subscription. So, you know, there are areas——

The CHAIRMAN. So you'd be paying for something that you don't want anyway.

Chairman POWELL. You could be, although I won't make the arguments for them. Different programming have different costs associated with them. But absolutely, the combination of what packages you get and what rights you have to block programming, I think, are the right places to look.

The CHAIRMAN. What about the overall issue of the fact that—what regulatory authority do you have over the 85 percent of Americans who are now getting it from cable and satellite?

Chairman POWELL. The short answer is, little to none, unfortunately. The statute that we administer, Section 1464, specifically says utterances that are broadcast. In addition, we have Constitutional limits that are different for broadcasting, because the courts have ruled that cable, unlike broadcast where the public airwaves are used, enjoys First Amendment protection closer to that of a newspaper, so there are a few more, you know, Constitutional constraints when you look there, as well.

And then, finally, there has always been a tension, I think, that plays into the Constitutional question about their being a subscription relationship in which consumers have purchased services. That's the court's view about them.

The CHAIRMAN. Well, there may be some difference of opinion on that, and perhaps there may be a need for legislation. I don't know what the answer, but it clearly—if 85 percent of the American people are receiving these broadcasts via methods that you no longer have any control over, I would think that that would raise a significant issue.

While I have you, I just want to mention—and I'll ask the other Commissioners if they have a comment—there's an article in *USA Today* this morning. So much for predictions. Rupert Murdoch, in News Corporation, would give a cable/satellite/TV industry price war after taking over direct TV. The top U.S. satellite service hit 12 million subscribers. The service plans to boost average rates by more than 3 percent March 1. Comcast, the Nation's largest cable operator will boost average cable rates by 5.4 percent. Time-Warner cable by 4.9 percent. On and on and on. The cable rates, sat-

ellite rates, continue to go up in multiples of the rate of inflation in America.

We've been concerned about it on this Committee, we continue to be concerned about it. There is nothing that I can see that is injecting the kind of competition which brings rates down. Instead, they are going up, as I say, in multiples of inflation. And now, of course, we see this morning's paper, that Comcast, the largest U.S. cable owner, is now going to make a bid for Walt Disney. Where, in your view, does this consolidation, that we've already seen to an obscene degree in radio, stop? Where is the endpoint here? Is it OK for Disney to be bought by Comcast? And then why don't they buy somebody else? And then why doesn't Mr. Murdoch buy somebody else? And then we have, as one of our colleagues is fond of saying, "many voices and one ventriloquist." Is this of concern to you and other members of the Commission?

Chairman POWELL. I'll speak for myself, but I think all would answer the same. Unquestionably, yes. And it stops where we draw the lines, both in terms of our rules, what statutory limits exist, and what the antitrust authorities and the public-interest transactions permit.

This Commission has demonstrated it is not afraid, in reviewing a transaction, from blocking a merger that it does not believe is in the public interest. I don't know if Comcast will get Disney or not. It's a hostile bid. If it does, a merger of that magnitude will unquestionably go through the finest filter that's possible at the Commission, I can assure you.

The CHAIRMAN. I thank you, Chairman Powell. I just think we need to be proactive on this issue, rather than reactive. And I appreciate, more than I can tell you, your leadership of the Commission. I'd like to hear the other Commissioners' views on the two questions that I raised, quickly, because I'm about out of time.

Ms. Abernathy?

Commissioner ABERNATHY. Clearly, it raises serious concerns when you've got excessive concentration, and there's no doubt in my mind—

The CHAIRMAN. First the issue of the broadcast—

Commissioner ABERNATHY. Oh, the broadcast and cable. It is a difference that exists more in our minds than in reality. At the time that we were given authority over broadcast indecency, I think cable wasn't really there yet. It's how the law is today. I think we'd need some legislative guidance if we wanted to venture into the area of regulating violence and indecency for cable. But I think that, given the fact that most children don't even know the difference between broadcast and cable, it makes sense to try and reconcile the two.

The CHAIRMAN. And the second question, you've answered?

Commissioner ABERNATHY. Yes, I think it's a serious problem.

The CHAIRMAN. Dr. Copps?

Dr. COPPS. On the first question, I don't know that I buy into the theory that your favorite regulatory commission is a toothless tiger when it comes to cable. Congress has struggled with this for a long period of time—regulating, deregulating, re-regulating, deregulating cable. But as some observers have pointed out, it is so pervasive in our homes, so pervasive with our children, I think you can

make the argument that there's a compelling government interest to do something about it. And, indeed, we have a Supreme Court case—the Playboy case—that says there is a compelling government interest in protecting children against indecency in cable. The fight has been, How do you find the least intrusive means to do that? We already have some cable regulation. Cable has to go through franchising, there are rights of way, there are public-access channels, and all the rest. Cable does use the spectrum. You know, this idea that they don't use the spectrum—DBS certainly does and cable is using satellite and microwave spectrum, too.

Section 612(h) of the Act empowers the franchising authorities at the local level, and the cable distributors, to do something about lewdness, lasciviousness, profanity, indecency, and even empowers a local cable distributor, if he wants to put out a prospective policy prohibiting this kind of stuff. So maybe there are some grassroots possibility, too. If it doesn't come from—

The CHAIRMAN. We've seen that tried before—

Dr. COPPS.—just from here, it can come from there.

The CHAIRMAN.—Doctor. We've seen that—

Dr. COPPS. OK.

The CHAIRMAN.—track before.

Dr. COPPS. Right. Well, maybe we ought to—

The CHAIRMAN. Pressures—

Dr. COPPS.—try it again.

The CHAIRMAN.—brought to bear on the local operator, we know, Doctor.

Dr. COPPS. And the second answer, it'll stop when we get serious about stopping concentration, this is the kind of thing I've warned about in voting against a lot of these deals, and I think it's just coming to—

The CHAIRMAN. Mr. Martin?

Dr. COPPS.—fruition.

The CHAIRMAN. Thank you.

Commissioner MARTIN. First, Senator, I would point out that I think we do have some indecency authority over satellite. Technically, I think the provisions regarding indecency actually apply to utterances per radio, and our Title 3 for radio authority applies to DBS. We don't currently treat it that way. We treat them more in the category of cable. But if we wanted to, we could extend it there.

As I mentioned in my introductory comments, I think we absolutely have to find a way to address the cable side, as well, and I think that while there are legitimate First Amendment concerns that some people have raised, there's no First Amendment guarantee to be paid for the programming that they're putting on, and I think that an a la carte option is something that needs to more thoroughly be discussed. I think that we have to find a way to have consumers to have more choice in their cable—in what's going on with the cable, both for the concerns about prices and the concerns about indecency. And so I think that goes to some of the second question you have, as well, of some of the ways that we could try to address the increasing prices that we've seen on cable, as well.

The CHAIRMAN. Thank you.

Mr. Adelstein? Thank you.

Mr. ADELSTEIN. Mr. Chairman, the courts have distinguished between cable and broadcast. Whether we like it or not, that's the environment that we operate in. One of the reasons they made that distinction was because, in their view, in the case that Commissioner Copps cited, the person who purchases cable has the option under the law to block a cable channel. Now, most consumers don't know that. I imagine most people that may be watching this hearing are surprised to learn that they could block any channel that they find inappropriate, be it MTV or anything else. I think the cable industry has to do more to ensure that every consumer has that right now.

The CHAIRMAN. How do you do that?

Mr. ADELSTEIN. Well, you do that through either—the digital box can do it, or through analog. They have technology available for both to block it. If a consumer asks for that, the cable company is obligated, under the law and under our rules, to meet that request. And it can be done—

The CHAIRMAN. How do you physically do it?

Mr. ADELSTEIN. Well, it's different for analog than it is for digital. Under—

The CHAIRMAN. Well, that's helpful.

[Laughter.]

Mr. ADELSTEIN. Well, under digital, it's much simpler to do. They can program into the box. Under analog, I believe they actually have to purchase some equipment, and it's very, sort of, burdensome. So—

The CHAIRMAN. So you—

Mr. ADELSTEIN.—people don't tend to do it.

The CHAIRMAN.—can block it, but you have to purchase equipment to do it. That's good.

Mr. ADELSTEIN. Or pay a small fee, I believe. It's unfortunate that that's the way it works. I mean, it's really not something that is being adequately implemented right now. I think the cable industry needs to step up to the plate, if that's the reason that there's a distinction between the two, and ensure that consumers actually have this right in practice and not just in theory.

The CHAIRMAN. Thank you very much.

Senator Hollings?

Senator HOLLINGS. Thank you, Mr. Chairman.

Let me make just a couple of comments from my experience of now 38 years on the Communications Subcommittee, and I'll comment, most respectfully, to the distinguished Chairman. I know he's a dedicated public servant, absolutely honest, but, in my opinion, dedicated not to regulate as the Chairman of a regulatory commission.

That's our problem. Here's a Chairman, who says that the public interest is an empty vessel, who redefines communications as information in order to avoid that responsibility. Slaps on the wrist, in the Detroit case—that's the filthiest thing, everybody agrees—on the different ways to perform sex in a filthy, filthy fashion, and leads the way for a little \$27,000 fine and not to revocation of the license. Oh, one of the Commissioners say, "Let's start a proceeding." Oh, they wouldn't think of that, of revoking the license. You've got the authority. But no revocation of license and a \$27,000

fine, when they paid, for 30 seconds—on that halftime show, 30 seconds is \$225,000. What the heck is a \$27,000 fine? If there ever was going to be a revocation, that would have been the case, in the Detroit case.

Last night, the President of CBS Television said: “To that end, I challenge the broadcast community to reinstate a voluntary code of conduct.” Like somehow we’re going to start getting with this problem.

Let me just say what the Commission—Chairman Powell said. This is why—I’m not trying to be unfair, I’m trying to be factual. This is our problem. And I quote Chairman Powell before April’s talk before the National Association of Broadcasters, “Every time something sort of salacious or edgy comes on television, we hear very strongly from very different viewpoints about it. But the same community taught me that we’re supposed to be a place of a marketplace of ideas—antagonistic voices, unpopular viewpoints, and unpopular images—and that our society is strong enough and robust enough to sustain that, and that rather than stamping it out under the boot of a government authority, we can adapt, and we can tolerate it.”

Now, that’s our problem. Calling the responsibility “the boot of the government authority,” and saying you can tolerate it, and then start this hearing off with toleration, namely calling for a voluntary code, we’re in real trouble. Do you think you’ll ever revoke a license? Why didn’t you start a proceeding revoking the license in the Detroit case, Mr. Chairman?

Chairman POWELL. Senator, I’m happy to answer all the things that you threw out.

First of all, I’m very proud to be associated with those comments, because those are being associated with the First Amendment, and I don’t mind being associated with Thomas Jefferson or Justice Marshall or any of those who recognize the importance of content on our society.

Senator HOLLINGS. Do you think you’re on the Supreme Court, or—

Chairman POWELL. If you’re—

Senator HOLLINGS.—are you on the—

Chairman POWELL.—going to allow me to finish, I’d be happy to—

Senator HOLLINGS.—Federal Communications Commission?

Chairman POWELL. No, but I took the same oath that my colleagues did to uphold the Constitution of the United States, and that’s one of my responsibilities. And I’m perfectly proud of that. I do think we are urged to be cautious and careful when we regulate content. That’s all that statement says.

But if we’re going to trade quotes, I don’t see why it’s just as fair for me to enter into the record quotes that I’ve said, for example, at the National Press Club just a few weeks ago, “I personally believe that this growing coarseness and the use of such profanity at a time where we are very likely to know that children are watching is abhorrent and irresponsible, and it’s irresponsible of our programmers to continue to try to push the envelope of a reasonable set of policies that tries to legitimately balance the interests of the First Amendment with the need to protect our kids.” I said, fur-

ther, "You can take the view that we have no standard, we have no moral limitation, we have no fear whatsoever of protecting our children from any range of communications that we know they can hear somewhere else, but sometimes what defines a culture or civilization is where we say no." Second, I think it's——

Senator HOLLINGS. My question was about revoking the license.

Chairman POWELL. I'm happy to talk about that, too.

Senator HOLLINGS. Yes, I mean, the media has reported that you're beginning to see the light. There's no question about that. But when are we going to ever revoke a license if we're not going to do it in the Detroit case?

Chairman POWELL. I think when the facts are egregious enough and serious enough to justify it. But we still are an agency of the law.

In April 2003, the Commission announced clearly to notice the broadcasters that it would consider revocation of licenses if there was serious and persistent conduct. The Commission's judgment has been that when it sees a case that meets those standards—and that's been less than a year ago—it would act. I also believe, however—and the Supreme Court has made clear—that the Commission, when it announces a new policy, or its intent to pursue more aggressively a policy, that it cannot retroactively apply that to conduct that preceded the notice.

So my view is—and you're free to disagree with it—once the Commission made a clear notice that it would pursue revocation on a prospective basis, it will. But for conduct as in the Detroit case that preceded that announcement, I think not only would that be unconstitutional, but fundamentally unfair.

Senator HOLLINGS. You made the finding subsequent to that announcement, and that was on November 24, when you had to forfeit your order or the slap in the wrist of a \$27,000 fine to that CBS entity, Viacom, and no wonder CBS and Viacom goes along with just baring the breast. I mean, come on. That's nothing compared to the people just seeing something they may consider indecent.

I'll ask Chairman Brownback to include in the record the list of TV and copycat behavior on violence, over a dozen cases. Nobody's killing themselves when they see a bosom, but they're constantly killing themselves over the years here when they see violence on TV. So I'll ask that that be included in the record.

Senator BROWNBACK [presiding]. That will be included in the record.

[The information previously referred to follows:]

TV and Copycat Behavior

January 2004: A sixteen year old California girl was killed when she was thrown from a merry go-round propelled by a rope tied to a truck trying to imitate a stunt from the MTV program "Jackass."

April 2001: Two Kentucky teenagers were injured trying to recreate a scene from MTV's "Jackass." One teenage, a 17-year-old, drove a car towards his 16-year-old friend, who stood in the middle of the road. The boy in the road was supposed to jump out of the way at the last second, but didn't make it in time.

January 2001: A 13-year-old boy suffered second-and third-degree burns after two friends poured gasoline on his legs and feet and set him on fire. They were imitating a stunt from the MTV show "Jackass" in which Johnny Knoxville donned

a fire-resistant suit covered with steaks and stretched over a giant grill to become a human BBQ.

May 1999: A 7-year-old boy in North Dallas, Texas accidentally killed his 3-year-old brother after imitating a pro wrestling move he saw on television. When interviewed by authorities, the boy demonstrated what had happened by running toward a doll about the same size as his brother and suddenly striking its neck, knocking it backwards. He also talked about his favorite wrestling stars, Stone Cold Steve Austin and The Undertaker.

January 1999: Two Florida teenagers repeatedly raped their 8-year-old half-sister after allegedly watching an episode about incest on *The Jerry Springer Show*. A detective asked the boys where they learned to abuse their sister and the older boy responded, "I learned it on *The Jerry Springer Show*." The show's publicist issued a statement saying, "We've never had a show that is remotely close to this situation and, unfortunately, there are situations in this world for which we are blamed."

May 1998: In Ocean City, Maryland, 12-year-old Darron Lawrence Green committed suicide and left a note citing *South Park* as a reason why he killed himself. He mentioned a character named Kenny, a small boy who dies violently in every *South Park* episode. The boy did not show any signs of depression before the act.

In the same year, 11-year-old Bryce Kilduff hung himself. Police suspected that it was an accident and that he was trying to imitate the character Kenny on *South Park*. His mother reported that the day before his death, her son was imitating the character and his friends said, "Well, if you're Kenny, then you have to die." He responded by saying, "That's OK, I'll be back next week." Bryce also drew pictures of the characters and based their portrayal on his classmates' stories, since his mother forbade him to watch the show. After his death, police found a picture drawn by Bryce depicting a character hanging himself.

January 1998: 14-year-old Michael Swailes committed suicide by lying down in front of a speeding train. The boy was carrying a notebook with suicide instructions he downloaded from a Duke University student's Website. Chris Economakis defended his Website, which outlines forty suicide methods, by claiming it was put up "for entertainment purposes only." After briefly removing the website, he put it back online 24 hours later with no changes.

December 1997: Michael Carneal, a Kentucky high school student, entered his school lobby and fired seven shots from a semiautomatic weapon into a group of students, killing three and wounding five. He told investigators that he had seen it done in a scene from the movie *Basketball Diaries*, in which a character, played by Leonardo DiCaprio, walks into a classroom and kills several students with a shotgun.

June 1997: Jeremy Strohmeyer, a California teen accused of sexually assaulting and murdering a 7-year-old girl in a Nevada casino, told Las Vegas detectives that he killed her by "putt[ing] one hand behind her head and one hand under her chin, and snapping] her head like he [saw] on TV."

February 1997: A Bridgeport, Connecticut, 8-year-old was killed by a gunshot to the forehead by another child. Police said the children imitated a scene from the movie *Set it Off* after watching it on videotape.

May 1994: A California teen and four other middle-class boys trapped and beat to death a sixth boy with whom the ringleader had engaged in intense competition over everything from grades to crime. The trial revealed that the teens' plot was based on tactics seen in TV police dramas.

October 1993: A 5-year-old ignited a 2-year-old sibling, who died from her injuries. The children's mother blamed MTV's *Beavis and Butthead* for inspiring the child: the cartoon's two main characters like to light fires and often chant, "fire is good." After this incident MTV moved *Beavis and Butthead* to a later hour and removed all references to fire.

May 1993: An abduction and multiple slaying in Flin Flon, Manitoba, Canada, was attributed to a broadcast of the made-for-TV movie *Murder in the Heartland*, because it resembled the crimes in the movie and occurred several days after the airing. The movie is based on the true story of Charles Starkweather, a 19-year-old who abducted his 14-year-old girlfriend and murdered her family.

Senator HOLLINGS. Thank you, Mr. Chairman.

Senator BROWNBACK. Senator Boxer?

Senator BOXER. Thank you so much.

First, I want to thank all of you for your eloquent statements today. I mean, I really do think that we're all speaking from the heart and we're all in agreement. The question is, where do we go from here? How do we take this outrage that we feel and do the right thing, consistent with balancing, you know, freedoms and good taste and morality and all the rest? This is not easy stuff. But I do think you could do more, and I think you think you could do more. And if you need the tools from us, we'll give you the tools.

A couple of things I want to pick up on, and I'll just ask my questions, and then I'll let you respond. I guess I would address these to the Chairman, because I think he has got the most, shall we say, influence over what happens.

To pick up on Senator Lautenberg's point, CBS, who brought us this offensive show—and I think we've all agreed it was offensive, the whole halftime show—turned down what I consider to be, and I think most people would say, was a very tasteful 30-second spot produced by a political organization called *MoveOn.org*. They said people would be offended. Now, it's true, the deficit is offensive. That's the message of this, that there's this huge deficit, and our children have to pay it off. CBS said people would be offended.

In terms of your, Chairman Powell's, total defense of the First Amendment, how can CBS turn that down while they allow all this other offensive material on ads and this whole show? Can you take action against them for saying they won't allow free speech on a political message?

Chairman POWELL. Well, first, let me be clear that—and I expressed this to them in fairly firm terms—I think it was a gross mistake. I don't see any reason—and, by the way, I've had my differences with *MoveOn.org*, but I agree completely with its rights to speak and to attempt to buy advertising.

I don't defend the conduct whatsoever. And by—

Senator BOXER. Are they allowed to do that?

Chairman POWELL. Yes, they're allowed—

Senator BOXER. They are. So—

Chairman POWELL.—I mean, they are—

Senator BOXER.—in other words—

Chairman POWELL.—allowed to make editorial decisions—

Senator BOXER. Fine.

Chairman POWELL.—about what advertising they take. Whether it's illegal or not, I'm not certain under what theory we would pursue it for that purpose, but it's worth considering. I don't think it was an appropriate choice, but it was the choice of the owner.

Senator BOXER. Right.

Chairman POWELL. They don't take a lot of advertising.

Senator BOXER. Well, let me make the point of—on this. When we allow more and more and more and more and more and more consolidation, we're going to have fewer and fewer people involved in saying what can be on and what can off. This is frightening to me. So all of these things are connected to the consolidation issue, and that's why so many of us are determined to overturn what happened in that omnibus bill where that slipped in and we're allowing more and more media consolidation.

Senator BROWNBACK. If we could have conversation concluded or taken out of the room, if that would be possible, for—

Senator BOXER. Thank you.

I do want to pursue that further with you, but let me go on.

Have you seen, Chairman Powell, this report of the GAO, February 2003—it's a very new report—"File-sharing Programs, Peer-to-Peer Networks Provide Ready Access to Child Pornography"?

Chairman POWELL. Senator, I haven't read it, but your office has made us aware of it, yes.

Senator BOXER. Good. I'm going to make sure that—if you don't mind, that we can meet about this.

Chairman POWELL. Sure.

Senator BOXER. And I'm going just put in the record, if I might, Mr. Chairman, just two pages of this, what the GAO found.

[The information referred to follows:]

CHILD PORNOGRAPHY IS READILY ACCESSIBLE OVER PEER-TO-PEER NETWORKS

[Excerpt for the record]

HIGHLIGHTS

File-Sharing Programs

Child Pornography Is Readily Accessible over Peer-to-Peer Networks

Why GAO Did This Study

The availability of child pornography has dramatically increased in recent years as it has migrated from printed material to the World Wide Web, becoming accessible through websites, chat rooms, newsgroups, and now the increasingly popular peer-to-peer file-sharing programs. These programs enable direct communication between users, allowing users to access each other's files and share digital music, images, and video.

GAO was requested to determine the ease of access to child pornography on peer-to-peer networks; the risk of inadvertent exposure of juvenile users of peer-to-peer networks to pornography, including child pornography; and the extent of Federal law enforcement resources available for combating child pornography on peer-to-peer networks. GAO's report on the results of this work (GAO-03-351) is being released today along with this testimony.

Because child pornography cannot be accessed legally other than by law enforcement agencies, GAO worked with the Customs Cyber-Smuggling Center in performing searches: Customs downloaded and analyzed image files, and GAO performed analyses based on keywords and file names only.

What GAO Found

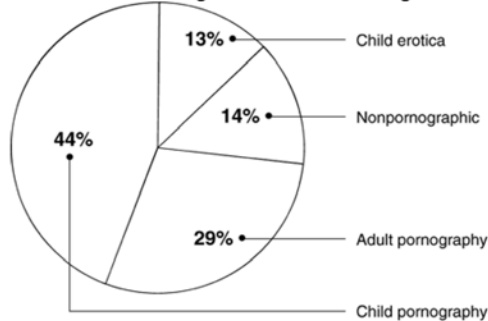
Child pornography is easily found and downloaded from peer-to-peer networks. In one search, using 12 keywords known to be associated with child pornography on the Internet, GAO identified 1,286 titles and file names, determining that 543 (about 42 percent) were associated with child pornography images. Of the remaining, 34 percent were classified as adult pornography and 24 percent as nonpornographic. In another search using three keywords, a Customs analyst downloaded 341 images, of which 149 (about 44 percent) contained child pornography (see the figure below). These results are consistent with increased reports of child pornography on peer-to-peer networks; since it began tracking these in 2001, the National Center for Missing and Exploited Children has seen a fourfold increase—from 156 reports in 2001 to 757 in 2002. Although the numbers are as yet small by comparison to those for other sources (26,759 reports of child pornography on websites in 2002), the increase is significant.

Juvenile users of peer-to-peer networks are at significant risk of inadvertent exposure to pornography, including child pornography. Searches on innocuous keywords likely to be used by juveniles (such as names of cartoon characters or celebrities) produced a high proportion of pornographic images: in our searches, the retrieved images included adult pornography (34 percent), cartoon pornography (14 percent), child erotica (7 percent), and child pornography (1 percent).

While Federal law enforcement agencies—including the FBI, Justice's Child Exploitation and Obscenity Section, and Customs—are devoting resources to combating child exploitation and child pornography in general, these agencies do not track the

resources dedicated to specific technologies used to access and download child pornography on the Internet. Therefore, GAO was unable to quantify the resources devoted to investigating cases on peer-to-peer networks. According to law enforcement officials, however, as tips concerning child pornography on peer-to-peer networks escalate, law enforcement resources are increasingly being focused on this area.

Classification of Images Downloaded through Peer-to-Peer File-Sharing Program



Source: Customs CyberSmuggling Center.

PREPARED STATEMENT OF LINDA D. KOONTZ, DIRECTOR, INFORMATION MANAGEMENT ISSUES, UNITED STATES GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Committee:

Thank you for inviting us to discuss the results of our work on the availability of child pornography on peer-to-peer networks, which we provided to you in a report being released today.¹

In recent years, child pornography has become increasingly available as it has migrated from magazines, photographs, and videos to the World Wide Web. As you know, a great strength of the Internet is that it includes a wide range of search and retrieval technologies that make finding information fast and easy. However, this capability also makes it easy to access, disseminate, and trade pornographic images and videos, including child pornography. As a result, child pornography has become accessible through websites, chat rooms, newsgroups, and the increasingly popular peer-to-peer technology, a form of networking that allows direct communication between computer users so that they can access and share each other's files (including images, video, and software).

As requested, in my remarks today, I summarize the results of our review, whose objectives were to determine

- the ease of access to child pornography on peer-to-peer networks;
- the risk of inadvertent exposure of juvenile users of peer-to-peer networks to pornography, including child pornography; and
- the extent of Federal law enforcement resources available for combating child pornography on peer-to-peer networks.

We also include an attachment that briefly discusses how peer-to-peer file sharing works.

Results in Brief

It is easy to access and download child pornography over peer-to-peer networks. We used KaZaA, a popular peer-to-peer file-sharing program,² to search for image files, using 12 keywords known to be associated with child pornography on the

¹ U.S. General Accounting Office, *File-Sharing Programs: Peer-to-Peer Networks Provide Ready Access to Child Pornography*, GAO-03-351 (Washington, D.C.: Feb. 20, 2003).

² Other popular peer-to-peer applications include Gnutella, BearShare, LimeWire, and Morpheus.

Internet.³ Of 1,286 items identified in our search, about 42 percent were associated with child pornography images. The remaining items included 34 percent classified as adult pornography and 24 percent as nonpornographic. In another KaZaA search, the Customs CyberSmuggling Center used three keywords to search for and download child pornography image files. This search identified 341 image files, of which about 44 percent were classified as child pornography and 29 percent as adult pornography. The remaining images were classified as child erotica⁴ (13 percent) or other (nonpornographic) images (14 percent). These results are consistent with observations of the National Center for Missing and Exploited Children, which has stated that peer-to-peer technology is increasingly popular for disseminating child pornography. Since 2001, when the center began to track reports of child pornography on peer-to-peer networks, such reports have increased more than fourfold—from 156 in 2001 to 757 in 2002.

When searching and downloading images on peer-to-peer networks, juvenile users can be inadvertently exposed to pornography, including child pornography. In searches on innocuous keywords likely to be used by juveniles, we obtained images that included a high proportion of pornography: in our searches, the retrieved images included adult pornography (34 percent), cartoon pornography⁵ (14 percent), and child pornography (1 percent); another 7 percent of the images were classified as child erotica.

We could not quantify the extent of Federal law enforcement resources available for combating child pornography on peer-to-peer networks. Law enforcement agencies that work to combat child exploitation and child pornography do not track their resource use according to specific Internet technologies. However, law enforcement officials told us that as they receive more tips concerning child pornography on peer-to-peer networks, they are focusing more resources in this area.

Background

Child pornography is prohibited by Federal statutes, which provide for civil and criminal penalties for its production, advertising, possession, receipt, distribution, and sale.⁶ Defined by statute as the visual depiction of a minor—a person under 18 years of age—engaged in sexually explicit conduct,⁷ child pornography is unprotected by the First Amendment,⁸ as it is intrinsically related to the sexual abuse of children.

In the Child Pornography Prevention Act of 1996,⁹ Congress sought to prohibit images that are or appear to be “of a minor engaging in sexually explicit conduct” or are “advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct.” In 2002, the Supreme Court struck down this legislative attempt to ban “virtual” child pornography¹⁰ in *Ashcroft v. The Free Speech Coalition*, ruling that the expansion of the act to material that did not involve and thus harm actual children in its creation is an unconstitutional violation of free speech rights. According to government officials, this ruling may increase the difficulty of prosecuting those who produce and possess child pornography. Defendants may claim that pornographic images are of “virtual” children, thus requiring the government to establish that the children shown in these digital images are real.

Senator BOXER. It found the following, that, “The proliferation of child pornography on the Net is prompting wide concern. According

³The U.S. Customs CyberSmuggling Center assisted us in this work. Because child pornography cannot be accessed legally other than by law enforcement agencies, we relied on Customs to download and analyze image files. We performed analyses based on titles and file names only.

⁴Erotic images of children that do not depict sexually explicit conduct.

⁵Images of cartoon characters depicting sexually explicit conduct.

⁶See chapter 110 of Title 18, United States Code.

⁷See 18 U.S.C. § 2256(8).

⁸See *New York v. Ferber*, 458 U.S. 747 (1982).

⁹Section 121, P.L. 104–208, 110 Stat. 3009–26.

¹⁰According to the Justice Department, rapidly advancing technology has raised the possibility of creating images of child pornography without the use of a real child (“virtual” child pornography). Totally virtual creations would be both time-intensive and, for now, prohibitively costly to produce. However, the technology has led to a ready defense (the “virtual” porn defense) against prosecution under laws that are limited to sexually explicit depictions of *actual* minors. Because the technology exists today to alter images to disguise the identity of the real child or make the image seem computer-generated, producers and distributors of child pornography may try to alter depictions of actual children in slight ways to make them appear to be “virtual” (as well as unidentifiable), thereby attempting to defeat prosecution. Making such alterations is much easier and cheaper than building an entirely computer-generated image.

to a recent survey, over 90 percent of Americans say they're concerned about child pornography on the Internet, and 50 percent of Americans cite child pornography as the "single most heinous crime that takes place online."

Now, I just want to tell you how upset I think everyone in this room would be—not to say "upset"—if you would see some of these images—Senator Lott, I know you, particularly, would be, as well, although I know you haven't been able to hear me—the bottom line is, you would turn away. You would walk out of the room. You would be sick to your stomach at what is going on today. We get upset about a halftime show. This is illegal, peer-to-peer downloading that is going on today. Is this on your plate of issues to deal with in a prompt manner, Mr. Chairman?

Chairman POWELL. It hasn't been, but I would be happy to explore it with you. It's not entirely clear in what way it falls in our jurisdiction. But I will tell you, I have two sons, and they each have laptops, and I know exactly what you're talking about—

Senator BOXER. Right.

Chairman POWELL.—and it's a source of an enormous amount of frustration. Your computer gets hijacked by these sites. And once you're hijacked, every time you boot up, it repeatedly is displayed, stuff is sent over the open connection, and I think there needs to be some solution to that, and I'm more than happy to be a partner in looking for ways to deal with that problem. It is a serious one.

Senator BOXER. OK, let me repeat. This is illegal activity. Child pornography is illegal. And it is going on as we speak, thousands of times a day. And while we work on these other issues, which we must do, we must get a handle on this, because this thing is expanding exponentially. And so I would love to meet with you in the very near future, as in next week, if you're available. We will work with your scheduler on that.

Chairman POWELL. I would just add—and I think that conduct is illegal and criminal.

Senator BOXER. Yes.

Chairman POWELL. And I think it's important to really work also with the criminal prosecution authorities—

Senator BOXER. We will.

Chairman POWELL.—about that, as well.

Senator BOXER. We will discuss that.

The last thing, and I will absolutely stop. Commissioner Abernathy, thank you, you met with some of the content people. Could you just give us a sense of how they responded to your upset on this?

Commissioner ABERNATHY. Yes. It was very interesting, Senator. The senior management put together the program—Rupert Murdoch on down, all attended—as well as all the folks who were involved in the creation of the content, and there were a number of panels. The response to what I had to tell them was skepticism, because I started out the day. As the day went further and they heard from parents and children, and they heard from their senior leadership, the younger folks who were producing the content—their initial reaction was, "You think there's a problem. There is really not"—by the end of the day, based on what they had heard from their senior management and from parents and from children

and from advocates, was an appreciation that they were wrong about what they were doing. Now, whether this will result in change, I don't know, but at least it's a new dialogue. It's getting a lot of these young kids in a room, who grew up on MTV, who don't have a clue what I need to watch with my 8-year-old. And that's what they just didn't get.

So I do applaud FOX for taking this first step. I am hopeful it will go further. I don't think that's enough, but at least it's something.

Senator BOXER. Thank you.

Senator BROWNBACK. Senator Breaux?

Senator BREAUX. Thank you, Mr. Chairman. And thank all the Commissioners.

Mr. Chairman, Chairman Powell, it's really interesting that the FCC launched an investigation after the Super Bowl halftime show was presented. Had that halftime show been on ESPN—if they had carried the Super Bowl, as opposed to the network—you wouldn't have done that. Because, as I take it, it—the law says—I think that's what I was hearing—that you have the obligation to enforce decency standards on broadcast networks, but that that does not cover cable, direct television, and television that some 80 to 85 percent of the people in America watch.

Is that because of a statute, or is that because of regulations, or why?

Chairman POWELL. Let me explain that. Congress passed statutes many decades ago on indecency, the famous Section 1464, and it specifically talks about utterance using radio, or over radio.

Senator BREAUX. What year was that? I mean, that was a long time ago.

Chairman POWELL. 1927.

Senator BREAUX. Yes. I mean, they didn't have cable.

Chairman POWELL. There was nothing else, probably.

Senator BREAUX. Right.

Chairman POWELL. And so for decades, essentially—and then there are other statutes, which—Congress empowers the Commission to enforce that statute. By the way, that statute's a criminal statute. While we can't enforce it criminally—we're not a criminal authority—Congress empowered the Commission to enforce civil forfeiture for violations of the criminal provision.

Senator BREAUX. If that's the statute under which you look at the broadcast networks for content under a decency standard, if Congress decided to broaden that ability to cover the rest of the programming that people watch—and they don't know whether it's cable or direct television or broadcast—would that be something that Congress, in your opinion, could give you that jurisdiction to do?

Chairman POWELL. I think that Congress certainly could give us that jurisdiction, subject to whatever Constitutional limits the court would impose. And I think the only caution I was introducing earlier was not an apology to not do it, only that the court has set much higher standards for the cable medium than the broadcast medium. We regularly hear people talk about, "These are the public airwaves and the public trust." That's unique to broadcasting. That is not an accurate characterization for cable.

Senator BREAUX. It seems to me that we have reached the distinction without a real difference, in the sense that the people who are flipping the channels—I mean, you can go up and down the whole spectrum of the channels, and I don't know why one has to have one standard and the other has the other standard. I mean, it doesn't make any sense.

So you're saying that Congress could expand that authority to give you the authority to treat non-broadcast stations the same as you treat broadcast stations.

Chairman POWELL. Most certainly. Again, only subject to whatever limits there are.

Senator BREAUX. It seems to me that—I mean, would you—we spent some time up here—we had televisions in here, we had demonstrations on the so-called V-chip, because I really thought the primary responsibility of making sure your children read what they should read and don't read what they should not read, and watch what they should, and vice versa, is the parent's responsibility. We created this V-chip mechanism. And yet it seems to me that that has been a pretty dismal failure, either because parents do not want to take advantage of it, they don't understand it, they're not comfortable it, or for whatever purpose.

I mean, if only 7 percent are using it, 93 percent of families who have small children who could be utilizing it don't take advantage of it.

Chairman POWELL. Yes.

Senator BREAUX. What's the—I mean, it's a failure, isn't it?

Chairman POWELL. It's not an overwhelming success, you know. [Laughter.]

Chairman POWELL. That's for sure.

Several years ago, when I was a minority Commissioner, I remember we made an enormous public affairs effort to try to educate the public, to really bring them in. Kermit the Frog was the spokesperson for the V-chip.

Senator BREAUX. He did a commercial——

Chairman POWELL. These things were up all over television. And they haven't worked. And it's—I don't know, it's difficult to say why. I don't like to believe somehow parents don't care. But I do think there's something kind of mysterious about technology to the adult generation that's very knowable to the younger generation. Kids have a better hold on how to use the V-chip and how to defeat it than probably parents do. And, you know, certainly my kids seem to be able to run circles around us on the boxes that sit over the television.

Senator BREAUX. I would hope that every time we—you get a letter complaining about something that's on a broadcast channel right now, that you also, in responding to the people, let them know that the V-chip is available. And that's a way of them taking control of their children's lives, instead of Congress being the only arbitrator of what is permissible for their children to see—that they have a responsibility to police their own family, as well.

Chairman POWELL. Well, that's one thing that we can do fairly well. Commissioner Abernathy mentioned we have an entire section of FCC Web pages dedicated to parents, and advice like this, and we can always do more with this. It is a difficult issue.

The other thing you could look at, if you're looking for ideas, is that programs are rated so that they can be used by the V-chip system. Now, a lot of programming still isn't appropriately rated, and some—on cable channels that may be rated at the outset, but you walk in and Comedy Central is on at 12 in the afternoon. You won't have any knowledge at that moment, whether what you're about to see is violent or indecent.

Senator BREAU. One final question, and that is on the broadcast networks now—I mean, Janet Jackson's breast on TV for 2 seconds is an issue, but I think that also—and even a much greater issue, as far as I'm concerned, is all the violence on prime time television, particularly some of the reality shows that we see. Like I said, with people eating cockroaches, sitting in a bathtub of worms, and also doing horribly dangerous stunts that children copy and try to do themselves—is just as harmful, if not more so, to society, and particularly to young children. Why are they on? Because people like to watch it. They're not on there to shove it down anybody's throat. They have those programs on there because they sell advertisement, and people watch those programs. I mean—so what's your responsibility in that area? I mean, that type of violence is worse than a halftime show, as far as I'm concerned.

Chairman POWELL. I will take my cue from my children. And, by the way, I want to commend Senator Brownback, who's sent me many of these studies, and I'm fairly convinced about the connection between the violent images people see and effects on the children. I see it in my own.

Back to your question—but I'm almost more offended by the video-gaming access of children, which, interestingly enough, for example, little boys almost don't watch television anymore. You've almost lost the little boy generation to the video gaming world, and it's already been reflected in the Nielsen ratings. Where are they? They're not there. They're on their Xbox and the PlayStation, playing anything from Grand Theft Auto to some pretty extraordinary stuff that will pale anything you've ever seen in prime time television. So I think that's an important thing to think about—

Senator BREAU. But you have no jurisdiction over that?

Chairman POWELL. No, not really. There are arguments being made about whether somehow we could redefine the indecency statute to include violence. And I would only suggest, while that might be possible at the very margins, I think the most proper way to do this, if we were going to do this, there really should be a statutory basis for doing it, because I think that we would likely not get very far trying to be cute with that interpretation.

Senator BREAU. Thank you.

Senator BROWNBACK. Thank you, Senator Breau. And I thought those were very thoughtful comments.

Thank you for being here. And I've met with most of you on this topic at some point in time. And I know your hearts, and they're in the right place. And I think you share our frustration of, "OK, now the rubber's met the road here, let's get something done with this."

I want to go through a couple of items here. And I think there's interesting question to ask that we—it would be great if the Commission would do this. Yesterday's *USA Today* asked the question,

“How did we get from ‘I Love Lucy’ to ‘I See Janet?’” And it’s a great line. And most of us have been alive long enough and consumers of television long enough, we’ve actually seen this take place.

Can we go back, in a case study, and ask ourselves, How did we fall down this far? How did we get to this point, where you have this on prime time television—Janet Jackson—and then all of us commenting up here. But that’s no big deal. If you just flip the dial over to MTV, this is regular MTV. But can we go back and do a case study of—how did we get from point A to B on this chain? Maybe we can, from that, start to dig ourselves a set of answers.

And I’ve liked several that I’ve heard some of you come up with here today that I think we can work on. And I’m cognizant—very cognizant of the limitations. First Amendment—I am not a censor. It would not stand up in court. I don’t stand for it myself. There are greater limitations on cable than what we can do on over-the-air broadcast, by the way the courts ruled. So you’ve got some additional parameters that you have to work it.

But, as well, guys, you know, I’m—how can the “F” word not be vulgar? And maybe you’re teaching people a little bit about English, of whether it’s a noun or an adverb. I don’t know that many people using it question that. But adjective, adverb, noun, however you want to use it—I’ve heard it used a lot of ways, but this is vulgar. You know, and I really hope you can turn that one on around.

I want to ask you, as well, if you can consider doing the type of study—or maybe we’ll just request the FTC to do it—of target marketing of sexual material to under age audiences. Because when we did that—when the FTC did that on violent material, they found that these companies were readily target-marketing violent material. They would say it’s violent material, which, normally you’re supposed to be 18 years of age to watch it, and then they were target-marketing it to under age 18 audience.

I am virtually certain that what we will find on MTV is that, here is sexual material target-marketed to an under age audience—under age 18 audience. I am certain of that. I don’t think that study has been done at all. This is material that’s rated as adult material. Yet it is just, pure and simple, target-marketed. And yet we’re all offended and amazed when it’s on the halftime of the Super Bowl. Actually, that’s reaching an older aged audience that it was target-marketed toward.

And this has a pernicious effect on the society. I want to show you a chart here of sexually transmitted diseases. Now, you can say, OK, these are not direct causal impact, but I would suggest to you it’s pretty close. And I think as we get into these studies on it, you’re going to see the impacts of these areas, of sexually transmitted diseases and violent activity. We are seeing it in the violence behavioral studies. I think you’re going to see it in the sexually transmitted diseases fields, as well.

Yesterday, I was on the phone to University of Indiana researchers, University of Indiana Medical School. They’re the ones that are leading the country—and I would urge you to contact them and bring them in to testify—leading the country on brain-mapping studies, watching a—doing an MRI of a child while they’re watch-

ing violent entertainment. Got some great early materials out on this. Because we've got all these behavioral studies that show that it's connected, but it doesn't seem to cause anybody to react.

But, in these, their studies are showing exposure to excessive violence in the media shows similar brain functions in children as those who suffer from attention deficit hyperactivity disorder and attention deficit disorder. And what they were basically saying to me on the phone yesterday is what happens when a child readily consumes this video game material—Chairman Powell, it's what you're saying, and it's what I'm seeing in my children—you are losing this younger generation to the Xbox and the interactive nature of it. What you're seeing is, while the reactive part of the brain is really fired up, the one that's just stimulated and just reacts, the cognitive—the thinking part of the brain that slows you from just reacting to a reflex reaction—the part that says, “Now, wait a minute. Let's think about this a second”—is depressed. Its activity is actually going down. That cognitive part, the front of the brain, the activity is actually going down, while this reactive part is going up.

So what we're seeing in the behavioral studies, now we're getting the hard sciences. Here's what's taking place. You're actually slowing that cognitive part of the brain down, depressing it, while this reactive, stimulated part of the brain, the reflex part of the brain, is actually being stimulated up.

And what we've created now is a toxic culture. We used to have toxic waste in the environment. We have created a toxic culture—sexual material, vulgar material, violent material. And we see the reaction to it, we see impacts. We now are getting the brain studies. And I think we're going to need to fund more of the brain-mapping studies so we have the hard science to go to the entertainment industry and say, “Here's the hard science. It's no longer behavioral studies, it's no longer is there causation correlation. Are we going to argue these points? Here's the hard science on it.” And the early studies are showing that the connectivity between watching—consuming a lot of violent material and being violent, the linkage to that is higher than that between smoking and getting lung cancer, so that you're showing a clear impact on this culture. And we may have to, in the future, just require more of these studies—behavioral studies, brain-mapping studies—to know exactly what are we feeding that child's mind? Because that's the bottom line what I'm trying to get at, What am I feeding that child's mind?

I watch what my children eat. Not as well as I should, but I try to watch what fat, what sort of diet they're ingesting in their body. What's more important is, What am I feeding their brain? And what are they getting in their brain? And we, unfortunately, are seeing now what they're getting in their brain and their reaction that it's then causing as they go ahead and develop through this society. And it is past time to get on top of it.

I'm going to push the leader to bring up the bill on tenfold increasing of the fines. I think that's a first step to at least give you folks the better authority that you need. I think we ought to look at how we go at cable industry within the First Amendment. I'm not a censor. I think we have to look at an FTC study on target marketing of sexual material to under age 18 children. And maybe

you folks—I think it probably fits more at the FTC. They’ve done this before.

And then I hope we can look backward, How did we get to this point, to the point of where we are today, that we’re all just—almost throw our hands up? But it’s not time to throw our hands up. Now’s the time to dig in, do the hard work of legislating and enforcing in a sensible, constitutional fashion, and start to dig out of this hole. And we can do it.

Long comments. I know you’re up to the task of doing it.

Senator Lautenberg?

Senator LAUTENBERG. Thanks, Mr. Chairman. And my compliments go to you for your interest in this subject for such a long period of time.

We are witnessing a poisoning of our society, and it’s a dreadful thing to stand by and see it happen. And one of the things that concerns me—I respect greatly Chairman Powell’s protection of the constitutional rights that we have, but I don’t know whether that turns us into more spectators bemoaning our fate than taking some kind of action to deal with it.

The public appetite for sex and violence certainly isn’t diminishing, because these shows, these commercials, are getting big responses. So how do you say, “OK, you shouldn’t like it this much,” without really introducing censorship of some serious nature?

So that’s a concern. And we were able to find a CNN Website that said there are 260 million pornographic Websites, that it’s an 1800 percent increase in 5 years of these. The average age of viewing is 11, and 90 percent of the kids from 8 to 15 are seeing pornography while they’re doing their homework. This is so pervasive and so destructive, in my view. I played football, and I did all the things, and I served in the military, but I’m revolted by the violence that we see constantly. As a matter of fact, I try not to go into the movie theater before the—or until the previews are done, because each one of those portrays violence in a way that attracts people.

So I don’t know what we do about that appetite, but—Mr. Chairman and your colleagues, and I think you did a very good job this morning. I don’t agree with the outcome of some of your decisions, for instance the Bono statement at the Golden Globe Awards show. Did you review the decision of the enforcement bureau before it was issued?

Chairman POWELL. No.

Senator LAUTENBERG. No?

Chairman POWELL. No.

Senator LAUTENBERG. Because the decision that’s made seems more on grammatical structure and not the public sensibility about whether it’s used as a part of speech; one is OK, on one hand, and, on the other, it’s considered unacceptable.

That coincides with something else that I’ve noted, that your critics have noted that the FCC last year received about 240,000 complaints about some 375 radio and television programs, but issued only three fines. And we all kind of agree that the fines are piddling compared to the lesson that we’re trying to put out there. But—the inadequacy of fines is one problem, but what about the lack of effort or attention, when, out of 240,000 complaints, there

have been three fines that were issued? Doesn't that seem fairly inadequate to respond to the number of complaints that you got?

Chairman POWELL. Yes, I would accept that criticism, but make a couple of points, if I could, just to put it in perspective.

Senator LAUTENBERG. Sure.

Chairman POWELL. 240,000 complaints over 375 programs, so the number of potential programs to fine is not the 240,000, it's the 375 programs. Last year, there were 13,000 complaints, but a similar number of programs. Actually, more programs were complained about the year before, with fewer complaints. And, you know, this is out of how many television programs a year? Conservatively, I would estimate television programs alone are probably in the 1.4 to 2 million programs-a-year range. That's not even adding radio. And since we don't enforce against cable, some amount of that 375 are cable complaints that we wouldn't act on. The penalties of this Commission compared historically to other Commissions are absolutely consistent and, frankly, more than the history of the Commission, and I can't defend all the years previously.

That said, is the ratio itself a sign of poor enforcement? I suppose one could argue that, but not without looking specifically at what each of those cases were and whether our decisions not to take actions were defensible ones. We're a robust society. People complain about content all the time. It's our difficult judgment to sort through what's actionable under the law and what's not. We bring the fines that we think are warranted. But I just think—

Senator LAUTENBERG. Yes, I would urge a more energetic response to this thing, if I can use the term.

Since we know that the appetite is almost insatiable out there among a large part of our society, you say, well, how do you get the message across that says, "Hey, you've got to stop this?" And I wonder what would happen if there were consumer organizations that started to form and said, "Look, you advertise that trash, that filth, that vulgarity to sell your product, we're just not going to buy it," and to see whether something could be done on the commercial side, because—Senator Graham talked about the family involvement, and that's true, but somehow or other that message doesn't get through as we'd like to see. It's too convenient. It's a babysitter in the home. So throw on the TV, "Go watch TV and let me get done with the wash."

So I think there are things that we can do, Mr. Chairman, not the least of which is to stay on top of this and urge energetic—and to take the enforcement side to the limits possible without invading the constitutional rights of our citizens.

I thank you very much.

Senator BROWNBACK. Thank you, Senator Lautenberg.

Senator Lott?

**STATEMENT OF HON. TRENT LOTT,
U.S. SENATOR FROM MISSISSIPPI**

Senator LOTT. Thank you, Mr. Chairman.

I believe we have a vote on now, so—and I did come in late, and I apologize to the Commission for not being here to hear your statements. Thank you for being here and for the work you do. You do take a little criticism along the way, both from us and others, and

you, I hope, understand that that's the way the job works. And I've been a——

Chairman POWELL. Better than anyone.

Senator LOTT.—among those that have been critical. But when you do the right thing or say the right things, I think we ought to also acknowledge that. I think, Chairman Powell, what you've had to say, since this recent incident, has been positive. I hope you will follow it up with action. I heard one radio announcer this morning talking about, "Well, you know, yes, they might change their conduct a little bit here in the next few days, wait for the storm to die down, then they'll go right on back to what they've been doing."

Same thing with FCC. You all will do as you've done in your statement, call on, you know, some voluntary action, work with, you know, the networks to do more to curb indecent, inappropriate, violent programming, and volunteer code of conduct. I don't think it's enough. I think you need to be very aggressive on this.

And I think we've got to be more aggressive. I don't think we've given you enough tools. I support increasing the fines by ten times. I checked to see if we could move the FCC reauthorization we passed last year that's pending in the Senate for action. The answer is, no, it has all kinds of problems, and we're not going to be able to move it in its present form. Lots of people have holds on it. So I think we should try to move the tenfold fine increase separately and freestanding to show that we're doing something, but in line with making sure we don't just make this a hot reaction to one event. It is much broader than that.

Shouldn't we put this enforcement also against the everybody—cable companies? I mean, it should be across the board, shouldn't it?

Chairman POWELL. Well, yes, in short. I think that——

Senator LOTT. We need to do that——

Chairman POWELL.—if you're going——

Senator LOTT.—legislatively, right?

Chairman POWELL.—honestly want to talk about this stuff on television, you're missing 85 percent of the story——

Senator LOTT. Yes.

Chairman POWELL.—if they're completely out of the discussion.

Senator LOTT. Yes. I believe it's being proposed by some people in the House. Maybe you already have this authority, but sort of a three strikes and you're out/lose your license sort of thing. Do you have that authority? Is there legislation pending in that regard? Is that something we'd want to consider?

Chairman POWELL. I don't know if there's legislation pending in that regard. I'll defer to others on that. It's——

Senator LOTT. You don't have that authority?

Chairman POWELL. It's not clear. I've actually thought about it. It's possible. I think it's something we should study or consider, whether there's an axiomatic number, and over what period of years would you do that.

Senator LOTT. I can tell you, and you know it, the American people are about—are getting fed up. Are they doing enough to control their own children and what they watch? No. Is the anxiety rising? Is the respect for, you know, big television, network television, fall-

ing? Absolutely. And I hope maybe this has been the match that lit the fuse where we'll finally get some action.

I think we need to do a lot more, a lot more aggressively. And that's one reason why, by the way, I opposed y'all's decision last year, and continue to oppose it. I think further concentration and consolidation is bad, because these people are already insensitive to what the American people are saying. And it's not just about children. It's just—what we're seeing, what's being shoved on us in large doses is totally out of control. And, frankly, when you get big enough, you don't care, and you don't pay much attention to your local affiliates; you do what you want to, and then hide behind the First Amendment. And I don't think that's a good idea.

Now, Dr. Copps, I sense that you've been anxious to say several things.

[Laughter.]

Dr. COPPS. Thank you.

Senator LOTT. Let me just give you a blanket opportunity to comment on anything you've heard in the last few minutes, and I'll stop with that.

Dr. COPPS. That's the nicest thing anybody's said to me in a long time, Senator.

[Laughter.]

Dr. COPPS. I appreciate that very much.

First of all, I think we do have that power to revoke licenses. I don't think we need to be giving notice for it. It has been in the statute, it has been in the rules, and we ought to be exercising it.

But I want to return to the question, because so many have alluded to it, you in your comments, Senator Brownback's question, How do we get from *I Love Lucy* to *I See Janet*? And certainly time's change, and nobody's talking about going back to the mores of the 1950s. But I think we've got to look within, and look at ourselves, and look at the culture that we have created for this—not broad culture, but just the legal and the regulatory culture for this kind of thing to occur. And we, at the Commission, have been guilty of this, too.

I think, you know, we don't come with serious fines. And we can sit here and debate whose Commission had the biggest fines, but nobody's Commission has had credible fines, Republican or Democrat, this or any previous one. So we need to be fixing that.

But I think that all this talk, which we're finally beginning to disabuse ourselves of, "we don't need a national nanny," "our people are getting what they want," or "they can turn off the set," or "the V-chip can handle it," all of that is contributory, because it just tells big media that they can just go right ahead without fear of punishment and without fear of retribution. And as you so eloquently said, media consolidation is certainly flashing a green light, and we see it flashed again this morning with the latest takeover attempt with Comcast and Disney.

So I think there may be many reasons for how we got from *I Love Lucy*, but I think we should probably look within, and, like Pogo, maybe the enemy is us.

Senator LOTT. Thank you, Mr. Chairman.

Thank you, Commissioners.

Senator BROWNBACK. Thank you, Senator Lott.

I've got a few questions to ask. We have a vote on, and several Members are coming back, and they all asked me to hold you here. So I hope you can stay in, in patience, because obviously this is a very hot topic for people.

Dr. Copps, what you said, I think, is accurate on this, in that we have given the media companies a pass on this and said this is the parent's responsibility. And I agree; as a parent of children, I am responsible. But I liken it to saying that when, in the 1960s, the Potomac was getting polluted from point-source pollution, that we should tell people, then, "Well, don't swim in it. Don't eat the fish. And if you want to swim in it, put a wet suit on." You know, instead of saying, "Well, let's clean it up." And we didn't take that route at that point. We didn't tell the big companies, "Well, you're not really at fault, you know, it's not your responsibility." We said, "No, you're responsible. You did this. You clean it up." And we really started going at it. And this is a cultural environment now we're dealing with, and it's pervasive, and it has toxic impact.

So now how do we back up and unwind that ball? I think you can start off with issuing some fines and looking at what you can do on removal of license. And then I do think we're going to have to take a hard look at cable, of what we can do in that area.

Chairman Powell, I'd ask you, do you have—what are the next steps you're going to be taking on this issue? It's obvious that the Commission has agreed that something needs to be done. What would you articulate as the next several steps you would anticipate you'd be taking?

Chairman POWELL. Let me just say generally and then with some of the specifics that you're aware of. By the way, it hasn't just been in response to the Super Bowl. I think anybody who wants to honestly and fairly look at this very Commission's track record over the last 3 years will see a steadily intensifying effort on indecency enforcement. And I credit every single member of this Commission for having a role in that. Each has something that they can take credit for for helping bring to our attention. But the thing that's admirable about the Commission is it has accepted and endorsed most of those things and moved forward. Some of them include dramatically—being as creative as we possibly can to raise the level of fines that we can raise by counting as creatively as we can. That means we're not using routine base amounts—at \$7,000, for example, which used to be the practice—and we almost routinely now come in at the high levels of 27,500. We've started fining multiple affiliates for the same offense. We've put people on notice that we will fine per utterance instead of per program. That's a dramatic increase. No Commission ever has done that before. That's something the Commission deserves credit for.

I think that we have talked about revocation. But we're not a star chamber. Just because we believe it's a tool doesn't mean we're going to go out and get somebody and put them in there just to make a point. If the Commission, in its judgment, believes that somebody has either repeatedly or seriously offended the indecency laws, I have no trouble whatsoever revoking a license. I think you'll see more stringent threat and potentially use going forward on that issue.

The other thing is, we want to work with Congress. We call for the fines, not to disabuse our own responsibilities. As I said in my testimony, the first place we look is ourselves. But even if we maximize fines every conceivable way under the statute, fines that are 15 and a half years old and are not even calibrated for cost-of-living adjustments, simply are inadequate. And I think it's responsible for us to work in partnership with the Congress to do that.

Finally, I would say, with respect to—we've also worked very, very aggressively to pull backlogs down. When this Commission took office, there was a significant amount of backlog in the enforcement agenda altogether. We've made enormous strides in that, and we need to do a lot better so that we can be swifter on complaints, act on them faster, and dispose of them quicker. That's a challenge for the agency, always dealing with its resources and appropriations, but we're committed to making that a priority.

And then, finally, with respect to these high-profile cases—and I would submit to you, the Super Bowl is only one of many that are heading to the Commission's desk—that we have out there that are probably very significant and will involve very significant penalties, and I think you'll see a steady stream of those over the next several weeks and months.

Senator BROWNBACK. I hope you can hold some Commission hearings across the country on this topic. You know, I think, Commissioner Abernathy, you mentioned about one of having the people from the industry. And I feel like sometimes the entertainment industry has put itself in a cocoon. Washington gets accused of that; sometimes rightfully so, but we really try to fight against that. I do think that industry has. And as long as the money is flowing, everything's fine. But to bring them out of that cocoon and hold the hearings—in Kansas City, I would welcome you—

Chairman POWELL. Next week?

Senator BROWNBACK.—Atlanta, places around the country, so that they can hear what people are really saying. Because I get this raised to me just all the time, is, people are fed up with fighting a culture to raise their kids. They feel like they're just being attacked all the time from it.

Commissioner Powell, let me ask you, on the cable issue—because several of you—I'm hearing a little dissidence here about, "We need to address it. We've got tougher standards to address it." Can you, will you, be willing to work with the Congress on how we can statutorily give you the authority to address the cable industry? And what kind of strictures would you see there?

Chairman POWELL. Most certainly, we're always ready to work with Congress on this agenda and our enforcement generally. So we would really be happy to do that, and we'd welcome the opportunity.

And, by the way, you know, my obligation, as advising the Committee about its restraints, are not an attempt to be dismissive about—

Senator BROWNBACK. No, I understand.

Chairman POWELL.—the importance of it, but for us to be honest, to be intellectually honest and sober about what our challenges will be.

I do think the Constitution and the First Amendment are a significant challenge. You cannot just easily take the broadcast model and roll it over to cable. The case that has been cited of *Playboy*, it's important to mention, yes, they said the Commission has the authority, and struck it down; and struck it down because they said the Constitution requires you to use the least-restrictive means. There are least-restrictive means in cable than there are in broadcasting. For example, Commission Adelstein rightfully talking about the ability to block programming. That's not something you can do in broadcasting—when a show is coming over at 8 o'clock, it's coming over at 8 o'clock. It's a one-medium medium. Cable has all kinds of technical capability that can be employed to help empower parents and families that broadcasting doesn't. And I certainly would be interested in looking there first, at whether cable can have a behavioral responsibility, but the tools—and not expensive ones that consumers have to pay for—but the tools are there for people to really make informed choices about what they don't want on their system. That's the second thing that I would look at very carefully.

And then you kind of figure out who you're talking about with respect to cable. It's a different model, in the sense that, you know, what's on the Discovery Channel is the responsibility of the Discovery Channel. It may be on Cox Cable, but who are we going to focus our attention on, the programmers or the cable asset owner? And I think—I don't know the answer to that, but these are some of the additional things to focus on.

And I think the fact that those programs run all day, full day, so you have genre channels—you know, the History Channel runs nonstop—so ideas that we've become we've become accustomed to in broadcasting, like a family hour or a block of time or something, is restricted or just a little trickier in the cable context, where you basically are buying separate spaces, and they run all day; so, you know, sometimes Comedy Channel is clean, and sometimes it's horribly dirty, but it can be on all day long. I haven't completely thought through the best way to focus on that if I were asked, but I just help you point out some of the issues that you'll have to focus on.

Senator BROWNBACK. Let me point out something to you that you know is coming. Yesterday's *USA Today*, again, says that NYPD Blue is considering broadcasting a different episode in Central and Mountain time zones than elsewhere because of the Janet Jackson incident. Two points off of this. Number one, is that acceptable way to go—you just don't offend us out in the middle of the country, and you can go at everybody else, that's OK—is one.

And, second, are we going to need to—are we going to have to require that these programs go through—that they have a review before it comes out? I'm seeing people now putting time delays on broadcasting, for them to make the call. Is that going to have to be something that we're going to have to require of over-the-air broadcasting companies, that there's some sort of at least private review by them of a delay so that it gets caught?

Chairman POWELL. I personally support time delay as a sort of reasonable tool to deal with the problem of live broadcasts. I think there is a challenge, when you're covering a live event, that one of

your talent—or one of the people that are being covered in the live event were to suddenly do something indecent or profane, what are the effective ways that you could prevent that from getting out over the airwaves. Once it's out, the damage is done. But we have this in our society all the time. I mean, in the Super Bowl, you will watch players jog off the field all the time, and you have no doubt—no trouble understanding what they're saying if they're cursing. If CNN is interviewing a soldier in Iraq, and he suddenly blurts out the "F" word, you're going to have those kinds of challenges in live television all the time. And so time delay seems to me to be a noncontent-based/respective of the First Amendment approach to trying to grasp that so that they get 7 seconds of notice, and they have a fair opportunity to prevent that from going out over the air.

That's why I think this week you've seen a whole string of announcements from what seems to be every single network about deploying time delays in their upcoming live programs.

Senator BROWNBACK. I want to get to the second part later. I need to go vote. Senator Wyden's here, and I'll give the running of the Committee to him until I get back from that vote.

Senator Wyden?

Senator WYDEN [presiding]. Thank you, Mr. Chairman.

Mr. Powell, I have been looking at the nature of the enforcement actions you all have brought, and fines and all of the data that essentially relates to how the Commission has proceeded in this area. And it looks to me that there is a clear bottom line here, and that is that the locally owned station is rarely the culprit here. If you look at all of the evidence, that's the conclusion you come to.

The question I wanted to ask you, and I wanted to get it on the record because it relates to the consolidation debate, "Do you think it's just a coincidence that, when you review the data, these locally owned stations are rarely the culprit?"

Chairman POWELL. I don't know for sure that I agree with that, that the local stations are never the culprit or rarely the culprit.

Senator WYDEN. Read this morning's *Washington Post*, Mr. Chairman. This morning's *Washington Post* says—

Chairman POWELL. Well, that's fine, but the—

Senator WYDEN. No, but that's a matter of—

Chairman POWELL. All right.

Senator WYDEN.—public record. I mean, we're talking about 70 percent, or something like that, essentially against the large, you know, conglomerates. And so what I want to do is, I want to take facts that are on the record—I mean, we all know you can have a debate about the politics forever, but it is clear, when you review the record, that the disproportionate number of actions are brought against the large people, which has led me to conclude that these local stations are rarely the culprit. And I would just like you to tell me, for the record, whether you think that's a coincidence or there are factors that I'd very much like to have your opinion on.

Chairman POWELL. Well, out of respect for the *Washington Post*, I will assume the data to be true.

Senator WYDEN. But it's in other sources, too.

Chairman POWELL. OK. We keep that data, and I will certainly look into it to see about it. But the other thing I think it's impor-

tant to note, that a lot of local broadcasters might not be the culprit because 70 to 80 percent of the programming they clear and they run, they purchase from networks and other sources of programming. So your local television station, no matter who owns it, by the way—and this is not much different for stations in large ownership groups or stations that are not—purchase the vast—you know, carry the vast majority of their programming from network sources. So it's just a dramatically higher probability that an offending programming—an offending program comes from a network.

Networks basically are programming a substantial part of what our citizens see every day. So with the exception of the local news or perhaps the Washington Redskin report in the Washington D.C. market, the vast majority of what you're watching on that local product during the day is being produced by a network, no matter what size the network.

Senator WYDEN. Well, I think that's fair to point out. At the same time, I come to the conclusion that if you have to shop next to somebody, and you have to see them at the little league team, you're going to be a little bit more careful about offending, and certainly as it relates to shows that aren't one of the 9 or 10 o'clock-at-night network shows. I'm prepared to make an allocation for that, but I still keep coming back to figures that it seems to me are irrefutable. Did you want to comment on this, Mr. Copps?

Dr. COPPS. Yes. Almost everywhere we have been—in our media-ownership hearings that Commissioner Adelstein and I went to last year and to our localism hearings that all of us are going to this year—I ask the owned and operated station owner, who is always there testifying, if he has ever, ever, ever preempted a show for indecency reasons. I have yet to find one network owned and operated show who has done that. I also ask the independent and the affiliated station owner have they done it, and time and time again they answer, “Yes, we've preempted *Married by America*—it didn't conform to our community standards”—or *Temptation Island*, all these things. So I think the premise of your question is right on.

And as to the question of the veracity of those findings, I think it's actually 80 percent of those fines, and 80 percent have gone to just the two big consolidated companies.

Senator WYDEN. All right.

Let me ask, while I have all of you here, about an issue I'm looking at, and it stems from the fact that once in awhile you write a law that exceeds your expectations. Last year—I think you know this, Mr. Chairman, because I discussed it with you—I wrote, along with Senator Collins, the Stand By Your Ad requirement in McCain-Feingold. It wasn't last year; it was part of the McCain-Feingold legislation. We thought it was going to make a difference. We thought it was going to be useful. And it essentially grew out of the campaign that neither I nor Senate Smith were particularly proud of back in 1995 and 1996. And so I wanted to do something about the negativity of political advertising. We thought that the legislation I wrote with Senator Collins would make a difference, but it has far exceeded our expectations when you had every candidate concerned about the lowest unit rate, and they're all stepping right up and saying, “I authorized the ad.”

My question to you is—and I would be interested in the views of any of your colleagues, as well—is, do you think that there is any way we might build on that model to enforce some broadcaster accountability? In other words, it clearly is not the same thing, and I understand that. And one of the things that's attractive about doing it with respect to political advertisements is that, because the ads are so short, when the candidate says it right at the end, there is a kind of ownership there that's constructive. But I am—I'm interested in whether or not it might be possible to put some additional heat on a broadcaster through an approach that would build on Stand By Your Ad, which, for once, exceeded the expectations of what the authors thought it might accomplish.

Chairman POWELL. I mean, could I ask—so the suggestion would be, somehow a commercial advertisement, whoever profligated that advertisement would somehow have to be identified?

Senator WYDEN. Well, I'd like to hold the broadcaster responsible, just as we have done with political candidates in Stand By Your Ad. As I say, now the American people, when they turn on this upcoming fall election, they're going to see candidate after candidate basically have to stick to the record, where in the past they essentially ran all those commercials where their opponent looked like they hadn't shaved for weeks and was essentially on a weekend break from some prison, and there's a new accountability. And what I'd like to know is whether you think we might be able to build on that model to get a broadcaster to take full responsibility for the kind of violent and overly coarse content that we're discussing.

Chairman POWELL. In the advertising? I'd have to give it more thought, but I think one part of your question that I think is correct, in terms of the premise, is that, you know, the broadcaster, either local or national advertising, is—there is an editorial responsibility there. They choose which ads to take and whether or not and when to put them on. So certainly there's a level of responsibility as to the choices being made about what runs. I'd like to work with you and think a little more about exactly how this Stand By legislation would work.

Senator WYDEN. Why don't we do this, because I am springing this on you cold, and I understand that. I would very much like to have the Commission take a look at this. We have a statute that is working now in the political area. It holds politicians accountable. I would like all of you to look at whether you could take that model and use that model in some fashion to hold the broadcaster responsible for the kind of material that is over the line and we're concerned about. And since I am offering it to you for the first time, if all of you would be willing to take a look at it and put the staff on it, I'd appreciate it.

Chairman POWELL. Yes, sir.

Senator WYDEN. Thank you all, and—appreciate all your patience this morning.

Senator DORGAN [presiding]. Members of the Commission, thank you for being with us. I guess I am probably the last to ask questions, and I will limit my time to 30 minutes.

[Laughter.]

Senator DORGAN. I'm just, of course, joking. I'll be brief. But you've been here a long, long while. We appreciate very much the entire Commission being willing to share your thoughts with us.

Let me ask a few questions about the will to regulate. This is a regulatory body. You all were confirmed to your posts by the U.S. Senate. You all appeared here before this Committee. And I think, with respect to most of you, I always said, you know, I hope that you're a tiger on these issues, that you have a will to really be a regulator, in the best sense of the word. And there does require, in my judgment, to be some regulation with respect to use of the airwaves, because the airwaves don't belong to those who are using them; they belong to the American people, and we license them for use, and we require certain things attendant to that licensing.

Let me ask, have there been any revocations of licenses of either television or broadcast—or radio broadcast stations in recent years? Not just with your tenure, but in recent years. And if so, how many?

Chairman POWELL. Never, to our knowledge, in the whole history of the Commission.

Senator DORGAN. Does that seem implausible to you, that we have these thousands and thousands and thousands of broadcasters with licenses to use something that belongs to the American people, that there has not been one revocation? And the reason I ask the question is, you know and we know now that there is a changing standard of behavior and what is happening in some areas on some programming is pretty disgusting. Should there have been, do you think, or should there be, aggressive approaches to say, you know, "Look, you have responsibilities. If you don't meet them, you have at least the prospect of losing this license"?

Chairman POWELL. To be clear, just on the—we have revoked licenses over the years. Something like, almost three, on average. Some people are saying per year. I'd have to check on that. But none for indecency. Do I think, over the entire history of television, could there have been a case in that time period in which that was warranted? Certainly—most certainly possible.

One of the things that we did is, when this issue was really emphasized by both this Committee and my colleagues, we moved toward a much more aggressive stance in this Commission to make clear that we intend to pursue that. And I don't have any problem whatsoever pursuing that on a going-forward basis with respect to our regulatory responsibilities.

Senator DORGAN. Do you think, based on your stance at the moment, that the prospect there are broadcasters who think if—"Look, if we move well beyond where we ought to be here, we might lose our license"—do you think that's a practical thought for some of these folks?

Chairman POWELL. If they have any wisdom whatsoever, it should be. We announced it formally in the context of our opinion. The fines and enforcement of this Commission is strict and stringent compared to any Commission previously. We have made public statements in response to outrage on television. I think we've telegraphed, with some aggressiveness, that that is—to ignore that is at your peril.

Senator DORGAN. Yes, but taking effective action and saying, "You just better watch it," are two different approaches to enforcement, and I think—I'm not suggesting this Commission is different than other Commissions; I'm saying I think there needs to be a will. And my hope is that perhaps this is a tipping point. Maybe we've come to a tipping point on this issue. After so many decades of discussing it in Congress, we've finally gotten to the point where we have a tipping point, and we'll have the FCC and Congress decide something really is going to happen here significant to change what's going on.

Let me ask about the issue of concentration. You all know I feel very strongly about that. I think with fewer and fewer people determining what people in this country see, hear, and read, it is very troublesome. And I happen to think—and I'd like your analysis of it—I happen to think much of what's happening with respect to coarseness and indecency and obscenity in broadcasting has to do with a concentration of ownership, because the more aggressive concentration of ownership you have, the less localism, and the less localism—as my colleague, Senator Wyden suggested, you know, you don't have to care much about what they think in the grocery store because you're not going to meet them.

Dr. Copps, you touched on that briefly. I'd like anybody that would like to—do you think there's a connection here between concentration and the diminution of standards?

Dr. COPPS. I think there's a definite connection. We should have debated this before we relaxed the media-ownership rules last year, and I requested that we do so; because everywhere I went around this country, I heard people saying, "We think there's a connection between the rising tide of indecency and the rising tide of media consolidation." I don't know if that's a causal effect or a correlative effect or what it is, but I think we owed it to our kids to tee that up and at least amass a halfway credible record before we voted.

But I think—and I don't think I'm going too far on this—that when you flash the green light for consolidation, you're just inviting more indecency. I notice one of the big mergers that recently was approved at the Commission, and the next day we read that that particular outfit was teaming up with somebody else to offer a porn channel. I mean, that's the kind of thing, I think, that we're going to see more of as consolidation increases. So I think the problems are intricately related.

Senator DORGAN. Anybody else on that?

I should just parenthetically say, it's my hope that perhaps the Super Bowl halftime program might persuade ten House members to sign a letter in the House, which will then give us a vote in the House, and perhaps they will pass the disapproval resolution that's already passed the Senate by a fairly wide margin with respect to ownership limits. But we'll wait and see whether that Super Bowl halftime performance has that salutary effect.

Let me ask about the "F-word" issue. And I know—let me say, Chairman Powell, I know that you have announced an effort—or I don't know, you might want to explain what you've announced—but you've announced the fact that you don't feel comfortable at all with where this issue is at the moment. The enforcement bureau in the FCC, as you indicated, issued a ruling on the use of the so-

called “F” word, saying that—they didn’t say it quite this way, but effectively they said, if it’s used as an adjective, a descriptive term that stops short of other terms they described, that it would be all right, it does not violate the decency standards and is not considered, quote, “obscene,” unquote.

I read that, and I was—I thought to myself, you know, I understand we have these issues with respect to cable, especially the basic tier of cable, which—you know, I mean, the basic tier is what you have to get when you buy cable, and there are—I think all of you have also raised this issue, that you have these differences between broadcast and cable, but they kind of fuse together when over 80 percent of the households have cable now. But when I read of the ruling, I thought, I don’t understand how they can reach that ruling. Isn’t there just some basic understanding that the use of that word on broadcast television is just “wrong,” quote/unquote, just—you know, no way to describe it, just flat wrong?

Chairman POWELL. We are going to rule on this, but I’m not afraid to say that—and I said publicly that I think the decision is wrong. But I do feel some obligation to explain what I think happened. The word is protected speech. It’s not an acceptable word, but it is one that the Commission looks to the context. I think a part of the decision in the bureau’s judgment was not so much—I think—the garbage about adverbs and adjectives is unfortunate, but I think the other aspect of their opinion was that it’s a fleeting exclamation, and Commission precedent was that when somebody blurts out that on TV, there has been a long record of not finding that to be indecent. But I think many Commissioners here have noted that there are other aspects of this statute. For example, profanity is also forbidden under the statutory provision, and I don’t think anybody would argue the word is not profane.

I think this Commission, who sets the law ultimately for the institution, will look at this and rule quite imminently. I don’t even want to begin to say that the adjective/adverbs thing, which just smacks in the face, to some people, of common sense, is really the basis for a regulatory authority to reach its final decision. And I want to assure people, as I’ve said when I’ve been asked in public, there is no way whatsoever that that’s a statement, or intends to be a statement that the Commission thinks it’s OK to use that kind of language during those hours in television.

Senator DORGAN. Well, Mr. Chairman and Members of the Commission, let me just say that I think there is a role for regulation in government. And in regulatory agencies, where regulation is the function, I would hope very much that this Commission and others would regulate on behalf of what they perceive to be the public interest, and the public interest in this circumstance, if you were to hold, let’s say, a dozen hearings across the country, would be a public interest shouted by parents all across the country saying there is a coarseness, a diminution of standards and language and so on, on broadcast properties, that they’re very concerned about. And they are not saying that they want censorship, they’re not saying that we want the “Thought Police” running all over America. They are saying there needs to be some common sense approaches. We used to have a family time on television, for example. Senator Hollings and I and many others think it ought to be brought back.

But I think we—at least speaking for myself, I hope the FCC is aggressive on these issues. You know, use the authority you have. If you need more, ask us for more and let us debate that. But I appreciate the work Senator Brownback has done. We've been having hearings—I've been on this committee now 12 years and—this is my 12th year, and we've been having hearings on these issues for a long, long time. We started, of course, with violence, which is also a significant issue, but—I don't think any of us suggests this is easy, but it is easy for me to read the paper and say—a ruling saying the “F” word is all right on broadcast television—it's easy for me to say that's just—that just defies common sense. So I appreciate your beginning to work to correct that.

But there's much more to do, and I hope that, with the leadership of Senator Brownback, Senator McCain, Senator Hollings, myself, and many others, that we can work with you to begin to address these problems in a significant way.

Thank you, Mr. Chairman.

Senator BROWNBACK [presiding]. Thank you, Senator Dorgan. And I'll look forward to working with you and some others as I think we've finally got a head of steam up now—not by our doing, but by others and what they have caused—that we're going to be able to move some of these on through the process.

I want to thank the Commission for being here today. Godspeed to you as we really try to move through this process and be cognizant of the Constitution and its requirement.

The record here will stay open for 15 days, as is required by this Committee. Thank you for joining us.

The hearing's adjourned.

[Whereupon, as 12:10 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII

Let me first thank the Chairman for holding this hearing and my colleague Senator Hollings who has championed the issue of protecting children from violent programming on television for many years, a legislative effort I am proud to support. In my view, serious action to stem the tide of indecency and violence is long over due. The coarsening of the material we see and hear across media outlets has raised the Nation's consciousness and the recent stunt at the Super Bowl halftime show was merely the final straw. Many among us have been sounding the warning bell for some time. Now the citizenry has also taken up the call. In just five short days after the Super Bowl, the FCC reported receiving over 200,000 complaints.

Unfortunately, we are not here to address a one-time event. The trend across radio, television, cable and satellite has been to increase indecent and violent programming in search of higher ratings and more advertising dollars. Commissioner Copps has called this trend a "race to the bottom." This race has resulted in increasingly debased material finding its way into our homes and reaching our children as companies compete with each other for new ways to push the legal and social limits with no end in sight. It is time for all media companies to respond to the local communities that they serve and not just to the almighty dollar.

While this race to the bottom has heated up, the FCC has been inundated with indecency complaints. According to the *New York Times*, last year the FCC received approximately 240,000 complaints concerning 375 radio and television programs. Meanwhile, the FCC's enforcement of its indecency rules has been woefully inadequate. In 2003, the FCC issued a total of *three* fines against radio stations and in the last three decades has issued only one sanction against any television station in the fifty states. The media companies have sought to test the FCC's resolve and found it missing in action. By failing to use all of the enforcement muscle at its disposal, even against egregious violations and repeat offenders, the FCC has given broadcasters license to serve the 18 to 34 demographic rather than the public interest.

Television can be a powerful influence in developing value systems and shaping behavior—for good or for ill. On average, American children spend more time watching television than they do in school. By the time a child reaches 18, he will have seen 16,000 simulated murders and 200,000 acts of violence. Despite the findings of study after study that viewing violence poses harmful risks to children, we have done nothing to limit the amount of violent programming on television. Looking around the world, Canada, the United Kingdom, France, Germany, Australia and many other countries comprehensively address both indecency and violence in their laws and through industry commitments to codes of conduct and rating systems. Meanwhile in the U.S., some media companies refuse even to use effective ratings systems denying parents the necessary tools to protect their children from harmful programming.

Last year, this Committee favorably reported legislation to increase the FCC's enforcement of its indecency laws (The FCC Reauthorization Act of 2003, S. 1264). We also have before us the "Children's Protection from Violent Programming Act," which I hope we will take up in the near future. With the proper tools and vigorous enforcement, we can greatly diminish the harmful effects of television on our children.

I look forward to the testimony from the distinguished panel. Thank you, Mr. Chairman.

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