THE BROADCAST DECENCY ENFORCEMENT ACT OF 2004

HEARINGS

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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ON

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THE BROADCAST DECENCY ENFORCEMENT ACT OF 2004

WEDNESDAY, FEBRUARY 11, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS
AND THE INTERNET,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:30 a.m., in room 2123, Rayburn House Office Building, Hon. Fred Upton (chairman) presiding.

Members present: Representatives Upton, Bilirakis, Barton, Stearns, Gillmor, Cox, Deal, Whitfield, Cubin, Shimkus, Wilson, Pickering, Bono, Walden, Terry, Markey, Rush, McCarthy, Doyle, Davis, Towns, Eshoo, Stupak, Engel, Wynn, Green, and Dingell (ex officio).

Also present: Representatives Gonzales, Solis, and Norwood.

Staff present: Kelly Zerzan, majority counsel; Neil Fried, majority counsel; Will Nordwind, majority counsel and policy coordinator; Jaylyn Jensen, majority professional staff; William Carty, legislative clerk; Gregg Rothschild, minority counsel; and Peter Filon, minority counsel.

Mr. UPTON. Good morning, everyone. I know on our side of the aisle we have a mandatory Republican conference and I think I saw everybody at least so far here check in. They didn't check us when we left, so that was—other members, I know will be here.

Today, we're going to be examining a bill that I've introduced along with Mr. Markey, Mr. Tauzin and Mr. Dingell, to greatly strengthen the FCC's enforcement of broadcast indecency laws. Let me start by saying what, in my view, today's hearing is about and what it is not about. Mainly what today is about is listening and responding to the American people's concern and understandable clamor for decency. Well before the Super Bowl episode, many Americans were fed up with all the too frequent flouting of common decency over our public airwaves.

As a member representing a Midwestern District that typifies the heart and soul of this country I have been swamped, thousands of letters and e-mails from folks downright desperate and frustrated that the government has not adequately used its authority to rein in broadcast indecency.

In one letter, a frustrated mom wrote, "I'm a single mom trying to raise a daughter and I cannot believe that it is nearly impossible for us to watch TV even sporting events or listen to most radio stations either without being exposed to indecent material."

As I said at our hearing 2 weeks ago, I believe that some TV broadcasters are engaged in a race to the bottom, pushing the decency envelope in order to distinguish themselves in an increasingly crowded entertainment field.

Today, we'll consider H.R. 3717, a bill to increase the penalties which the FCC can impose by tenfold. It's a tough bill which, if enacted, would help clean up our airwaves. Even the mere introduction of this bill is already forcing the broadcasters to be more responsible. The marketplace is reacting to the threat of increased fines and stepped up FCC enforcement.

In the February 5 edition of The Washington Post, Academy Awards Executive Director Bruce Davis stated "part of what they're worried about is that bill in Congress." He didn't say the Upton bill, but that bill in Congress "that would increase the financial penalties tenfold. They're terrified of this. I can imagine the kind of pressure the network is feeling and it's all very well for us to take a noble first amendment approach, but if this bill is passed and run through by February 29, the date of the Oscars, we might be exposing them to some horrendous amounts of money. We have to recognize that."

In addition to the Academy Awards adopting a 5-second delay, the Grammy Awards this past weekend was broadcast with a 5-minute delay. We've seen similar changes in the behavior with other broadcasters.

I believe increased fines will push the marketplace to impose live broadcast delays and promote more exacting corporate discussions about what is inappropriate for TV and radio. We'll likely see contracts between the broadcasters and on-air talent whereby the talent will be required to pay any fines which might be imposed on the broadcasters as a result of the talent's indecency. And I suspect that such contracts could make Janet Jackson and Justin Timberlake think twice before rolling the dice and taking the hit in their own wallet.

The same goes for the Shock Jocks who brought us such dubious hits as "Sex in St. Patrick's Cathedral" and depictions of daughters performing oral sex on their dads. And while I believe H.R. 3717 is a strong bill which is already having an effect, I'm interested in working with members on both sides of the aisle to improve the bill in a responsible way. We need to look at the level of the fines. We need to look at beefing up the license renewal procedures to ensure that indecency violations are factored in by the FCC and as I've suggested before, perhaps we're at a point where we need to drop the hammer of three strikes and you're off, off the air.

Today's hearing is not about anything to do with TV or radio outside the scope of the public airwaves. Our bill applies to broadcast TV and radio. However, I would hope that all companies, cable or otherwise, satellite, would adhere to a voluntary code of conduct for programming during the hours that children are most likely to be watching. And as a parent, I would also add that we need to continue to actively monitor what our kids are exposed to on both TV and radio.

This hearing is not about making a government entity the nanny of America's kids. I know that the ultimate responsibility for instilling character, common sense, values in my kids rests within

the four walls of our house. It's just that regrettably, the current race to the bottom in the entertainment industry has made it an all-but-impossible task for parents. They should be able to rely on the fact that at times when their kids are likely to be tuning in, broadcast TV and radio programming will be free of indecency, obscenity and profanity and Congress has given the FCC the responsibility to help protect American families in that regard.

We're here today to help ensure that the Congress take responsible and constitutionally sound steps in doing our part to help the FCC make sure that the public airwaves are cleaned up through the strengthening enforcement of the indecency laws which have been on the books for decades.

I would also like to announce that we are going to be polling members on both sides of the aisle to see as to whether or not we'll have the appropriate number of members here to have a subcommittee markup tomorrow morning. I think we have an agreement with the Minority to only offer and withdraw amendments and at the request of Ranking Member Dingell, I have agreed to hold an additional hearing before we get to full committee markup after the President's Day recess where we'll be inviting a number of witnesses to appear again.

I appreciate the bipartisan cooperation of my colleagues, and I recognize my good friend, the ranking member of the subcommittee, the gentleman from Massachusetts, Mr. Markey.

[The prepared statement of Hon. Fred Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON, CHAIRMAN, SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

Good morning. Today we will be examining a bill I that have introduced, along with Mr. Markey, Mr. Tauzin and Mr. Dingell, to greatly strengthen the FCC's enforcement of broadcast indecency laws.

Let me start by saying what—in my view—today's hearing IS about and what it is NOT about.

Mainly, what today IS about is listening and responding to the American people's concern and understandable clamor for decency. Well before the Super Bowl episode, many Americans were fed up with the all too frequent flouting of common decency over our public airwaves.

As a Member representing a Midwestern district that typifies the heart and soul of this country, I have been swamped with letters from folks downright desperate and frustrated that the government has not adequately used its authority to reign in broadcast indecency.

In one letter, a frustrated mother wrote . . . "I am a single mom trying to raise a daughter, and I cannot believe that it is nearly impossible for us to watch TV, even sporting events, or listen to most radio stations either, without being exposed to indecent material."

As I said at our hearing two weeks ago, I believe that some television broadcasters are engaged in a "race to the bottom," pushing the decency envelope in order to distinguish themselves in an increasingly crowded entertainment field.

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In the February 5th edition of the Washington Post, Academy Awards Executive Director Bruce Davis stated, "Part of what they're worried about is that bill in Congress that would increase the financial penalties [for broadcasting an 'indecency'] tenfold; they're terrified of this. I can imagine the kind of pressure the network is feeling and it's all very well for us to take a noble First Amendment approach, but if this bill is passed and run through by February 29"—the date of the Oscars—

"we might be exposing them to some horrendous amount of money . . . we have to recognize that."

In addition to the Academy Awards adopting a five second delay, the Grammy Awards this week was broadcast with a five-minute delay. We have seen similar changes in behavior with other broadcasters.

I believe increased fines will push the marketplace to impose live broadcast delays and promote more exacting, corporate discussions about what is inappropriate for television and radio. We will likely see contracts between the broadcasters and on-air "talent" whereby the "talent" will be required to pay any fines which might be imposed on the broadcaster as a result of the "talent's" indecency. I suspect such contracts could make Janet Jackson and Justin Timberlake think twice before rolling the dice and taking the hit in their wallets. The same goes for the "shock jocks" who brought us such dubious hits as sex in St. Patrick's Cathedral and depictions of daughters performing oral sex on their fathers.

And while I believe H.R. 3717 is a strong bill which is already having an effect, I am interested in working with Members on both sides of the aisle to improve the bill in a responsible way. We need to look at the level of the fines. We need to look at beefing up the license renewal procedures to ensure that indecency violations are factored in by the FCC. As I've suggested before, perhaps we are at a point where we need to drop the hammer of three strikes and you're off the air.

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But as a parent, I would also add that we all need to continue to actively monitor what our children are exposed to on television and radio. This hearing is not about making a government entity the nanny of America's children. I know that the ultimate responsibility for instilling character, common sense and values in my children . . . rests within the four walls of our home.

It's just that, regrettably, the current "race to the bottom" in the entertainment industry has made it an all but impossible task for parents. They should be able to rely on the fact that—at times when their children are likely to be tuning in—broadcast television and radio programming will be free of indecency, obscenity, and profanity. And Congress has given the FCC the responsibility to help protect American families in this regard. We are here today to help ensure that the Congress takes responsible and constitutionally sound steps in doing our part to help the FCC make sure the public's airwaves are cleaned-up through strengthening enforcement of the indecency laws which have been on the books for decades.

Mr. MARKEY. Thank you, Mr. Chairman, very much, and I think you for holding this hearing today. The legislation which you and I introduced has now drawn obviously considerable attention across the country and the co-sponsorship of so many of the members on this committee obviously is having a real impact in terms of the discussion which is taking place in the country.

This hearing is going to make it possible for us to gain the testimony on the legislation which we have introduced and it will also allow us to make some early determinations as to just where the level of fine should be for all violations of the law.

The public's airwaves are licensed to a relatively precious few who have the honor, the opportunity and the obligation to use them as trustees of the public interest. There are those licensees, however, who are not treating these licenses as a public trust, but as a mere corporate commodity and they air content replete with raunchy language, graphic violence and indecent fare.

The Federal Communications Commission is charged with ensuring that licensees serve the public interest and its stations do not air obscene, indecent or profane content in violation of the law and the Commission rules. The enforcement record of the Federal Communications Commission is not encouraging. In 2002, there were 14,000 complaints about some 389 different programs, yet the Fed-

eral Communications Commission issued only 7 notices of apparent liability that year.

Last year, complaints skyrocketed to 240,000 for allegations about 375 different programs, let last year, the Commission issued only 3 notices of apparent liability.

And we heard testimony at our first hearing that thousands of complaints are never addressed or languaged to the point where essentially the statute of limitations has run out.

The Federal Communications Commission has many numerous tools to enforce these important policy requirements, including the ability to revoke a station license. Yet, it is increasingly clear that the paltry fines the FCC assesses have become nothing more than a joke. They have become simply a cost of doing business for far too many licensees, particularly in the radio marketplace.

Many stations regard the prospect of a fine as merely a potential slap on the wrist. Washing their mouths out with soap would have a greater deterrent effect than the few and the paltry fines that the Federal Communications Commission currently levies. The FCC's utter unwillingness to revoke licenses or to raise these issues during license renewal essentially means there's no real deterrent effect left. This is especially true of the multi-billion dollar media conglomerates who control a multitude of stations. What possible deterrent effect can $27,000 have on a company which reaps in $27 billion in annual revenues?

We need to have a public discussion about the FCC's failure to use its enforcement and deterrent tools effectively, even in the most egregious cases and what the FCC plans to do about this issue. Clearly, Congress will have to address these shortcomings at the FCC.

Second, we need to do a better job in educating parents about the tools they already may possess or can utilize to address the myriad concerns they raise with us about what is on TV and radio and need the assistance of the industry in this area. Parents can use the TV ratings system and the V-chip which stems from legislation that I authored 7 years ago.

Today, the several million families that use the V-chip like it, yet the vast majority of parents will only use it if they fully understand the ratings system and how it works in conjunction with the chip and only if parents have bought a recent TV that has the chip in it. The industry did a good job with much fanfare after the TV ratings system was finalized in doing public service announcements and other educational messages regarding the ratings. Yet those efforts have waned significantly in recent years. I believe that the industry should renew such efforts and also consider a number of other ideas. For instance, I believe that the icon that appears at the beginning of a show such as TV-13 with a V, an S or an L for violence, sex or language, should appear after each commercial break. That way, channel surfers who land on that show during commercials will get a warning as the show resumes.

I also believe the industry should consider adding a voice over when the ratings appear. If dad or mom is in the kitchen, out of the room or distracted reading a newspaper, they may not see the icon when it appears. A voice over would help parents hear the rat-

ing as the show begins and prompt them to change the channel and protect their children from inappropriate programming.

With respect to cable programming, we need to explore ways in which we can educate parents and make more useful the provisions of the Cable Act of 1992 that permit any cable subscriber to request a blocking mechanism to block out any cable channel parents find objectionable. If a family buys the expanded tier of basic cable service, but does not want MTV in their house, they can request equipment from their cable operator that effectively blocks out MTV. This is an option that many subscribers do not know they have and we have to ensure that all avenues are explored to improve the effectiveness of this provision so that the millions of parents who may want cable in their house, but not some of these offensive channels can, in fact, just disconnect those offensive channels.

Clearly, many broadcasters needs to clean up their acts. Parents are increasingly frustrated and have every right to be angry at both certain licensees with a history of repeated violations as well as with the Federal Communications Commission itself.

I thank you, Mr. Chairman, for this timely hearing. I think it really is an important discussion the American people want us to have.

Mr. UPTON. Thank you. I recognize the gentleman from Florida, Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman, and I too want to commend you for holding this second of, as I understand it, three hearings, at least on this subject. As a grandfather of six, I am very concerned about the programming being broadcast into our homes. Over the last several months I've heard from many of my constituents that share these concerns and of course, like many of my colleagues, I've received dozens of complaints from constituents who are outraged by the content included in the Super Bowl's halftime show. And I'm sure we're going to talk more about that as time goes on.

And I also understand that the FCC received more than 200,000 complaints about it as well and I am pleased that the FCC has acted quickly to initiate an investigation into the broadcast. I do believe that additional action is necessary, Mr. Chairman, and that's where H.R. 3717 comes in because it's certainly one step in the right direction. As we've heard over and over again at our last hearing, some companies consider the current fines from the FCC as the price of doing business. This is a clear indication that the current fine structure is not a sufficient deterrent to bad behavior and your bill, the bill that you and Mr. Markey wrote which I am very pleased to have been co-sponsor, increases the penalties tenfold with a cap of $3 million for continuing violations and as I've already said I support that increase in forfeiture authority.

However, Mr. Chairman, as you know, I made it clear in the last hearing, as we consider increasing the penalties that can be imposed upon broadcasters, I am particularly concerned about the ability, the ability of local television affiliates to reject programming that they consider unsuitable for their communities. Over the last several weeks, my staff and I have spoken with a variety of individuals regarding the relationships between the networks and

their affiliate stations. We received a wide range of perspectives on the ability of local affiliates to pre-empt programming that they find objectionable.

So as we move forward on this issue, Mr. Chairman, again, I reiterate, I think it's imperative that we examine ways to clarify an affiliate's ability to pre-empt programming that is unsuitable for its local community. I am anxious to hear from today's witnesses, especially the Commissioners, to get their perspectives of this important issue and my questioning will go into that particular area and I'll let the others go into the fines and what not.

Thank you again, Mr. Chairman. I yield back.

Mr. UPTON. Thank you. I recognize the gentleman from the great State of Michigan, Mr. Dingell, for an opening statement.

Mr. DINGELL. Mr. Chairman, I thank you, and I commend you for holding this hearing. I look forward to joining you in support of good legislation to address the concern we confront here. I note that one of the functions of this hearing will be to find out what is the law, what are the regulations, how are they being enforced and what does it all mean?

I had the impression that public indecency on the airwaves was subject to controls by the FCC. I see that apparently that is not the case and apparently there is no enforcement of regulations at the FCC.

I grieve to see my two friends, Mr. Tagliabue and Mr. Karmazin, here with us this morning. And I tell them that there's nothing personal in the questions that will be asked today. I also note that others from the broadcast industry will be called upon to come before this committee because this is an industry-wide concern to the Congress and the behavior of the FCC is a matter of very special concern to the Congress.

I note that we appear to be in a very unfortunate race to the bottom where everyone in the broadcast industry is subject to vast pressures to have more and more profitable and less and less dignified and proper broadcasting.

Now I'm not one here to criticize this on moral or theological grounds. I happen to think that there is a question there that could be addressed, but I am here to raise questions about whether the law is being carried out and whether the public policy is proper.

So for these reasons, Mr. Chairman, I commend you for your leadership on this issue. I think our committee's work has gotten the attention of FCC Chairman Powell and the Bush Administration. And I'm happy to see the FCC now being brought to a state of apparent alert on these matters.

I welcome Chairman Powell's new found concern for the level of sex and violence on television and in better enforcing the Agency's indecency rules. I would observe there's a fine saying on this, "better late than never."

Two weeks ago, members on both sides of the aisle expressed outrage over the use of certain unacceptable language on broadcasts by Fox and NBC. Some of us had hoped that the onslaught of indecent broadcasts could be curbed by that hearing and the potential for legislation to increase penalties for indecent broadcasts. Unfortunately, we were apparently quite wrong. A few days later, Americans were treated to a halftime show at the Super Bowl

which many, including myself, found to be patently offensive. Others have noted that the CBS network displayed remarkably poor judgment in airing violent commercials during Super Bowl hours where they knew children would be in this television audience. Even more disturbing is the seeming indifference of the several network executives to these concerns.

At our last hearing I noted we could accomplish little unless the committee brought before it the executives of the major television and radio networks. I think we need to hear from them as well as from Mr. Karmazin and Mr. Tagliabue.

This problem of too much sex and violence in broadcasting can only be addressed if the industry itself is willing to examine its practices and find solutions. If they will not do so, then it becomes the responsibility of the FCC acting under the hopefully strong tutelage and guidance of this committee to carry out its statutory responsibilities.

Unfortunately, many of the network and radio executives have declined the Chairman's invitation to appear today. I can only conclude that this is a prudent act on their part, one which protects them from a certain uncomfortable appearance before a congressional committee. I have to conclude, however, that they are in good part insufficiently aware of the seriousness of concern on both sides of the aisle on this committee and on the streets and are indifferent to the legislation before us. Perhaps then some legislative changes will be necessary to attract their more full and complete attention.

I'm not surprised that they are indifferent to the legislation. I was pleased to co-sponsor your bill, to raise the penalties, Mr. Chairman, for obscene and indecent broadcasting from $27,000 to $275,000. It appears that the absent executives consider these penalties to be nothing more than lunch money or perhaps a small cost of doing business. And why shouldn't they? Here's some revenue figures for the trailing 12 months for the companies that own major networks: General Electric, $134 billion; Disney, $27 billion; Viacom, $26 billion; NewsCorp, $23 billion. I think it's worth noting that Clear Channel, a frequent violator of FCC's indecency rules had revenues of $9 billion.

Now let's look at these numbers to see what they mean in terms of percent of revenue of these companies. General Electric/NBC, 0.002 percent; Disney/ABC, Viacom/CBS and NewsCorp/Fox, 0.001 percent; Clear Channel, 0.003 percent. Or for a different perspective, even if the FCC were to fine CBS/Viacom the maximum penalty allowable under the bill for the shameless stunt during the halftime show, the executives of that company will sleep most comfortably knowing that they have made nearly 10 times that amount with each 30 second Super Bowl ad.

I commend Mr. Karmazin from Viacom and Mr. Tagliabue for coming here today to discuss these matters. Gentlemen, I thank you for being here, but what should we do about those executives who have declined your invitation?

Mr. Chairman, I think we need to hear from them. And I suggest that there are some words that may help get their attention. One, forfeiture. Perhaps the penalties in this legislation need to be more closely tied to the advertising revenues that an indecent broadcast

generates. As long as the revenues from such broadcasts far exceed the penalties this behavior is going to continue.

Two, revocation. My experience in fighting the recent battle over media ownership has taught me that the potential loss of licenses is the best way to get the attention of the network or the broadcaster who might be involved.

The airwaves belong to the public. The licensees are licensed subject to rules. We must find out whether the FCC has the intention of carrying out these rules and whether it has an affinity for seeing to it that the law is properly carried out. The FCC has rested most tranquilly by its responsibilities and we will ask some useful questions about what they have done. If the rules are repeatedly broken, license revocation should clearly be considered.

Three, renewals. Certainly, any and all indecency violations should be a major mark on a licensee's record when the license comes up for renewal. The FCC should certainly be required to afford such violations substantial weight when determining whether a licensee should have it's broadcast license renewed.

All three of these matters are worthy of consideration. I understand the Congress has been a reluctant body when legislating on the issue of speech. This is not an issue, I note, of speech, but rather of carrying out the license which is given and seeing to it that laws which are fair are, in fact, applied fairly and evenly across the board to prevent a race for the bottom in the broadcasting industry.

We find ourselves here then with an industry that has failed to control itself, an Administration and FCC that is unwilling to act to effectively enforce its rules. It looks like we should inquire this morning then what would be a suitable action by the Congress. Certainly, your excellent bill is a beginning. Certainly more is required.

Once again, Mr. Chairman, I commend you for holding these hearings. I appreciate your willingness to invite the missing radio and television executives to a future hearing to consider these issues. I'm sure their testimony will be helpful and I'm sure they will be interested in talking to us about the three points that I raised this morning.

Mr. Chairman, I thank you.

Mr. UPTON. Thank you, Mr. Dingell.

You are recognized for an opening statement, Mr. Barton from Texas.

Mr. BARTON. Thank you, Mr. Chairman. I ask unanimous consent to revise and extend my prepared statement Mr. UPTON. Without objection, all members' opening statement will be entered as part of the record.

Mr. BARTON. Mr. Chairman, there's a famous movie, I think the name of it was Network, where the commentator comes on, says we're mad as H-E-L-L and we're not going to take it any more. I think that's where the country is. The halftime show at the Super Bowl is the proverbial last straw and that's why we're here. I do want to thank these two gentlemen for appearing before our panel today.

Mr. Tagliabue, we appreciate the game. It was one of the best Super Bowls.

And Mr. Karmazin, we at least appreciate the attempt at half-time to provide entertainment, although I think it went a little bit beyond the bounds.

The focus of today's hearing is on enforcement of the existing sanctions, whether we need to increase the level of those sanctions, whether we need to increase the type of sanctions and whether we need to increase the eligibility of who can be sanctioned.

I was very heartened by what Chairman Dingell said in his remarks and what Congressman Markey said in his remarks. There's obviously a bipartisan consensus that something needs to be done and the question is what needs to be done?

The purpose of this hearing and the markup that's going to be tomorrow is not to get into some of the more controversial issues such as ownership requirements and things of that sort. We have a consensus on the committee. We have consensus in the country that something needs to be done to protect over-the-air broadcasting standards and I think this subcommittee is going to move in a very expeditious fashion tomorrow and then I think the Full committee is going to move within the next month in a very positive fashion and I look forward to being a part of that process, Mr. Chairman.

With that, I would yield back the balance of my time.

Mr. UPTON. Thank you. Ms. McCarthy.

Ms. MCCARTHY. Thank you very much, Mr. Chairman, for this hearing, as well as for the legislation you've introduced. I'm proud to be a co-sponsor with you. I really wish that this hearing were not necessary, actually. I'm a civil libertarian and proud of my defense of the first amendment, but I am really concerned about the abdication of responsibility by the broadcasting industry and what that has meant for viewers.

I'm hopeful that the witnesses here today and I'm very grateful that they are here, will share with us what it is that is keeping them from executing their responsibility. It seems to me and I can reminisce, I'm old enough to remember being on a drill team and performing at half times in high school and half times historically, traditionally were about marching bands on the field and flag wavers and pom pom throwers and so forth. That's all changed and other organizations have accommodated that change. It's been cited that the Grammy's stood a 5-minute delay before airing their show.

Why aren't the broadcasters looking at alternatives for half time presentations? Certainly, since it's no longer marching bands from regional colleges or any of the traditional half time we've been used it, it certainly could be taped way in advance and shown. I'm told by friends who were fortunate enough to be present at the game that you couldn't even see if it you were in the stands anyway, so it wasn't for the people at the Super Bowl. It was for the television viewers. If that's the case and we all want to respect the first amendment, and those rights, then why not have the industry tape it ahead of time, review it and make such deletions or changes as are appropriate for the viewers and make that quite clear.

I think there are solutions without trampling in our first amendment rights. I'm here today to hear what ideas the industry has to present to us about accepting their responsibility, as well as to the regulators who clearly it has been made note of that fines are not

at all in sync with the consequences. I'm not sure that it isn't just a cost of doing business, but I'm anxious to hear from the regulators as well on what, if any, additional tools that they need. But it is time, Mr. Chairman, as you have proposed, to rethink this whole activity and I'm very pleased that we're having these witnesses and this hearing today.

Thank you.

Mr. UPTON. Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman, I'm an original co-sponsor of your bill and I commend you for this hearing today. In determining whether material is indecent, the Federal Communications Commission applies a quote contemporary community standards quote test. I think all of us in this room will agree that this test has decreased in terms of indecent material.

Now some will say and I think the Chairman here of Viacom has indicated that indecent programming only represents a handful, a handful of incidents, an infrequent amount in proportion to the 8 billion minutes broadcast per year. But I also submit that Commissioner Martin, in his testimony, provides a sharp contrast to that by noting that consumer complaints for indecent programming have gone from hundreds to hundreds of thousands. In fact, in the year 2003, the number of complaints jumped to 240,000. Five years ago, it was probably in the hundreds. Some may think that incidents of indecency in programming are infrequent, the outrage from parents and family organizations, of course, is growing greater and greater.

The point I'm trying to make is that we're facing a much larger problem here. Must See TV does not mean the public must see certain parts of a person's anatomy during a live broadcast, yet artists consistently attempt to increase the shock value of their words or actions. Broadcasters know this which is why at times they provide warnings to viewers regarding language, violence or explicit scenes.

But Mr. Chairman, honestly, are we actually to the point in our society that we must in the future place such viewer warnings before and during the Super Bowl? Broadcasters can employ audio and video delays, but that will not stop these artists from pushing the envelope to gather as much publicity as possible.

The FCC has the authority to fine individuals, but has never brought forth a notice of apparent liability for these individuals all during this time. Why? Because under the Communications Act, the Commission can only do so if the individual commits a subsequent act, so basically any artist can go on any live TV, blurt out any phrase, display of vulgar acts, then simply walk away, free of any accountability. They're getting a Get Out of Jail Free card.

It's my understanding that the subsequent engagement language is included because the individual may not have been aware of the regulations regarding indecency. This brings to my mind the old phrase "ignorance is no excuse in the eyes of the law."

These performers are told prior to their appearance, exactly what they can and cannot say. It is also basic common sense to know if you drop the F word or bear a certain part of your anatomy, people will be offended. If we intend to hit licensees in the pocketbook as a deterrent to offensive programming, we should do the same for the person that commits the indecent act.

Thank you, Mr. Chairman.

Mr. UPTON. Ms. Eshoo.

Ms. ESHOO. Good morning, Mr. Chairman, and I too, along with all of our colleagues on the committee, thank you for your leadership on this issue and for holding this, the second hearing on it. And I welcome the witnesses that are here with us today.

This is a problem that I think has been escalating for a number of years and I think the straw that broke the camel's back was what so many people saw on Super Bowl Sunday. And it strikes me that despite the amazing growth of the internet and other forms of communication, television and radio remain extraordinarily powerful mediums for sharing ideas in our country, for promoting viewpoints and frequently, for instilling values. It's not headlined, instilling values, but it's right there in the mix with everything that is viewed and heard and what the content of that is.

I'm pleased, Mr. Chairman, to co-sponsor your legislation. As has been stated before, I think that the penalties really are not penalties unless they are severe. And with that people will sit up and take notice. But I also think that in addition to passing new laws and raising the penalties for inappropriate broadcasts, we need to do much better as a society in fostering a higher level of discourse and in setting a better standard for young people and for ourselves. For this, I don't believe there is legislation. That's why I think the discussion and the conversation here in the Congress is such an important one, that people across the country and those that may be listening in different parts of the world will understand that we do have a set of values in our country and that the standards really should be high and that as we send things out around the world, that we export the best of ourselves. I think that whomever is involved in this, even though you have a bottom line, and I appreciate that, that you set very high standards for yourselves, that you raise the bar for yourselves and that if there's something or someone that doesn't meet that standard, that you be the first to recognize that.

I think as a community we're responsible for what goes out over our public airwaves. The operational word is public. They're not private. They're public airwaves and that I think that there's a collective sense that we've kind of had it with some of the things that pass for entertainment today.

Parents, of course, and I'm one, even though my two are very grown, they have to play an active role in this. I also think along with Congressman Markey, that the Congress can take some steps to assist parents, but they're the ultimate arbiters in this in terms of what's appropriate for their children, what they see and what they hear. But even the most attentive parents can't possibly contend with the barrage of either coarseness or profane content that comes across their TV screen.

The FCC has a primary role in deterring and setting up standards and then sticking to them. We can all jump on the FCC, most frankly, with some legitimacy. I think that they really have failed to do what they should do and I think we're getting their attention now and hopefully between this committee and what we do and the FCC that will enter into a new chapter relative to the public airwaves.

So I thank you, Mr. Chairman, for holding the hearing today. I look forward to the testimony of our witnesses and to Mr. Tagliabue, I have enormous respect for you and I think that you do have high standards and it shows in so much of what you do, but we need you to help us with this. I'm sure that what the committee sets down, what the Congress sees fit to do that you will be a willing and important partner in it. So thank you again, Mr. Chairman, and I yield back the balance of my time.

Mr. UPTON. Mr. Cox.

Mr. COX. Thank you, Chairman Upton, for your leadership on this issue and for holding this important hearing. Welcome, Mr. Tagliabue, Mr. Karmazin.

As I think you can infer from many of these opening statements, this is not about the Super Bowl halftime show. It's about a problem that's been festering for a lot longer.

We don't need to achieve consensus on exactly which words and images are appropriate for public display because so much of what's now broadcast on the public airwaves is so far over the line. And that line which separates artistic expression and quality entertainment on the one hand from nihilist garbage should be tested by free people using their own money and not on the taxpayers' subsidized public airwaves.

TV and radio broadcasters receive a multi-billion dollar subsidy from the American public in the form of free bandwidth. As a result, they owe something in return to the community. While others in telecommunications pay for their share of the airwaves, the broadcasting industry has been given multi-billion dollar slices of the public airwaves for free.

In the 1990's, every other industry that uses the airwaves such as wireless phone companies, paid for their pieces of the airwaves in government auctions that generated billions of dollars for taxpayers. The broadcast industry, on the other hand, gave the taxpayers nothing for their continued free use of this valuable public asset and on top of that, every TV station owner was recently given more free bandwidth to convert to digital TV. That taxpayer largesse shouldn't be rewarded with what we're getting. Consumers should see more from this than simply an opportunity to receive the same objectionable programming in digital form.

This latest gift from the taxpayers, by the way, of broadcast spectrum, is worth perhaps $100 billion. That's a payment from every man, woman and child in America of about $350. Our witnesses today will acknowledge that the Super Bowl audience of 140 million Americans weren't exactly enthusiastic about the way a major broadcaster is using their $350.

Mr. Chairman, I would ask as we consider higher penalties for broadcast indecency, that we also consider why American taxpayers should continue subsidizing this industry. I would hope that this committee could agree at a minimum that it's time to set a hard date at the end of 2006 or sooner, for the return of taxpayer property and the immediate auction of the loaned broadcast spectrum.

As for the television content providers, it's not that you don't have the right to produce nihilist garbage. It's that there ought to be some place, some time during the day where Americans who

watch TV and listen to radio can escape it. We have hundreds of channels these days and there's something for everyone on pay commercial TV. But free public airwaves, so easily accessible to children, and for which every taxpayer is footing the bill, should be free of junk. I will defend to my last breath your right to cuss and use foul language and run around naked with forest animals if that's what suits you, but don't impose it on people who don't want it or on our kids who may want it, but who deserve far better.

Thank you, Mr. Chairman.

Mr. UPTON. The gentleman from the great State of Michigan, Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman, and thanks for holding this hearing. I want to thank the Commissioners and other witnesses for participating today. As my colleagues have mentioned, this subcommittee will mark up a bill that will significantly increase the fines on indecent content in television and radio broadcasts. This bill is far from perfect and I believe it's only a small part in addressing this problem.

First, I think we need to address enforcement. A number of complaints have surged in recent years, yet the FCC rarely investigated, and when the Commission did issue fines, it took them one to 3 years to do it. I liken this to a school police officer looking the other way when kids are fighting or selling drugs at school.

I read Bubba the Love Sponge transcripts and it was obvious that this dialog had no business being on public airwaves at any time of the day much less when our kids are most likely to listen. Why did it take 3 years to determine that material was clearly indecent? Why aren't repeated indecency violations considered during license renewal? And how often does the Commission actually follow-up to make sure these violators are paying up?

Second, we need to take another hard look at the new media consolidation rules the Commission issued last year. It seems the Commission Chairman's priority in the last year was making it easier to form media monopolies without consideration on how that would impact our children and what they see on TV. Indecent and obscene programming on radio and television are becoming the norm rather than the exception and local communities and local broadcasters are losing their power to tell the big media conglomerates no.

Was the impact of consolidation on indecency ever considered by the FCC before it issued its rules and before the Administration forced greater consolidation on the American people?

Third, if we increased the fines on indecency, then I think we also need to consider what else falls under the indecency definition, specifically, excessive, graphic violence. Indecency should not be limited to sexual content. Excessive and graphic television violence has surged as networks compete for young viewers, all in the name of higher advertising profits.

Multiple studies have found that this kind of television violence has a harmful impact on children. I hope we learn today how the FCC plans to address this issue. Again, if indecency rules and higher fines are intended to protect our kids, why isn't violence included under the indecency definition?

And finally, Mr. Chairman, if we're going to hold hearings on indecency in the media, then as I said at the last hearing, we need to hold a hearing on first amendment issues such as censorship in the media. The same company that ran Super bowl halftime show is the same company that refused to broadcast the drama documentary on the Reagans and refused to allow a nonviolent, nonsexual moveon.org ad that addressed a $1 trillion deficit and who's going to pay for it. This is nothing more than censorship.

Mr. Chairman, I ask again, let's have a full hearing on first amendment violations over our public airwaves.

Thank you, Mr. Chairman, I yield back any balance of time I may have.

Mr. UPTON. Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman. Opening statements are beneficial to the public and to people in the industry to relate that Members of Congress have gotten the message from our constituents. And so now the question is as we move forward is basically how hard are we going to come down, how fast and how are we going to craft legislation that will actually move because in the midst of statements there will be positioning of whether we can move legislation that will be signed versus will be bog down in the political rhetoric and the fights that will unfold?

So I'm not going to pile on on the issue of penalties because we'll have a chance to address that. We're going to have another hearing. We're going to have a subcommittee markup. We're going to have a full committee markup and the process is just moving forward.

Many people know in this hearing room and my colleagues, we were very successful in addressing legislation to help protect kids on the internet, .kids.us. And I would challenge the NFL and I would challenge Viacom to get on board with the .kids.us site, provide children appropriate material, information-based on this website. It's a statement that you want your industries to meet and educate children in an appropriate manner on the internet. So we want to continue to—I use every opportunity I can to talk about the .kids.us site because it addresses the similar things that we've had.

Now we've got many problems with pornography and smut and indecency issues, whether it's peer to peer systems, downloading on the network or free over the air. Free over the air is something we can get our hand on real quickly which is what we're going to do.

So I will continue to concur and support my colleagues as we move this legislation forward, but I would make my appeal to our corporate members at the hearing table to have their companies look at the .kids.us website and get engaged in a process that's positive, proactive information for kids under the age of 13 that can't be abused by those who would promote smut and indecency to our kids.

With that, I'll yield back my time, Mr. Chairman. Thank you.

Mr. UPTON. Thank you. Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman, for calling the hearing on H.R. 3717 and I'm proud to be a co-sponsor of it, along with you and our Ranking Member Markey and our Chairman Tauzin and Ranking Member Dingell. I'd like to welcome Commissioner

Tagliabue and Mr. Karmazin to our hearing. Like a lot of folks, I have a District in Houston and you know, I was disappointed in the results of what we saw because it was the second time Houston has hosted a Super Bowl. We had one of the best football games I've seen, very competitive and down to the last few seconds. And the halftime show seemed like it overshadowed all the other success that was there from that Super Bowl. And even the success of the first time of having the University of Houston and Texas Southern University bands perform at halftime together, two major, state, urban universities, one predominantly African-American, the other one very multi-racial, perform together. So I was proud of that in watching the Super Bowl halftime.

It was frustrating and I think this committee was already working on this legislation but to see that happen, it just added icing, I guess, to the cake.

Our committee sometimes is known for its bipartisan cooperation and sometimes not, but I'm real impressed with our bipartisan cooperation on this particular issue. By all account, indecency on the airwaves has dramatically increased over the past few years. And personally, I don't think Americans' public taste has gotten worse, but for some reason some of the industry felt like they had a green light.

Now this comes at such a high profile, again, including my home town of Houston and created enough outrage the FCC is shifting gears at a furious pace. Like many Americans, I was deeply dismayed to see our moral boundaries on television and radio being pushed to the extreme by both the established and emerging television networks.

The problem goes beyond four letter words during awards ceremonies or a brief nudity during the halftime at the National Football League. The large concern is the overall programming that is, I consider, going down the tubes. On Temptation Island, you can watch couples cheat on each other and on Who Wants to Marry a Multi-Millionaire, marriage is equal to greed, all during the so-called Family Hour of broadcast TV.

It's hard for some parents to watch broadcast of the National Football League with children, not just because of the halftime, but because of the raunchy and violent advertisements after every punt, touchdown or turnover. I don't think we need promises to be fair and balanced. It's that Americans would settle for little more than decency and respect.

In 2002, the FCC received almost 140,000 complaints about 389 different programs, yet issued on 7 notices of apparent liability for fines. In 2003, the FCC received 240,000 complaints about 375 programs and issued only 3 orders. Where has the referee been during this downward spiral in the last few years? Maybe the Commission has awoke and we can raise the FCC's penalties. I just hope we're successful.

If we are successful, we need to make sure that the meaning of the FCC's rules are clear and that people who break the rules are the ones who are punished.

To address the first issue, I support a collaborative industry effort to bring American media companies together either to agree on what our current standards mean or if they need to be scrapped

to create new standards. Commissioner Copps has been calling for this for years and Chairman Powell is now proposing something along those lines today. I call on the entire media industry to participate in a meaningful way.

To address the second issue, Congressman Bart Gordon and I are preparing an amendment to H.R. 3717 that we will present in markup tomorrow. The amendment will shift the majority of the burden of the entire fine away from local affiliates with little or no control over the network broadcasting content and place the bulk of the responsibility on networks that produce the programming. And I look forward to discussing these ideas further and in particular, I look forward to these panelists today.

Again, thank you, Mr. Chairman, for holding this hearing.

Mr. UPTON. Ms. Wilson?

Ms. WILSON. Thank you, Mr. Chairman, and thank you for continuing to pursue this issue and for your leadership on this issue.

On Super Bowl weekend, I was out of town visiting my mom and I called home a few minutes before halftime and in our house we're real restrictive about television watching, but we have a sports fanatic fourth grader who asked for special permission to watch the game. So my husband and my kids together watched the Super Bowl. And even before halftime I heard about the farting horses which I guess proves what we've all suspected that Madison Avenue really does pitch its advertising to the average fourth grader's sense of humor.

When I called the next day my son without any prompting said to me, "mom, did you see the halftime show at the Super Bowl?" and I told him that I had. And I asked him what he thought of it. And he said, "I thought it was nasty." The disrobing was apparently the talk of the playground in our neighborhood for the whole following day and the kids on the playground seemed to know that the television station might get sued which is really not a bad fourth grade description of an FCC fine. My son seemed to think that they should sue Janet Jackson and Justin Timberlake because they were the ones who did it and it was really nasty. If the fourth grade boys at a public elementary school in Albuquerque, New Mexico can tell right from wrong, we need to ask ourselves where you corporate CEOs lost your way?

I should not have to use an NFL halftime show as a negative example to teach my children. And there are a lot of other parents who feel the same way.

As a lawmaker, I want to know how something like this made on to the show, in a very scripted, rehearsed for weeks performance. And all of these "well, we never knew about it" sounds a little like the Homer Simpson defense.

The playground at our elementary school should have been abuzz with talk of the Patriots and their great moves on the field, not the moves of some disrobing rock star. The FCC plays an important role in protecting Americans and our children from indecent programming. The FCC has a statutory mandate to prohibit indecency on broadcasts, but the government alone is not the answer.

While some argue that television and radio reflect social values, you also influence social values and in the same way that Enron highlighted unacceptable corporate behavior from a financial point

of view and ethics in our corporate board rooms, Viacom's support of shock jocks and allowing tasteless Super Bowl programming is a nationwide entertainment industry standard. You knew what you were doing. You knew what kind of entertainment you're selling and you wanted us all to be abuzz here in this room and ont eh playground of my kid's school because it improves your ratings, it improves your market share and it lines your pockets.

It's time for a change and unless we see change in the corporate board rooms and a return to responsibility, this bill is only going to be the first step in changing American broadcasting.

Thank you, Mr. Chair.

Mr. UPTON. Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman. I, too, am the parent of two small children and I have witnessed this very disturbing trend, particularly in my own backyard, the Tampa Bay area. I expect the FCC and these companies to help me make informed and wise judgments about the access of my children to this type of material.

I am a co-sponsor of the bill. I think it's a good first step. I'm also very cognizant of the responsibilities and limitations imposed upon us by the United States Constitution with respect to protection of political speech and to a lesser extent, commercial speech.

As we begin the testimony in a few minutes, I hope that each of the witnesses will speak to us not just as leaders of their respective organizations, but also as parents and grandparents and citizens. I presume you, too, have had discussions with members of your own family about what occurred and please tell us how you feel about this as a human being, not just as a business executive.

I think it's very important that this hearing try to establish exactly what the policy of the FCC is in terms of enforcement. It's critical they have the tools they need to do their job and that they be adequate and used. I am very concerned about the delay associated with many of the actions the FCC has taken. There has to be a quicker way to get this done. Ultimately, the goal is trying to develop a standard of the FCC that is both constitutionally enforceable and sufficiently certain so we can focus on preventing these types of broadcasts rather than simply focus on punishing them.

Thank you, Mr. Chairman.

Mr. UPTON. Mr. Walden?

Mr. WALDEN. Mr. Chairman, I'm going to forego an opening statement to have more time during the Q and A.

Mr. UPTON. Mr. Terry.

Mr. TERRY. Thank you, Mr. Chairman. I'm proud to be a sponsor with you on this bill. I just want to start by saying that we have an impressive first panel here and they're going to be asked a lot of questions about how the Janet Jackson incident could have escaped you and how this could have happened, but really the reason why we're here today and this bill was drafted even before Janet Jackson's exposure.

The discussion is much greater than one breast or an F bomb dropped by Bono. It's about the acceptance by the FCC and maybe of society, of the spiraling nature of our culture or is it spiraling downward? Is there a race to indecency? Well, there is, I believe, at least on radio talk shows and TV shows, but I'm not yet convinced that society has accepted it or participates in it more than

it just feels like it has no say so any more and maybe our second panel with the FCC actually is going to have more effect on TV and radio in the future.

In that respect, just look at the type of programming that we see on television on network programming. And I read an article in USA Today on the plane out here yesterday about NYPD Blue, how they're editing out a 15 second sex scene and the producer is just outraged at this censorship. And I thought, you know, that speaks more of the problem than why you two gentlemen are sitting here today. Because there's a feeling in the producing and directing and the Hollywood center that that's what people want in America. Well, I'll tell you what, I had more complaints in my office about the Super Bowl halftime show than the number of people that Ti'VOed it and replayed it back, I'll guarantee you that.

And so I think it's about time that Americans are heard that the Congress and the FCC stands up and starts enforcing our indecency standards. NYPD Blue is a great TV show. I enjoy it, but let's all recognize it will be a great show and I will enjoy it without a 15 second sex scene that's really frivolous. And that's where we need to go and encourage the FCC.

So thank you, gentlemen, for being here today.

Mr. UPTON. Mr. Doyle.

Mr. DOYLE. Thank you, Mr. Chairman. I want to thank you for convening this hearing today and bringing together this distinguished panel of witnesses. I look forward to hearing their testimony and I'm hopeful that it will help us reach a better understanding of these complex and troubling issues.

I also want to recognize a good friend and someone who is held in high respect in Pittsburgh, Mr. Dan Rooney, owner of the Pittsburgh Steelers who is here with us also.

Mr. Chairman, I think it's important that we recognize and not underestimate the fact that these issues are complex and not necessarily addressed by any quick or easy solution. In addition, when it comes to considering the programming being broadcast on both television and radio these days, the concerns that we have here on this committee are not partisan ones. I think all of us, Democrat and Republican, share a sincere interest in seeing that this broadcast material meets a level of decency and appropriateness that we, as parents, can live with and our children can grow with.

One thing that seems to be clear is that the current system we have to monitor, police and ultimately enforce standards of indecency does not seem to be working. What's even more troubling is that the breakdown of the system does not seem to be a problem with statutory authority as much as it seems to be an enforcement issue. Let's take the year 2002, for example. In that year, the FCC received almost 14,000 complaints about 389 different programs, yet only issued 7 notices of apparent liability for fines. Last year in 2003, the FCC received over 240,000 complaints, about 375 programs, but issued only 3 orders. To me, that seems to be a questionable track record.

And it's not as though we're attempting to impose a rigidly puritan ethic that doesn't allow for free expression and creativity and obviously, it is important that we continue to maintain vigilantly our first amendment freedoms, but it is also important that we

achieve at least a modicum of decency and even this minimum standard at times seems to be glaringly absent.

Frankly, I'm not so sure that simply raising the amount of potential monetary fines, as the bill before us today does, is all that's required. While it does seem like a necessary first step, I wonder if we shouldn't do so by allowing for a more flexible scale that ties the dollar amount of a fine to a percentage of profit or perhaps a reflection of the share of rating points for a particular broadcast.

And I further wonder why we can't establish a more effective and timely method of reviewing complaints and handing out fines when necessary. You know, when a driver runs a red light or parks in the wrong spot, their fine is swiftly established, yet when indecent material is broadcast to millions of people, our current process can take years to conclude. Unfortunately, that seems to both allow for and almost invite further abuse.

I'm also troubled by the fact that there seems to be little or no attention paid by the FCC to the preponderance of extreme violence filling our TV screens. One can argue just how harmful a particular obscenity or swear word may really be, but there has been numerous studies that have concluded that graphic violence is extremely harmful, especially to our young children who are far more impressionable.

For these reasons and others, I'm glad we're holding this series of hearings and I hope we can utilize the information we glean to craft legislation that will address these issues in an even more comprehensive way than H.R. 3717 does.

Mr. Chairman, thank you very much. I yield back my time.

Mr. UPTON. Mr. Whitfield.

Mr. WHITFIELD. Thank you, Mr. Chairman, and I also want to thank you for holding this hearing and working so diligently to quickly bring this bill before the subcommittee. Those of us who have the privilege of serving in Congress represent approximately 650,000 people, each one of us and I can't think of any issue in the last three or 4 years that has created more e-mails into our office than this whole subject matter of the programming on our broadcasting networks.

And there's been a lot of snickering about some of these issues and some people view it really as sort of an insignificant issue, but to the millions of people who have sent e-mails in on their concern about the programming that their families see, it's a serious issue and that's why they're writing. And it has to do with more than the Bono decision or the Janet Jackson Super Bowl show because there is a lot of public frustration with the low quality and standards of television and radio programming and that has been brewing for some time. From radio shock jocks to popular prime time sitcoms, our airwaves have been inundated with foul words, filthy content and suggestive actions.

I disagree with some in the industry who say that these incidents are so fleeting, or are so insignificant that they don't really have an impact. Any time a flagrantly inappropriate word or scene is broadcast into tens of millions of homes across the nation, in my opinion, that incident ceases to be isolated or rare.

So Mr. Chairman, I'm pleased that we are proposing to address this problem through a sharp increase in the fines that companies

pay when they air such material. The American families are frustrated and many of them feel powerless to do anything at all about the quality of the programming offered by the media. And they're ready for someone to take a stand on their behalf. It is the responsibility of the Congress to take a stand and I think it is time for broadcasters to literally put their money where their mouths are.

And so I look forward to working with the subcommittee to craft a bill that will hopefully address this significant issue and I yield back the balance of my time.

Mr. UPTON. I like those last couple of words. Mr. Rush.

Mr. RUSH. Thank you, Mr. Chairman. Mr. Chairman, I also want to commend you for your leadership on this particular subject matter and I do intend to work with you very, very closely as we mark up H.R. 3717.

Like many Americans, I can dismayed and disappointed by the broadcast of the halftime show of the Super Bowl. It occurred less than a week from our first hearing on indecent standards and it seems that the concerns we expressed to the broadcasters fell on deaf ears. Apparently, we failed to remind the broadcasters that their licenses are a public privilege and what is given can be taken away.

Broadcasters have a responsibility to serve the public interest. That responsibility encompasses protecting children from indecency from 6 a.m. until 10 p.m. Unfortunately, this responsibility was breached during the Super Bowl.

As we prepared for a second hearing on this issue, several thoughts come to mind. Chief among them is the prevalence is the violence on TV. It's an issue that we haven't heard a lot about this morning, but it's an issue that is really a priority of mine and also of my constituents. It seems like the level of violence and profanity on television has increased year after year. Standards have been lowered. Statistics show that by the time the average child who watches 2 to 4 hours of television per day, by the time that child is 12, that child has observed 8,000 murders and 100,000 other acts of violence all on the broadcast waves. These statistics are alarming and must be addressed by the Congress.

For many years, indecent programming and obscenity has primarily been based on nudity and sexual acts, while violent programming has been overlooked. Regulating violent programming, I believe, is in the public interest. We have a responsibility to protect the psychological and emotional well-being of minor viewers by reducing the amount of violence they see on television.

Mr. Chairman, last, I have another issue. We, as a committee, are all in agreement that something must be done and something will be done to address the flagrant violations as occurred not only on the Super Bowl, but in other instances also. However, I must take issue with one aspect of what I see and what I hear that is going on. My friend from Nebraska, Mr. Terry, and others have made comments calling the incident at the Super Bowl the Janet Jackson incident. Well, where is Justin Timberlake? I am utterly astonished that Mr. Timberlake has been given, in my estimation, a proverbial slap on the wrist while Janet Jackson has been substantially punished. This seems to me continues a pattern of the double standards that I fought against most of my life.

I am concerned, Mr. Chairman, and other members of this committee that both individuals who were party to this act, that both be singled out and both be dealt with in a way that will be fair and equitable to all.

Let me just say that historically and I must remind the members of the committee and inform some who might not know, that this is indeed—February is annually considered Black History Month. And with that in mind, I have to tell you that when I saw this occurrence at the Super Bowl, the kind of innately reminding me of the kind of atrocities that have been visited upon not only African Americans, in general, but African American women, in particular. I know that that's kind of something we might not have focused on. It's something we might not want to hear, but I tell you, it reminded me of that. And this is the kind of the discussions that are being held at barbershops and beauty shops and in community organizational meetings in my District.

Thank you, and I yield back the balance of my time.

Mr. UPTON. Mr. Pickering.

Mr. PICKERING. Mr. Chairman, thank you for this hearing. I do look forward to hearing from the panel. I appreciate Mr. Tagliabue and Mr. Karmazin for coming today.

In my work, there are times where I go home at night and I'm not too proud to be a part of this institution when the political culture or the political leadership fails its responsibility or we do not live up to the standards that people expect. Sometimes I wonder what can be done. But I am a part of this process and this institution and I have a responsibility to try to make it better. And in the same way, you are in very critical influential positions for our country, for the example that we set, the power and the influence of the entertainment industry and I hope that this serves as a wake up call for all of us.

The country does not want what we saw at the Super Bowl. We want to be a better nation and abetter people, with better standards. We don't want to be indecent and crass and crude and profane. You know, my other difficult job is a father of five sons, ages 14 to 5. And I look at all of the messages that they get from the media and I wonder and just like Ms. Wilson, how do we teach our children good values?

I think what you're hearing in this hearing from the people's representatives is that America really wants to be better and they want you to do better. It wasn't only Janet Jackson and Justin Timberlake, but the commercial for two and a half men hasn't really been mentioned here, but a woman comes through the kitchen. There's I guess a 7 or 8 year old boy at the kitchen table. A woman just has a t-shirt on. She reaches up into the cabinet and exposes her entire back end to an 8 year old boy. That's a prime time, supposed to be Family Hour sit down. An 8-year old turns to Charlie Sheen and says wow. I mean is this really—is this something that you're proud of? Is that something that you want to a part of? Don't you want to do better?

And I think what we're trying to do is to say to the FCC enforcement and actions and standards that we're going to make sure that we do better. And I think it's time for the industry, both cable and broadcast, to come together and to adopt voluntary standards of

what will be allowed and not allowed. We will move this legislation and we'll make sure that it has teeth.

Mr. Chairman, I look forward to working with you on the possible inclusion of three strikes and you're off. I think more important than the fees is to know that if you don't live up to your responsibilities, that you can be replaced and I think that type of approach is necessary and warranted.

I think for the cable industry, it's time to look at family friendly unbundled packages of programming so that we don't have to purchase programs and shows that we don't think are healthy or good for our families or our children, that it can be educational and news and sports and family, but it doesn't have to be the adult or the profane or the crude.

I think that it is time that we move on a very comprehensive approach to make sure that the FCC can enforce the standards. It's very important that I think that as a corporate leader that you voluntarily stand up and do what is right. And not only to say we will not show what is indecent, but I think it's also important that in this hearing and from this point forward that you also set an example of honesty. For Justin Timberlake say it's a wardrobe malfunction offends everyone. That's dishonest. We don't want dishonesty or indecency. We don't want to hear "we didn't know, we weren't aware." Take responsibility, become decent, be honest. Those are the virtues and the values and the example of what we expect in the political culture and the entertainment culture and in the corporate culture.

And I hope by the end of the day we can say we were part of doing something that made it better.

Mr. UPTON. Mr. Towns.

Mr. TOWNS. Let me begin by thanking you, Mr. Chairman, for holding this second hearing on indecency, an issue which has rushed to the forefront following the incident at the Super Bowl.

I think it is important to note, Subcommittee Chairman Upton and Chairman Tauzin and Ranking Member Dingell introduced H.R. 3717 before the recent controversy. So this is an issue this committee has been considering for a long time.

Like virtually every one in America, I was disappointed by the now infamous incident at the conclusion of the halftime show and to some extent the overall production of the show as well. It was inappropriate for children and not suitable for a program that was watched by millions of people of all ages. While the outrage for this incident was understandable, what really concerns me is the lack of similar outrage for gratuitous violence on broadcast television that occurs on a daily basis.

I strongly believe that such violence has a more harmful effect on children than the brief exposure provided by Ms. Jackson could ever have. But we do not have the same outrage and that really bothers me. I have worked hard to reduce violence. This has included talking with parents and working with community leaders to reduce violence in our schools and in our neighborhoods and supporting foundations that address these kinds of concerns. I've introduced a bill in Congress to outlay the sale of realistic toy guns because all they do is whet a kid's appetite to get a real gun in later years.

Therefore, I strongly believe that violence on television only has negative consequences. In fact, hundreds of studies of the effects of TV violence on children and teenagers have found that children may become immune to the horror of violence, accept violence as a way of life and the way you solve problems and exhibit aggressiveness or even imitate the violence they observe on television. So I ask where is the outrage?

I appreciate the testimony of our witnesses today and I'm especially interested in whether the FCC has the authority to address violence under its current indecency standards and whether it can regulate such harmful images on the pubic airwaves under the first amendment.

I look forward to answers to all of these questions and to say to you that while we look at the incident that happened at the Super Bowl, let us not forget to look at the violence that we see on our televisions every day and every night that now have our young people confused about what reality is. They think if they shoot somebody, they'll be able to appear in the next episode. On that note, I yield back.

Mr. UPTON. Ms. Bono?

Ms. BONO. Thank you, Mr. Chairman. I'd like to thank our panelists for being here this long. I look forward to your testimony. I was not going to make an opening statement because I believe we're all in unison here in speaking with the outrage.

I believe we are outraged and I believe my constituents are entirely outraged, but as I sit here I have so many questions and I definitely have to identify myself with the comments that were made by Congressman Dingell and that is that the penalties have to be a deterrent to what you're seeing and what has happened. Hollywood has long been about, and the success of Hollywood has long been about us pushing ourselves and pushing the envelope or pushing the limit. I was married to an entertainer and I have a family, an extended family that is still in this business and we know that this is about pushing the envelope. The American people have finally said enough. You've pushed it too far. And the truth is the bottom line corporate profit is what this is about at the end of the day. Janet Jackson, as I understand, came out with a new album. Wow, surprise, surprise. And here we are in Congress talking about this stupid stunt that she pulled which appalls me even further it plays right into what she was doing.

But it goes down to the great song by—and Mr. Markey can sing it for me—by the group Traffic. "The man in the suit has just bought a new car off the profit he's made off of your dreams." And that's what this is about. There are thousands of talented, qualified artists who could have been out there and you all knew, as I understand, MTV was promoting something spectacular would happen at halftime. And I look forward to delving into this a little bit further during the question and answer period. But that's the truth. And the truth is there is outrage and Congress is going to stand up. We've been here in unison today and said enough is enough.

Mr. Chairman, I applaud you for your timely legislation and the way in which you're moving it and I look forward to working with you and I yield back the balance of my time.

Thank you.

Mr. UPTON. Mr. Wynn.

Mr. WYNN. Thank you, Mr. Chairman, and in the interest of hearing from our witnesses, I'm going to defer at this time.

Mr. UPTON. Ms. Cubin.

Ms. CUBIN. Thank you, Mr. Chairman. Well, in the words of our esteemed 40th President of the United States, Ronald Reagan, "here we go again." It was just 2 weeks ago that we heard testimony about the indecency standard, the utterance of the F word and how the bill before the subcommittee would affect the increasing cases of indecent broadcasts. Just later an event occurred that upped the ante in the debate on what should and should not be broadcast over the public airwaves.

The exposure of Janet Jackson's breast during the Super Bowl halftime show smacked of shameless self-promotion as my colleague from California just stated. I also agree with my colleague, Mr. Rush, that Justin Timberlake deserves more than just a slap on the hand. I think it takes two to tango and I think only a sleazy person, a sleazy man would allow Janet Jackson to take the full blame.

However, as Mary said, no one was talking about Ms. Jackson's upcoming CD a week before the Super Bowl and now she's all over the news and her new disk could end up be a chart topper. Are we the suckers in all of this? I think so. Should we continue to adhere to the status quo which is dangerously close to adopting the F word as an allowable adjective or is enough enough?

Judging by the response that I've gotten from my constituents, the decency line has been pushed too far for Americans to stomach. Now as a Member of this body, I have taken an oath to uphold the Constitution which is the most important protector of our right to speak freely. I'm also aware that there are limitations on a citizen's right to free speech. For example, you can't shout "fire" in a crowded theater. These matters are difficult to reconcile, but I think Chairman Upton's bill is narrowly tailored enough to be effective in curbing or stopping indecency without having the government in the business of censoring programs.

By just discussing the increase in penalties that can be applied for the indecent broadcast, we are seeing a wave of market base corrections to the heretofore status quo and that's a good thing. With networks scrambling to adhere to some common sense protections like implementing delays on live broadcasts, we see there is a will to address this public outcry and I am glad of that.

I am just sorry it's taken this committee's action and an incident that happened at the halftime of the Super Bowl to spur that positive change.

Thank you, Mr. Chairman, and I yield back the balance of my time.

Mr. UPTON. Mr. Engel.

Mr. ENGEL. Thank you, Mr. Chairman. We've heard a lot of talk from Members of Congress this morning and when this happens I think of the adage which declares that all that needs to be said has been said, just not everyone has said it. So I'm going to cut my remarks. I want to thank you for holding the hearing so we can hear what the witnesses have to say. I thank you, gentlemen, for having the guts to testify and I look forward to your testimony and you

can see the most difficult part is not your testifying, it's having to listen to all before you can actually get to testify.

Obviously, this is a serious matter. I don't think Congress should grandstand what happened at the Super Bowl. It was obviously offensive, but all indications are that Janet Jackson and Justin Timberlake did this without anybody's prior knowledge and they certainly ought to be ashamed, but I don't know that anybody frankly at CBS could have known or should have known of what would have happened.

My solution to this, to ensure that things would never happen again would be a 7 second delay. We've talked a lot about it and I'd be interested in hearing what the panelists would think about that.

Obviously, we want to work with the industry to find ways that broadcast television can continue to flourish, but at the same time find that balance that allows families to comfortably watch TV at night. Some of my colleagues have said we have to address violence and we do, as well as some of the sexually explicit material. Obviously, we have first amendment rights. I always struggle with this. New York, where I'm from, the community standards are different from those of Omaha, Nebraska where my colleague, Mr. Terry, is from. I know that some of the shows to which I may object are highly rated and watched by millions of Americans. So I think that Congress ultimately has to sit down with the industry and come up with standards. Again, I don't think grandstanding is the way to go. I think we all need to put our heads together. There is a solution to this and I look forward to hearing the gentlemen's testimony to hear what they might have to say.

I yield back, Mr. Chairman.

Mr. UPTON. Mr. Deal.

Mr. DEAL. I pass.

Mr. UPTON. Mr. Gonzalez.

Mr. GONZALEZ. I waive opening, thank you, Mr. Chairman.

Mr. UPTON. Ms. Solis.

Ms. SOLIS. Thank you, Mr. Chairman. I want to also thank you for the opportunity to be able to sit here and listen to statements made by you and my colleagues.

While I don't sit on this subcommittee, this is a subject, obviously, that affects all of us. I come from a small District out in Los Angeles and we have varying degrees of different programming much of which I've questioned for many years, particularly on Spanish language television where we see oftentimes indecent exposure on many occasions and it's somehow allowed to go on. But the real issue here for us, I think, is to hear what we can do to change behavior and hopefully rectify this and work with the different bodies here that I think have heard very loud and clear that there needs to be some changes made.

So I would just respectfully submit my statement for the record, and thank you, Mr. Chairman, for allowing me the opportunity to be heard.

Mr. UPTON. Thank you. Again, I would remind all members that their opening statements will be included as part of the unanimous consent request.

We are now finished with opening statements, in case anybody comes in that door.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. PAUL E. GILLMOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

I thank the Chairman for calling this timely hearing to examine H.R. 3717 with respect to the FCC's enforcement role in preventing broadcast indecency.

As the frequency of indecency invading our radio and television airwaves continues to increase, my constituents in the Fifth District of Ohio have sounded out with great disdain. I have received over 500 emails regarding the use of the expletives on television and several hundred more emails regarding the Super Bowl halftime show performance. Many of these messages detail the stories of young people exposed to the shocking actions of a few performers. I am confident that their accounts will be echoed by my colleagues as examples of the damage this type of programming can cause.

The Super Bowl performance, combined with the offensive language used at awards shows in the past year, have resulted in bringing the very important issue of broadcast indecency to a focal point in American society. The deplorable actions displayed during the exploits of Janet Jackson and Justin Timberlake were the culmination of a sexually revealing and embarrassing halftime show complete with inappropriate groping and self-gratification.

I would like to thank the Chairman of the Federal Communications Commission (FCC), Michael Powell, for his swift condemnation of the Super Bowl XXXVIII Halftime Show festivities as well as his commitment to raising the penalties for broadcast indecency. I look forward to examining the disregard by performers and programmers to deliver the decent and quality broadcasting that consumers demand and deserve.

I commend my colleagues on their quick legislative action. In particular, I thank Chairman Upton and Ranking Member Markey's efforts and am proud to be an original cosponsor of HR 3717, the Broadcast Decency Enforcement Act of 2004. The effort to increase FCC penalties ten-fold for obscene, indecent, or profane broadcasts is consistent with the will of the citizens of Ohio's Fifth District. I am also anxious to debate the possibility of making this measure even stronger.

I look forward to hearing from the well-balanced panel of witnesses regarding standards of decency at future live television performances. In addition, I look forward to examining the scope of the pending legislation as well as proposals for furthering the penalties available to the FCC. Again, I thank the Chairman and yield back the remainder of my time.

PREPARED STATEMENT OF HON. W.J. "BILLY" TAUZIN, CHAIRMRN, COMMITTEE ON ENERGY AND COMMERCE

Thank you, Chairman Upton, for holding another excellent hearing on the issue of broadcast indecency. In light of everything that we've seen and heard on the airwaves recently, this hearing is perfectly timed.

It seems Americans have received the proverbial one-two punch from broadcasters recently. First, viewers were bombarded with some descriptive expletives rarely heard on television during some live award shows. Second, and even more egregious, was the now infamous "wardrobe malfunction" during the Super Bowl halftime show that was broadcast to 100 million people. Certainly, the Super Bowl, "America's game," watched and loved by children and families across the country, was not the most family-friendly viewing of the evening. And that's saying a lot when the "Lingerie Bowl" was a viewing alternative.

Understandably, parents were outraged. They were outraged because nudity was not what parents expected with they tuned in to watch the Super Bowl—they rightly predicted a football game with some age appropriate entertainment during halftime. But clearly that's not what parents got. So it should come as no surprise that families are increasingly concerned with the rapid decline in language and material being broadcast on television and radio.

Broadcasters are trustees of a public resource worth billions of dollars, which they get for free, in return for a pledge to act as a responsible steward of the airwaves. Unfortunately, many Americans feel that pledge is not being honored. So we are getting to a point, between Super Bowl halftime shows and live awards programs, where constituents and Members of Congress will be calling not just for increased

financial penalties, but for more drastic remedies, such as license revocation. That is the fate of the broadcaster if the industry does not do a better job policing itself.

I am hopeful that H.R. 3717, the "Broadcast Decency Enforcement Act" will help take the industry in the right direction. I am heartened that this bill is already doing what it was intended to do—change the way the industry is doing business. Since this bill has been introduced, all of the networks have opted to use delays on their live award show broadcasts. The Grammy Awards, recently broadcast on CBS, had a full 5-minute delay. As shown with a recent episode of "ER", affiliates are also taking a close look at the content of the shows being broadcast into their local communities.

H.R. 3717 is a strong first step. The bill is consistent with the goals of strengthening the FCC's hand at combating indecent material on broadcast television and radio, and upholding the rights of broadcasters under the First Amendment. But I ask that as we move toward subcommittee markup of H.R. 3717, that we continue to be mindful of the delicate balancing act required under the First Amendment.

I want to applaud Chairman Upton for the excellent lineup of witnesses we have before us today. I want to welcome National Football League Commissioner, Paul Tagliabue, and President and CEO of Viacom, Mel Karmazin. In addition, we are pleased to have all five FCC Commissioners here to testify. I hope we hear today from the FCC is that it plans to more aggressively use its current enforcement authority on behalf of American families. With the addition of H.R. 3717 to your current bag of enforcement authority, I am convinced we can make a difference in what our children see and hear over the broadcast airwaves.

Thank you, Mr. Chairman. I yield back my time.

PREPARED STATEMENT OF HON. BART GORDON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. Chairman, As a parent of a small child, I am increasingly concerned by the raunchy language, sex and extreme violence I am seeing on TV and radio. The super bowl stunt with Justin Timberlake and Janet Jackson is just the tip of the iceberg. I have heard from hundreds of constituents in the past few months who share my concerns. They feel frustrated and angry that their complaints are not being heard by the broadcasters or the FCC.

We don't have to accept that there is nothing we can do about this situation. A free public broadcast licence is a privilege and it comes with an obligation to serve the public interest. And we have longstanding laws on the books regulating obscenity, indecency and profanity over the public airways that have passed constitutional muster. I see no reason for Congress or the American people to have accept the amount of objectionable content that is being broadcast over the public airways and into the privacy of our homes, particularly during the hours children are watching. I see the problem as two-fold.

First, the current indecency fines are drop in the bucket for multimillion dollar corporations. I support increasing the fines so that they are meaningful deterrents, not merely a slap on the hand. I am working with my colleague Rep. Gene Green (D-TX) on an amendment to ensure that these fines go to the entities responsible for the content, and not the local TV affiliate who has no ability to alter the network programming.

Second, while I am encouraged by the Commission's new found interest in levying fines, the fact is it does not have a good record responding to the public's growing concern about indecency over the public airways. According the FCC's own numbers, 240,000 complaints concerning 375 different programs were made to the agency in 2003. But only three notices of violations were issued. And in 2002, only two fines were levied. The FCC moves so slow that it is not uncommon for the statute of limitations to expire before the FCC gets to complaints. And when fines are issued, they frequently go unpaid.

I look forward to hearing from today's witnesses. In particular, I would like to know what the Commission intends to do to step up its indecency enforcement efforts and make the process more responsive to the public. I63

PREPARED STATEMENT OF HON. PETER DEUTSCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Thank you, Mr. Chairman, for holding this hearing.

Mr. Chairman, today is really a continuation of this subcommittee's work surrounding the issue of broadcast indecency. Since our last hearing, however, this issue has been not only debated by Members of Congress, policy wonks and lobby-

ists, but by most of the 100 million people who viewed CBS's broadcast of the National Football Leagues's Super Bowl XXXVIII half time show.

Under the Communications Act of 1996, Congress empowered the FCC to fine any licensee who broadcasts "obscene, indecent or profane language." Regretfully, procedural barriers and a reluctance by the Commission to exercise its authority prove frustrating in the effort to protect our children from harmful and indecent material.

As a cosponsor of the Upton/Markey legislation which this subcommittee will mark up tomorrow, I fully support this initiative which increases the forfeiture penalties the FCC may levy for obscene, indecent or profane broadcasts. Additionally, I feel this committee should expand on its efforts to define the FCC's role regarding indecency by debating the merits of the FCC actively monitoring the networks and imposing automatic triggers for licensing revocation hearings. Common sense, it seems, has finally intervened as most of us here today agree that voluntary efforts are not the answer. I look forward to the testimony we will hear today.

Mr. UPTON. We are very grateful to have our first panel testify this afternoon. We are joined by Mr. Paul Tagliabue, Commissioner of the National Football League and Mr. Mel Karmazin, President and CEO of Viacom. I appreciate your testimony in advance. Many of us were able to read it last night. I would note that your testimony is part of the record in its entirety. We'd like you, if you can, to limit your remarks to about 5 minutes.

Mr. Tagliabue, we'll begin with you, welcome. You need to hit that mic.

STATEMENTS OF PAUL TAGLIABUE, COMMISSIONER, NATIONAL FOOTBALL LEAGUE; AND MEL KARMAZIN, PRESIDENT AND CHIEF OPERATING OFFICER, VIACOM, INC

Mr. TAGLIABUE. Thank you very much, Mr. Chairman and members of the subcommittee. I want to introduce Mr. Jerry Richardson and Mr. Dan Rooney who are behind me. Mr. Richardson's family owns the Carolina Panthers team which was in the Super Bowl game and Mr. Rooney's family owns the Pittsburgh Steelers team which had the distinction of winning, I think, four Super Bowls at one point. And he's anxious to be back there.

We have all spent, all three of us, have spent most of our adult lives trying to make the National Football League a powerful and positive influence in American life, especially for young people. Mr. Rooney has been involved with the Steelers for 50 years, I think. He doesn't look that old. His family has owned the team for 70 years. Mr. Richardson is unique in our League in that he's the only owner who played in a championship game as a player for the Baltimore Colts in 1959 and 2 weeks ago had his team, the Carolina Panthers, in the Super Bowl game. So we're all parents and we're all grandparents.

I can say for them and for myself and for the other 30 owners that we are deeply embarrassed by what happened at the Super Bowl halftime and we more importantly are determined to make certain it does not happen again. When we step back and look at what went on the air, it's the most perverse outcome that we could imagine because due to my own ineptitude and the ineptitude of others the super performances of our athletes, Tom Brady, Jake Delhomme and others and maybe the most thrilling Super Bowl game we've ever had have been totally lost in the wilderness of Hollywood and musical entertainment. I can assure you that's not what we were trying to accomplish and certainly not what CBS Sports was trying to accomplish with our Super Bowl telecast.

So let me turn to sort of a summary of my prepared statement, Mr. Chairman, and as you suggested, I'll try to get through it within the time constraints that the committee has.

Needless to say, I'm very pleased to be here today. We've always taken pride as a League in the quality and popularity of our television programming and in the way that the National Football League brings families and communities together. We have a 30-year plus tradition with the United Way and many other traditions at the team level, we think demonstrate what we're about.

We're aware of the special character and place of our sport for many millions of Americans and the unique character of the Super Bowl game itself which for better or worse has become an unofficial midwinter national holiday.

Super Bowl XXXVIII which was played on February 1 in Houston, represented the finest football entertainment that our League and our teams offer. It also featured a halftime show that departed sharply from our views and I believe CBS's views of what constitutes high quality and acceptable entertainment for the NFL and CBS Sports which have a 40-year tradition of working together and having worked together quite remarkably, I think.

The 12 minutes of the halftime properly resulted in significant criticism of all who were involved with the halftime show and we take our share of the responsibility and the blame. At the outset, I would note that while MTV produced the halftime show, it did so under a contract with the National Football League. As I say, we accept our responsibility for having entered into the contract and for what resulted from it.

When we agreed to have MTV produce the halftime show, based on our prior, positive experience with MTV 3 years ago with the Super Bowl, we expected a show that would feature high energy, outstanding and diverse musical entertainment that would appeal to more than 100 million Americans who would be watching some portion of the Super Bowl telecast.

Unfortunately, the show that MTV actually produced which we had reviewed in advance fell far short of the NFL's expectations of tasteful, first class entertainment. In my statement, our statement issued minutes after the halftime, during the early part of the third quarter of the game, we made clear that we were deeply disappointed and offended by the inappropriate content of the show. And my disappointment, our disappointment went well beyond the Janet Jackson-Justin Timberlake stunt that has garnered so much attention. Since the Super Bowl, we have thoroughly reviewed this matter. I guess I could add, since the beginning of the third quarter, I've been reviewing this matter.

I'll summarize here the answers to three questions which I think will provide the subcommittee with a better understanding of what occurred and what we are doing to ensure that it does not happen again.

The first question is in planning the musical entertainment at the Super Bowl including the halftime show, were we and CBS striving to have high quality programming that was tasteful and reflected the special place of the NFL and the Super Bowl in American life? The answer to this, I think, I know on our behalf and I'm quite certain on CBS' behalf is yes. We were trying to do something

positive that would reflect very well on both our League and CBS Sports.

We selected MTV to be the halftime entertainment producer for this year's Super Bowl because at CBS' request, MTV had produced a first rate Super Bowl halftime show for our game in January 2001. However, on key aspects of the planning for the 2004 game for the show, we found MTV to be difficult to work with, resisting disclosure of its planning at certain points or input or oversight from our office and others.

As a result of this concern in mid-December, I personally discussed the type of Super Bowl halftime entertainment that we desired to have with CBS' Chairman and Chief Executive, Les Moonves, for whom I have tremendous respect. I emphasized our concerns also with MTV executives in a meeting in early January because I believed and I continue to believe today that CBS shared our goal of having a positive halftime show that would bring credit to both the NFL and CBS.

When I spoke to Mr. Moonves in mid-December, I emphasized that the focus needed to be on the NFL and CBS Sports and our audiences of sports fans on Super Bowl Sunday, not on the much different and far narrower MTV audience. I mentioned that I thought we had a common interest in this, based on 40 years of working together and that CBS Sports was more than the NFL and more than football. It was college basketball, it was many great things. And I felt we had a common interest here to get things right.

Our audience is 8 to 80 or beyond and we didn't want anything to happen that would compromise the reputations of either the NFL or CBS. I mentioned to Mr. Moonves that we had been embarrassed by a tawdry element of the season kickoff event on the Mall last September in a performance by a singer and I did not want the halftime show to be the cause of any further embarrassment and I'm sure I used the word grief. Mr. Moonves said he shared my views and would personally see to it that the halftime show would be appropriate and not embarrass either the NFL or CBS and I say all that just for background. I take the responsibility for what happened and I'm not trying reallocate responsibility to anyone else including Les Moonves. But that's the context.

Second, based on our discussions with CBS and MTV did we have a realistic expectation that MTV would produce a tasteful, satisfactory Super Bowl halftime show? Again, I believe the answer is yes. We had numerous discussions about the talent. When I say "we", most of this is our staff and their staff, but I did get personally involved, as I mentioned, as is recounted in my prepared statement. We had numerous discussions about the talent that would appear. Given her recent hit song, "Rhythm Nation", we were pleased that Janet Jackson would be a featured artist. The song is really about tolerance. It's an almost up-to-date version for us old folks of some things that Joan Baez and others used to sing when we were younger. We knew that Kid Rock had joined with NFL players on a USO trip last summer to entertain troops in Iraq and Kuwait and he had done extremely well. He would help anchor the musical lineup.

So we felt comfortable with talent such as that. We had flatly rejected a number of other performers because we felt their music, their personal conduct or both made them inappropriate in our view for the halftime show.

I think if you try to see what we were trying to accomplish, consider the pregame entertainment both on the network and in the stadium which was televised by CBS. I know some of you were there at the game watching what was going on, including on TV monitors. CBS has a great piece by Dick Enberg about the astronauts since the game was on the first anniversary of the loss of the Columbia Shuttle, just by complete coincidence. Lesley Visser had a great piece about Jake Delhomme and small town America and his roots in the Cajun country in Louisiana.

We both presented Willie Nelson and Toby Keith, the Spirit of Texas. We had Hispanic music to emphasize the diversity of Houston and of Texas. We had wonderful pregame entertainment by Aerosmith, by Josh Groban in tribute to the astronauts and we had a stirring rendition of the anthem by Beyonce who was accompanied by a military guard which included the Vice Chairman of the Joint Chiefs of Staff.

I think that was—CBS and the NFL—I know that's what we were trying to accomplish for the whole day in terms of entertainment.

So how did we fail to get there? That's the last question in my statement. It's the last question I'll speak to now.

In the immediate weeks and days preceding the Super Bowl were our standards and procedures for reviewing the halftime entertainment as timely, exacting and effective as they should have been, and if so, how did the halftime show turn out to be unsatisfactory, offensive and embarrassing to us? In hindsight, the answer is clearly no. Our standards and procedures were not as exacting and as effective as they should be.

From last fall until the dress rehearsal 3 days before the game and there was only one dress rehearsal, we were operating in an environment where MTV had produced a quality halftime show 3 years ago and where senior MTV officials had assured our staff and me that they knew what they had to produce for the audience of the NFL and CBS Sports being well over 100 million, including many families. Those assurances extended beyond comments made to our executives and included public statements as well.

Just the day before the game, on Saturday, January 31, I read in The New York Times an article about how our Super Bowl halftime had evolved over the years and it included a statement from the co-producer of the MTV halftime show which was to the effect that we had made our views clear to MTV and the message that they had from us was and this is a quote of the MTV executive "know who the audience is. MTV is 12 to 24 and the NFL is 18 to 80. It's a little bit different from what we do but we know our role."

Having read that, I can tell you that when I went to the game I was a heck of a lot more concerned about security and other things than I was about the halftime show. As it turned out, the most significant breach of security was the streaker and the halftime show was extremely bad.

But based on a lengthy course of dealing with CBS and MTV, we somehow persuaded ourselves that we and they were fully on the same page and that the Super Bowl halftime show was going to be satisfactory. Clearly, there's a wide gap between our view and MTV's view of what was appropriate. We should have recognized it earlier.

In our statement issued during the third quarter of the game, we made clear that we were deeply disappointed and offended by many elements of the show, not just the closing stunt and I think the subsequent statements by MTV go in the opposite direction.

While we made our views about the halftime entertainment clear and ruled out talent and content that we found objectionable or risky, we certainly did not in the end retain or assert sufficient control over the final character, content, lyrics, choreography and other critical elements of the show and for that we take responsibility.

Reflecting on it, I feel like we gave the keys to the car to someone else for them to drive without assuring ourselves that they knew how to drive safely and the car crashed.

So let me reiterate what I said after the game. We will make the necessary changes in our operations to ensure that there is no repeat of this kind of performance. We will work very closely with our broadcast network partners, CBS, Fox and ABC who televise the Super Bowl in rotations to accomplish this. I'm sure we will get complete cooperation from them.

The changes that we will make will go well beyond simply resolving not to work with MTV in the future and being wiser in our own dealings with others. As I said on Monday morning after the game, we will change our policies, our people and our processes for managing halftime entertainment to make sure we get it right.

I'm going to conclude with one final simple thought which may be the most important of all. We in the NFL have always recognized that we must hold ourselves to very high standards, not only for our game, but for everything we do, especially things related to our game including the Super Bowl. For NFL fans, the NFL is the game of football. We strongly support football at all levels, including youth levels, and view the game as a positive force for millions of people in our society.

Going forward, our intention is to be what we are, the game of football and not to succumb to pressures to become something else. Our further goal is to ensure that the League and its teams continue to be a respected, influencing organization in America and for millions of Americans.

Mr. Chairman, thank you very much for having us and for having me and Mr. Rooney and Mr. Richardson, and I guess vicariously our other 30 owners and we're pleased to be here to answer the committee members' questions.

[The prepared statement of Paul Tagliabue follows:]

PREPARED STATEMENT OF PAUL TAGLIABUE, COMMISSIONER, NATIONAL FOOTBALL LEAGUE

Chairman Upton and Members of the Subcommittee: I am pleased to appear before you today as you consider H.R. 3717, the Broadcast Decency Enforcement Act of 2004. The specific features of the Bill apply to broadcast stations and networks, and the NFL therefore does not take a position on the bill itself. In a broader sense,

however, H.R. 3717 addresses a matter of fundamental importance to our League, our thirty-two teams, and our fans, and which affects both producers and broadcasters of entertainment programming alike.

The NFL has always taken great pride in the quality and popularity of its television programming, and in the way that NFL games bring families and communities together. We are aware of the special character and place of our sport and our league for many millions of Americans, and of the unique character of the Super Bowl game itself.

We know that many millions of Americans view NFL football—and football generally—as representing traditional and important values of teamwork, achievement, sportsmanship and fair play. Each year NFL games continue to be viewed—by a wide margin—by the largest television audiences of any American sporting event. This is so not only during the League's regular season on Sundays and Monday nights, but also on special occasions—such as Thanksgiving Day—and our playoff games.

Above all, we recognize that the Super Bowl itself has come to be an unofficial mid-winter national holiday; that the Super Bowl has a unique place in millions of American homes; and that many of the most watched television programs in American history have been Super Bowl games. With respect to sports television specifically, 18 of the top 20 highest rated television programs have been Super Bowl games—the only two exceptions involving the 1994 Winter Olympics.

Super Bowl 38, which was played on February 1 in Houston, represented the finest football entertainment that the NFL offers. It also featured a halftime show that departed sharply from the NFL's views of what constitutes high quality and acceptable entertainment, and which has properly resulted in significant criticism of all who were involved with that show. It has also highlighted the concerns previously expressed by the FCC and many members of Congress.

At the outset, I would note that while MTV produced the halftime show, it did so under a contract with the NFL. We accept our responsibility for having entered into that contract and for what resulted from it. When we agreed to have MTV produce this year's halftime show, we expected a show that would feature high-energy, outstanding and diverse musical entertainment that would appeal to the more than 100 million Americans who would watch some portion of the Super Bowl telecast, and that would be free of the controversial elements that have generated well-grounded complaints from so many viewers.

The show that MTV actually produced this year fell far short of the NFL's expectations of tasteful, first-class entertainment. In our statement issued immediately after the halftime show, we made clear that we were deeply disappointed and offended by the inappropriate content of the show. This disappointment goes well beyond the Janet Jackson-Justin Timberlake stunt that has garnered so much attention.

Since the Super Bowl, we have engaged in a thorough review of this entire matter. In the course of my testimony today, I will summarize our findings.

Let me address three questions, the answers to which I think will help the Subcommittee better understand what occurred on Super Bowl Sunday and what we are doing to ensure it does not happen again.

First, in planning the musical entertainment at the Super Bowl, including the halftime show, were we and CBS striving to have high quality programming that was tasteful and reflected the special place of the NFL and the Super Bowl in American life?

The answer to this question is "yes."

We selected MTV to be the halftime entertainment producer for this year's Super Bowl because, at CBS's request, MTV had produced the Super Bowl halftime show for our game in January 2001—and MTV had at that time produced both a quality show, and other quality programming during the Super Bowl weekend. This year, we were again dealing with MTV because of its affiliation with CBS. (In addition to the halftime entertainment, our Super Bowl day programming on CBS included two other one hour programs produced by CBS-affiliated companies—Nickelodeon and MTV—which were televised between 12:00 Noon and 2:00 P.M. EST.)

Our halftime entertainment in recent Super Bowls has been tasteful and tailored to our wide Super Bowl audience. We have had a wide range of talent, from an 80-member choir, to Clint Black, to Tony Bennett, to Diana Ross, the Blues Brothers, and Stevie Wonder and Gloria Estefan. (A full listing of the halftime entertainment at all Super Bowls is attached to my statement.)

Since the September 11 terrorist attacks and the beginning of military combat in Afghanistan and Iraq, we have made special efforts to ensure that all aspects of the Super Bowl, including special events and game-day programming, have been fitting and appropriate. For example, for the Super Bowl immediately after the September

11 losses, we made certain that the entertainment at the January 2002 Super Bowl (televised by FOX) properly reflected the Nation's mood and the losses that the Nation had suffered. We thus developed a program that included the Boston Pops orchestra with a performance of Aaron Copland's "Lincoln's Portrait," featuring taped appearances by former Presidents Ford, Carter, Bush and Clinton, and Former First Lady Nancy Reagan on behalf of her husband. The halftime show in that game was an extremely well-received tribute to those lost on September 11th performed by U2.

Despite our earlier satisfactory experience with MTV, a number of contentious issues arose late last Fall relative to key aspects of the planning for the halftime show for the game in Houston on February 1 this year.

As a result, it became necessary for senior NFL executives to speak directly to their counterparts at CBS Sports, and to convene four-way discussions among the NFL, MTV, CBS Sports and AOL, the halftime sponsor. By mid-December, these discussions had not resulted in a satisfactory resolution, and our senior executive staff was seriously considering terminating MTV as the producer of the halftime show.

At that time, our staff recommended that I should review the type of Super Bowl halftime entertainment that we and CBS desired to have with CBS Chairman and Chief Executive Officer Les Moonves.

I did so on December 16, 2003, and I believed after that conversation—and continue to believe today—that CBS clearly shared our goal of having high quality, broadly acceptable halftime entertainment that would bring credit to both the NFL and CBS Sports. We were, in short, on the same page with respect to the halftime entertainment.

Specifically, I emphasized to Mr. Moonves that the focus of the halftime entertainment needed to be on the 100 million plus fans of the NFL and CBS Sports on Super Bowl Sunday, not on the far different and much smaller MTV audience.

I also emphasized the special character of the Super Bowl, both generally and for this year's game in Houston. Uniquely, the game was, by complete coincidence, being played on the first anniversary of the loss of the Columbia Space Shuttle and the Columbia astronauts, and we were playing in Houston—the home of the space program (the Johnson Space Center); we had been working with NASA and other government officials for most of the past year to ensure that the day of game, in-stadium events would include elements commemorating the loss of the astronauts and paying tribute to the other heroes of space; we were still at war, both with terrorists and in Afghanistan and Iraq, with thousands of U.S. troops in both countries connecting to home by watching the Super Bowl telecast; we would honor the military servicemen and women in the pre-game, hopefully with an appearance by the Chairman of the Joint Chiefs of Staff; and former President Bush and Mrs. Bush were generously involved—as Houstonians—in welcoming the Super Bowl to Houston and were expected to attend the game.

Finally, I noted that the League had been badly embarrassed in a concert at the National Mall in Washington kicking off the 2003 season by an unexpected, tawdry segment involving the singer Britney Spears, and I did not want any repeat of anything like that in the Super Bowl halftime entertainment.

This explanation of my goals for the Super Bowl entertainment reflected decisions we had already made to avoid controversy arising out of game-related televised musical entertainment. Specifically, we had already decided not to have musical entertainment—televised or not—during the halftimes of our two Conference Championship games played in mid-January this year, even though the games are televised by CBS and FOX and would attract very large audiences. This decision was based on our judgment that previous Championship Game musical entertainment had generated criticism and created unnecessary risks of ill will with our fans and the public generally.

Second, based on our discussions with CBS and MTV, did we have a realistic expectation that MTV would produce a tasteful, satisfactory Super Bowl halftime show?

Again, I believe that the answer is "yes."

Our staff had numerous discussions about the talent who would appear in the halftime show. Our staff agreed that Janet Jackson would be the featured artist and believed that Kid Rock, who had joined NFL players on a USO trip last summer to entertain troops in Iraq and Kuwait, would be a positive addition to the musical lineup. Our staff had also flatly rejected a number of other performers suggested by MTV because their music, their personal conduct, or both made them inappropriate for the Super Bowl audience.

In early January, 2004, we again sought to ensure that the MTV-produced halftime entertainment would be satisfactory and without controversy. Specifically, along with our key staff involved with presenting the Super Bowl, I attended a

meeting on January 9 with the producers of the Super Bowl pre-game entertainment (Best Productions) and with MTV representatives. At this session, we again emphasized the importance of focusing on the mass nature of the Super Bowl audience; the MTV representatives confirmed that they understood our desire to have a halftime show that would be well received by a Super Bowl audience, and gave an overview of the halftime entertainment that was being developed to accomplish this. They emphasized that all of the elements were not yet in place but would be carefully tailored to meet the NFL's concerns—starting with the use of two, nationally-renowned college football bands to start the halftime show, and including Janet Jackson's "Rhythm Nation"—which was described as a serious song with a message of tolerance.

Three days prior to the Super Bowl, January 29, our staff attended the halftime show's one "dress" rehearsal, along with representatives of MTV and CBS. It is fair to say that the most objectionable aspect of the halftime show was not rehearsed. Nonetheless, there were a number of elements of the show that disturbed our staff, and they promptly communicated those concerns to MTV officials, both orally and in writing. Our staff specifically identified concerns with lyrics, costumes, and the use of the Flag by Kid Rock. One of the MTV executives in charge of producing the show ended a detailed e-mail exchange by saying

> "I know you are worried, but we are all aware of what we need to do and will address all you [sic] concerns above."

In evaluating what our goals were with respect to Super Bowl musical entertainment, it is instructive to consider the Super Bowl pre-game show, produced on the field by the NFL with a third party and on television by CBS. The pre-game show featured a tribute to the Nation's space program in a performance by the classical artist Josh Groban. It recognized the musical traditions of Texas by featuring both country music stars Willie Nelson and Toby Keith and Hispanic artists Mango Punch. And it concluded with a moving and elegant performance of our National Anthem by Beyonce Knowles.

That was the kind of show that we sought and expected at halftime.

Third, in the immediate weeks and days preceding the Super Bowl were our standards and procedures for reviewing the halftime entertainment as timely, exacting and effective as they should have been—and if so, how did the halftime show turn out to be unsatisfactory, offensive and embarrassing to us?

In hindsight, the answer is clearly "no," our standards and procedures did not accomplish what they should have.

Having reviewed these events, I now recognize that we in the NFL did not conduct ourselves in our dealings with CBS and MTV in a manner that guaranteed that the Super Bowl halftime entertainment would be acceptable to a mass audience, including many families, and most important, consistent with the standards we had set for ourselves. Our people and our management procedures did not provide the necessary assurance that the halftime entertainment would be appropriate to the very special place of the Super Bowl game in American sports, the unique circumstances of presenting such an event at this time in American life, and on a special day of remembrance of fallen astronauts in the city (Houston) that was both home to the space program and host to the Super Bowl game.

Some of the reasons for this seem relatively clear; others still need to be ascertained through further review, with additional perspective and certainly with greater clarity. Clearly, too much credence was given to our staff's experience with MTV in producing a quality halftime show three years ago.

In addition, our staff clearly believed—and communicated those beliefs to me—that we had effectively communicated to CBS and MTV our expectations with respect to the quality and character of the Super Bowl halftime entertainment. And right up until the day before the Super Bowl game itself, statements by MTV's representatives seemed to confirm this belief. To note a single example, in a *New York Times* feature on the evolution of Super Bowl halftime entertainment on Saturday, January 31—the day before the game, it was stated that the League had clearly communicated its expectations to MTV and the MTV co-executive producer of the halftime show was quoted as saying that:

> "Know who the audience is . . . MTV is 12 to 24, and the NFL is 18 to 80. It's a little bit different from what we do, but we know our role."

In conclusion, we in the NFL absolutely recognize and accept our responsibility to ensure that all Super Bowl programming is tasteful, first-class, and highly regarded by NFL fans and the public generally. We will certainly be wiser in dealing with others but, most important, we will change our policies, our people and our processes for managing the halftime entertainment in order to deal effectively with the quality of this aspect of the Super Bowl game.

Mr. Chairman, thank you for the opportunity to testify today. I would be pleased to respond to any questions from the Subcommittee.

Mr. UPTON. Thank you very much. Mr. Karmazin, welcome.

STATEMENT OF MEL KARMAZIN

Mr. KARMAZIN. Thank you very much. MTV is not responsible for the banging noise that you're hearing. Thank you, Chairman Upton and members of the subcommittee for allowing me the opportunity of appearing here today. I just need to correct you on one thing. My title is President and Chief Operating Officer. This is not the spot I suspect to get promoted at today.

Before I address Chairman Upton's legislation, I'd like to spend some time and discuss the event that happened during halftime at the Super Bowl. It's very regrettable for what should have been remembered as one of the finest Super Bowl games of all time, one that was very exciting, had great ratings, is being marred by the controversy surrounding the halftime show.

Let me say, Congressmen, you're just wrong. Let me just say that everyone at Viacom and everyone at CBS and everyone at MTV was shocked and appalled and embarrassed by what transpired. Ms. Jackson's unrehearsed and unapproved display went far beyond what is acceptable standards for our broadcast network. We apologized immediately to our audience and I apologize here again to all of you. This is not acceptable. We're not defending anything on any basis of free speech. This should not have happened.

We have conducted an investigation. Yesterday, we supplied the FCC with significant amounts of information. To date, we have interviewed 50 individuals and we have also included a tape from Ms. Jackson as well as an affidavit signed by her as well. We have submitted tapes of every rehearsal, notes of the entire process and that it is clear that nobody at CBS, nobody at Viacom, nobody at MTV and certainly nobody at the NFL knew what was going to happen.

She has now publicly admitted, Ms. Jackson has now publicly admitted that she and her choreographer, unbeknownst to anyone else, met privately in advance with Justin Timberlake. We understand that that meeting took place approximately an hour before the halftime show and she discussed what was going to be a new ending to the show. She has said that she had told—and Mr. Timberlake has said that he was under the impression that at the end of the song, he was going to remove her top and under that top was to be a red bra or bustier and when he did that, it wasn't there, which is why you heard these comments about "costume malfunction" was the alleged sense that he believed there was going to be something under there and that her bare breast was not to be shown.

It happened. It happened under our operation. We take responsibility for it, but this happened on live television and had not happened before. So let me tell you that during the Super Bowl we aired that entire program on an audio delay because we wanted to make sure that if somebody said something inappropriately, we had the ability to edit that out. We have never, ever had to do anything with a video delay because the video delay, you move the camera. So when Commissioner Tagliabue mentioned a few min-

utes ago that there was a streaker, I don't know those of you who were watching on television that were not there in the stadium should know that a naked person just before the start of the second half, came out onto the middle of the field, naked, I think, it was hard to see from where we were. He was decked by a player. Security came, carried him off and that wasn't off television. And the reason it wasn't on television, we didn't believe that's appropriate to put on television and therefore it never found its way to television.

If, as some have said, this is a plan to sort of see how low we could go and if, in fact, it was about getting ratings or some of the other things that I've heard this afternoon, we would not have exercised what we obviously always do which is protect ourselves that way.

The event was on for 18 frames, what that is, is a little bit than three quarters of a second. That's how much it was on. It shouldn't have been on at all. That was three quarters of a second too much which is why we decided that we had to take this to a new level because the concept of just using audio delays and the concept of just having the ability to pull away no longer works. So we announced that for the first time that has ever been done in television to my knowledge is that we took a live event, the Grammys, and we put it on a 5 minute delay, so in addition to having the protection of an audio delay, we knew that—we weren't sufficient in what we had without a delay and we put that on.

We have also for the first time in our history, we have instructed all of our television stations, our individually owned and operated television stations, 39, that when they are broadcasting live programming and this would not include news, but live programming where something like this could happen, they will from now on broadcast not just on an audio delay, but on a video delay.

We are concerned about the risks associated with that because we certainly don't want performers to suddenly now think that they're off the hook, that therefore it's on a delay, so therefore they're free to say anything because you guys are the ones that have to capture it. But we are going to stick with this and we're going to continue to see where it goes.

We also appreciate the interest that this committee has had on the difficult issues of indecency. Chairman Upton's legislation will no doubt have a detriment to some effect of stations airing indecent material. There was a lot of material said and I really do want to keep my comments short because I would love to answer your questions.

I don't believe there is a single broadcaster who looks at fines as a cost of doing business. I don't believe there is a single broadcaster who wants the ability to getting fined. None of us do. I've been a broadcaster for over 30 years and I can assure you that I don't want to get a fine. And it's not about the money, it's about the principle. If you're a broadcaster, you shouldn't be fined and you don't want that material on the air.

I don't think fines address what we believe to be the problem. And the problem, we believe, is the current vagueness is how indecency is defined. And it's exasperated by the lack of clear policy direction from the FCC. Firstly, I got a compliment and I have to

give some credit to the FCC. This is a very difficult of enforcing these very vague standards. I do believe what we need is a roadmap.

I mentioned I've been in the broadcasting business a long time. The standard used to be the seven dirty words. That was for most of my career the standard. You never heard the seven dirty words on TV. Occasionally, someone mentioned Bono did it, but for all of the hours of broadcast television there was never a lot of indecency on the air.

What's happened since then is that the standard has changed and by the way appropriately so. I think that indecency is beyond the seven dirty words. But it is not clear exactly what is meant by indecency.

I also want to make a point that says that if we wanted to air indecency, if there was an intent on the part of broadcasters to air indecency, I'm told we can do that after 10 o'clock at night because that's a safe harbor. Nobody is seeing that material done after 10 o'clock. So we don't want to run indecency in the safe harbor and we don't want to run it in prime time. So what we have urged and we have urged this for some time and maybe this committee can help us, is that we hope that the FCC will undertake a rulemaking that would decide on what is indecency and questions that were asked earlier, is the standard in Las Vegas the same standard that's appropriate in Salt Lake City and what we think should happen is that if in fact the FCC undertakes this rulemaking, and for the first time, by the way, this has never been done. And if in fact, the Courts uphold it, that's the standard.

So in conclusion, let me assure you that we fully understand your interest in ensuring that indecent content does not appear on live television. I pledge to you that we will take every precaution to fulfill whatever laws, to follow whatever laws Congress enacts, the FCC implements and the Courts uphold.

We are proud of our long heritage as one of the premiere broadcasters of this country and we will do all that we can not to jeopardize that trust that's placed on us to deliver entertaining, enjoyable and very appropriately programming into American homes.

Thank you, and I look forward to your questions.

[The prepared statement of Mel Karmazin follows:]

PREPARED STATEMENT OF MEL KARMAZIN, PRESIDENT AND CHIEF OPERATING OFFICER, VIACOM

Good morning Chairman Upton and Members of the Subcommittee. I am Mel Karmazin, President and Chief Operating Officer of Viacom.

Thank you for inviting me to appear before you today. The topic of this hearing is H.R. 3717, "The Broadcast Decency Enforcement Act of 2004." With such a subject naturally comes scrutiny of the state of television and radio in America today. In a universe of television and radio programming that is informative, educational and entertaining, the incidences of indecency are infinitesimal. There are more than 1,700 television stations and nearly 13,500 radio stations nationwide, broadcasting a total of some 8 *billion* minutes each year. And yet, in any given year, programming that is found to be indecent typically represents a handful of incidents covering only a few hours of that time "even under the vaguest indecency definition that exists today.

This illustration is not meant to diminish the serious concerns and legitimate debate about indecency. Rather, it is an attempt to put into perspective the frequency, or more correctly, infrequency, of indecency and to shine a light on all the positive social contributions that we and other broadcasters make. In the interest of time, rather than enumerate all of our efforts, I will submit for the record in this hearing

an impressive compendium of the localism, programming and diversity achievements of Viacom's broadcasting divisions. One example you will find discussed in that litany is our HIV/AIDS awareness campaign. Launched last year in partnership with the Kaiser Foundation, the campaign mobilizes the full range of Viacom's properties. In 2003, Viacom devoted $180 million in media value to messages on HIV/AIDS and produced 15 television programs on the topic, which reached more than 50 million people. And for 2004, Viacom has pledged $200 million in ad value to the campaign.

Largely unnoticed in the recent controversy was our decision to air a highly valuable spot on HIV/AIDS during the Super Bowl pre-game show. This message reached about 72 million people, and in the 48 hours following its airing, the campaign's website received 215,000 unique visits, allowing individuals to obtain important information on the disease. Equally unnoticed was MTV's launch during the Super Bowl half-time of its "Choose or Lose 2004" campaign with a timely message to young people about voter registration, a cause certain to resonate in these halls.

But a few regrettable moments in that same Super Bowl have since overshadowed our many good deeds and the quality programming that our company produces and delivers day-in and day-out. We had eagerly anticipated broadcasting the NFL championship game since 2001, when we last aired the event. Super Bowl XXXVIII was the fifteenth one that CBS has televised. In the months leading up to February 1, CBS Sports and engineers excitedly prepared to showcase in both analog and high definition what has become the centerpiece for a national day of celebration. At the same time, MTV made ready its plans for production of the game's half-time show, featuring some of the most popular recording artists in the music industry: Janet Jackson, Kid Rock, Justin Timberlake, P. Diddy and Nelly. This is the second time that MTV produced the half-time event "it also did so in 2001.

MTV's preparations for this year's half-time event included a full review, in tandem with CBS, of the script and lyrics and attendance at all rehearsals throughout the week before the Super Bowl so as to conform to broadcast standards. The script called for no untoward behavior. In rehearsals, Nelly did not reach for an area below his belt, and Jackson and Timberlake certainly did not practice the stunt they performed on air. Further, as Jackson has acknowledged in both written and televised statements, it was devised by her alone, without the knowledge or participation of anyone at CBS or MTV.

In addition to these preparations, CBS put in place for the broadcast of both MTV-produced segments on Sunday "the one-hour 'TRL Total Request Live' at noon Eastern and the half-time show" a five-second delay device designed to eliminate inappropriate audio. With respect to video, the first line of defense, as is always the case at live entertainment and sporting events, was the cut-away camera, which moves the camera away from inappropriate graphic subjects. Given the history of broadcast television up until this Super Bowl, deleting troublesome video was never a concern, except, perhaps, for the occasional streaker dashing across a sports field.

Having taken these steps and with our delay and cut-away systems ready, we truly believed that we had thoroughly prepared and taken all precautions needed to deliver a sports and entertainment event that would be enjoyed and applauded by fans throughout America and around the world. We were wrong. Although we are proud of 99 percent of what people saw on CBS last Sunday during eight hours of Super Bowl sport, pageantry and music, we understand what a difference one percent can make. We apologized right after the incident. And I take this occasion to apologize again, to our viewers, to our affiliates, to both teams and the NFL, and to our advertisers for not having in place the technology needed to remove objectionable video before it reached our audience.

Some have publicly stated that they don't believe that we were duped by Jackson and Timberlake. Even with the facts before them, they never will. Yet, logically, there was nothing to gain for Viacom "not for ratings, not for advertising dollars, not for promotional value. Our reputation and the reputations of CBS and MTV are too valuable to risk by engaging in such stunts.

Others have said that we should have anticipated what would happen because of the talent involved. Yet, to our knowledge, neither Jackson nor Timberlake, seasoned performers in numerous live television events, had ever engaged in such an antic. The well-received half-time show MTV produced three years ago had also included performances by Timberlake and Nelly.

The unfortunate Super Bowl half-time episode instructs us that unacceptable conduct may occur at live entertainment events on broadcast television that the cut-away camera approach cannot cure. Artists are pushing new limits, and as they do, high definition digital technology is delivering their words and actions clearly and crisply and often on very large screens into America's homes. Personal video recorders, like TiVo, transform what once was a fleeting, did-that-really-happen television

moment into a repeated performance. It was reported that TiVo subscribers hit rewind on the Jackson-Timberlake incident nearly three times more than they did on any other moment in the Super Bowl, even those nail-biting final seconds of the game. These TiVo-recorded images of fleeting television moments are then magnified and transported around the world almost instantaneously via the Internet. Of course, the enlarged still photos appearing on websites are not what a Super Bowl viewer saw. Our first-line defense of the cut-away camera did work to make the incident truly fleeting. And the cut-away camera did, a few moments later, manage to completely protect the home audience from viewing a streaker who had eluded heavy police security and darted across Reliant Stadium's field in front of 70,000 fans. We must be vigilant at the moment of broadcast to protect our own viewers, but we cannot be responsible for the images that are stilled, distorted and then disseminated via a medium over which we have no control. However, we do understand that our first line of defense has to be made more effective.

For the live Grammy Awards show this past Sunday, the CBS Television Network implemented an enhanced delay system for deletion of any inappropriate audio *and* video footage, had it been needed. Under this system, the broadcast of the live Grammy Awards event was delayed by a full five minutes. Developed by CBS engineers on short notice, at great cost, and under tremendous pressure, the system is groundbreaking "no other network has ever undertaken the task of creating a system that is capable of eliminating video from a live program. In fact, the system we used for the Grammys truly is an invention in process, and we are at the mercy of the technology and of our personnel on the scene. While we would like to commit to using this enhanced technology for all potentially problematic live network events, we are still studying how it works. But I pledge to you that the CBS Television Network will use it or something better whenever appropriate.

We do note a concern that anything more drastic could mean eliminating all live programming. That would not be a good outcome for viewers of broadcast television. Moreover, with an enhanced delay system in place, some celebrities in fact may believe they can do and say anything based on the assumption that the network will catch the inappropriate-for-broadcast behavior before it airs.

Our rigorous attempts to deal with inappropriate footage during live events leads to a discussion of Congressman Upton's bill, which seeks to increase fines ten-fold for violations of the FCC's indecency policies. The ultimate goal of any indecency law or rule should be to keep indecency from being broadcast to American listeners and viewers. Fines have a deterrent effect, for sure, and, if assessed judiciously, can also motivate broadcasters to take more precautions, which, in turn will minimize indecent broadcasts. But it is also important that, as the FCC levies fines, it exercise its discretion to adjust the amounts downward for behavior that is clearly not deliberate, that is, where the broadcaster has taken all reasonable precautions to comply with the indecency rules.

One other point I would like to make is that the enormous fines proposed under the legislation could devastate small broadcasters, who will have much less ability to pay and could be driven to bankruptcy. As a broadcaster, I urge you to consider the significant impact of the legislation on small station owners.

However, we firmly believe that instituting increased fines is putting the cart before the horse. There is a chronic problem that is not cured by increased fines, and that is the vagueness of the FCC's indecency standard. Before the FCC levies any fine, it must determine that a broadcaster has violated a rule. In the case of indecency, the rules are neither clear nor static. The precedent constantly changes, and the standard is not clearly articulated to broadcasters. For example, in two prominent decisions released shortly after the FCC published its long-awaited "Industry Guidance" on indecency in 2001, the FCC issued fines for Eminem and Sarah Jones performances found to be indecent. The FCC later reversed course, found the performances *not* to be indecent and rescinded the fines. More recently, the FCC's Enforcement Bureau, consistent with Commission precedent, found Bono's use of a particular word on a live awards show to be so fleeting and non-sexual as to be deemed not indecent. Now it is reported that the FCC intends to reverse course and find Bono's utterance to be indecent. These multiple course "corrections" in the context of adjudicatory proceedings typically involving a single party and taking months, or even years, of deliberation, illustrate the difficult task facing broadcasters as an industry in determining whether certain program material "especially in live broadcasts when they are under timing pressures" crosses the line. In short, broadcasters need a much better roadmap.

The FCC should undertake a full rule making proceeding in which all interested parties can participate so that the constitutional parameters of indecency enforcement can be made as intelligible as possible. The Commission has never held such a proceeding relating to indecency, nor has the FCC ever tried to establish a mecha-

nism by which it can reliably ascertain the required *contemporary* community standard for the broadcast medium. Given the fast-paced nature of change in our society, such an updated standard is critically needed. Then the courts can decide whether the lines have been drawn in proper deference to the First Amendment.

Our request for clear guidelines from the FCC and the courts is in no way an abdication of our responsibility as broadcasters in setting our own internal guidelines. Therefore, I take this opportunity today to reaffirm and explain these long-standing commitments and practices, as well as to announce the institution of a new one, to our CBS and UPN viewers and to Infinity listeners.

First, we reaffirm our policy across the networks and our owned radio and television stations that certain expletives like those contained in the George Carlin monologue "Filthy Words" and which led to the Supreme Court's *Pacifica* decision should not be broadcast at any time of the day, including "safe harbor" periods "except in the rare instance where deleting such language would undermine classic creative content delivered in context. Several years ago, for example, CBS aired a live production of "On Golden Pond," in which we allowed language we would not have otherwise permitted. We also note that other networks have taken the same approach when airing movies such as "Schindler's List" and "Saving Private Ryan." When such exceptions are used, however, warnings to viewers about language are frequently interspersed within the programming. As has always been the case, appropriate action, up to and including termination, will be taken against any Viacom employee who violates this policy.

Second, it has been the practice for several years now, that all of our Infinity radio stations that produce their own potentially problematic live entertainment or news programming, or sporting events containing a live entertainment or interview element, have in place delay systems and the personnel to operate those devices in order to delete inappropriate expletives, as well as other unacceptable sexual descriptions or depictions within that programming. We will continue to use these systems and discipline Infinity employees who fail to vigilantly utilize them.

And third, starting this quarter, for the first time *all* of our locally owned CBS and UPN televisions will purchase and install delay systems to be used under the same circumstances as described for the Infinity radio stations.

In conclusion, we hope that these policies and changes help reassure you and our viewers and listeners of our commitment to continue to deliver the high quality programming they expect and deserve from our company. On behalf of our entire organization let me again state that I regret the incident that occurred during the Super Bowl half-time show. Our country has the finest free broadcasting system in all the world, and Viacom is proud to be a part of that system.

Mr. UPTON. Thank you both, gentlemen. We'll proceed to questions from the panel.

Mr. Tagliabue, are you satisfied with Mr. Karmazin's explanation, that they did everything that they could working with you, working with the NFL?

Mr. TAGLIABUE. I heard his explanation of what they had uncovered and I have no reason whatsoever to question anything that he said. I guess my point would be I don't think we, the NFL, did enough and we didn't work closely enough with CBS to avoid the halftime show that went on the air.

I think with the benefit of hindsight we all agree with that. We did not want to have this kind of a show and we will not have it again. As I said, we have a tremendous working relationship with CBS. It was not that way with MTV and we probably should have recognized that the best way to have the proper programming is to have a good, strong, cooperative relationship and one that doesn't seem to be at cross currents.

Mr. UPTON. Mr. Karmazin, in your testimony you expressed concern about the vagueness of the FCC's indecency rules and the broadcasters face a difficult task to determine whether certain programming crosses a certain line. And having heard that I want to talk about two FCC notices of apparent liability for indecency issued against Viacom's Infinity Broadcasting. One was in 2002

and the other one was in 2004. Both were episodes of the Opie and Anthony Show. And leaving specific legalities aside, would you agree with me today that regardless of how vague you believe the FCC's indecency rules are, at a minimum it should not have been a difficult task for anyone in the broadcast industry to determine whether those shows were appropriate or not and one of them well discussed is the situation of the St. Patrick's Cathedral. As I recall, I think you fired or someone fired or eliminated that show almost on the spot.

Mr. KARMAZIN. I believe I know the two that you're referring to. I believe it was inappropriate. It should not have been on our radio station, that we fired not only the individuals, we fired the producers. We fired the program director. We fired the general manager and changed the format of that radio station from a talk radio station to a music radio station. So no, I don't believe that that material should have aired. I'm not a constitutional lawyer. I can't tell you whether or not the specific words conform to the indecency standard, but more importantly it doesn't conform to our own standard and we took it off the air.

Mr. UPTON. And you recognize that by the quick action that you took, and as I understand the FCC, at least for the second one had a fairly significant fine and I want to say it was in the hundreds, $357,000, referred to a number of different radio stations it was broadcast on. Have those fines actually been paid?

Mr. KARMAZIN. The fines have not been paid because of the fact that we are appealing the outcome on basis of whether or not that constitutes, based on similar material, similar content that the FCC deemed not to be indecent. So one of the ways that we as a broadcaster know what is and what isn't is you take a look at the stuff that they say yes, you are fined and then you take a look and say no, you're not being fined. You've mentioned a lot of these complaints that have been filed and therefore a lot of them were not issued an NAL and a lot of the content was similar. I can control exactly what goes on on our properties. We have people responsible for that. That material is unacceptable to us, whether it crosses to indecency and deserves a fine——

Mr. UPTON. But on the one hand you said it was objectionable enough that even the producers, everybody was fired, and it's off the air and a second later, you indicate—and that was justified, but the second case though, you don't pay the fines. The FCC has agreed that it was, in fact, indecent. I would guess that everyone in this room in watching would say that it was totally inappropriate, terribly offensive to virtually everyone that heard it. You agreed with that. The FCC ruled and yet the fine is unpaid.

Mr. KARMAZIN. Congressman, I think what you said was objectionable, offensive and we would all agree to that. The question——

Mr. UPTON. And indecent.

Mr. KARMAZIN. The question is whether or not the material was indecent. So I can fire somebody for reasons that they broadcast something that I did not want on the air. I did not like during halftime of the Super Bowl that somebody touched their crotch, okay? I don't know whether or not touching the crotch, there's an awful lot of people who do that, whether or not that violates the indecency—but I can tell you that's not acceptable for us.

So the fact that we fire somebody doesn't mean they violated necessarily the indecency standard, so the idea of paying the fine is basically acknowledging that you have aired indecency and my attorneys have assured me that in their judgment we did not air indecency. We aired objectionable, offensive, embarrassing, don't want it, shocking all of these other words. The question is whether or not the legal first amendment standard of indecency was crossed.

Mr. UPTON. Mr. Markey?

Mr. MARKEY. Thank you, Mr. Chairman. Obviously, MTV has its standards and CBS has its standards. The NFL, CBS that day was targeting an audience from age 8 to 80 which is not exactly the strategy of MTV.

Is there a—let me ask this question. If you eliminate the first half and you eliminate the second half, you eliminate the wardrobe malfunction and all you're left with is that halftime show, with the below the belt activity you just referred to, the racy language that you referred to, would that show, in your opinion, merit a G rating?

Mr. KARMAZIN. Let me answer that question. I think the Commissioner said that all of his meetings and what he mentioned, I believe, in his testimony was 18 to 80, 18 to 80 was what was there.

Mr. MARKEY. Realistically, it's 8 to 80.

Mr. KARMAZIN. I'm not trying to debate the audience of the Super Bowl.

Mr. MARKEY. Every kid that has shoulder pads from age 8 on is sitting there all day.

Mr. KARMAZIN. So let me tell you that from my point of view, the artists that were selected to perform, the artists that were selected to perform were very, very popular, mainstream artists, Janet Jackson, Justin Timberlake, P. Diddy, Kid Rock, Nelly. So let's start with the artists. The songs that were featured are song of the most popular songs of today and by the way the versions that were done were the clean versions of those songs, songs that were played on thousands of radio stations, songs that were performed on the Teen Choice Awards——

Mr. MARKEY. Would you give it a G rating?

Mr. KARMAZIN. I'm not in the rating—I don't know, G or PG. I'm suggesting that there were three——

Mr. MARKEY. Do you think the language in those songs was appropriate for an audience 8 to 80, that's all I'm asking.

Mr. KARMAZIN. That's a broad spectrum of the audience, Congressman. There's very little that's appropriate for an 8-year-old and an 80-year-old and I'm saying that the lyrics were scrubbed. They were looked at. They were deemed to be appropriate.

Now it's Monday morning. You know how you look at a football game and you sort of Monday morning quarterback it and you say should we have gone for that play? Certainly to do it over again as the Commissioner said, to do it over again I would have much preferred the NFL show to be different than what appeared at halftime.

Mr. MARKEY. You did third quarter quarterbacking looking at the halftime show. Would you have, in retrospect, even leaving out

the wardrobe malfunction, have had the lyrics, the other conduct beyond the Janet Jackson-Justin Timberlake episode?

Mr. TAGLIABUE. When I saw—during the early part of this halftime show I was doing an interview on CBS radio. As soon as I started looking at the halftime show I felt like I was kicked in the stomach. Why do I say that? I didn't like the choreography. I didn't like the suggestive grabbing of private parts which the choreography lent itself to. I didn't like the way the flag was being treated. I believe absolutely in the first amendment right to do what you want to do with the flag, if you're in a protest march some place, but not for this audience where we've got tens of thousands of troops watching the game around the world. I had as my personal guest at the game, the son of a good friend who was embedded with the 1st Marine Division. I had as my personal guest at the game, General Pace, the Vice Chairman of the Joint Chiefs of Staff who brought within him a Patriots fan who was in Walter Reed Hospital having lost his arm in Iraq. So there's a time and place for everything.

Friday morning, our people e-mailed the MTV people and said they didn't like the use of the flag. It didn't get resolved. That's partly our fault, partly their fault. At this point I couldn't allocate the blame. We were both at fault, our people and their people, in my judgment in the way the flag was in my judgment trashed, in that setting, at this time in the nation's history.

On the lyrics, on Friday morning, our people e-mailed MTV and said—objected to some of the lyrics, even as Mr. Karmazin said they were the watered down or scrubbed version. MTV's response was that they have been—those lyrics have been sung on Saturday Night Live. Give me a break. Saturday Night Live is not the Super Bowl audience. I'm sure he agrees with me. If the two of us have been there maybe we would have made a different judgment. Unfortunately, we weren't there. Someone made a bad judgment. It was as bad on my side as on the other side because if you're objecting to lyrics and someone says they've been played on Saturday Night Live, it doesn't mean they go into the Super Bowl telecast with 150 million people watching.

So those are the kinds of problems I have. I agree with Mr. Karmazin the talent, you can argue about the talent, but as I said in my statement and as Mr. Green noted, we started the show with the Texas Southern and Houston University marching bands. Not many MTV shows start with two college marching bands, one African American school and one other, both local. That was something we all insisted upon. Then we went to Janet Jackson. We were told her main song was going to be Rhythm Nation. I've already commented on that. We went to Kid Rock who I was assured was fine because he was with our players, Deuce Staley and another player at Baghdad International entertaining the troops last August.

Well, benefit of hindsight, that's not a great recommendation either because we know what Bob Hope used to do with the troops around the world and he didn't do the same thing on broadcast television necessarily and I don't know what Kid Rock sang in Baghdad International, but what he sang at our game I didn't like and the way he conducted himself with the flat, I'm sure is not the way he conducted himself with the troops in Baghdad International.

So judgments were made that were bad and it won't happen again. I don't think the judgments were even close calls.

Mr. KARMAZIN. The sense of the flag issue was something that really troubled me because personally that's how I feel. In trying to get to the bottom of it what we saw was that during rehearsal and by the way, all of the tapes, fortunately, sometimes tapes hurt you and sometimes it's good to have tapes, so we have everything on tapes including all of the rehearsals and everything.

What happened during rehearsal was that Kid Rock was wearing the American flag. He was singing a very patriotic song. By the way when he opened up, I was at the stadium, he opened up the jacket he was wearing to reveal the flag and if you look at the tapes as I've seen many times, you'll see that he was greeted with applause, but in rehearsal he took his American flag, this is the MTV version, so Commissioner Tagliabue is saying what his people had said to him and I'm telling you what we've investigated from our end. He took the American flag and threw is down and then somebody threw him a hat. That is what we thought was the objectionable part, that he threw the American flag down and that was corrected, so that when he took the poncho off that he was wearing, he threw it to somebody else.

Again, the dance numbers, believe it or not, I don't dance that way. I am told that is the way people are dancing today. Adults are dancing today. The younger demographic is doing today. I think we have issues that the Commissioner and I both share. We would have liked there not to be a controversy. The last thing—we've had—I have a long term association with the NFL long before I came to CBS and the owners of the teams, the players of the teams, the League itself does not deserve to have all of this discussion be about a halftime show.

So I would not pick the songs. I would have had Andy Williams.

Mr. UPTON. Mr. Bilirakis.

Mr. MARKEY. I just would like to conclude by saying it was an MTV version on a G-rated, supposedly G-rated all ages program and that's a problem and it's something that in the future we're just going to have to deal with as a matter of policy that ensures that parents have a right when there's a halftime show that is entertainment can be blocked out.

Mr. KARMAZIN. I understand, Congressman.

Mr. UPTON. Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman. Certainly the testimony and the questioning that has gone to the Super Bowl halftime show and that is very significant to talk about standards, I think, Mr. Karmazin used the word standard a number of times. I heard a lot of your testimony in the anteroom out there.

So it's important because standards, what are we doing with our standards being lowered constantly if we accept these things.

Let me get though into the area that really bothers me in addition to all that and I mentioned it in my opening statement. Viacom owns Infinity Broadcasting that runs radio stations, right?

And would you agree that the incidents on indecency on radio far surpasses the indecency on television?

Mr. KARMAZIN. Yes.

Mr. BILIRAKIS. It does. Well, many radio stations frequently rely on syndicated content, do they not? Your stations rely on syndicated content?

Mr. KARMAZIN. I think if you were to do the total percentage, but yes, many radio stations do carry syndicated programming.

Mr. BILIRAKIS. Isn't it unrealistic and unfair to expect those stations to have someone standing by on a 24/7 basis in order to bleep potentially offensive material coming down the line?

Mr. KARMAZIN. Absolutely not. If you are a licensee of a radio station, you are responsible for what airs. We have encouraged our ratio stations, even though they are taking somebody else's produced programming, that they should be operating on a 7 second delay at their local station in part because of what may be appropriate in New York may be inappropriate someplace else. So no, it's not impossible.

Mr. BILIRAKIS. Can your stations just refuse some of this syndicated material? Can they do so?

Mr. KARMAZIN. Absolutely.

Mr. BILIRAKIS. Do they do so?

Mr. KARMAZIN. Rarely.

Mr. BILIRAKIS. Rarely, why only rarely?

Mr. KARMAZIN. Because most of the material is consistent with why they decided to take that program. So if as an example you decided to take a program and that occasionally that program goes over the line, you might want to pre-empt or you might want to excerpt it. If you don't want to take that programming, if you're saying you know what, I don't like the idea of taking syndicated programming, don't take the syndicated programming.

Mr. BILIRAKIS. Without suffering any dire consequences?

Mr. KARMAZIN. That's not the standard, sir. I think the answer is whether or not if you want to take a program that you think is right, that you should take it and when it occasionally would fall over the line, you would pre-empt it, you would edit and you would do what you needed to do to protect your responsibility as a broadcaster.

Mr. BILIRAKIS. If you're responsible under the law.

Mr. KARMAZIN. You're responsible under the law. If you're a broadcaster and there's a program, I mean that you just don't want to take, you don't want to carry that program, you shouldn't carry that program.

Mr. BILIRAKIS. All right, are you familiar, does the same thing apply as far as television stations are concerned?

Mr. KARMAZIN. I think from my point of view, one of the things that I think we need to do as a result of this most recent event and again, maybe it should have been done sooner, but as a result of this, we need to make sure that we, as an example, our affiliates, not just our owned and operated stations, but our affiliates understand what each of our responsibilities are and that I would not—would I have objected, if an affiliate of ours had the ability to knock out that Janet Jackson piece, I would have loved to have done it. So if they did it, believe me, there's no consequence of somebody doing that.

Mr. BILIRAKIS. Well, but if you're a local broadcaster and you're affiliated with a network, and they send you the programming, and

we talked about this in the prior hearing, you're basically stuck, are you not, in terms of that programming?

Mr. KARMAZIN. I think the history, sir, has been that there really hasn't been what—there's been sort of a handful. Again, a handful are too many, but there's that Bono thing that was talked about. There were some other things on Fox that was talked about and there's this Janet Jackson thing. So I think in light of that you know, out of all of the hours of stuff that gets fed, you know, it's been a minor amount. I do think there's an appropriate time now to have a dialog with our affiliates to see——

Mr. BILIRAKIS. We have yet to hear from the broadcasters and we have another hearing coming up after our February break.

But my impression is and I concentrated on this in the last hearing, is that the affiliates have a problem. Either they can't pre-empt or else if they do pre-empt they're in danger of maybe losing their affiliation with the network. But we'll be talking to the Commissioners in a little while.

I do want to thank both of you, gentlemen. I asked the question of the staff are they kind of willing witnesses and she said that you are more than willing to come here of your own time. You didn't have to be subpoenaed or anything like that and we appreciate that very much.

Thank you.

Mr. UPTON. Mr. Dingell.

Mr. DINGELL. Gentlemen, welcome to the committee. Mr. Karmazin, I've checked MTV's website just prior to the events of this hearing and in it it included the headline saying this "Janet Jackson's Super Bowl Show Promises Shocking Moments" and then I read in the same Viacom MTV website the headline "Janet Gets Nasty. Jaws across the country hit the carpet at exactly the same time. You know what we're talking about. Justin Timberlake in a kinky finale that rocked the Super Bowl to its core."

Is that correct?

Mr. KARMAZIN. What you read is correct. We investigated——

Mr. DINGELL. Did that surprise you that they put that on? Does that show that maybe MTV did plan this thing all along?

Mr. KARMAZIN. So one of the things that we did was certainly to try to understand what was intended on Thursday when that shocking thing was there.

Mr. DINGELL. Yes.

Mr. KARMAZIN. And what the shocking thing that was there was the appearance, the special appearance of Justin Timberlake.

Congressman, I don't know how much more I can do other than sometimes the truth may not satisfy——

Mr. DINGELL. You own MTV. Viacom owns MTV. And I would assume that the policies of CBS and Viacom would be noticed at MTV?

Mr. KARMAZIN. What I'm saying is the shocking—what you've read that was on the MTV site in advance was promotion to attract an audience to the Super Bowl and the shocking event was not to be anything like this Janet Jackson episode but, in fact, was an appearance by——

Mr. DINGELL. Apparently somebody at MTV or Janet didn't hear this.

Now let's go to a couple other questions. These are for Mr. Tagliabue.

When the NFL contracted with Viacom to produce the halftime show, were you aware, and don't answer this question until I finish it, specifically Infinity Radio which is owned by Viacom had a rich history of broadcasting indecent content at a time when children were likely to a large portion of the audience? In fact, CBS, the predecessor company of your Super Bowl partner Viacom, was fined $1.7 million in 1995 to settle a long series of broadcasting indecency cases. And were you aware that Viacom had received notices of apparent liability, NALs, for at least nine broadcasts of sexually explicit programming including a song describing a father making his daughter perform oral sex on him and a show that challenged listeners to have sex in St. Patrick's Cathedral, the Disney Store and FAO Schwartz?

Were you aware of that, Mr. Tagliabue?

Mr. TAGLIABUE. No. And——

Mr. DINGELL. Were you aware of that, Mr. Karmazin?

Mr. KARMAZIN. Some incorrect statements, if I may correct it? We were never fined $1.4 million because of the issues that we had with the FCC on our ability to argue the indecency things. We agreed to a settlement where we have no fine. If you were to check the records, sir, you would find that——

Mr. DINGELL. You paid up $1.5 million.

Mr. KARMAZIN. We paid the Treasury, $1.4 million to settle something because of the fact that licenses were being held up by the FCC and this was the fastest way that we could settle an issue that was out there.

Mr. DINGELL. Mr. Tagliabue, the Fox Network broadcast the F word into millions of American homes in 2002 and 2003. This past year, characters on the Fox Television show Keen Eddie employed a prostitute to have oral sex with a horse. Were you aware of that?

Mr. TAGLIABUE. I can't say that I was.

Mr. DINGELL. Now if Fox is hired, are you going to be back before us next year shocked, horrified, embarrassed and unaware of the character of the contractors that you're having to put these programs on for you?

Mr. TAGLIABUE. I don't think so, Mr. Chairman. Let me just comment on that and I would say this equally about ABC, Fox and CBS with the complete aberration being this year's halftime show. The last time Fox televised our Super Bowl game was in January after 9/11. We had canceled a week of games because of the attack at the World Trade Center and elsewhere. We had had our games interrupted on a Sunday early in October, we, meaning CBS and Fox, as we kicked off on a Sunday afternoon by the beginning of the attacks on the Taliban. We had gone through an incredible fall as a nation. And Fox was phenomenally responsive and capable in putting on a tremendous Super Bowl telecast, including a program that included the Boston Pops, Aaron Copeland and other things.

Mr. DINGELL. Just one question though. What will you do to assure that the halftime shows that are put on for you are of suitable character for being viewed by minors?

Mr. TAGLIABUE. That's where I was going with this Fox example. In that instance, I had spent 2 days with the Fox executive pro-

ducer. I had spent time with a close friend who is a classical violinist to go over music. We and Fox——

Mr. DINGELL. You will note here I'm not talking about classical violinist.

Mr. TAGLIABUE. I'm making the point that the halftime was U2. It was a tribute to those lost at 9/11. It was incredibly stirring and incredibly well done. We had the Boston Pops at a game the Patriots won, first time the Boston Pops ever——

Mr. DINGELL. We rejoice at these things and we commend you.

Mr. TAGLIABUE. But my point is——

Mr. DINGELL. The point is——

Mr. TAGLIABUE. We worked very hard to get this right, whether Fox, CBS or ABC, we know how to do it right and in this instance, this year, we didn't do it right.

Mr. DINGELL. Mr. Chairman, my time has expired. Thank you for your kindness.

Mr. UPTON. Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman. Mr. Tagliabue, let me just ask you a question. Let me say I appreciate your comments. I was watching in my office up there and they're sincere comments and I think your leadership is to be commended here.

Are NFL players fined for cussing or vulgar acts? Could you explain what happens if an NFL player, with profanity and let's say vulgar acts, tell us what you do?

Mr. TAGLIABUE. We have mandatory fines for profane language that comes across the airwaves for players and coaches and anyone else on the sidelines whose either profane language would come over the telecast or a profane gesture. It's a mandatory fine which we impose.

Mr. Richardson reminded me last night that at the team level he has suspended a player for one game who scored a touchdown and grabbed his private parts in the end zone. So the answer is yes, and that's whether it's a national telecast or a regional telecast or even local footage like a news show. If we pick up profanity or lewd gestures by players, we fine them. And it's mandatory.

Mr. STEARNS. And would you say you consider an NFL player when he's playing sort of an entertainer? He's a sports person, but he's also—I mean, or is he not an entertainer?

Mr. TAGLIABUE. In my judgment, he's not. I played basketball at Georgetown. We were not entertainers. We were athletes. I still view them as athletes. Other people in the business have a different view. I'm sure Mr. Rooney and Mr. Richardson and I agree, our players are athletes, not entertainers. Some of the players don't seem to accept that.

Mr. STEARNS. No, I don't think they do. So we have a private organization finding its sports persons for violation of conduct. Wouldn't you think the broadcasters, the networks should offer some type of similar fine or penalty for their performers when they're on the screen just like the NFL players? Wouldn't you think that would be logical?

Mr. TAGLIABUE. It would be logical. I understand—I think fines are a deterrent. I also understand what Mr. Karmazin said about fines, are they the best way to get people to do things, sometimes yes, sometimes not.

But the other thing I would add is on our games with the networks, we get terrific support in trying to keep profanity out of the game in terms of limiting parabolic mics and things like that. We work together quite well.

Mr. KARMAZIN. We take it one step further that when of our employees do it, not only do we fine them, we fire them. So whereas the NFL has been very responsible, and they take their players, their athletes and when they do something wrong like air indecency, they fine them. We very often have gone to where we are firing them, our employees. A couple of examples are performers who no longer are with our company. We had another circumstance where somebody for the first time, no history, no problem before, a real bad day, I mean should not have done it and we suspended and punish them as well.

Mr. STEARNS. In light of what you just said, Janet Jackson comes in to you and she has her contract with you perform. In your contract, do you specify that they cannot perform behavior which is antithetical to entertainment, antithetical to values that the people who will be watching at that particular time would expect, sort of this community indecency understanding?

Mr. KARMAZIN. Congressman, what has been the practice on things like award shows is that you send out a contract and the contract itself gives us that authority to do, but these contracts historically have never been signed by the performer.

Mr. STEARNS. So none of the performers, you make this—you have your lawyers come out, sit down, you give the agent you give the performer the contract and no one signs the contract?

Mr. KARMAZIN. That's most often the case, sir.

Mr. STEARNS. That reminds me, during the oversight hearings on Enron, Mr. Fastow said Mr. Skilling never signed the Special Purpose Entity contracts, but they still went ahead.

Mr. KARMAZIN. I think there's quite a difference. I'm not sitting there saying I'm not responsible——

Mr. STEARNS. If they have a contract, why don't they sign a contract before you put them on the air?

Mr. KARMAZIN. Because what has become customary in the entertainment business and maybe by the way we're going to revisit that. I mean if you're asking me, I'm trying to give you as candid an answer as I can.

Mr. STEARNS. I appreciate that. We just thought they signed a contract because I was going to take you then, if they signed a contract, then you must have some kind of standards in the contract, but you're saying they didn't even——

Mr. KARMAZIN. If I had the ability to take action against the performer who totally ad libbed, totally changed our program, okay, and the NFL's program, I don't think there's a fine big enough for what action I would have taken because I totally find that to be such that I don't believe—again, we're looking at it, we're trying to ascertain what we have. We may change the way we deal with these contracts in the future or we may decide, as we did with the Grammy's that said, you know, if we can't get a contract to guarantee us that, then we're going to take the responsibility unto ourselves and put it on that even if they do this, it won't come out on

the airwaves so that the American public could see. So no harm, no foul.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman. Mr. Tagliabue, in your statement and you've said today that NFL accepts the responsibility for having entered into the contract and what resulted from it and I know you've answered questions and explained how the NFL could have done something different. I appreciate that frankness and hopefully we'll learn from this incident, it doesn't happen again. So I for one appreciate it that you're willing to do that.

Do you have any control over the commercials that are run during the Super Bowl?

Mr. TAGLIABUE. No. With one—the answer is no. The one issue that does concern me with respect to the commercials is that we have some sponsorship arrangements which are completely separate from the television commercials which is a network matter. And under some of those sponsorship arrangements, take Gatorade being a benign one, for example. We have Gatorade on the sideline as a sponsorship arrangement. We sometimes give the sponsored partner the right to use our NFL logo which is our shield in some of their advertising. So if it's Gatorade, I wouldn't find it offensive. Some of the televised commercials today which are using the NFL shield in the advertising as a result of sponsorship arrangements which are separate from the advertiser do bother me, especially in the pharmaceutical category and I think we will revisit that.

Mr. STUPAK. Okay. Mr. Karmazin, I appreciate your being here. In response to Mr. Dingell, something about a fine, about a $1 million fine, you said it wasn't for indecency, but a settlement of some other matters with the FCC, is that correct?

Mr. KARMAZIN. That's not what I said, sir. There was a dispute on some material that was broadcast on some radio stations that we own. The FCC claimed that there was indecency. We said there wasn't indecency. We agreed to disagree and that what was done was we paid a contribution to the Treasury of $1.4 million to settle it and there was nothing that was ever declared indecent that we paid that fine for.

Mr. STUPAK. So there was a settlement without admission in a way?

Mr. KARMAZIN. There was no admission because we didn't think it was justified to admit anything. We don't believe there was anything indecent.

Mr. STUPAK. Okay, but you paid a $1.4 million——

Mr. KARMAZIN. And the reason for it was unfortunately the government put us in a very difficult position as a business that has to get our licenses. We wanted to own a car and wanted to be able to drive the car, but in order to drive the car, we need to get a license and the FCC was delaying our ability to get the license. So from a point of view, which we didn't think, by the way was even constitutionally fair, but that they should delay, you know.

Mr. STUPAK. Do you think the FCC should revoke license based upon decency standards?

Mr. KARMAZIN. I think that when you're dealing with the first amendment, sir, when you're dealing with the first amendment, I

think that you have to be very, very careful. And no, I do not believe on first amendment issues that where there may be something that somebody doesn't like that somebody is going to decide to threaten a broadcaster so I now know that if I don't run, move on .org commercials, my license——

Mr. STUPAK. I was going to ask you, why didn't you air this one? Isn't that censorship? Isn't that first amendment?

Mr. KARMAZIN. No, I think it's the idea—I'll tell you why we don't. We and the other networks, but certainly, you'll have the opportunity to talk to the other networks when they choose to participate. We don't take advocacy advertising by any side, so that if there's a commercial that's out there that is an outreach commercial, that is basically the government saying by the way, there is Medicare benefits available to you, we distinguish that commercial from call your congressman, okay? Call your congressman about abortion, call your congressman about NRA——

Mr. STUPAK. But aren't you subjecting, using your own subjective tests what should be viewed? I mean they were willing to pay the $2 million, whatever it was and run their ad, yet you ran an ad that said choose or lose in 2004, urging people to vote, but one of the issues they should vote on, you didn't feel was appropriate to run?

Mr. KARMAZIN. And sir, there's a distinction between that, but let me give you further clarification.

Mr. STUPAK. The distinction is only your subjective test.

Mr. KARMAZIN. As is accepting a commercial which the Commissioner is correct. It's our responsibility. It's not the NFL's. We have standards and practices. We can be criticized for accepting a commercial or not accepting a commercial, that we do not take advocacy, any side, okay, of a commercial.

Now somebody could say why don't you and part of the reason, by the way, is some of the commercials that get submitted to us on abortion and some of the commercials are so graphic that we don't want to find ourself in a position of No. 1, airing it, getting criticism, No. 2, turning it down because it is so graphic and having there being an accusation that we're taking sides in an issue. So we make it simple. We say we do not take any advocacy advertising.

Mr. STUPAK. I have many more questions, but I guess I have to leave it here.

Mr. KARMAZIN. I would be available to see you after this hearing and answer them.

Mr. UPTON. Mr. Barton.

Mr. BARTON. Thank you, Mr. Chairman. My first question is a general question. Under current law and FCC regulations, the entertainer or the perpetrator of the incident, the transgression is subject to some sort of a warning by the FCC, but they're not immediately subject to sanction. So my first question to each of you, gentlemen, would you support a statutory change that would make the perpetrator of the transgression subject immediately to some sort of sanction?

Mr. TAGLIABUE. I guess I would rather think we don't need the statute because we should be able to control it ourselves, but again, I'm not against finding people, I do it all the time for things that

are inappropriate under the rules. So I guess I could apply that to the statute, but I would—I think we can solve that issue on our own.

Mr. BARTON. You would not be opposed?

Mr. TAGLIABUE. I would not oppose it.

Mr. BARTON. What about you, Mr. Karmazin?

Mr. KARMAZIN. I think that I would not automatically be opposed to it either. I think that one of the things that we have to do, just like we have said that we're asking for some form of rulemaking to understand what is and what isn't. What you don't want to do is you don't want to find that performers are going to avoid and again, we're not talking about the episode of Janet Jackson, we're talking about performers that perform on free over-the-air broadcasting are not going to perform because there's some standard that they don't know exactly what they are or aren't going to get fined for and therefore all that happens is that all of this entertainment migrates to an unregulated form of the medium. But if, in fact, everybody knows that the speed limit is 55, and you have to go 55, and somebody goes over that speed limit, I think it's something that's worthy of consideration.

Mr. BARTON. I'm not saying that it should be mandatory, but I think we could perhaps statutorily say that the FCC has discretion and then stipulate when that discretion would be in order.

Under the current law and current guidelines in place, what control, if any, does the NFL or Viacom have over what transpired at the Super Bowl had you known before the fact, Mr. Tagliabue, could you have prevented what happened?

Mr. TAGLIABUE. You know, I've given a lot of thought to that since the Super Bowl in terms of liquidated damages provisions, in terms of withholding fees. One of the things that's ironic about the Super Bowl entertainment is some of the greatest shows we've had, the talent has not charged a fee, but instead has made a major gift to charity, just for the privilege of being in the Super Bowl entertainment. Garth Brooks comes to mind. He did a Super Bowl half time with no fee and contributed $1 million to a community center that we left in that Super Bowl city.

I guess I think I need more time to think about your question because I think it comes back to what Mr. Karmazin said. You can't be so draconian here that you chase good talent away from platforms that you want to have them on, particularly broadcast television.

Mr. BARTON. We're not trying to be draconian, but I think——

Mr. TAGLIABUE. There are things that must be done, let's put it that way. Exactly what they are, I'm thinking about a lot and our attorneys are thinking about them as well.

Mr. BARTON. Do you have a comment?

Mr. KARMAZIN. We had a lot of discussion afterwards and we had it a propos of the Grammy awards, because that was our next live event, you know, in a very short period of time after the Super Bowl and the instructions that I gave somebody was that if there's going to be a chance of indecency, take it off the air, take the network, go dark, go dark. And we put in the 5 minute delay as an insurance, but if whatever happened didn't, better we should put a test pattern up, than we should be in a position or I should be

back here having to testify and that we shouldn't be airing indecency. So yes, there are things you can do, you know, including prohibiting artists who are risky from appearing. Better to air on the side of safety.

Mr. BARTON. My final question and my time is about to expire, if we were to eliminate the kind of a warning ticket approach to entertainer sanction, other than financial penalties what sanctions might be applicable?

Mr. TAGLIABUE. I don't know. I guess other than financial penalties, you can always suspend people from performing and you can incarcerate people. It doesn't seem to—I think about sanctions, those are the three that come to mind and I would hate to think—in our league, we suspend athletes because they know the rules and they violate the rules. To go beyond that, to some broader context where an entertainer is effectively boycotted, to me that raises some troublesome issues, I think.

Mr. BARTON. I am fairly confident that we're not going to have another Super Bowl halftime show like we had. I have a feeling that Jerry Jones and Al Davis and Mr. Kraft, et al., the Rooneys, I think they understand what prevailing community standards are and I think they'll communicate that to you and I think you'll communicate it to whoever gets the entertainment promotion and I think we'll be okay, but I'm not so sure that Viacom and CBS and NBC, I'm not sure they've got it yet, so this is more directed at you.

Mr. KARMAZIN. I'm not sure I understand what you don't understand we got. At this point, CBS, Mr. Paley started CBS a whole lot of years ago and if you're dealing with the subject of indecency, this is the first time in that history that there is an issue with CBS network TV on indecency. So I don't know where it gets. I think NBC was very concerned when Bono said the F word. We operate on the delay to make sure it doesn't happen. So I just don't get the analogy. If anything, we're licensed, so we have more concern than anybody else does.

I'm sorry, I respectfully just disagree with you.

Mr. BARTON. That's fine. My time has expired. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman. Mr. Tagliabue. Did I understand you to say earlier that other than apart from the use of the NFL endorsement or logo that was used in some of the ads during the Super Bowl that the NFL doesn't have any objection looking back to the content of any of the television ads that were run during the Super Bowl?

Mr. TAGLIABUE. No, I didn't say that.

Mr. DAVIS. Could you elaborate then, on that?

Mr. TAGLIABUE. What I said was that we have nothing to do with accepting the ads or evaluating the ads before they go into the game telecast. I've heard a lot in the last week about some of the ads. I haven't seen them. Some of what I heard is not very elevating .

We have had issues with, as I said before, with some of our sponsors where we—which is a separate relationship, where we did not like the advertising that they were putting into NFL games by agreement with the networks and I have met with the CEOs of

some of those companies to urge them to change their advertising and as I say, I'm not entirely comfortable with the use of our logo in some of the advertising. We're going to revisit that.

Mr. DAVIS. Okay, so the NFL intends to review the content of the ads associated with the game.

Mr. TAGLIABUE. Ultimately, if it's independent of the NFL, Dell Computer, IBM or someone, we have very little opportunity to do or say anything. If it's something like Pepsi with whom we do a number of youth programs and have a partnership in spots with Pepsi, there's more that we can do and we do discuss those kinds of issues with Pepsi. That's just to take one example.

Mr. DAVIS. Mr. Karmazin, thank you for agreeing to appear here today. The Infinity Broadcasting FCC proceeding that's been discussed at length here, have you personally reviewed the content of the broadcasting that the FCC found indecent?

Mr. KARMAZIN. I haven't.

Mr. DAVIS. Would you express your personal opinion?

Mr. KARMAZIN. I find it offensive, distasteful, does not belong on the air.

Mr. DAVIS. But why not indecent?

Mr. KARMAZIN. Because lawyers have given me a different standard. You've asked me my opinion and then there's the FCC standard and the legal definition of what is indecency which again, I know some of it, discussion of sex or excretory matters in a patently offensive manner that as the definitional part, so I have people who are advising me that as crude and offensive and inappropriate, as I find it, it may not be legally indecent.

Mr. DAVIS. Have you received any comments from the advertisers to the Super Bowl as to their opinion as to what happened during the halftime show?

Mr. KARMAZIN. I have not personally had any conversation with any of the advertisers, but as part of this process, including before, I would touch base with the people who report to me and see what the reaction is and a number of people have expressed concern. A number of them have asked not to be identified, some of them have less caring about it. But that I don't think anybody—I must have gotten I don't know, I don't want to exaggerate, but you know, lots and lots of e-mails and lots and lots of mails. I didn't receive one, not one, that said boy, that was great or that was—you guys are excellent.

Mr. DAVIS. My question is just about objections from your advertisers as far as the bottom line is concerned here.

Mr. KARMAZIN. Yes. Let me tell you, when you have these controversial programs, you know, somebody mentioned, it's not one of our properties, Bubba the Love Sponge saying something, the traditional national advertisers have a list of personalities that they do not advertise on because they don't want to be associated with what could be considered indecent. There is no advertiser, no advertiser that buys you because you air indecency. There are lots of advertisers who don't buy you because you air indecency. So there's nobody saying yes. There are people saying I don't want to be associated with it.

Mr. DAVIS. There was formerly a code of conduct that involved the Family Hour, as you know, and apparently, the Chairman of

the FCC has suggested that your company and others resume a conversation as to whether that would be appropriate to have a uniform standard designed to protect, particularly minors against access to certain material from 7 to 10. What is your opinion on that?

Mr. KARMAZIN. I don't want to keep showing how old I am, but I operated when the NAB used to have a code of conduct and that was ultimately eliminated. If the Chairman wanted Viacom to participate in discussions about that, I'd be very open and very willing to participate on it.

Mr. DAVIS. Do you think that the cable industry and other broadcasters besides the major broadcasters such as yourself, ought to be a part of that?

Mr. KARMAZIN. Again, I think that there's a different standard for broadcasting in cable. By definition, broadcasting. So if you a parent, you have made CBS potentially a channel that is acceptable because on Saturday morning, we're running Blues Clues and we're running Nickelodeon programming, so somebody could watch that, that you don't want to limit it. But if you are a parent and you don't want a channel in our home, a cable channel in your home, as Congressman Markey correctly points out, all you need to do is to tell your cable company or satellite provider, I don't want that channel.

So there's a—in my opinion, there's a tremendous difference between a broadcaster and a cable channel. If you want to discuss what should be on broadcasting, great. If you want to discuss what's on cable, I think the parent has the ultimate ability to take any channels that somebody finds objectionable and just say I don't want it in my home.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Cox.

Mr. COX. Thank you, Mr. Chairman. Mr. Karmazin, I think you're on to something here. I think it matters greatly that we're talking about broadcast television and we're not talking about cable TV. As has been noted several times here, the audience for the Super Bowl is the ultimately most broadly defined audience.

I'll just tell you that you can cavil about whether it's 18 to 80 or 8 to 80, in the gathering where I watched the Super Bowl, as I think most Americans did, not solitary, but in a gathering, we had a lot of kids that were younger than 8. And they were very interested in the game. They play it. They don't play it particularly skillful at age 5 and 6 and so on, but they're there in their jerseys too and this can't come as a surprise to anyone.

So when I hear you get into these legal domains about well, the legal standard isn't clear enough, I just think you're missing the point entirely. This isn't about what legally you can do. This is about taste and judgment and discretion. Probably the most inappropriate label that I've seen on some of this programming for mature audiences, because the junk that gets labeled for mature audiences is clearly for immature people. They're chronologically at least teens, but they're clearly not grown up yet because they think this stuff is just really funny. And this extended to the ads that you're running.

I suppose the best way to imagine it is that you're a guest in someone's home because earlier during this testimony, we heard you talk about appropriate programming for broadcasting into American homes. That's literally what you're doing. You're coming into people's homes. Would you ever go into somebody's home in a gathering that included grandma and little kids and everybody in between and think that some of this stuff is—you ought to tell a joke like this? Should you tell the joke about the flatulating dog? That's the commercials that we're watching.

My beef is, as a parent now, the first time I went to one of these hearings, we had a field hearing and I'll never forget, up in Illinois, to talk about how parents were reacting to the self-regulation of the networks. And the parents just beat the hell out of the network executives and I wasn't a parent at the time. I was a Member of Congress, but I wasn't a parent. Now I've got a 10 year old, a 9 year old and a 6 year old and I'll tell you what pains me the most, Mr. Tagliabue, is to be watching Fox on Sunday with my two boys and my daughter and we're thinking we're having a good time on a Sunday afternoon watching football and then the commercials come in and I mean as a parent, how do I block those commercials?

It's just all over TV and what I remember those parents saying back when i wasn't one, a decade ago, was thanks for giving us some controls to keep your stuff out of our house, but did it ever occur to you that you might do things that would make our jobs easier as parents, not give us ways to avoid the obstacles you put in our path as parents. Make our jobs easier, help make America a better place and why isn't that happening?

Mr. KARMAZIN. Congressman, I didn't use any legal argument to discuss anything that was dealing with the Super Bowl. What I was saying was dealing with adult radio programming as compared to the Super Bowl.

Mr. COX. Adult radio programming includes the stuff that I listen to on my way into work on a.m. radio. I can't believe what's on your a.m. radio. I can't believe it.

Mr. KARMAZIN. The distinction being we were concerning ourselves about the kids because we do recognize that at the Super Bowl there are 4 year olds and 8 year olds and 9 years watching that. So there, I think we need to be even more sensitive, obviously, including by the way—you didn't ask me about the commercials, but I will tell you that we are revisiting our standards and practices. There must be some form of disconnect between what we are airing in the commercial——

Mr. COX. I mention the flatulating dogs. For some people that was funny. For others, it wasn't. It's clearly legal and Congress should stay way the hell away from trying to regulate this and so should the FCC, but my question is we've got a guy sitting across from us who is the President of an organization that had not revenues, but earnings of $2.6 billion last year, a grown up, is this your idea of the way to make money in America? Why don't you improve the country?

Mr. KARMAZIN. We think we do, sir, and obviously, I didn't want to take up our testimony reading all of the things that we do good. What we're here to do is to talk about these particular issues.

Mr. COX. Let me ask you just one question because I think my time is about to expire and I do want to put a very specific question.

I mentioned the fact that you're a significant company. You have about $27 billion in earnings for last year, $1 trillion in revenues for last year which is about $2 billion from the year before and we're here talking about a fine that might amount to $270,000 and that fine doesn't even apply to you. Even if we raise it tenfold it doesn't even apply to you. Shouldn't we make these fines apply to networks?

Mr. KARMAZIN. In my opinion, it does get to us because we have our owned and operated stations.

Mr. COX. I want to ask a very specific question because right now under Title 47, these penalties are levied not on the networks, but on the station licensee or the permitee. Should we change the law so that it can be levied on you?

Mr. KARMAZIN. Can I just ask you one question, are you a lawyer?

Mr. COX. Yes.

Mr. KARMAZIN. So I'm totally disadvantaged, but if you ask me, as a businessman, is there any reason that I would have, okay, without giving any legal consideration to what somebody may advise me of, I would have no trouble with that. I would have no trouble—I appreciate being responsible for what we air on our broadcast network. I take that responsibility. I have no issue. Somebody may come up with 30 reasons why I shouldn't have said that, but I being responsible for it, have no problem with it.

Mr. COX. I appreciate that very much. I thank the Chairman for his indulgence and just think about us parents out there.

Mr. KARMAZIN. I'm one too.

Mr. UPTON. Mr. Rush.

Mr. RUSH. Thank you, Mr. Chairman. It seems to me like both the witnesses have demonstrated the necessary and sufficient outrage about what happened. I'm not sure if it's convincing though, but it seems like it's necessary and sufficient for their purposes here.

I just want to ask a question, Mr. Karmazin, what are the entities that Viacom own now? What are your other——

Mr. KARMAZIN. Viacom owns the CBS and UPN broadcast network. We own 35 television stations. We own 185 radio stations. We own Simon & Schuster Publishing Company. We own Block Buster Home Video. We own cable networks, BET, MTV, Nickelodeon. We own Paramount Pictures. Those are just some of——

Mr. RUSH. So you really are carrying a lot of flags here today, right? If we had MTV before us right here and you had to defend MTV, then you would probably take a different kind of posture in terms of some of the content of the programming on MTV. Is that correct?

Mr. KARMAZIN. I guess the question I would have is——

Mr. RUSH. Is that correct? Is that correct?

Mr. KARMAZIN. It depends on what MTV aired. I wouldn't just sit there blindly and say I'm going to take a different answer. If MTV had something that was inappropriate for MTV——

Mr. RUSH. You would be here defending MTV?

Mr. KARMAZIN. Or accepting responsibility.

Mr. RUSH. Absolutely. I want to ask you, have you completed your investigation now of the Janet Jackson-Justin Timberlake investigation? Have you completed your investigation?

Mr. KARMAZIN. Not totally. There's some more things, the FCC asked for an extensive amount of material. I mean it's——

Mr. RUSH. Let me ask you this question. Do you recall in the song right before this incident happened that Justin Timberlake sang these words "I'll get you naked by the end of this song" right before the body part was exposed?

Mr. KARMAZIN. I'm not familiar with the lyrics, sir. I don't deny it. I'm just not familiar with it.

Mr. RUSH. If that is accurate, would that have an effect on your conclusions of how this event——

Mr. KARMAZIN. I don't. I think the sense that we have and we dealt with this, sir, in the Grammy Awards. Our feeling was neither Janet Jackson nor Justin Timberlake should be performers in the Grammys. Even if the argument goes that Janet committed a crime, Justin was the getaway driver. So our feeling was that neither one should perform. The people who produced the show and all of our investigation of Justin were Janet said she did it. Justin said he didn't. And was totally unaware.

I felt very uncomfortable personally in the idea of putting the white man on the show and the black woman not be able to be on the show. I was convinced on the Saturday before the event that we ought to invite both on the show, not one at the expense of the other, that we ought to invite both and that if both wanted to appear, as long as they apologized, we would accept it. Justin Timberlake accepted. He apologized again and performed. Janet Jackson declined to perform.

Mr. RUSH. Mr. Tagliabue, getting to the instances of violence, the NFL from your statements, the NFL is, you've indicated that you abhor violence that comes across the airwaves in some respect, is that right? What is the NFL's position on violence?

Mr. TAGLIABUE. Some people think our game is a little violent.

Mr. RUSH. Beyond that.

Mr. TAGLIABUE. Well, like most citizens, I think violence is abhorrent and when we've had athletes who have conducted themselves poorly, whether it's violent criminal conduct or not nonviolent, we have come down rather hard on them.

Mr. RUSH. Do you license video games that are extremely, extremely, not only violent, but repugnant?

Mr. TAGLIABUE. No.

Mr. RUSH. You don't.

Mr. TAGLIABUE. No, we review very carefully the video games that we license. They all are related to our sport. I meet annually——

Mr. RUSH. Let me ask you, do you license a video game called NFL Blitz 2003?

Mr. TAGLIABUE. Probably.

Mr. RUSH. And is the level of violence in that game, in that video acceptable to you as the President of the NFL?

Mr. TAGLIABUE. I haven't seen that game, but I do know, I believe there's a rating service for video games and we focus emphati-

cally the G rating, whatever it is, and we stay away from violent video games.

Mr. RUSH. If, in fact, you found that these video games that you license which are exposed to our young children, available to our young children, if you found that those video games were repugnant to you, your standards, would you, in the NFL rescind your license?

Mr. TAGLIABUE. Yes, and I believe we have done that in some instances where we found that games that were marginal, I mean they were small pieces of the market, but they went over the line, we have terminated licenses.

Mr. RUSH. There's a game that's called the NFL's Greatest Decapitations. Are you aware of that?

Mr. TAGLIABUE. No.

Mr. RUSH. Thank you, Mr. Chairman, I yield back.

Mr. TAGLIABUE. As I said, I have reviewed with our major licensees, Electronic Arts, in particular, their standards and our standards to try to assure myself that we are not licensing games that are violent.

Mr. RUSH. Mr. Chairman, I just—if, in fact, in your review, would you send this committee an analysis from your perspective of the NFL licensed videotapes?

Mr. TAGLIABUE. Yes, I would be very pleased to do that. I'll work with our licensees and I will submit something in writing to the committee.

Mr. RUSH. Thank you.

Mr. UPTON. We're going to take a short break because of the votes. We have two votes on the floor. I'll ask members who have not asked their questions to speed back. We'll start with Mr. Shimkus next on the Republican side. We've got two votes. I'd like to think that we might be able to start as early as 2:10.

[Off the record.]

Mr. UPTON. We will resume with Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman. I know it's been a long day. As I've said in the opening statements for the last couple of weeks, I think the world now knows that this has touched a chord and we will respond somehow and these hearings are designed to do that.

I'll be honest with you, when I saw that MTV was doing the halftime, I changed the channel and I watched Independence Day with my kids and I'm glad I did. So I wasn't expecting anything that was—that had any social benefit for me or my kids and for once I chose right.

But I'm not going to pardon the NFL for part of this great debate. A local talk show host—first of all, we're all, many of us are old broken down athletes. In fact, we used to have Mr. Largent on our committee, a friend we know, and we served with, a lot of us still try to perform on fields on various sizes based upon our ability or lack thereof. We understand we're dealing with elite athletes that get paid very well for their performance. I would say 75 percent of all males would love to have the opportunity to perform at that level and it's really a privilege that they can do that. It's a short career, I understand. They're paid well for it.

A local radio talk show personality in the St. Louis area, I represent Southern Illinois, although I also have a big part of the metropolitan St. Louis area and a major radio show morning talk show host, female, posted this question which I think it's a credible question to ask and she said does anyone really believe that the NFL is a G-rated or PG-rated show anymore? Does anyone really believe that? And if they do, they're probably not watching the NFL and the surrounding thing that the NFL has evolved to be. For years, we've had scantily clad cheerleaders, even worse now today than before when the Dallas Cowboy cheerleaders were the anxiety of the nation. You have problems with performance-enhancing supplements, performance-enhancing drugs. You've got corporate sponsors like Coors that is using the NFL label, that is using sex to sell their product, alcohol.

I chose right when I didn't watch the halftime show.

But I cannot, if you're watching a very exciting football game, you cannot miss every commercial, every sponsorship.

Mr. Tagliabue, I'd like to know why do we think that the NFL shows, games with all the trappings should fit in the Family Hour any more?

Mr. TAGLIABUE. Well, I guess I would say that I do think it's a G rated program and a very good G rated program and I think that's shown by the size of the audience we have. This particular game was the largest audience in television history for a program in American television history and in the second half it got close to a 50 rating which is really about as high as anything ever goes. So that's not an R-rated program. If it is, it's a sad comment on 145 or 150 million people.

So I think it is G-rated.

Mr. SHIMKUS. Sir, let me interrupt for a second. I'm not going to argue or debate, but I'm going to say a lot of things are said about you, you're known by the friends you keep.

Mr. TAGLIABUE. Right.

Mr. SHIMKUS. And you could put a great product on the field and I watched the game, but you are known by the company you keep. And you are known by the people who are your corporate sponsors. I think we had a great discussion of that, the NFL symbol.

You will be known by the advertisements that surround the game which generate the revenue to allow that to happen. And I don't want to belabor the point. Folks who follow this committee and I have small kids, too. They're 11, they're 8 and they're 4. Tell me how we can watch and enjoy the Super Bowl game without being embarrassed?

Mr. TAGLIABUE. Well——

Mr. SHIMKUS. I didn't watch the halftime. Take away the halftime. I didn't even watch the halftime. Tell me how I can watch with my 11, 8 and 4 year old without being embarrassed?

Mr. TAGLIABUE. Well, first of all, I would say this, I think we have a very elite and selective group of corporate sponsorship partners. They are at the front line of respected companies with respected products and services in America.

Second, put aside for the moment the advertising in the Super Bowl game, which as I said before, I haven't seen. I've heard about it. I haven't had the chance to look at it. I will. But I think that

our advertising, the advertising in our games, which is not our advertising, it's the advertising that our network partners rightfully accept is also extremely high quality and elite companies. In many cases, technology companies and others who find our audience to be the high, educated, quality, R-rated audience that they want to sell their computers and their software and other products to. So we are striving in every way possible and I think we're doing a very good job. Most other sports have gone off broadcast television. The only two sports that continue to be on broadcast television in large volume are National Football League and the Olympics. And I think that's a very positive comment about the widespread acceptance of the quality of our product and the respect for our game and our athletes.

Mr. SHIMKUS. My time is up and I appreciate that response. I would just tell you that I'm disappointed and I think you could draw the same numbers by putting a good product on the field without the extraneous things that are causing us to have this cultural warfare debate.

Mr. TAGLIABUE. There are things that disappoint me too. I'm sure you and I could agree on quite a bit, but not on the general proposition.

Mr. SHIMKUS. Mr. Chairman, I yield back.

Mr. UPTON. Mr. Engel?

Mr. ENGEL. Thank you, Mr. Chairman. I said in my opening remarks that I thought that everything that had to be said had been said, but not everyone had said it. I guess I was wrong. But I watched the Super Bowl and I have to tell you, I'm one of the people that watched it and missed the incident. I must have turned my head and missed it and I don't mean to make light of it because as I'm offended. I also have three kids and I'm offended as anyone by what Jackson and Timberlake did.

But I think that what we ought to do in Congress is use this incident not to grandstand or to tell our constituents how appalled we are, but to try to ensure that these things don't happen again and then correct some of the problems of violence and indecency and in my estimation we're only going to do it if we work with the industry. I think it's clear to me Mr. Karmazin's comments today, he's apologized, he's embarrassed. He doesn't want it to happen again. Mr. Tagliabue, as well. They're not here as adversaries and I think that we in Congress need to work with them to make sure that it doesn't happen again.

So let me just ask a very simple question. Let me start with Mr. Karmazin. In your opinion, what should we in Congress do? We obviously have the Chairman's bill, talking about the fines. You've said in your testimony that you are considering revisiting some of the things. Mr. Stearns has mentioned the contracts that weren't signed by the performers and you said you'd look into that. And I think in reference to Mr. Cox's question, you said you were going to revisit your standards and practices for advertising.

What should we be doing and what should we be doing with you so that this doesn't happen again?

Mr. KARMAZIN. I think the most helpful thing that Congress could do, you know, would be to urge the FCC to undertake a rulemaking on this subject of indecency so that people who are oper-

ating with this responsibility have a clear cut roadmap as to what constitutes indecency. I think that would be a huge, huge step because I truly believe that whether or not if the CBS or NBC or ABC and a lot of the local broadcasters, I seriously don't sense from knowing who is in this industry that people want to broadcast indecency. No one wakes up in the morning and says let me see how far I can push this.

So I do think that it would be a huge, huge difference that could be made if, in fact, we could find something that the FCC would do that the courts would approve and that would shine a very, very bright light on something. I recognize the difficulty for the FCC. These are people who absolutely have attempted to do an extraordinary job under difficult circumstances, but I think this would be a great step forward.

Mr. ENGEL. Well, I think that's a question in the second panel that many of us will be asking the FCC. You mentioned that CBS put on a 5-minute delay on the Grammys to bleep out whatever offensive things might happen. Obviously, it's a very delicate balance between first amendment and not wanting to have anything inappropriate. Could you expand on some of that, other things that you're looking at or revisiting to make sure——

Mr. KARMAZIN. We have reaffirmed—we've had a long-standing policy that those so-called seven dirty words not appear, even though arguably they had the ability to appear in this safe harbor period of time. We don't believe that those seven dirty words ought to be on, even when you can do it, so we've reaffirmed that policy to make sure that everybody understands it. I believe that—I sent a note to our organization, our entire organization that basically made it known that what happened is not acceptable, is not something that we were aware of, so that they understand that the company is clearly committed against it. I mentioned that we're taking our television stations and that we are putting our local stations on a delay. I've mentioned that we're going to meet with our affiliates to see if there's a way that together we can make sure that they're comfortable with the programming that we're airing and making sure that they have the responsibility as a licensee and that they live up to their responsibility.

And you know, I don't know, those of you who watched the Grammy Awards as closely as did, but when Christina Aguilera came up, she was wearing a rather low-cut dress and if you were to look at our coverage of it, you saw her principally from the shoulders up. So to the crotch question that came up during the halftime, we certainly have learned how to even shoot live events to make sure that if somebody is doing something that we don't want on the air that we have the ability to making sure that the people at home don't see it.

Mr. ENGEL. Thank you. I was wondering if I could briefly ask Mr. Tagliabue the same thing. What should we be doing in Congress, in your opinion?

Mr. TAGLIABUE. I think what you're doing today is very, very constructive because I think it's been a very well thought out and thought provoking series of comments from the committee members that affects a lot of people, certainly us in sports and I'm sure everyone in television, in terms of the House of Representatives is

so broadly representative, that's partly the genius of our Constitution, make clear what you think the standards are and what your constituents think the standards are because we have a decentralized economy. A lot of companies, a lot of advertisers, a lot of ad agencies, what we're sitting here talking about is the end result, as you well know, hundreds, if not thousands of companies with tens of thousands of employees and everyone needs to get a sense of outrage, if that's the right word and where the line needs to be drawn. I think Mr. Karmazin and I have a pretty good sense, I'm sure Mr. Rooney and Mr. Richardson do, but I think that's an invaluable service.

Mr. ENGEL. Thank you. Thank you, Mr. Chairman.

Mr. UPTON. Ms. Wilson?

Ms. WILSON. Thank you, Mr. Chairman. Mr. Karmazin, you said that in the response to a previous question that we not only fine them, we fire them. Who have you fired since the Super Bowl?

Mr. KARMAZIN. We have not found anybody at Viacom that has done anything wrong in connection with the event that took place. The comment that I made on firing people has to do when radio announcers or any other announcers did something that we feel crossed over the line and we fired them.

Ms. WILSON. Who is the producer of your MTV show?

Mr. KARMAZIN. I don't remember her name, but it's all done under the direction of the CEO of MTV who is Tom Freston, under Tom Freston is Judy McGraff. Under Judy McGraff is Van Toffler and then we had a series of people, all of whom I've met with personally including the people who were field producers, the people who were at all of the meetings with the NFL and CBS and I don't recall, I'm sorry, all of their names. We've provided them to the FCC, all of this information, but there was nothing that we encountered that these people did.

Ms. WILSON. I guess what I'm trying to get at here is within your company, you're the leader and you set standards. And one of the things that communicates those standards to everyone else is when somebody makes a lousy judgment call, there's a consequence for the future of their career or for their compensation, for all kinds of other things. What message have you sent to the rest of your employees as to what your standards are?

Mr. KARMAZIN. I guess we have to find out what real mistake they made. We can find the people who booked the acts and we say no, these acts were acceptable acts. We can deal with the people who decided that the lyrics were right because these lyrics were heard in your city on radio stations on a regular basis. We can sit there and say whether or not Kid Rock should have worn the American flag. There was enough question in that regard as to the legitimate difference as to whether or not wearing it was okay because again, he did support something.

There was people who had tapes of the rehearsals that were done between Janet Jackson and Justin Timberlake. They didn't do that. They were blindsided. We had people in tears who after the event was over, people rushed off the field so proud that they had put on a show without ever knowing what happened with the Janet Jackson episode. So right now, there's nothing in our investigation. By the way, outside attorneys as well are investigating it that we

have encountered somebody who did something within our organization that deserved to be fired.

Ms. WILSON. Let's talk about those lawyers for a minute. And in particular, the Affinity Broadcasting case that's been referred to before where the FCC has found that there was indecency. I have the case here and I was going to pull out some excerpts and ask you whether you thought that they were indecent, but I'll spare everybody that because it's really pretty gross. It makes what happened at the Super Bowl seem like nothing at all.

I don't think there's anybody, reasonable American in this room who wouldn't find what went on on that radio show to be gross and indecent. The real question in my mind is you said "I have people who are advising me that this is not indecent." It sounds to me as though you're playing the "let's see how far we can push this game." And I can find a lawyer who will defend any position, but the decision, sir, is yours, as to what you stand for, what your company represents, and why are you continuing to say "oh, no, this wasn't indecent at all." What does that say about you?

Mr. KARMAZIN. It says that we believe in the first amendment. It says that we believe in our right as a broadcaster to broadcast things that are not indecent, that we clearly believe it's gross. I don't believe that the Constitution deals with gross speech. I think it deals with indecent speech and that's why we had suggested and have suggested for a long time that the FCC institute a rulemaking so that therefore it's clear what indecency is. So I don't want indecency on our air. And I'm not the person that's equipped for indecency. I can decide gross. That's why we fired those people that probably did what you have in front of you. But that's a different standard than what the Constitution has said and the courts have said.

Ms. WILSON. Let me ask you about those standards because as I understand it, this was at least the third time that they had run this marketing promotion. What did you do after the first time they did it, before it came to the FCC?

Mr. KARMAZIN. The fact is that I had no idea they ran that marketing promotion the first or the second time and the first time I learned of it, first time I learned of it and I also by the way checked to see who knew about the first and the second and we fired everybody that was connected with it, that was appropriate at the time. So I'm not proud—I take responsibility that it aired. Shame on me. It aired. But I do think that when it occurred that we fired, we fired the general manager, fired the programmer, I don't have to go through all the list of the people that we did and again, that's separate and apart from whether or not this signifies under the court's ruling and under the Constitution of whether or not it's not or not.

Ms. WILSON. Thank you, Mr. Chairman. I appreciate your time. I would just like to say that we've got reassurances that this won't happen again. I believe it won't happen again from the NFL because I don't think they're going to contract with your company again and I'm glad they're not. But I'm not at all convinced that you get it, sir. I have a right to freedom of speech, but I also have an obligation to be responsible for what I say and I see no sense of responsibility here.

Thank you, Mr. Chairman.

Mr. KARMAZIN. I appreciate your comments, Congressman.

Mr. UPTON. Mr. Walden?

Mr. WALDEN. Thank you, Mr. Chairman. Mr. Karmazin, I think I got you by 2 years. I started in radio when I was 15 and I'm 47 now.

Mr. KARMAZIN. I've got you by more years than——

Mr. WALDEN. I think you said you were in the business for 30 years, and I'm unique in this committee and probably the only licensee of commercial broadcast stations. I own and operate five radio stations and I want to go to—I guess the issue on the Super Bowl of the choreography, because I think I heard you say that Janet Jackson, her choreography and Justin Timberlake were the only three who knew what was going to happen in that she was going to be completely bare.

Mr. KARMAZIN. I don't know whether or not any of her people, I can tell you that there was nobody at the NFL that knew and there was nobody at CBS that knew and there was nobody at MTV. It's possible that there was an assistant choreography or somebody designed a costume, in other words, that allowed for this to happen. I can't say that it was just the three people, but none of the people who knew were part of Viacom.

Mr. WALDEN. That's what I was getting to. Who did the choreographer work for? You said she talked it over——

Mr. KARMAZIN. She was Janet Jackson's choreographer.

Mr. WALDEN. And that choreographer, as far as you know, never communicated, nobody in that group that talked that you're aware of ever shared any of that information with MTV?

Mr. KARMAZIN. Correct. And I think you'll see, based on the thorough investigation that's been done that was submitted to the FCC, that's what our information says.

Mr. WALDEN. All right. I share a lot of the outrage that my colleagues have shared about where we've come in media, what's being broadcast today in radio and over TV, but frankly sometimes I think it's a lot worse on radio. And I'm intrigued by your comments about a lack of standard for what is indecent and I commend you for your call for the FCC to do a rulemaking to define that because I suppose it's politic to say this, but I doubt if we could sit here on this committee and write an indecency standard very easily. I think it would be very difficult to do.

And as I've read through some of the background on these cases, it seems pretty obvious that the FCC has wavered at times, even the Bono F word, one area in the FCC says shouldn't be fined and now we hear may be fined. So I think if we're ever going to get to the problem here, there have to be clear standards so that we can have swift and certain justice so that you don't have 200,000 complaints a year against 370 or 380 shows and maybe two fines. Because nobody knows the rules.

And so if we really want to get at this, it's really the next panel that needs to be prompted, I think, if we're going to give them this new authority and fining ability, to come up with a clear understandable standard, much like we used to have with the NAB code of what we did or didn't do.

But one of the things that I'm troubled with and I think my colleague from Florida raised this issue earlier and that's about the affiliates. And I think my colleague from California, Mr. Cox raised the issue about networks.

And my question is if I'm contracting with a network for programming and let's put it in a radio context now, maybe CBS Radio or some other programming in radio and my station is unattended between midnight and 5 a.m., do you think the provider of that content should be liable when they know that their product is going to be broadcast on broadcast license stations?

Mr. KARMAZIN. Yes, I've said to you or to the committee that said do I think a network should have responsibility.

Mr. WALDEN. Right.

Mr. KARMAZIN. During the break I didn't check with my lawyers, but I still say the same thing that I don't have any—I'm not looking to wash my hands of it as a network, but I do think that if you're a licensee and people have talked about the value of the spectrum and the American public, then I don't think you ought to say that you don't want to have somebody on duty from midnight to 5 a.m. and not be responsible for what comes through your speakers. The fact that it's a safe harbor, you know these are all nuances.

Mr. WALDEN. Mr. Karmazin, what's the smallest market you have in O and O?

Mr. KARMAZIN. Let me tell you that my son owns a radio station in Beaver Dam, Wisconsin, so I have a pretty good handle of the small market.

Mr. WALDEN. How small is Beaver Dam?

Mr. KARMAZIN. Pretty small. It's a suburb of Madison and I think Madison is pretty small.

Mr. WALDEN. I'm in a town of 4,000. I don't know what Beaver Dam is and my District is one of the most rural in the country and I just made a 600-mile round trip swinging to only 6 of the 20 counties and I've got to tell you, nearly every radio station I went into is using a Jones format satellite service or ABC hot ace. You go through the various providers, wait, and they're unattended or they wouldn't be on the air because the dynamics are such you'd go broke, if you had to have announcers there 24/7.

Mr. KARMAZIN. But Congressman, there's not an issue with those. In other words, what we're saying is the fact that the people who were broadcasting those formats to particularly small markets, very few of them are taking an approach, recognizing that there's not somebody there to be able to bleep something.

Mr. WALDEN. That's what I wanted to get to because the reality of today's really small market broadcaster is such that you'd shut it off at 11 o'clock at night like we all used to because you didn't have a single ad you sold overnight and at least now the EAS will run if there is a disasters because you can automate that. You can still insert weather and news and other timely programming, frankly, without somebody there and it will call you if there's a problem.

But to think that—and we're contracting with services that darn well should know, tell me Disney ABC doesn't know what their jocks, where their voices are going when they're sitting in their stu-

dios in Dallas. They know they're coming out over small market broadcast stations. And so to me, it seems to me there should be some way to indemnify and hold harmless against the licensee when you're contracting with somebody upstream.

Mr. KARMAZIN. I know where you're going, but I think, this is as a broadcaster and I know it's not related to this necessary issue. As a broadcaster, you never want to let the licensee, it would seem to me, off the hook.

Mr. WALDEN. I understand.

Mr. KARMAZIN. Because then we could sit there and say well, we have indemnified or we indemnified somebody so that they're not responsible for the morning drive time. So I think it's a dangerous area. I understand what you're trying to accomplish.

Mr. WALDEN. What I'm trying to do, if we're going to increase the fines to $275,000 per utterance and in today's testimony, two of my colleagues have used the H word a total three times and I don't think we bleeped, but then we're on cable, so that's okay. It's not, but that's the reality. I'm not saying I shouldn't have liability, but somewhere here, I want to make sure the FCC sorts out the difference between programming I originate and I should be held fully accountable for and programming companies like yours or Disney or somebody else originates where I have limited ability in reality to control.

Mr. KARMAZIN. I think that would be a good idea for the FCC to look into. I think it would be.

Mr. WALDEN. I guess, Mr. Chairman, that's all I have.

Mr. BILIRAKIS. Would the gentleman yield?

Mr. WALDEN. yes, certainly.

Mr. BILIRAKIS. Thanks, Mr. Chairman. Do all of your licensees, broadcasters that you work with have the authority to pre-empt stuff coming down from the networks?

Mr. KARMAZIN. Sure.

Mr. BILIRAKIS. They do? Is it in the contract? What kind of authority do they have?

Mr. KARMAZIN. But they may not know what's coming if it's a live feed.

Mr. BILIRAKIS. They may not know what's coming. In the cases where they do know what's coming, do they have that authority?

Mr. KARMAZIN. We have, in our affiliation agreement so that CBS has 212 affiliates throughout the United States and we have an affiliate agreement, written, signed agreement with everyone and in those agreements there are terms and conditions including the right to reject, including each of them having the ability to have a basket of a certain amount of pre-emption, so that if somebody deems that a local basketball game is more important than carrying 60 Minutes, within a basket, they have the right to do that. They have the right to do it in the event of emergencies, so obviously, if there was a local emergency they would have the right. And then they have the right to do things that just may even be in their financial best interest, a certain amount of programming.

Mr. BILIRAKIS. Do they have the right for any reason other than those you have just stated? For instance, I don't like this, it doesn't jive with my community area.

Mr. KARMAZIN. Yes, and they have done that within that basket of discretionary programming that they could elect not to carry.

Mr. BILIRAKIS. Is there a limitation to those rights?

Mr. KARMAZIN. Absolutely there's a limitation to those rights?

Mr. BILIRAKIS. There is?

Mr. KARMAZIN. Yes.

Mr. BILIRAKIS. What are the limitations?

Mr. KARMAZIN. They vary by market. It's something that is discussed every time you get into an affiliation. What you're trying to protect, Congressman, is the ability to create a Chinese menu, to be able to have somebody say I could make more money by running at 11:30 at night a rerun of Sex and the City which will now be syndicated instead of carrying David Letterman. So at this point you can't have a network that is not going to be able to clear stations in every market in the country.

Mr. BILIRAKIS. But I'm concerned. I think you know what I mean, Mr. Karmazin. I'm concerned about content. Do they have a right to just not buy it because of the content that it's inconsistent with the philosophy of the general area.

Mr. KARMAZIN. To the point, as an example, CBS aired a program, a Victoria Secret program. A number of stations did not want to air it and they did not. We aired a mini-series on Hitler that we thought it was very well done. It won an award for it. There were a couple of affiliates that didn't think that it was appropriate for their market, just the name Hitler was not—they preempted it.

Mr. BILIRAKIS. I'm sorry, Mr. Chairman. Thank you.

Mr. UPTON. Mr. Terry.

Mr. TERRY. Mr. Karmazin, just a few questions, more trivia than berating. Are there any consequences, contractual, noncontractual, intangible, that will be paid by the performers, Janet Jackson and Justin Timberlake?

Mr. KARMAZIN. I don't know.

Mr. TERRY. Any consequences to them, other than the fact that her album probably is going to hit the charts at the top now?

Mr. KARMAZIN. We're not in control of that. We don't own the album. We have no vested interest in the album, that we have not, I can't tell you whether or not the FCC is going to find some basis on the Communications Act as a way of going after——

Mr. TERRY. Those can't go after the performers.

Mr. KARMAZIN. I'm not sure you—here's another area that I don't want to play lawyer on. I think there's enough lawyers who can figure that one out. I can't tell you whether they can or not. That I don't believe that we know what our ability is to do it. I certainly have asked the question as to what rights we have to deal with it.

Mr. TERRY. Just marketplace.

Mr. KARMAZIN. Again, I described earlier to Congressman Rush's point of view about my feeling about the performers on the Grammy Awards. I know that this is a very difficult area as to what we have control over for them. We could sit there and say that should we not play Janet Jackson's music on our stations? I don't know——

Mr. TERRY. You may not book them for the next Grammy Awards?

Mr. KARMAZIN. I think you should assume that we will take that kind of—and I'll tell you, I don't want to understate the importance of this issue. Somebody decided to change our show, so forgetting any reason that you're investigating it, even if they changed it not in an area of indecent, how dare anybody who is a performer to decide what the script should be?

Mr. TERRY. And that's made that person and that choreography inherently untrustworthy to the point where I don't think that person should be hirable. I just wanted to know if there was going to be any marketplace, if you felt that from your experience. But do you think that under FCC rules that CBS should be fined for what Janet Jackson did?

Mr. KARMAZIN. I do not.

Mr. TERRY. Why?

Mr. KARMAZIN. And the reason I do not is that we had all the precautions in place, that any reasonable broadcaster should have in place, including a delay on the audio. We had exercised, I demonstrated a streaker at halftime that this is not what we wanted. It was on for three quarters of a second and as soon as it happened, we did it. We've conducted a thorough investigation. I don't know what else we could have known.

As the Commissioner pointed out, the song that Janet Jackson was there to sing, she was a legitimate performer who had never done this in her life. So it's not like one could say well, you should have known better when you booked Janet Jackson. It was a reasonable decision to book her. We went through her script. We went through everything——

Mr. TERRY. I don't want to be rude, but I've two other questions.

Mr. KARMAZIN. Cut me off any time you want to.

Mr. TERRY. And a minute to go. So no one from MTV has been fired, even though obviously someone from MTV had some responsibility, although you may not say they were culpable, somebody had responsibility over this?

Mr. KARMAZIN. I have the responsibility for everything that goes on in my company, but no I have not found anybody at MTV that did something that would have warranted that they be——

Mr. TERRY. Even though there's a responsibility and a breach, under their watch, there will be no heads that roll?

Mr. KARMAZIN. Until we find out——

Mr. TERRY. Where we live heads always have to roll if something happens.

Mr. KARMAZIN. Well, scapegoats are something that I try to avoid. What I try to do——

Mr. TERRY. People have responsibility. They need to exercise that——

Mr. KARMAZIN. And I think that I've said that I'm responsible for what goes on and if, in fact, I'm not going to just find a scapegoat so I could say somebody's head rolled.

Mr. TERRY. But people are responsible. Last question, you've hit on many times that the FCC needs to clarify their language. Would you, as a member of the overall industry, broadcast industry, like Greg mentioned with the old NAB rules where they developed their own set of guidelines and rules, would you work with this com-

mittee, Congress or the FCC, to establish written guidelines of conduct or would you just simply say that's the FCC and your job?

Mr. KARMAZIN. No, I would not just say that. I would absolutely cooperate.

Mr. TERRY. Thank you, that's it.

Mr. UPTON. I just might ask, would it be possible to get an affiliate agreement that we might put in the record, a standard form?

Mr. KARMAZIN. Mr. Chairman, we'll give you anything you want.

Mr. UPTON. Good. We'll put that in the record. Thank you.

Mr. BILIRAKIS. Is there a standard contract or a variety of them?

Mr. KARMAZIN. Again, we were trying to balance the time issue, there is no limit. There is no limit to the amount of time an affiliate can cancel something for reasons of content, okay? But we will give you the full range, if what you're worried about is we're going to give you a boiler plate and nobody else has that, we will give you and I'm sure the affiliates in your market would be happy to provide it to you, if we didn't. We'll give you everything that you need to know on the relationship of the affiliate agreement.

Mr. BILIRAKIS. We can have that within a couple of weeks.

Mr. UPTON. We are going to have an affiliate at our next hearing, we're going to have an affiliate come.

Mr. Deal?

Mr. DEAL. Thank you, Mr. Chairman. As I have listened to the opening statements and the testimony and the questions here today, it sounds to me like we have two worlds that have collided. One is the world that we all hear from and that is a world that is outraged by what has happened in recent weeks over the public airwaves because they do perceive that you are the invited guests into their home and you have badly misbehaved.

The second world, Mr. Karmazin, seems to be your world. That is a world in which you've testified that you have heard no complaints from any of your advertisers about what went on at the Super Bowl. Now there is something that is colliding here and that is colliding in this testimony today that requires that we take action. Now I quite frankly think that the NFL has gotten the message. I think they will do everything within their power to make sure this is not repeated.

I have not been convinced that the same is true from your world. On five different occasions in Mr. Tagliabue's testimony and perhaps even more, red flags were waved, almost to the point that they pulled the halftime ceremonies. I heard nothing in your testimony, nor do I see in your written testimony that any red flags were ever waved to you or to MTV. Am I incorrect in my analysis?

Mr. KARMAZIN. In some ways, sir. With all due respect, we're not living in two worlds. We said the same thing about outrage. We are outraged as to what happened at the Super Bowl.

Mr. DEAL. Let me stop you there. Mr. Tagliabue was concerned about things, not the incident with Janet Jackson. He was concerned on at least five different occasions about the way the music was being portrayed, about the other things that went along with it. Did any of those red flags ever cross your mind?

Mr. KARMAZIN. Prior to the event, prior to the halftime show, I had zero role in the show, zero role in the show.

Mr. Tagliabue will confirm that he had meetings. I was never at meetings——

Mr. DEAL. I'm not speaking to you personally. You are the representative of every entity involved here from the ownership of CBS to the ownership of MTV, am I correct?

Mr. KARMAZIN. You are absolutely correct.

Mr. DEAL. Yes sir. Did anybody under you then, if you were you not personally, was there ever anything raised of saying we ought to be concerned about this?

Mr. KARMAZIN. Absolutely and the evidence shows and Mr. Tagliabue mentioned it in his testimony that the head of CBS was concerned about some of the information he was getting about the artists and the cooperation of MTV with the NFL and the CEO of CBS took corrective action and improved the situation. So yes, I mean there was.

The CEO of MTV was involved and took action when he heard from the head of CBS that there was a question about the relationship. There were lots——

Mr. DEAL. So it got better then? In other words, we could have had a worse presentation had this not happened, is that what you're saying?

Mr. KARMAZIN. You characterize it better or worse. There were discussions about who the artists should be, whether or not certain——

Mr. DEAL. That sounds like to me nothing changed in the process of those discussions, is that right?

Mr. KARMAZIN. If that sounds to you——

Mr. DEAL. Yes, it does. Let me ask you this. We've talked about a lot of things, accountability. You used the word "indemnification." I think you were relating to the discussion about the folks who pick up your broadcast, etcetera.

I would like to ask you, do you have any indemnification language in your contracts to indemnify you or MTV or CBS for any fine that might take place? Do you have written language with your performers that they will indemnify you in the event you're fined because of their conduct?

Mr. KARMAZIN. Yes. In many of our employment agreements, particularly on the radio side where somebody has a microphone in front of them and they're doing a live performance, what we say is we will indemnify you, the performer, for material that we give you, so that if you're reading a commercial and someone is going to sue you because the facts in the commercial are wrong, we'll indemnify you. But if you're going to go on the air and say something that is inappropriate, you indemnify us and yes, we have used that indemnity, not necessarily on indecency, but we have used that indemnity to pay us because people have used——

Mr. DEAL. So if you go before the FCC and they decide that there's a fine coming down the line, you can't use the argument then that you had no way to protect yourself against it because you could have, you could have indemnified yourself by such a contract clause with a performer who may go out of line, even though you had no reason to suspect they could.

Mr. KARMAZIN. No, I think that if we went before the FCC and the FCC were to question something that happened on our facility,

the fact that—we're responsible, and I have said it maybe not enough times, we're responsible whether we're indemnified or not indemnified. We take the responsibility that we're the licensee and we're responsible.

Mr. DEAL. All right, so that will be your position before the FCC when the issue of fines comes up then. Is it you're responsible with no excuses, is that right?

Mr. KARMAZIN. We have absolutely not taken the argument that we're not responsible for what happens on our air.

Mr. DEAL. Mr. Chairman, I would just conclude more or less with a statement and that is we've heard the argument here now that the FCC is the one who ought to redefine the definition of indecency. Perhaps that is true. I find it objectionable that those who have been granted the free use of our airwaves would not see fit to restrain themselves within their own conduct to define conduct that is less than indecent, that is, that which we've heard the use of the words crude, inappropriate.

It would seem to me that if you have the confidence of the public and wish to maintain it, then you would establish standards and don't require the FCC to set standards defining a constitutional level. You should be above that. Because if all you do is race to the bottom of a standard, then this is what we're going to get and I believe that's what's being advocated here.

Thank you, Mr. Chairman.

Mr. UPTON. Ms. Bono.

Ms. BONO. Thank you, Mr. Chairman, and thank you both, gentlemen, for staying so long. I don't believe it's as simple as my colleague just stated. I think at the end of the day you also report to a whole bunch of other people, shareholders or whomever, and so I don't believe it's that simple. And I want to compliment you for what you did do with the Grammy's. It worked. Isn't that simple? It was beautiful. Even what you did with Christina Aguilera, where you raised the camera. It was obvious you did that and I thank you for doing that. I was watching it with my daughter and I thank you.

Isn't it that simple, the 5-second delay, for these sorts of circumstances? Doesn't that kind of solve our problem also?

Mr. KARMAZIN. I thought it did. I just want to hopefully make sure that someone is not trying to figure out the next thing out there and that we have the flexibility. We used to think that having an audio delay because someone was going to say the F word or somebody was going to do that was the only thing we had to worry about. Now we found out we were wrong. Very wrong at the Super Bowl. So we've now taken a step. Hopefully, we can be confident that neither audio nor video inappropriate programming gets on the air. I hope that's the case.

Ms. BONO. And I also recognize the fact of what you said happened with the streaker that we did not see that and I thank you. That is an important example to point out and understand the difficulties here that you're faced with.

I think this is a little bit too late and that's why we're here in Congress visiting this issue, but I have—there are not really congressional issues or questions or legislative answers, but how much in the ballpark—I had read that the Super Bowl, the acts were

paid seven figures, is that true? This particular Super Bowl were they paid acts?

Mr. KARMAZIN. I have nothing to do with that part of it. I know that MTV which produced it did not make any money, so this was not done—it was done, by the way, for MTV——

Ms. BONO. No, the question was simply were the artists paid? I don't quite buy your argument you presented a long, long time ago that these contracts go unsigned. I find that so impossible to believe that you could present that in this circumstance that there would be perhaps over a $1 million contract that's not signed.

Mr. KARMAZIN. And again, I am not involved in the production. It was really done by—I think AOL contributes to the NFL for the payment of the halftime show and I think that money gets used to produce the halftime show. I don't believe anybody gets paid. I believe that they get expenses to cover stuff, but I don't believe anybody made money, but I don't——

Ms. BONO. So the real compensation is in the exposure, pun intended, I guess, and the fact that Monday morning she could wake up and be—she meaning Janet Jackson—was on the front page, not the quarterback of the winning team. And I empathize with the NFL and I sympathize with the team owner because I think that was very outrageous, but nonetheless, she got what she wanted and we're talking about her, like I say.

So when you said—you gave a nice apology, both of you did. But I think people are apologizing all the way to the bank.

Mr. KARMAZIN. There were so many—if you go through—so many performers at the pre-game show, at the halftime show that contributed there. I don't believe and over the years, by the way, so this the first time that this has occurred at the Super Bowl. I don't believe people are booking themselves or trying to get onto to the Super Bowl because they want to be on the papers on Monday.

Ms. BONO. Really? I'm sorry. I don't believe that acts were—maybe, Justin Timberlake, but I don't know that she was in the top five certainly that week. I don't believe she was on the—and to tell you the truth, and this is just a comment as a parent, I was watching this thinking this is so wonderful and this is going to be an off-the-wall comment. It was so wonderful here is Ms. Jackson proving all of the talent she has and she's a true artist and true performer and that none of her brother's negative publicity is affecting her and that argument was certainly shot, it was proven wrong. That's the truth of the matter here as well.

So I thank you for your apology. I thank you for the 5-second delay with the Grammy's and I actually would like to hear briefly, if you have specific comments about the specific legislation that is in front of us, and if you've read it and if you are supportive. I know you have said the FCC ought to be more involved, do the rulemaking.

Mr. KARMAZIN. I thought the language on increasing the fines could be a deterrent. I think it is possible. I think it needs to have some flexibility and again, maybe somebody who was a victim of something, you know, again, you can leave it to the FCC to decide, should be treated differently than someone who does something blatant. So the point that I would make would be I would give the people who are enforcing these increased fines flexibility to decide

whether or not $275 is right or maybe $150 is right or maybe a lower fine is right, based on their compliance.

One of the worse things that somebody could ever do is to lie to the FCC, you know. That is the death penalty. The idea is that when the FCC is investigating these things, that the sense is that you want broadcasters to come forward, admit what they've done wrong and I just think that if there could be some flexibility on the Commission's part, not the licensee's part, to decide what the—there's a sentencing guideline, you know? Judges have a sentencing guideline and you might want to have a sentencing guideline that gives the Commission some flexibility, but I think the fine could be a deterrent.

Ms. BONO. Mr. Chairman, I know I'm over my time. I believe that we've had some great testimony that will be very helpful as we go forward and I hope the gentlemen appreciate their comments themselves as we move forward in the future.

Thank you.

Mr. UPTON. Mr. Gonzalez.

Mr. GONZALEZ. The question is for Mr. Karmazin. You've indicated that there was some objectionable content during halftime and I guess it's the wardrobe malfunction that you're referring to?

Mr. KARMAZIN. No, I was saying that personally, this is not—I found Justin Timberlake dancing, I found the wardrobe issue, I found the crotch grabbing and I found the American flag wearing all things that in my old eyes, I found objectionable.

Mr. GONZALEZ. Well, you may share the values of most people that were watching, so why wouldn't that somehow factor in as to what you do allow?

I know it was MTV that produced it. I know that NFL actually had protested some of the content. They were assured it was taken care of. It obviously was not. And I mean if you really do look at the gyrations and the dancing and then the lyrics of some of the songs, surely, you would arrive at a conclusion that it would have been inappropriate for a halftime show for the Super Bowl.

Mr. KARMAZIN. Congressman Gonzalez, the rehearsal, again, on tape of Nelly who was the performer who grabbed his body part or his pants, I don't know what he grabbed, was not done during the rehearsal. That same performer, that same performer was on the Super Bowl 3 years earlier, did not do that. We had no reason to believe he was going to do it. It's a live——

Mr. GONZALEZ. Well, then how do you suggest that you are able to somehow have some sort of preview that allows you that kind of control?

Mr. KARMAZIN. I missed that. I'm sorry, sir?

Mr. GONZALEZ. What safeguards do we have then that that would be brought to someone's attention? In other words, you're saying that if someone basically deceives you, and tells you they're going to present one thing and then present another, there is nothing you can do?

Mr. KARMAZIN. I'm not suggesting that something like that—you've asked me what I found distasteful and I found the—we're not dealing with whether or not there is a standard of indecency that someone, you know—there are a bunch of people culturally that are going to say that that's a racist comment on Mr.

Karmazin's part, okay, because of the fact that that's the reason he's saying it.

I mentioned it in the case of Christina Aguilera. We learned how to shoot things because this now became an issue. So that what did do? We certainly did see it on the Grammy Awards because we were very sensitive to it after the fact. The idea of the American flag was something that could be debated all day long.

Mr. GONZALEZ. On the Grammy and where there was a low-cut dress, but for the incident with Janet Jackson, I would have been able to have viewed Christina Aguilera in her total low-cut dress?

Mr. KARMAZIN. My guess is, sir, you certainly would have not seen anything indecent because we would not have aired it, but you might have seen more skin than you saw this time. I think it was a reaction to what happened. It's a sensitizing of everybody to what's going on and I think we made some progress.

Mr. GONZALEZ. I guess it goes back to what Congresswoman Wilson was alluding to and that is and the way I interpreted what she was saying, certain things may be legal, but are they right? You can call your lawyer and figure out what's legal, but you make the determination whether it's still right and that's the responsibility that somehow we're trying to establish and I don't know what's going to happen with the FCC in increased fining and such.

The second part of my question because I have about a minute left, you've indicated that maybe the networks should be on the hook, in other words, that it would be appropriate of the FCC to levy a fine directly against the affiliate. I'm new to the network. I'm new to the committee. I'm not real sure about the regulatory scheme, but I'm told that only the affiliates will be the ones on which fines will be levied and some are owned and operated by the networks, so you will feel that pain. But let's just say in that particular world and we get those changes and fines will now be levied directly against the networks, what size of a fine would get the attention of a major network?

Mr. KARMAZIN. Two things, just real quick, hopefully I wont' take it away from your time. We have people at each of these business units, adults, who are responsible for what is appropriate on their channel. You don't want me to necessarily be responsible for Nickelodeon. I really don't have enough knowledge of children's programming, so the fact is you're not dealing with me, you're dealing with the people who are doing that.

Regarding what size is appropriate a fine? I take any fine seriously, any amount and I think most broadcasters will. Relating it to revenue is irrelevant. You don't want—many people who speed and get a speeding ticket, they can afford to pay the $65. But it's not the $65 that is the deterrent. You need to get it to $1,000 because if Donald Trump is speeding, what's $65? So why don't put a speeding ticket related to how much revenues somebody——

Mr. GONZALEZ. Because that person's driver's license is in jeopardy.

Mr. KARMAZIN. I think the idea, again, I mean my opinion, you invited me into this house, that my opinion is that when you use the word "taking a license" or "three strikes" or any of this stuff, dealing with first amendment, I think you're on very dangerous ground, my humble opinion.

Mr. GONZALEZ. And I would agree to a point, but I'm saying if our only deterrent then will be the bottom line, it's going to cost you money and it goes back to the Ford Pinto, that kind of corporate mindset that everyone fears. You put a cost analysis to it, you figure this is the most we're going to get fined for this particular incident, but boy are we going to make some money on this deal, and that's our fear.

It will never be a deterrent until it really affects you.

Mr. KARMAZIN. Putting it into perspective, sir, CBS, how many times have we had to call CBS about anything indecent? It's not about the fines. This is not something that is widespread at CBS network. I mean this happened. Again, I apologize. I'll say it one more time in case any one was missing. I apologize. I am responsible. I take full responsibility, whether it's CBS, MTV, you know, I'm responsible. But CBS isn't doing this every day, that we've got to figure out a way to stop—CBS doesn't want to do it. We don't want to do it. If you believe we're doing things for the bottom line, it's not good business.

Mr. GONZALEZ. Then there's no reason to have this hearing. There's probably no reason to have the Upton-Markey Bill, which I would disagree, but thank you very much and I'm over my time.

Thank you, Mr. Chairman.

Mr. UPTON. Thank you. We are now finished, Panel 1. Close your books. Stop, close your books.

We appreciate your hours of testimony and answering questions. We look forward to working with both of you as this legislation begins to move and we are now adjourned for the first panel and we'll reassemble with Panel 2 momentarily.

[Off the record.]

Mr. UPTON. We are going to start with Panel 2. Thank you, Commissioners, for waiting. I know that you watched at least the good chunk of our first panel from the sideroom. We appreciate all of you being available for today's important hearing. We also appreciate being able to review your testimony this last night.

As is the normal course, your testimony is entered into the record, as it was submitted, without any objection. We'd like to limit your remarks to no more than 5 minutes and Chairman Powell, we'll begin with you, welcome.

STATEMENTS OF HON. MICHAEL K. POWELL, CHAIRMAN; HON. KEVIN J. MARTIN, COMMISSIONER; HON. KATHLEEN Q. ABERNATHY, COMMISSIONER; HON. JONATHAN S. ADELSTEIN, COMMISSIONER; AND HON. MICHAEL J. COPPS, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. POWELL. Thank you, Mr. Chairman. It's a pleasure to be here. This is our second panel, as well, having testified in the Senate this morning on the same topic and we're really pleased and privileged to be with you here today on this important subject.

As we've just heard, the infamous Super Bowl halftime show which was clearly offensive and outrageous, and I might add, particularly degrading to women, is just the latest example in a growing list of deplorable incidents over the nation's airwaves. The increasing coarseness of television and radio has resulted in a dramatic rise in public concern and outrage about what is being broad-

cast into their homes. Over 200,000 concerned citizens and counting have filed complaints with the Commission on the Super Bowl incident alone.

The recent Times CNN poll found 47 percent of Americans said the incident marked a new low in bad taste. And as a parent, I share their displeasure and fatigue of millions of Americans about the erosion of common decency standards on television.

As a member of this Federal agency, I can assure all Americans that this Commission 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 of whether there was a violation of the law. This investigation will be thorough and it will be swift. Additionally, a decision on a proposal to overturn the recent decision in the Global Globe case is imminent.

Protecting children and giving parents the tools to restrict inappropriate programming from unexpectedly invading our family rooms requires action from many people on all fronts. But that effort begins first with the Federal Communications Commission. This Commission, me and my colleagues, are pushing what I think is the most aggressive enforcement regime in decades by proposing nearly ten times the level of indecency fines than the previous Commission, and we're just getting started.

I want to note a few additional steps that we have taken, and are beginning to take, to sharpen our enforcement blade. First, we recognize that $27,500 in fines constitutes peanuts to a multi-million dollar corporation. We actively seek ways to increase penalties and creatively count them in measures to increase those penalties for repetitive and lasting indecent programming and taking steps to impose statutory maximums for significant violations of the law.

In addition, as we've heard many people suggest and many of them my colleagues, we should treat multiple indecent, utterances within a single program as constituting multiple indecency violations. In an opinion in April of last year, we announced, and put broadcasters on notice, that in the future we would count in that way.

We have also, in that same opinion, put broadcasters on notice that egregious and continuing disregard of indecency laws will potentially lead to revocation of licenses. We will pursue more indecent programming on television and much more aggressively. We will continue to work aggressively to answer complaints in a timely manner. When we took control of the Commission there was significant backlog of these and other types of enforcement cases.

In 2002 alone, there were 14,000 complaints, only 30 of the most serious remain pending and are quickly moving toward disposal. We will continue to vigorously monitor industry developments to see if they indeed meet the challenge to join the ranks to protect our children.

Indeed, the Commission has already begun wielding the sword in several important respects. We have proposed some of the largest fines in our indecency enforcement history, including a proposed forfeiture of nearly $350,000 in the case of a vile broadcast of sex-

ual content in St. Patrick's Cathedral in New York, and proposed a fine of nearly $750,000 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 maximum under the statute when it aired a program in which a performer actually exposed himself in front of the camera, making it one of the first fines of television in the Commission's history.

Just this week, I have personally written and called on the broadcast and cable industries to step up their own personal responsibility and to commit themselves to protecting children. Specifically, we challenge broadcasters to reinstate the code of conduct that they once had and urge the broadcasting and cable industries to work with the public and the government to take other steps, like education and outreach campaigns, and provide for a time delay for live entertainment performance events. We hope to hear an answer from them soon.

To succeed fully in protecting our children from the proliferation of inappropriate and excessive and violent content, we need Congress in its critical role, as a leader to help us as well. I urge Congress in the strongest possible terms to help us by adopting legislation that will increase statutory maximum of our forfeiture penalties at least tenfold. And I commend Congressman Upton, other members of the committee and Senator Brownback in the Senate who have championed this issue by introducing legislation and we stand as a partner with you on that legislation.

We need this increased authority to ensure that our enforcement actions are meaningful deterrents and not merely the cost of doing business. Additionally, this deterrent effect can also spread to other types of coarse and inappropriate programming not suitable for children, such as excessive violence.

We've all been concerned, but the time has finally come for us to work collectively, the Commission, Congress, the industry and the public, to take whatever steps necessary to prevent allowing the worse that television has to offer from reaching the best of our assets, our children.

I commit to you that this Commission will continue to put our resources into vigorously enforcing our rules. And I urge Congress to assist in these efforts and the industry to do its part for our nation's children.

Thank you, Mr. Chairman. I'm happy to be here and I look forward to your questions.

[The prepared statement of Hon. Michael K. 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% 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.

Mr. UPTON. Thank you very much for your testimony.

Mr. Martin.

STATEMENT OF HON. KEVIN J. MARTIN

Mr. MARTIN. Thank you, Mr. Chairman and distinguished members of the committee, for the invitation to be with you this afternoon. 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 has increased 95 percent from 1998 to 2002.

At the Commission, 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 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 offers 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 want. They must buy the "Touch the Hooker" episode, the Spike TV's Joe Schmo's 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 with a better guide to television programs. I ask that article be made part of the written record.

Mr. UPTON. Without objection.

Mr. MARTIN. 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 Chairman Powell that the enforcement bureau is wrong when it finds profanity is acceptable, merely because they are used as adjectives. I also agree with him that our nation's children, parents and citizens deserve better. And we at the Commission 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. And I believe there are four steps we can take to help address this process. We should first aggressively enforce the law. Congress has charged the Commission with protecting families from obscene, indecent and profane material and our rules need to serve as a significant deterrent to media companies considering airing such programming. 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 urge the Commission to do even more.

In fact, I have argued that there is some action we can take now even without 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 $247,000 instead of $27,000.

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 profanity on television and radio appears to be widespread and yet I've not found even a single instance in which the Commission has concluded a broadcast was profane.

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

Second, 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 to keep coarser network 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 direct government oversight of network content. We should clarify immediately that local broadcasters have this opportunity and this obligation when they serve the 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. Broadcasters should bring back the Family Hour.

While I will continue to call for the industry action, the Commission can take some action on its own. A year ago, PAX Communications 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 importance of the Family Hour.

And finally, we should address cable and satellite programming. Broadcasts 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 more comprehensive solution. Over a year ago, I urged the cable and satellite providers to take action and I continue to believe something needs to be done to address this issue.

As I suggested, cable and satellite operators could voluntarily offer an exclusively family friendly programming tier as an alternative to the expanded basic tier on cable. Parents could get Nick-

elodeon and Discovery without having to buy MTV or other adult-oriented fare. A choice of 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. Other subscribers could continue to have the same options they have today. Alternatively, cable and DVS operators could permit parents to request not to receive certain channels and reduce the package price accordingly.

Finally, I'm sympathetic to the many people who asked why are indecency regulations apply only to broadcasts? Indeed, today programming at 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 have moved to satellite radio.

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

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

Thank you.

[The prepared statement of Hon. Kevin J. 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% 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.

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[1] *See* 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)..

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

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.

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 con-

cept 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% 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.

FAMILY-FRIENDLY PROGRAMMING: PROVIDING MORE TOOLS FOR PARENTS

KEVIN J. MARTIN [1]

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. Impor-

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[1] 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.

tantly, 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% 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.

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.[2] 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,[3] 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%.[4] 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% and 97% of U.S. television homes, respectively.[5] More recently, Paxson Communications launched PAX TV in 1998, reaching 85% of the country.[6]

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 multichannel video programming distributors ("MVPDs"), including cable and satellite.[7]

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

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

[4] 2002 Biennial Reg. Review Before the FCC—Review of the Comm'n's Brdcst. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996, *Notice of Proposed Rulemaking,* 17 F.C.C.R. 18503, para. 53 (2002) [hereinafter 2002 Review].

[5] *See* WB Web site, at http:www2.warnerbros.com/web/all/link/partner.jsp?url=http://www.thewb.com (last visited Feb. 27, 2003); Viacom Web site, *at* http://www.viacom.com/thefacts.tin (last visited Feb. 27, 2003).

[6] *See* Pax Communications Web site, *at* http://www.pax.tv/about/ (visited Feb. 27, 2003).

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

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.[8]

In addition, the number of households accessing these multi-channel services has increased significantly since the 1960s. In 1976, there were still only 17% of U.S. households—fewer than 10 million homes—served by cable.[9] By 2002, cable reached 96% of television viewing homes, with 73 million subscribers.[10] DBS is available nationwide and now has nearly 19.8 million subscribers.[11] Today, 85.3% of households subscribe to a MVPD.[12]

Long gone are the days when broadcasters commanded 100% 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.[13] Other sources indicate the shift may be even more dramatic, with broadcast drawing only 37%, and cable programming drawing 53% of TV viewers.[14] 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.[15]

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-*un*friendly 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.[16] The subse-

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[8] 2002 Review, *supra* note 3, para. 25.

[9] Florence 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).

[10] Cable History, The Cable Center, *at* http://www.cablecenter.org/history/index.cfm (last visited Feb. 27, 2003).

[11] Satellite TV Subscriber Counts, Sky Report, *at* http://www.skyreport.com/dth—counts.htm (last visited Feb. 27, 2003).

[12] 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*].

[13] *Id.* para. 24 (citing Nielsen Media Research, *Total Day 24 Hours 6 am-6 am: Total US 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% due to simultaneous multiple set viewing." *Id.* para. 24 n.39.

[14] 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.

[15] 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 US Ratings by Viewing Source July 2000-June 2002,* Oct. 2002).

[16] 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.

quent 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.[17] 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.[18]

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 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.[19]

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.[20] 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,[21] Congress instructed the FCC to outline actions it had taken or planned to take to protect children from excessive violence and obscenity.[22] The FCC staff recommended several options, including issuing notices of inquiry, notices of proposed rulemaking, and policy statements.[23] 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.[24]

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.[25] The family viewing amendment provided in relevant part that "entertainment programming inappropriate for viewing by a general family audience should not be broadcast during

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

[18] 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.

[19] The 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 Web site, Questions/Answers, *at* http://www.ana.net/family/default.htm (last visited Feb. 27, 2003).

[20] Report on the Brdcst. 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).

[21] *See 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).

[22] H.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).

[23] *Writers Guild of Am.,* 609 F.2d at 359.

[24] *Id.*

[25] The 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.

the first hour of network entertainment programming in prime time and in the immediately preceding hour." [26]

In 1983, the Department of Justice brought suit against the NAB, challenging the NAB Code on antitrust grounds.[27] Although the suit involved only the code's restrictions on television commercials,[28] 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.[29] 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." [30]

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." [31] 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." [32] 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).[33]

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% drop in viewership last season.[34]

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.

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[26] *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 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.

[27] United States v. NAB, 536 F. Supp. 149 (D.D.C. 1982).

[28] *Id.*

[29] 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/chrissmith/press2001/pr1005001tvfamilyhour.html.

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

[31] Family Friendly Programming Forum Web site, FFP Mission, *at* http://familyprogramawards.com (last visited Feb. 27, 2003).

[32] *Id.*

[33] *Id.* at Family TV Awards.

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

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% 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 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% of American parents now own a television equipped with a V-chip, less than 7% of those parents use it to block programs with violent or sexual content.[35] 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.[36] 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 surf-

[35] 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.

[36] 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.

ing." 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.

Mr. UPTON. Commissioner Abernathy.

STATEMENT OF HON. KATHLEEN Q. ABERNATHY

Ms. ABERNATHY. Thank you very much. Good afternoon, Mr. Chairman, Congressman Markey and distinguished members of the subcommittee. I appreciate the opportunity to appear before you this afternoon to discuss what are very critical issues in our society today.

A recent study found that even the youngest of children, those under the age of 6, are immersed in today's media world and a vast majority of parents have seen their children imitate the behavior that they see on TV. 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.

This hearing is the 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 and cable and video games. And it's not simply an issue with regard to excessive sexual content in many mainstream programs. It's also reflective in the excessively violent content of material that's distributed to children via broadcasting and the internet. This has occurred despite this Commission's vigorous enforcement of the indecency laws, despite our announcement that these efforts would be further intensified, despite our putting broadcasters on notice that they're putting their licenses at risk and despite pending legislation to increase our forfeiture authority.

Some broadcasters have clearly 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 reflected in the Broadcast Indecency Enforcement Act. Our 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. For example, relying on past Commission rulings, the Enforcement Bureau recently issued a decision determining that Bono's language during a telecast of 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 that it's difficult to imagine very many contexts where the knowing broad-

cast of this 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 the live broadcasts of radio or TV programming. Therefore, in addition to current and even enhanced enforcement measures, we should improve and amplify our forward-looking safeguards. Our laws try to help parents understand and control the programs their children watch in several different ways. The V-chip and the programs rating legislation that Congress passed are intended to ensure that parents can control access of broadcast programs into the home. Is the system working well? I think clearly not. Most parents do not understand how to use the V-chip and they're unaware that a TV rating system exists.

The shortcomings of this early warning system are even more troubling as it applied to violent programming, which unlike indecency is not subject to FCC 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.

I know that you've grappled with the many legal and practical issues involved in attempting legislatively to define and limit televised violence, but in the absence of express 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 Government 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 it directs parents to websites that identify age appropriate programming by locality. It also explains the V-chip as well as 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 parent.

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 need to enlist the help of broadcasters if we are to ultimately address the core of consumer concerns because the issues really go beyond more than simply what is or is not legally indecent programming.

Mr. Chairman, if there's anything at all positive 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 inappropriate programming while continuing to tap into the best of what media has to offer.

In response to these challenges, I fully support your efforts to increase our forfeiture authority, the expanded enforcement efforts by the Commission and the possibility of improving the existing safeguards and I welcome the opportunity to discuss any of these matters further with you.

Thank you.

[The prepared statement of Hon. Kathleen Q. Abernathy follows:]

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

Good morning Mr. Chairman and distinguished Members of the Committee. I appreciate the opportunity to appear before you this morning to discuss "The Broadcast Decency Enforcement Act of 2004" and the FCC's efforts to protect children from indecent 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 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

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

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 the "The Broadcast Decency Enforcement Act of 2004" and 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 the 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 even 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 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 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 web site called *Parents Place. Parents Place* explains the

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

rating systems, including what the ratings mean and when and where the ratings are displayed and directs parents to web sites 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 are, 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 broadcasters 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 be 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 your efforts to increase our forfeiture authority and 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.

Mr. UPTON. Thank you.

Mr. Adelstein.

STATEMENT OF HON. JONATHAN S. ADELSTEIN

Mr. ADELSTEIN. Thank you, Mr. Chairman, Congressman Markey, members of the committee. I appreciate your forceful leadership on this issue and your tenacity today through this hearing and over the years in the fight against indecency.

Like many of you, I sat down with my family to watch the Super Bowl and like millions of others I was appalled by what I saw. Not just the shock value stunt at the end, but the overall crude performance in front of so many children, 1 in 5 American children. And the advertising, I think, set a new low for what should air during family time. A special family occasion was disrespected.

One commercial that really hit home for me and really stung me and a lot of my friends was a violent trailer for an unrated horror movie that showed these terrifying monsters with big fangs that were attacking people. I literally had to jump out of my chair to

try to get between the television and my child so he didn't see it. I wonder how those who chose to air this kind of violent programming can sleep at night when so many American children had nightmares as a result.

No parent should have to jump in front of the TV to keep their children from having to see such images. We need to help parents navigate the difficult environment they face in today's media. They're crying out for our help. Complaints are exploding about the increasingly graphic and shocking entertainment in today's media. Some observers note that broadcasters are just responding to what cable programming has on it. Take MTV, the cable network that is 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 standards during the Super Bowl which is traditionally a family event.

As a musician myself, I recognize that there's a place for 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 right, under the law and under our rules, to block any channel they don't consider appropriate for their children. That choice isn't available to over-the-air television and it certainly took American families by surprise when it happened at the Super Bowl.

As a parent and as an FCC Commissioner I share the public's outrage with the increasingly crude radio and television content we're seeing today. 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 attack indecency head on and use the full authority provided to us by Congress in fighting against profanity. We need to reverse the Bureau's decision to allow the "F-word" to be used just because it was in the form of an adjective.

I supported going to the statutory maximum under these fines in many cases, but even this is woefully inadequate and I welcome the efforts by you, Mr. Chairman, and by other members of this committee to increase the fines tenfold. I'd welcome that increase fining authority, I might add, across all the areas of our jurisdiction.

Awaiting that authority, I've tried to find creative ways and I've pushed for ways that we could deter indecency using the authority that we have. These include fining for each separate utterance and revocation hearings in serious repeated cases. I worked last April to put the FCC on record and put broadcasters on notice that we were beginning the stronger enforcement regime going forward.

We now need to act more quickly as these complaints come in and we have a lot of complaints before us that I think we're going to get out the door rather quickly. We're going to try. But there are limits to what the FCC can do. We've got to balance strict enforcement of our indecency laws with the requirements of the first amendment and the constitutional protections that Americans enjoy. If we overstep, we risk losing the narrow constitutional authority that we now have to enforce the rules that and would set

back our enforcement efforts even further. So it may take more than the FCC to turn this around.

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

One question I often ask myself is whether the coarsening of our media is responsible for the coarsening of our culture or is it the other way around? I think it's both. I think they feed on each other. And media consolidation intensifies those pressures. Fast-growing conglomerates focus on the bottom line, above all else.

Last summer, the FCC weakened its media ownership rules. 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 local community standards. The back and forth that local affiliates have with the networks is critical in the fight against indecency and the FCC must preserve it.

On the positive side, I think the FCC can do even more to help families. We should complete a 3-year-old rulemaking 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 insulted by what's broadcast at them. My job as an FCC Commissioner is to protect our families from the broadcast of indecent material. It's also my job to promote more 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.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Jonathan S. 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 emails 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 rulemaking 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.

Mr. UPTON. Thank you.

Mr. Copps.

STATEMENT OF HON. MICHAEL J. COPPS

Mr. COPPS. Mr. Chairman, Mr. Markey, Mr. Dingell, members of the committee, thank you for having us up here this afternoon to talk about an issue that has all America talking. This is not the first time that I have expressed my concern to the members of this committee on the important issue of indecent and violent programming on the public's airwaves.

There is frustration and there is anger out there. I saw the people's anger all last year when Commissioner Adelstein and I took to the road during our media ownership forums and I saw it again just 2 weeks ago when all the Commissioners went to San Antonio. We saw parents lined up to talk from their hearts about programming's addiction to sex, violence and profanity. People all across this land of ours are demanding action, action now to put a stop to it.

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 that's just the tip of the iceberg. The real test for the FCC is how we address the

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

thousands of other complaints pertaining to hundreds of other programs and so far we don't have any results to crow about.

Until we walk the walk of enforcement and until it's there for industry to see, they're just going to thumb their noses at us.

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 we can get from you. 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.

One, use our full authority to punish transgressors with license revocation, license non-renewal and higher fines. We need to send the more outrageous transgressions and the repeat offenders to license revocation hearings. We've already had some sterling candidates for that. The Commission has never used this authority and nothing would send so powerful a message to those who produce these programs. We should have done this long ago.

We need to impose meaningful fines for each utterance rather than 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 ads as well as programming. 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 violence programming. Companies that do not serve the public interest should not hold a public license.

To reform the complaint process, the Commission should commit to addressing all complaints within a specific timeframe, such as 90 days. It is the Commission's responsibility to investigate complaints that the law has been violated, not the citizens' burden to prove those violations. 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. We don't need more studies. We need action. The Commission needs to move on this now.

Four, convene an industry summit that includes broadcasting, cable and DBS. Industry needs 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 this afternoon who hasn't heard my personal plea on this over the past 2½ years. I'm very pleased that Chairman Powell is supporting this effort. Broadcasters used to police themselves with a voluntary code. Why can't they do it again. This summit needs to include, and absolutely must include, cable and satellite providers. Perhaps cable could explore such options as offering a family tier. 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.

A summit like this is not a substitute for us doing our job or enforcing the law, nor should it be allowed to let anybody off the hook, but I really think it's the least that industry can be doing to step up to meet its public interest obligations in this environment.

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 refuse to 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, 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 rules 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 boards. We open the door 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 barrel down the track, doesn't it, with the wires reporting this morning the possible bid by Comcast to take over Disney. I think we'll all want to look seriously at how this would impact the ability to control 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 are going to see this job through.

Thank you again for this hearing. I think it's a true public service. Thank you for the commitment and dedication of so many of you on this committee on what I think is both a legal and a moral issue.

I look forward to hearing your comments and for your thoughts on all of this.

[The prepared statement of Hon. Michael J. Copps follows:]

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

Mr. Chairman, Members of the Committee, I am honored to appear before you today on the subject of indecency on the people's airwaves and at a time when millions of those people are looking for action to halt what appears to be media's race to the bottom—if, indeed, there even is a bottom to it. I appreciate the attention this Committee is devoting to the issue and I am grateful to you for the opportunity 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 station 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 timeframe 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. 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, 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 demonstrating its commitment on a matter that so many Americans want to see tackled and resolved. I look forward to hearing your comments and further thoughts on all this.

Mr. UPTON. Thank you all for your testimony. As you know we have a 5-minute rule for us with questions and I want to ask you a question that you probably didn't hear us ask the first panel. I asked Mr. Karmazin it was my understanding that Infinity Broadcasting which had been fined in a number of cases, but one was

$357,000, and he indicated that Infinity had not ever paid the forfeiture penalty in the two Opie and Anthony cases. As I read the transcript from that case, I can't imagine something more indecent than what I read. What is the FCC going to do about cases like that where you render a judgment, you issue a fine and in fact, it's not paid years after it was done?

Chairman Powell?

Mr. POWELL. Let me explain how that works because I think it's an important question.

Mr. UPTON. And I want to get into the due process of what their rights are and how you look at license revocation.

Mr. POWELL. What happens is the statute requires us to (a) once you receive a complaint, conduct an investigation. Then if you believe that a violation has occurred, you have to issue a Notice of Apparent Liability. Then the parties under the due process rights get to challenge your supposition.

The case that you're talking about, for example, the Commission agreed with your judgment as to the substance and has issued a Notice of Apparent Liability just last year, just recently. The parties, in response, have filed challenges to our decision, sort of the equivalent of reconsideration or appeal of the apparent liability. That process now is with us. We'll either accept or reject their plea. If we reject it, and they refuse to pay, we refer those forfeiture collections to the Department of Justice who goes in to District Court in the local community, usually, to enforce those judgments. There are no forfeitures outstanding pending at DOJ now, but if CBS continued to fight this after we reach a final conclusion, then that's what our next process would be.

Mr. UPTON. When are you likely to reach a final conclusion?

Mr. POWELL. I think that case, in particular, is probably fairly imminent.

Mr. UPTON. And are you able to revoke the license? Let's say they continue not to pay the fine, you send it to the Department of Justice. I've heard and I'd like you to correct me if I'm wrong, I've heard that there are some in the Department of Justice say it's not working, fines are too small. Forget it. We're going to spend more going after these folks. Some of the fines are in the magnitude of $350,000, some are much smaller, but it's not worth it in terms of our time to go seek some judgment in Federal Court to go after them. Is that accurate?

Mr. POWELL. Well, I can't speak for them and I haven't heard that directly from a Justice Department official, but I think it points out another consequence of inadequate penalties, that if you're talking about $6,000 or $7,000 which is the base amount of forfeitures or even if you're talking about the maximum for one single incident of $27,500, you know, packing the lawyer's bags cost almost that much money to go collect it.

Now fortunately, at least in the last couple of years we've had relatively good success of getting the parties to stop contesting and pay the forfeiture. But if they go to the wall and we have to prosecute the case, I do worry that we're not talking about amounts high enough——

Mr. UPTON. You have to go through all those steps to revoke a license?

Mr. POWELL. You even have to go through more to revoke a license. All those steps are to find liability to revoke a license. The statute requires you first put it into hearing, and then you have an adjudicatory hearing that can last as long as it takes, literally, a mini-trial at the Federal Communications Commission in front of an Administrative Law Judge who then would reach a recommendation that would then come back to the Commission.

Mr. UPTON. I was asked yesterday about our Bill 3717 which you've all commented on in a very favorable light and we appreciate that. I was asked that, Mr. Upton, if your bill passes does that mean we'll have to increase the FCC's enforcement budget. My immediate response was I hope that we can decrease it because the penalties will be so severe that, in fact, you won't have anyone looking to violate the law and therefore you aren't going to have the complaints to move forward.

Now what concerns me as I read through the testimony of the thousands of cases and the hundreds of thousands of complaints that are before you and yet we see a relatively few judgments, as you weigh it against all of the complaints that are measured.

I'd like you to comment on that. As you look at all of the number of complaints, how many judgments are you able to have and in fact, do you need more staff, more time to go after these folks that clearly are in violation?

Mr. POWELL. Let me try to do that as briefly as I can and anyone else can comment. One, we could always use more staff. I'm trained to always say that. I also think that if you start talking, and I'm more than happy to be engaged in that dialog, about time limits. You want decisions, complaints processed in 90 days. You can imagine 14,000 complaints in a year period at 90 days' interval is a fairly intense task. We have 25 attorneys dedicated solely to this. I think you'd be talking about an order of magnitude need in increase in resources and penalties. I just want to make that point.

And so in terms of the number of fines. My view is we can always do better, but I think it is important to get the perspective. There can be lots of complaints, but you should focus on how many programs are being complained about. So for example, in 2002, there were 14,000 complaints for some 389 programs. In 2003, there were 250,000 complaints, but actually toward fewer programs, but not by much, 375 programs. So how many actions we bring is against the number of violating programs. So I wouldn't compare—I personally would compare 3 or 6 to the 375, and you could go through them individually and decide whether you agree with the merits of the Commission's decisions. But a lot of those complaints turn out to not meet the indecency standards. Some of them are cable where we don't even have authority, so they're gone already.

And I can only say that while I'd like to be more aggressive, the number of complaints per year is roughly similar to and actually this Commission has a higher record of prosecuting than almost every Commission in the history of the FCC.

I also would note finally and I'll leave it at that that the amount of fines per finding for us is dramatically higher than at any other time. It's something like $71,000 per finding as opposed to closer to $7,000 or $10,000 in years past. And I also would say that the

time isn't over. I think there are a very serious number of very serious cases moving toward the Commission now and I think you're going to see an order of magnitude increase in the findings.

Mr. UPTON. Mr. Markey?

Mr. MARKEY. Thank you. Mr. Chairman, there's a filing over at the Commission that would give affiliates more ability to be able to reject indecent programming. It's been sitting there for 3 years. It's been referenced by Mr. Martin and Mr. Copps in their testimony. You seem to oppose that, otherwise, apparently on its face. It doesn't appear to be a good reason why we wouldn't have some action on it.

When will you have action on this empowerment of the affiliates to be able to reject the quantity and quality of violence and sexual material that comes into people's homes?

Mr. POWELL. I think it's very important to put on the record that whatever the substance of that petition, there is no question whatsoever under the law that a local affiliate has a right as a matter of statute to reject programming and has a legal obligation to do so——

Mr. MARKEY. When will action on that petition be taken, Mr. Chairman?

Mr. POWELL. It will be taken this year.

Mr. MARKEY. This year?

Mr. POWELL. Yes.

Mr. MARKEY. Not 3 months, not 6 months, but over the next 10 months after waiting 3 years?

Mr. POWELL. The only problem I have with that, Mr. Markey, is one of the reasons it's stalled is the Commission hasn't exactly figured out the best thing to do with it.

Mr. MARKEY. I appreciate that, but I think—will you put it on the front burner? And I think right now is the time, Mr. Chairman, to put this issue on the front burner.

If you're going to be doing something, that's the issue. Empower the affiliates to say no and you'll get a marketplace reaction from the networks. Don't wait a year, Mr. Chairman. It will be a big mistake.

Mr. POWELL. I'll accept it, but I'll also emphasize again that they have absolutely——

Mr. MARKEY. I appreciate that. Second question is this, yes, there were 375 different programs and 240,000 complaints, but only three Notices of Apparent Liability, three. Why was that? Why was the number so low, Mr. Chairman?

Mr. POWELL. First of all, it's important to note that we're not finished. There are three that have been issued and there are 30 that are pending and the reason they are the remaining that are pending is because they are the most serious. And I can tell you without revealing the specifics of them, that a significant number of them are heading for apparent liability.

So we're not done with closing out that year of complaints. We have a significant number of them under investigation.

Mr. MARKEY. Well, you closed out 2002 with only seven.

Mr. POWELL. The calendar year is closed, but there are 14,000 complaints. All but 30 of them have been——

Mr. MARKEY. How long does it take to close out a year, 2002 is still open?

Mr. POWELL. There are complaints from 2002 that are still under——

Mr. MARKEY. We're in 2004.

Mr. POWELL. Yes.

Mr. MARKEY. It's critical for the FCC, Mr. Chairman, to act in a timely fashion to create the disincentive before the programs themselves get canceled. There has to be some punishment that reflects the contemporaneous commitment of this violation of the law. You can't have 2002 complaints still open in 2004 with no point at which you're sure that you've completed all of those actions.

Third, in the 1992 Cable Act, there's a provision requiring cable operators to provide by sale or lease equipment to block unwanted cable channels so if you don't want MTV, you can request equipment to block that out and the cable operator is required to block out MTV if you request it.

What can you do to mandate that all cable operators notify all subscribers in America that they have this right and if they request it as consumers that the cable companies will provide that service to that home immediately. What can you do to provide that immediate mandate to the cable operators and information to subscribers across America?

Mr. POWELL. I actually think it's a decent idea. I'd have to look at what authority we have to mandate it, but I will note two things. One, in the letter that I sent to the cable industry just yesterday urging them to take a role in indecency, there was mention of specifically improving the educational efforts——

Mr. MARKEY. I don't want improving educationals. I want the cable industry to be mandated to provide this information to consumers. When you reach a level of concern that parents have, I think the least that the FCC should be able to do is to mandate to the cable industry, inform every parent that they have a right to disconnect MTV and that the cable company will do it for them. What's wrong with that formula?

Mr. POWELL. There's nothing wrong with that if we have the legal authority and I just don't have confidence right now, without looking at it carefully whether we do. We don't have legal authority to do everything——

Mr. MARKEY. If you don't have it, do you want us to give it to you?

Mr. POWELL. Sure.

Mr. MARKEY. Okay. And Mr. Adelstein or Mr. Copps, could you tell us how you believe that media concentration is affecting indecency and affecting the marketplace of ideas?

Mr. COPPS. Well, we don't know for sure, but it's common sensical, it's intuitive almost that the more you take the design of programming, the production of programming away from the local community or the region and put it in some advertiser's headquarters whose main reason to live is to sell products to 18 to 34 year old eyeballs, that you're probably going to end up with fare that's a little bit less family friendly and child friendly. And we've seen this time and again. I was distressed to see after one of the recent mergers involving DirectTV, one of the first things we read

about was an agreement to set up a porn channel. I don't think there's any question that there's a connection, but we need to know for sure. And I pleaded before we voted on media consolidation last June 2, we owe it to our children, let's look to see if there's a connection between the rising tide of consolidation and the rising tide of media indecency. And we did not do that and I think that was a disservice to our kids and we need to be serious about this and get on with it.

Mr. MARKEY. Mr. Adelstein?

Mr. ADELSTEIN. Well, you do see the rising tide of indecency and crassness in the media, coarseness. You see the rising tide of consolidation. Is there a connection? Maybe. We don't know for sure. As Commissioner Copps indicated, we should know that before we take any steps to loosen the media ownership rules.

The question I have is a market-based question. What do these companies do as they become larger and larger, and they're accountable to Wall Street. They have a fiduciary responsibility to make as much money as they possibly can. They are doing everything they can to make as much money. It's an eat or be eaten world.

Just today, we heard about Comcast trying to swallow Disney. So it's swallow or be swallowed. How do you avoid being swallowed? You get your stock price up so that you can swallow somebody else. How do you do that? It's quarterly results. You have to make as much money as you can every quarter. How do you do that? If it takes pandering, if it takes crassness, if it takes making people eat worms on TV, if it means having people dance in lewd ways, whatever it takes, apparently these broadcasters are willing to do it. So there may well be a connection there.

Mr. MARKEY. Thank you. Thank you all for coming here today.

Mr. UPTON. Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman. Mr. Chairman, and members of the Commission, thank you for being here and I don't know whether you sat through this entire thing since 10 o'clock, 10:30 this morning, but if you did, then you did hear so much that took place.

Mr. Markey made a punch regarding the petition which was submitted some 3 years ago. The network affiliate stations alliance, I don't know, I'm sure you have a lot of complications and complexities in your job, but 3 years seems like an awfully long time.

Can I ask you if you can respond, do you believe, Mr. Chairman, that under the Communications Act and the FCC's rules, local TV stations have the right indeed, the legal duty, if you will, to reject network programs they deem to be unsuitable for their communities?

Mr. POWELL. Absolutely.

Mr. BILIRAKIS. You do. Ms. Abernathy?

Ms. ABERNATHY. Yes, absolutely, they have the legal right.

Mr. BILIRAKIS. Absolutely, you agree, go ahead.

Ms. ABERNATHY. Absolutely. They have the right and they have the obligation.

Mr. BILIRAKIS. And Mr. Martin, you certainly went into it in your written testimony. You certainly agree.

Mr. MARTIN. Yes sir.

Mr. BILIRAKIS. Mr. Adelstein, do you?

Mr. ADELSTEIN. Yes. I indicated in my testimony that I do believe they have that legal right and the right under our rules to reject programming they consider inappropriate.

Mr. BILIRAKIS. Mr. Copps?

Mr. COPPS. They do indeed. It's very difficult for them to exercise that right.

Mr. BILIRAKIS. What is taking 3 years? You all agree, apparently. I realize that terminology is important and what not, but I can't get over that. You apparently agree.

Well, we've got some votes coming up. It's important, Ms. Abernathy and gentlemen, that you realize that what we're trying to do here is to be helpful. We have constituents out there that we represent and we want to be helpful to them and responsive to them and we want to be helpful to you in terms of helping you to do your job, the job as you see it. It seemed to me in this particular area, at least, I realize the definition of indecency and what not is very difficult and no matter how much we define it here now as one of the witnesses said, shared with us at the last hearing that we had, new words and new phrases would come out of the woodwork that we can't even imagine now and it would be difficult. But it seems to me that one way, as long as this is tailored correctly so that it does exactly what we intend, would be to give the local programmers, the local broadcasters, the local affiliates the right to make those types of decisions regarding content.

We can go into the profit motive and we can go into the ads and things of that nature. I don't know that I think they should have the right regarding some of those areas, but if we all agree that they should have that right in terms of content, then by golly, we ought to do it.

I was planning, the Chairman asked me to hold off, but I was planning to offer an amendment to his bill, his and Mr. Markey's bill to that effect. We're apparently going to wait here, because as I understand it, the Commission is really addressing this now or trying to address it now and hopefully you will satisfactorily. If not, by the time we hit the full committee mark up we're going to do something in that regard.

The additional thing, just very quickly, in terms of authority, lines of authority and what not, I'm not really sure what authority you have over MTV, over the NFL, over the performers, that sort of thing. You ought to share with us areas—you've already indicated in one of your responses, Mr. Chairman, to Mr. Markey the areas that you feel you should have authority and I'm not saying we're going to give you carte blanche, the authority that you would ask for, but certainly help us to help you so to speak.

Having said all of that, I guess I won't go take any more time, Mr. Chairman, because I know we have that series of votes.

Thank you very much.

Mr. UPTON. We have 12 minutes remaining. We have two votes.

Mr. Dingell, do you want to do your 5 minutes now or do you want to come back after the two votes?

Mr. DINGELL. Mr. Chairman, it would be my preference to come back.

Mr. UPTON. Okay, we'll adjourn until the two votes are over. My guess is that we'll come back at 4:25.

[Off the record.]

Mr. UPTON. I just want to remind my colleagues and the staff that we do still intend to go with the markup tomorrow morning at 9:30. I don't intend to see it last very long. We have an agreement on both sides to offer and withdraw amendments and even though we're done with votes, recorded votes on the House floor for the week, I think this will be fairly quick and members will be able to go back to their Districts immediately following.

We will continue with the questions. I know Mr. Dingell is on his way back. I talked to him on the floor but since he's not here yet, we'll go to next on the list which is Mr. Stupak, 5 minutes.

Mr. STUPAK. Thank you, Mr. Chairman. Chairman Powell, on indecency, can you tell me how many employees does the FCC have looking at this issue? Let's say in 2000, there were 14,000 complaints to the FCC on indecency. How many employees did you have then looking at whether or not you should take action?

Mr. POWELL. We have roughly 20 to 25 that do it virtually full time. Depending on work load, sometimes we have to try to reallocate resources to zoom that up a little bit, but that's usually the dedicated amount.

Mr. STUPAK. And then in 2003, it went to 340,000 complaints?

Mr. POWELL. Yes.

Mr. STUPAK. Still same 20 to 25 people?

Mr. POWELL. Oh yes.

Mr. STUPAK. You talked about the length of time it took to get a response because I'm a little critical here of the FCC. It just seems like it takes so long to get any kind of resolution. Do we have to develop some kind of scheme where you have so many days to respond, so many days to respond back, to speed up this process? I mean it doesn't seem to me it should take this long, especially when the problems seems to be spiralling out of control.

Mr. POWELL. I won't attempt to disagree that we could be faster. I'm not satisfied with our pace of decision and we've worked very hard and by the way, I think we have dramatically increased our pace of decision.

One area you could look at, if you were interested in that is we have a very lengthy required process by statute. As I described at the very beginning of the investigation, you can't even go to liability, you have to go to apparent liability and then the parties can respond. I don't think there's any specific time limit on them, so we're pushing them to get responses back. And then we move to decision and if the Commission is going to take it, it's another level. But you know, that's a lengthy process. And it's a little difficult for me to generalize because some cases just are longer and more substantive, but we're not satisfied with that and we're looking within our own processes.

Mr. STUPAK. So if we could expedite it, you would have no objections there?

Mr. POWELL. I wouldn't, as long as we really were given the resources we would need to meet those expectations. It's only a matter of how many people we can dedicate——

Mr. STUPAK. Speaking of the resources, when a fine is paid, is it paid to the FCC or DOJ or U.S. Treasury?

Mr. POWELL. It's paid to the U.S. Treasury, sir.

Mr. STUPAK. Do you get any kind of part of that back to invest into the enforcement team?

Mr. POWELL. No sir, we don't.

Mr. STUPAK. Would that be something you'd be looking for?

Mr. POWELL. I'd love it.

Mr. STUPAK. Let me ask you this, there was some testimony earlier about a $1.4 million settlement was the word used by Viacom and the impression left me, it wasn't because of indecent programming, it was sort of a settlement of some issues. It's a heck of large settlement, $1.4 million, but Mr. Karmazin said it really wasn't for indecent programming, but for settlement of issues.

Is there ever—is that unusual to have a payment without some kind of admission of wrong doing?

Mr. POWELL. It's not unusual, but that's why he won't admit it. As far as we're concerned, it's a settlement for indecent conduct. That's what was—but this is an old, 1994, 1995.

Mr. STUPAK. That's the point I was going to drive. It's not that unusual. So how do you get broadcasters or I should say stations like this to really acknowledge, hey, maybe there really is something wrong.

It seemed like he didn't have any problem saying I paid $1.4 million. He had problems saying because we had improper programming. I mean if they don't appreciate it or understand it, how are we ever going to clear this matter up?

Mr. POWELL. Well, I would agree with that. Again, the specifics of that case pre-date me, but sometimes when a party settles, they refuse to admit liability. Sometimes they do. But the vast majority of the cases we have, when we find, when we affirmatively find liability, there's no escaping that that's the resolution and many companies do admit their culpability and pay the fines and those are more common than the kind of settlements from 1995.

Mr. STUPAK. The other concern I have is let's say like, let's take the Super Bowl, CBS aired it. In my rural District, it was probably carried on every CBS station there was. Underneath the current legislation, the Upton legislation, would CBS, the main CBS pay the fine or would each affiliate that aired the program, would they also be required to pay a fine?

Mr. POWELL. The Commission's authority runs to licensees, so the licensees are the actual station holders. Contrary to popular opinion, we actually don't regular networks directly.

Mr. STUPAK. Right.

Mr. POWELL. Except in a very limited way. The reason we can get CBS is because they own stations.

Mr. STUPAK. Sure.

Mr. POWELL. Very often, however, they have affiliate contract relationships that sometimes causes them a lot of trouble and they're willing to allow them to pay the cost of the fine on behalf of the affiliate.

Mr. STUPAK. But how do we protect the affiliates when you run a show like this, like the Super Bowl or some big show? Affiliates, from what I understand can always say no to the local program-

mers. Local affiliates can only say no three times and then CBS, NBC, whatever it is, can cut them off or break that contract with them. How do the local people, especially when we have more mergers and conglomerates can say no, this is not the type of programming we want in our neck of the woods?

Mr. POWELL. There are a couple of things I would suggest. One, they do have the right to reject programming. That is statutorily conferred on them and they have the right to exercise it and do have the duty and obligation to exercise it. Also, local stations——

Mr. STUPAK. But that's limited though.

Mr. POWELL. Well, this is the subject of some dispute. There are allegations by some that certain contracts are trying to prevent and limit them and that is what the subject of the petition is.

But the other thing is, just like the networks have announced this week, as have many stations, that you can time delay live programming, affiliates or any distribution property could time delay also. So in addition to rejecting the Super Bowl which I doubt anybody would really want to do, you could also, if it's a live event, have your own delay in addition to whatever the network does that would allow you to prevent stuff going over the air.

Mr. STUPAK. I see. One more quick one. In your definition of decency, does violence have any role in this decency definition? Not necessarily yours, but I mean the Commission?

Mr. POWELL. Putting ahead my opinion, no, it does not. Indecency has developed as a term of art. It's defined, it's first laid out in the statute, but there are 40 years of precedent as to what it means and the Supreme Court sanction as to what it means has never been read. The phrase "indecency" has never been read to include violence.

Mr. STUPAK. Should you revisit that because the 1996 Act says programming that contains sexual, violent or other indecent material.

Mr. POWELL. Certainly one could argue——

Mr. STUPAK. Not us, but you, the Commission.

Mr. POWELL. There has been an argument that we could try to be cute and suggest that indecency also means gratuitous violence. My suggestion would be even though we could consider that, that you would be on sounder ground with any attempt to prosecute violence with a statutory backdrop because the Supreme Court and the first amendment jurisdiction tends to view indecency as something of sexual and explicit nature. I think if we suddenly lumped in violence, there would be some difficult legal questions. I would hate that we would try to pursue this only to have it all thrown back at us when—I think Senator Hollings and others have recognized that in proposing specific statutes that would laid that out.

Mr. STUPAK. Thank you, and thank you, Mr. Chairman.

Mr. UPTON. Mr. Walden.

Mr. WALDEN. Thank you very much, Mr. Chairman. Is there anything that would prohibit you from doing a new rulemaking on the issue of indecency, trying to clarify these various definitions? We heard sort of a call for that from some that say that this question in different decisions, take Bono, for example. You've got staff saying no, if it's used as an adjective it's one thing, if it's used over

here it's another. You all may reverse that. I mean do you have any plans to do a rulemaking?

Mr. POWELL. Let me suggest, I think the rulemaking suggestion, not surprising from the industry, is a trap.

Mr. WALDEN. Why?

Mr. POWELL. The definition of indecency has existed for 30, 40 years. It has been approved by the Court and it's been prosecuted aggressively by the Commission. I don't think there's any question about what the indecency standard is as to the parties' right.

The second thing I would say is we can rule by adjudication, meaning when there's a complaint and there is a particular alleged indecent context, we can rule on that case right then and there. I can do that a lot faster and a lot swifter in adjudications than a lengthy rulemaking that could easily take the better part of 8 months to a year and at least in the area of indecency, I'm not sure I agree there's any compelling reason to do so.

Mr. WALDEN. Let's take Janet Jackson. Was that profane, indecent, obscene?

Mr. POWELL. Well, that's what our investigation will determine. But when we make a decision, we'll rule on that and that decision will have the effect and it will be a lot quicker and swifter and it will include forfeiture and I daresay defensible in court, a lot more than a comprehensive rulemaking on a subject that's been with us and has been approved and established over many, many decades.

Mr. WALDEN. What would the public process be to try and bring in others to comment then on defining sort of today's standard? I mean you hear the revulsion that we represent of what we're hearing and seeing on the air, cable, satellite, at all, but it focuses on broadcast because that seems to be the only place where it can go right now.

Mr. POWELL. Well——

Mr. WALDEN. You get hundreds of thousands of complaints.

Mr. POWELL. I think that's part of how we do it, meaning to a great degree, we do hear from the public about the things that they complain about. We take it in the form of formal complaints, informal complaints, e-mails, letters——

Mr. WALDEN. Investigations.

Mr. POWELL. Do the investigation.

Mr. WALDEN. How many have actually resulted in fines in the last each year, how many?

Mr. POWELL. In the last 3 years under our tenure, it's been about $1.4 million in fines.

Mr. WALDEN. Fines?

Mr. POWELL. Fines and forfeitures.

Mr. WALDEN. For indecency and obscenity?

Mr. POWELL. Yes.

Mr. WALDEN. So not three that we heard about?

Mr. POWELL. This is the dollar amount. The three that you heard about——

Mr. WALDEN. I mean numbers of fines, not dollar amounts.

Mr. POWELL. Yes, I don't have that right in front of me, but I would say somewhere in the neighborhood of six or so per year.

Mr. WALDEN. Six or so per year?

Mr. POWELL. Yes.

Mr. WALDEN. And you've got 379 separate programs you're investigating?

Mr. POWELL. That's the number for last year.

Mr. WALDEN. I realize some roll off, some roll on. Well, each year you're getting new ones and dispensing with——

Mr. POWELL. This may help you and I may not have this exactly right, but 375 for last year, 389 for the year before. Then it starts to drop off. I think there have been—let's see, I can give it to you precisely; 375, 2003; 389, 2002; 346, 2001; and in 2000, 111.

Mr. WALDEN. Okay, so 300 something a year, generally.

Mr. POWELL. Yes, close to 400.

Mr. WALDEN. Of those 300 or so, how many each year then have resulted in fines?

Mr. POWELL. Well, they vary. But if I were to give you an average, I'd say it averages 6 to 7 per year that go to fine or forfeiture.

Mr. WALDEN. And the others have been rejected or are they still in process?

Mr. POWELL. Most of the others have been rejected. For the most recent year of prosecutions where you've heard about the 14,000 complaints, all have been dealt with except for 30 that remain and those 30 are still in prosecution.

Mr. WALDEN. Do you have the authority to do apply similar standards to cable, satellite, TV and satellite radio?

Mr. POWELL. No.

Mr. WALDEN. Is that an authority you'd like to have or is that an authority we could give to you?

Mr. POWELL. It is an authority you could give to us, yes.

Mr. WALDEN. Is it an authority you'd like to have?

Mr. POWELL. I wouldn't mind having more authority at all.

Mr. WALDEN. You would have been the first one in government I've ever heard if you were to have said it differently.

Mr. POWELL. I don't think you've ever heard anything different.

Mr. WALDEN. The final question I have relates to networks and affiliates and I'm obviously sensitive to that. I've made no secret about the fact that I an a licensee. So here I am at your mercy, as it were, but do you differentiate between programming that is created and distributed sort of in-house, if you will, Clear Channel that has whatever that show was and distributed among their stations, versus somebody that's buying programming from a syndicator.

Mr. POWELL. We do not distinguish between those two.

Mr. WALDEN. You do not distinguish.

Mr. POWELL. No.

Mr. WALDEN. So if I'm the non-O & O affiliate that carried the Super Bowl in small town America out there because I'm a CBS affiliate, I'm going to hit equally as if I were Mel Karmazin's station in New York City?

Mr. POWELL. No, not necessarily. I think it's important——

Mr. WALDEN. You do distinguish between?

Mr. POWELL. Where we can distinguish is in what penalty you subscribe and to who.

Mr. WALDEN. That's what I was asking.

Mr. POWELL. Substantively, we don't distinguish in terms of whether you could be liable, but the benefit of having a penalty

phase is that the Commission enjoys discretion to assign penalties based on culpability or other factors and that's one of the reasons why I think Congress told us to first have a Notice of Apparent Liability. It allows a local broadcaster to come in and explain the circumstances that might suggest that that liability should be rescinded or not apply to them. And I think the Commission has a pretty good record of being fair about that.

Mr. WALDEN. Do you go back to the provisions in the 1934 Act that suggest you should look at market size and ability to pay and all of that? Or is that something that needs clarification?

Mr. POWELL. I'd like to look into that a little further for you, but I do think all of those things would be legitimate factors for consideration in determining penalties. That's why not to draw a parallel to something like sentencing guidelines, but the fact that the Commission has discretion when you're talking about in the television area, almost 1400 unique television stations in different markets in the country, you're talking 13,600 radio stations. I think the Commission should have some discretion to figure out whether the circumstances, in fact, but someone who had a conscious intent, for example, if CBS knew what they were doing——

Mr. WALDEN. Did it on purpose——

Mr. POWELL. It's a very different case than someone who just got caught up by it.

Mr. WALDEN. Thank you.

Mr. UPTON. Mr. Dingell. You need to hit that mic button.

Mr. DINGELL. Mr. Powell, you recognize action is appropriate. Let me mention last year there were some 240,000 complaints received by the FCC against 375 shows. However, the FCC issued only three NALs. Is that correct?

Mr. POWELL. Yes, thus far.

Mr. DINGELL. Now in 1995, FCC and CBS Radio now owned by Viacom settled at least five NALs for indecency going back to 1990 for the sum of $1.7 million. Is that correct?

Mr. POWELL. I believe so.

Mr. DINGELL. On October 23, just 1 month later, CBS broadcast additional sexual explicit programming for which it received an NAL, is that correct?

Mr. POWELL. I believe so.

Mr. DINGELL. In fact, since the $1.7 million settlement, Viacom has received NALs for at least nine broadcasts of sexually explicit programming including a song describing a father making his daughter perform oral sex on him and a show that challenged listeners to have sex in St. Patrick's Cathedral, Disney Store and FAO Schwartz. Is that correct?

Mr. POWELL. Yes.

Mr. DINGELL. In addition, isn't it true that Clear Channel Communications, the largest station owner has received over 20 NALs since 1990 for broadcasting indecent material?

Mr. POWELL. There is one case in which they had 20 NALs. I don't know about the time period.

Mr. DINGELL. Now, Mr. Chairman, I note that the answers to the following questions are critical to how the committee will consider legislation.

Since the FCC was last reauthorized in 1990—I'm going to submit to you a letter asking how many NALs the FCC has issued and to which companies.

How many of these NALs have been resolved and how long did it take to resolve each one?

Which NALs resulted in fines for less than the amount of the NAL and what was the amount in each case?

How many complaints does the Commission receive on a yearly basis and how many shows per year has it been subject to complaints?

I also am going to ask you how many times the FCC has raised questions with regard to license renewals or how many questions relative to revocation have you brought forward in matters of this kind?

Now I understand you may not have the information available to you at this particular time, so you will get the letter and I ask, Mr. Chairman, that that letter be inserted in the record at the appropriate place.

Mr. Powell, you've also said that the FCC's authority to fine stations is not adequate and in your testimony you've called for the Congress to increase it by at least tenfold. I applaud that. That is correct, is it not?

Mr. POWELL. Yes sir, it is.

Mr. DINGELL. It is my understanding that the FCC has the authority to fine violators up to $27,000 for each utterance of content that violates FCC indecency rules. Is that correct?

Mr. POWELL. Yes sir.

Mr. DINGELL. Have you ever used that authority?

Mr. POWELL. We have used the authority fine——

Mr. DINGELL. For each utterance?

Mr. POWELL. No, and let me explain.

Mr. DINGELL. All right, now it is also my understanding that the FCC has the authority to revoke a station's license for violations of FCC's indecency rules. Is that correct?

Mr. POWELL. Correct.

Mr. DINGELL. And you have the authority to take, to consider these questions if and when the question of license renewal comes before the Commission. Is that right?

Mr. POWELL. Correct.

Mr. DINGELL. Have you ever done that?

Mr. POWELL. No.

Mr. DINGELL. Now is it fair to say that the broadcasters are using public resources and that the right to use these should be in full accord with the law and in compliance with the rules and regulations?

Mr. POWELL. Absolutely.

Mr. DINGELL. That responsibility, Mr. Powell, belongs to the Commission, does it not?

Mr. POWELL. Absolutely.

Mr. DINGELL. Now, Mr. Powell, in the speech to the Media Institute in 1998 you criticized the heavy handed enforcement action and you said and I quote now "that the government"—and here's the quote—"has been engaged for too long in wilful denial in order

to subvert the Constitution so that it can impose its speech preferences on the public."

Is that correct?

Mr. POWELL. Yes, but it was not a speech about enforcement. It was a speech about the first amendment.

Mr. DINGELL. Now you went on to say in your first news conference that you "don't want the government to be my nanny." Is that correct?

Mr. POWELL. Yes, it is.

Mr. DINGELL. Does this represent the philosophy of the FCC with regard to questions related to indecency, tasteless presentations on the airwaves, license renewals and the level of penalties to be imposed upon violators of your rules with regard to indecent and tasteless programming?

Mr. POWELL. No, it doesn't and I'd like to submit to the record quotes that make that clear from my position.

Mr. DINGELL. Well, Mr. Powell, I'm not going to argue with you about that. You said these things. I did not. I'm just inquiring about what you meant when you said them and you have 13 seconds, according to the clock in which to respond.

Mr. POWELL. Those were in a general speech about the first amendment and the first amendment's limit on government intrusion on content. But I've also said that when something is well within the rights of government to regulate, and consistent with the first amendment, that we have a duty to enforce it effectively. How am I doing?

I want to be clear. I think that's right. The indecency statute has been upheld as constitutional. It's been upheld that our enforcement is consistent with the first amendment and when it is, I think we have a duty and a responsibility to enforce aggressively and effectively and we can do better; but we're working really hard to continue to do that.

Mr. DINGELL. Thank you, Mr. Powell. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman. Chairman Powell, my question is for you. The FCC has the authority to fine individuals, but as I understand, my knowledge is you have not done so. And I guess the question is why? Is it something that's just very legally, very difficult to do from a legal standpoint to fine an individual or why hasn't an individual been fined?

Mr. POWELL. Candidly, it's easier to go after a licensee or the programmer because the statute requires us to take several additional steps required to an individual that would prolong the case.

For example, in the case of Janet Jackson, if you tried to go after her, the statute requires you have to first issue a citation. You're not authorized to bring any kind of penalty or forfeiture and the citation, that is a warning. And then if that single individual does it a subsequent time, only then can you bring forfeiture. So the Commission and I'm trying to speak now for decades of Commissions, but I think they have not generally pursued that route because they tend to pursue those who are within direct jurisdictional responsibility.

Mr. STEARNS. Because then you have to monitor——

Mr. POWELL. Janet Jackson forever.

Mr. STEARNS. For the next citation. And do you think a citation and hearing is enough due process for the individual, especially when it's been flagrant?

Mr. POWELL. Well, I think within the context of the statue we have, probably. But I think it would depend on what kind of penalty we're talking about.

The other interesting thing that I think has never been adjudicated is that the statute is a criminal statute and if the Commission cites them for civil forfeiture, query what would be the criminal due process rights associated if somebody attempted to prosecute criminally, but 1464 is a criminal statute in the United States.

Mr. STEARNS. So you're telling me 1464 says if Janet Jackson went out and subsequently did the same thing on the same broadcasting network, then you could not issue a citation, but you could actually criminally prosecute her?

Mr. POWELL. We couldn't.

Mr. STEARNS. No, but someone could?

Mr. POWELL. This law is very——

Mr. STEARNS. It sounds like you've never used it, so no one knows exactly what it does because the counsel in the back——

Mr. POWELL. There's a reason though. The legal prosecution would have to be a prosecutor which we're not. I mean the Department of Justice or the local——

Mr. STEARNS. So what would you do?

Mr. POWELL. If we were doing it, we could only impose civil forfeitures and we couldn't do that unless we had first issued citations.

Mr. STEARNS. Okay, so you've issued a citation. She goes out and does another example of the same thing in flagrant disregard to you. What would you do then?

Mr. POWELL. Well, then theoretically you could bring a forfeiture against her like we do with the licensee and that's never been done, so I'm not——

Mr. STEARNS. Never been done and it would be a fine?

Mr. POWELL. It would be a fine.

Mr. STEARNS. And it would be a fine of $27,500 like it is today?

Mr. POWELL. I think so. They say yes.

Mr. STEARNS. So it's the same as we do for the broadcasters.

Mr. POWELL. Same thing.

Mr. STEARNS. Okay. What do you think of the idea of just saying, just like you post a speed limit, and everybody knows what the speed limit is, if you go beyond the speed limit, bingo, they get a fine. You tell the individual entertainers, look, this is the set up. It's prominently displayed in the broadcasters, in the affiliates. It's known by everybody and these are the rules. We're posting it just like a speed limit. You disregard it. It's no more citation. No more subsequent. We're are going to come right down and fine you $27,500. What's wrong with that?

Mr. POWELL. Nothing theoretically. You know the question is it's easier to say 65 than exactly what the conduct which would result in automatic penalty and that's always been the problem with indecency that——

Mr. STEARNS. You couldn't determine what she broke.

Mr. POWELL. Well, I'm just suggesting the definitional difficulty of how you specifically define absolutely clear conduct that automatically results in a fine.

Mr. STEARNS. But you have that same problem with the citation.

Mr. POWELL. Right, but what we do is we review these cases on their facts in context, as opposed to have some flat, if this happens you will immediately be fined, so you could say well, if you do this, then you're immediately subject to a proceeding which will determine whether you should be fined.

Mr. STEARNS. Commissioner Martin, you mentioned a Family Hour and the broadcasters' former family viewing policy as part of its code of conduct for TV broadcasts. Can NAB reinstate such a policy without running into the anti-trust arguments that have plagued that policy since 1983?

Mr. MARTIN. Congressman, when the code of conduct was struck down, it was based on anti-trust concerns in the advertising side, so they didn't actually address the issues related to the Family Hour. It was because of concerns about anti-trust and what was going on in advertising.

There's actually an opinion that was issued by the Department of Justice in the 1990's that said that they could do so on some concerns related to family viewing, but I think they could. There's also been legislation introduced on the Senate side, Senator Brownback has introduced legislation in the past to clarify that the broadcasters should be able to engage in that kind of a code of conduct without triggering those anti-trust concerns. But there's at least some people who think that they're able to today, as related to the family hour and content.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. I want to thank both the Chairman and Commissioners for spending the afternoon with us and the morning over in the Senate.

Obviously, this hit a nerve and being from Houston and being at the Super Bowl and seeing the groundswell of publicity on what happened, it took what I thought was a great football game and for the next week we didn't know anything except what happened at the halftime performance.

Let me—I have some questions because we're going to work on amendments on the bill and I want to talk a little bit about in following up on my colleague from Michigan, on local stations and their control over network programming. There's a lot of talk about who's responsible and did I hear you, Mr. Chairman, say that the FCC has the authority over the local stations, but not networks?

Mr. POWELL. What I was trying to say is we have authority over licensees and a network, if it had no stations it would be a very different entity. We tend to be able to get at them because they're license holders.

Mr. GREEN. That brings up the concern of if we have stations that are maybe not owned by the network but also members on the control on it and one of the reasons I've heard that the FCC initially was hesitant to issue Notice of Apparent Liability for fines to the NBC and affiliates because of the Golden Globe incident be-

cause of the limited ability of stations to edit the network feed. Is that correct?

Is that a correct statement that in that particular case with liability for fines with NBC with the affiliates and not with the network because they didn't have the ability to control the programming?

Mr. POWELL. The Bureau decision found no liability, so it never got to the point of who would be responsible. The Commission is currently considering possibly reversing that decision and I suppose those questions will be part of whatever it resolves. But I think that, to clarify, part of what you're asking is true which is one of the greatest things that people have complained about in the context of that performance was that the precautions of time delay and the kinds of things that a distributor can sometimes do were not in place.

Mr. GREEN. And I think the time delay on the Super Bowl issue, but I guess going to the liability again, no affiliate would not want to carry the Super Bowl.

Mr. POWELL. Right.

Mr. GREEN. But they might want to be able to have the—again, I don't know if local affiliates have the ability what like networks have to have that delay and to blank out or whatever.

Mr. POWELL. I understand that they do. The real issue, I think, for consideration is for really small broadcaster, it's a pretty significant expense.

Mr. GREEN. We know that CBS, it's possible to edit both the video and audio by networks which are responsible for producing the program in the first place.

Does it make sense for networks to be the focus of the FCC fines rather than local affiliates who most likely whether by contract or maybe by technology are unable to alter a network feed?

Mr. POWELL. I think the Commission's position and its record tends to be that it does focus most exclusively on the network and its stations. We don't want and I'm not prepared to say, we foreclose that you wouldn't also hold an affiliate responsible.

Some of our recent fines are because things were done locally by local affiliates. But you know, for example, in the case of CBS and the Super Bowl, most of our efforts to date have been focused very squarely at CBS and we'll see how the ultimate resolution of that is.

But we like to maintain the view as an enforcer that no one necessarily is beyond our reach because we think everyone has a role in helping push back when this stuff happens, including the local affiliate.

Mr. GREEN. And I agree. But again, you're looking for the culpability and who has the ability to deal with it and oftentimes an affiliate doesn't.

Commissioner Copps, have you noticed a change at the Commission on this issue in the recent weeks? It just seems like after starting on this legislation with the Chairman, there's been so much on the indecency issue and it seems like the FCC is recognizing there's a concern. I know you've been concerned about it for a good period of time.

Mr. COPPS. I really hope so. I think the initial statements we heard today are positive, but I still have some concern. I think the message that needs to go forth from this time and place and that needs to go forth from the Commission is that we are aggressively pursuing all of these other avenues and trying to instill a little bit of respect in those who are purveying this stuff on the airwaves.

I think we need to be looking aggressively and saying so and have an item on profanity, looking at ads, looking at making the consumer complaint process more user friendly, T-up something on violence. Certainly, it's difficult, but I think credible cases have been made that violence is every bit as indecent as some of this salaciousness of sex that we see.

Sure license revocation hearings may be time consuming, but let's accent the positive and let's do it and let's get on with it.

I'm not even convinced and I say this only in a tentative way, but I don't know that the networks are so far beyond our reach as some would have us say. If you look at 503(b)(5) and we're talking about you can find anyone if you have a citation to go through that process, but it says if they own a license, then you can go right after them. Well, can you make the case that CBS owns a license so you can go directly after them? That may be tentative, but it doesn't mean we can't consider it and look at it and try to figure out what the law empowers us to do. And that's the message that's got to go out. We have helped create this culture in the media of no fear, no respect for the authority of the FCC. So now we're trying to change that. The only way we're going to change that is to really be aggressive in all of this.

I think that's the message that I would want to convey.

Mr. GREEN. Thank you, Mr. Chairman. Thank you, panel.

Mr. UPTON. Mr. Terry.

Mr. TERRY. Thank you, Mr. Chairman. Chairman Powell, along some of that same vein, it seems like common sense that if we had more enforcement, more frequent enforcement instead of only a few examples of fines, that we had a hundred, that would be a deterrent in itself. Would you agree?

Mr. POWELL. Sure, but it's a little too easy from my perspective to simply count numbers without looking at specific cases and say that if you have this many numbers you must not be enforcing.

These are judgments made about specific programs and specific fact patterns and we certainly could put them on the table and debate whether when we dismissed one, one would have agreed, but I think we've been clear that the Commission has for the last several years, frankly, been increasing its aggressiveness in enforcement and been increasing the fines, increasing the way it counts them, raising its aggressiveness in this. And I think we're not there yet, but I think we definitely, this group is working very hard to be there.

Mr. TERRY. Well, from what I heard today I think the entire group is working toward that goal and I just think it's intuitive that if you've only got a few examples of fines, no matter what the specific nuances of each case, you know if there's a lot of examples out there, I think they'd start thinking well, geez, I need to be a little bit more careful in what we do here.

But with that, let me ask, you've all endorsed the Upton-Markey et al. bill, multiplying the current by a multiplier of ten. Well, when we look at, talk about Comcast taking Disney, Viacom, billion dollar companies, I mean $275,000 falls out of their pocket walking to the elevator. Are we still talking about something that's so de minimis that it wouldn't be a deterrent even at ten times the current?

Mr. POWELL. To be clear, my position has been at least ten times, at least. I would leave to your judgment to take it as high as you would feel comfortable with, we would use it, if you do it. I think that particularly when you start to do things like count utterances, $275,000 may be peanuts if that's all it is to maybe a billion dollar company, but if something were repetitive and there were multiple utterances that can become serious money.

Mr. TERRY. And there's no cap on those? I mean if you have a 3-hour radio show——

Mr. POWELL. You could rack up a lot of dollars.

Mr. TERRY. A lot of utterances that could add up in some of these 3-hour morning shows.

Mr. POWELL. Particularly radio shows. You could be in——

Mr. TERRY. If we're talking about some of the specific utterances are the radio shows. Those just are way out——

Mr. POWELL. It's interesting, until just I think last year, the vast majority of our complaints for very, very long time has been principally focused on radio. But I also think it's important to remember we're trying through strong enforcement and high finance, create a deterrent.

Mr. TERRY. Yes. All of these things add into the totality.

I'm going to leave you alone and I want to talk to Mr. Martin for a second.

You brought up something that I've been struggling with and you mentioned with broadcast kind of in a race to the bottom with cable and the competition with cable that cable television is a little seedier, a little—maybe let's call it edgier and that network tries to compete with that.

And I think that's true. I think they do try and compete with that edginess. But frankly, I'm confused why. For example, I just went to Nielsen ratings before the hearing today and pulled off the top 10 shows for networks. CSI had 30 million viewers. The top rated cable show that wasn't ESPN-related is number 3 at Monk with 5,000, I'm sorry 5,500,000 viewers and then tied at number 4, Sex and the City at 4.8. I don't understand the philosophy in the networks that a program that's going to get 30 million viewers has to try and compete and outbeat a program that's going to get 4 million viewers.

Can you help me understand that?

Mr. MARTIN. Not completely and obviously I think it would be better if the broadcasters were still focusing on those viewers that they had, but I think that they have seen a migration away from broadcast television. So while they have a significant audience share, that audience share has been diminishing each year. And this was recently, it was the first time that all of the cable programming combined actually achieved a greater audience share than the broadcast programming combined.

And so it's that dynamic that they're seeing their audience base slowly erode that is trying to—that they are trying to recapture and that's why I think it's some of the race to the—in that sense the race to the bottom, as you were describing.

Mr. TERRY. Thank you.

Mr. UPTON. Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman. I'd like to ask whether any of the Commissioners have a concern that the $3 million maximum penalty under the proposed bill provides to you sufficient authority to act as a deterrent.

Mr. POWELL. I have to be candid and say that I wasn't, until you just mentioned it, aware of the cap. It would be something I would rather give more consideration.

Mr. DAVIS. Mr. Chairman, I stand corrected. There is no maximum amount. So it's unlimited. It's just based on the monetary amount per incident or utterance.

Are any of the Commissioners asking for additional authority beyond what's proposed in the Upton-Markey Bill to provide you sufficient authority to act as a deterrent?

Mr. COPPS. I think we could be looking at some other options as we go down the road. I'm very interested right now, we're getting into the world of multicast and digital television and the ability to multicast on many channels and how those are going to be used in the public interest. That goes to indecency, both to the bad programs but more than that to the positive commitments that stations should make to carry family oriented programming or children's oriented programming, and how it's going to be done. We've got 217 stations in the United States already multicasting which is unbelievable to me. The whole area of what are the public interest obligations of those broadcasters has gone unaddressed and I think we need to address it now. It may not be in this particular bill we're talking about here and this may be only tangentially related to that, but I don't think it's entirely unrelated.

Mr. DAVIS. With respect to the issue of penalties, Commissioner Copps, and again to any of the Commissioners, is there anything specific, specific legislative authority you'd like to ask us to at least consider providing to you?

Mr. COPPS. Other than to say the more authority you can give us, that's fine. I'd be happy to try to think about additional ways we can do it, but if we're going to really use this as a deterrent, and it's going to be effective, I think we should include everything we possibly can.

Mr. POWELL. I would like to consider it more, but I've heard mention a number of times the concept that if you are a repeat violator at some level that you would either get a multiple of penalties or potentially revocation. I'm a little unprepared to say I'm totally convinced of the necessity, but I think that would be another thing worthy of some additional consideration.

Mr. COPPS. How about this one, some particular cases would go in the first instance to a license revocation hearing?

Mr. DAVIS. So the Commission doesn't have the authority to go to license revocation upon a first instance?

Mr. COPPS. I think we have that authority, but I think it also helps to motivate the Commission when Congress comes behind it

and encourages it to do what it may should be doing in the first place.

Mr. DAVIS. So you'd like a nudge.

Mr. COPPS. You bet, push us as hard as you can.

Mr. ADELSTEIN. You might consider fine authority even greater than ten times. I note that Janet Jackson's album, for example, is at the very top of the charts and the profits are enormous. I'm not saying that is or isn't why she did it, but there can be enormous profits to be had and in order to have deterrence, I don't think necessarily $275,000 is a sufficient deterrent. It could be that the higher amount would be more effective because these are multi-billion dollar companies and the benefits could outweigh the costs and we have our authority to lessen it in cases where we feel that it would be excessive. Let's have a higher top amount and trust our discretion to try to limit it in cases that are less egregious, but that would be preferable to topping out in ways that aren't a sufficient deterrent.

Ms. ABERNATHY. To the extent that we're just talking about fines against broadcasters, I think what you're doing is headed in the right direction. To the extent that we're discussing our ability to go after violent programming or our ability to regulate indecency or other kinds of programming for cable, again, both those instances, there are significant legal issues associated with them that would require some legislative guidance from you first.

Mr. DAVIS. Would all of you like for the Commission to have the authority to reach cable in terms of regulation of indecent content?

Mr. COPPS. Absolutely for me.

Mr. DAVIS. I think what we've heard today is a clear consensus on the part of each of you to act more firmly and aggressively with respect to repeat offenders. Would all of you agree with that?

Mr. POWELL. Yes.

Mr. COPPS. Yes.

Mr. DAVIS. Mr. Chairman, there also seems to be consensus about the need for the Commission to proceed in a more timely fashion. I'd like to ask you today or supplement the record with exactly what the Congress' responsibility is to enable you to proceed in a more timely fashion with respect to these enforcement proceedings.

Mr. POWELL. Well, candidly, I think this is first and foremost our responsibility in the management of the agency and the management of its workload.

I think if we wanted to see a real order of magnitude increase in speed of decision, there would be some congressional issues that I think would be presented. No. 1, it's just simply resources. I know chairmen complain about their money all the time——

Mr. DAVIS. Mr. Chairman, let me interrupt you because I don't know how generous the Chairman is going to be. If you could provide us some particulars in writing, I think there would be a lot of support for that.

Let me say as a Floridian, I think this isn't just true for Florida, there's a growing amount of Spanish speaking and listening radio and television. I understand the Commission only has one attorney or personnel in the Enforcement Division who is fluent in Spanish and while your Enforcement Division thinks you could adequately

handle right now, as you plan for the future, Mr. Chairman, and see the growing amount of content in this area, I'd like to ask you to advise at least me and perhaps other members what resources you will need or will need to start planning for so that you don't get behind the curve in that as well.

Mr. POWELL. Good point, yes.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Pickering.

Mr. PICKERING. Mr. Chairman, again, thank you for this hearing and let me just follow up from the gentleman from Florida's conversation because I really do want, as we go to the subcommittee mark and as we go to the Full committee, to get the legislation and the tools that you need in a way that we can make this an effective enforcement piece of legislation and it's something that we can bring consensus to.

Some of the concepts that have been discussed, three strikes and you're off, as a way of giving the incentives. You can debate whether financial deterrents actually work or are actually significant. How do you fine smaller versus larger and you get into problems with financial deterrents. But it seems to me as a condition of renewing licenses if they know that they're multiple offenders, repeat offenders, that they are jeopardizing their very company asset, their economic worth completely, that that would be the best deterrent that we could ever have.

Is that something, three strikes and you're off, is that something that the majority of the Commission would support and let me just ask starting on one end going to the other?

Mr. COPPS. I like three strikes you're out as long as it doesn't get in the way of the Commission acting if there is a particularly outrageous case. We should not create the expectation that a station has three shots at this.

Mr. ADELSTEIN. I would agree, Congressman, that revocation is the ultimate sanction in that it would have an incredible deterrent effect. I would note that we do have authority under our current rules to take steps to do such a thing. We can do that under our own authority, but we would welcome congressional guidance on that matter.

Mr. POWELL. I think I would agree. Although I'm always hesitant without thinking through all of the implications. I agree with Commissioner Adelstein that maybe this is something that's possible, but that the Commission should consider with the benefit of its tools to look at what would really be at issue there.

The conception in and of itself is not bothersome, so is it three in a year, five in a year, three over a period of what and what kind of mitigating factors would be permissible because I think once you set it in statutory law——

Mr. PICKERING. I appreciate the need to be thoughtful and flexible, but also to create a framework where I think that we will—sometimes it's difficult to get corporate leaders' attention. Sometimes it's difficult to get political leaders' attention, but I think we've reached that critical, probably what Secretary of State Powell would say, it's that tipping point and a cultural——

Mr. POWELL. He stole that from me.

Mr. PICKERING. Yes. And I do think that we need both the financial deterrents and through a condition of renewal, a framework that we can have true teeth in enforcement and I just want to go all the way down and get your all's input as well on the same concept.

Ms. ABERNATHY. Absolutely. I support the ability to revoke a license. I think it's the ultimate sanction and there has to be a little bit of fear out there. The exact process, I'd want to get more into the details, but we can do that today, certainly it never hurts to have legislative imprimatur on it also.

Mr. MARTIN. I would think the best way to approach it would be staying with some number of multiple offenses and we'd have to set it for a revocation hearing, but then the Commission would still have some discretion, depending upon the facts of the hearing that actually arose. And that actually might mean, even if you had two, if there were even two instances of a violation, you'd have to set it for hearing, that might be a little more flexible than saying you have to take away the license after three violations.

That might not take into account the third violation was unintentional if it was a performer you had warned and had gotten a promise, a contractual obligation that they wouldn't do it and they did it anyway. That doesn't mean, I don't think that ultimately we have to take some steps, but I think that kind of flexibility might be what I might recommend.

Mr. PICKERING. I understand that judges sometimes chaff at mandatory sentencing and they want to have the flexibility of good judgment. And so we want to give you that flexibility but at the same time we want to have a very clear signal of certainty that what we have allowed to evolve into what is acceptable which is truly for the great vast majority of Americans and American families unacceptable and crass and crude and indecent and profane and violent and all of that, that we do need to send a clear signal and set a clear certain standard and make that part of their conditions for renewal.

So I look forward to working with the Commission on that concept and creating a framework that gives you the flexibility that you need, but also at the same time sets a very clear standard.

The shot clock is another concept that's been discussed, to resolve a complaint that's been filed within a time certain, whether that is 6 months, a year or whatever that is, I would like to have your all's input on what is a reasonable period of time by which complaints should be addressed. I realize there is a resource issue, possibly involved in this, and we need to get your input on this.

The third thing and I know my time is running close, but I'd like to get your input as you look at cable issues and whether you need greater regulatory authority, I know that there are constitutional and other issues that could make that more problematic and difficult, but to what degree and I'd like you all to comment, could we or should we require cable companies to provide family tier programming or a la carte programming or some type of package of programming that families across this country would truly appreciate, demand and want. I'd like to get your input on that.

Mr. MARTIN. On the first issue of a timeframe, I think that that actually may be as critical as the authority to have three strikes

and you're out to make sure that we're dealing with the many complaints that are pending.

I've in the past said that we should have an 8-month timeframe, time deadline that we should go and set ourselves and so I think that's the kind of timeframe that I think we should be saying we should act on all complaints within.

And I think it's critical and maybe the most critical aspect of this is to address cable in some way. I've put forth several different options, whether it's family friendly tiers, some kind of more of a choice for consumers to be able to say they don't want to receive certain programming and have programming not included in the package or applying some kind of indecency restrictions with the same kind of standard to cable, I think is critical.

And one of the things that is actually unexplored today is that actually I think many of our indecency obligations already apply to DBS. DBS is technically a radio, is already a radio licensee and we are just not acting, we don't enforce them in that manner and I think it would be somewhat more incongruous if we applied them to DBS and not to cable, but I think probably ultimately addressing cable may be one of the most important things for us to do.

Ms. ABERNATHY. I guess my concern is I think we need legislative help if we want to go after cable. I think it absolutely makes sense. I was discussing with someone the fact that there are many apartment buildings where that's all you can get, so you don't even have the option of free over-the-air, so it seems to me that given that most consumers don't even know whether it's a free over-the-air or a cable channel that they're watching, we should be trying to apply the same rules and regulations, but we can't today without legislative assistance.

As far as the shot clock in order to make sure that we resolve these complaints expeditiously, you know, it all goes to resources, as you said, but I do believe we have to do a better job and I think all of us recognize that.

Mr. POWELL. Yes sir, I'm not adverse to looking at ways to provide affirmatively better packaging programs to people on cable, but I also think it's really worthwhile and maybe constitutionally compelled that you look at the possibilities of rather than saying what you get, how do you empower somebody to make sure what you don't get, that is, Commissioner Adelstein has talked about it today. There are statutes, but there could be better ways to make sure that you could block programming on your cable channel that you didn't want to receive, even though it was available.

Right now, technically that's supposed to be possible. Cable, in contrast to broadcast, has a lot of technical possibilities you could explore for empowering individuals and parents that don't exist in broadcasting and certainly worth exploring.

I say constitutional because it's important to remember all of this gets ultimately measured, even your acts are going to ultimately get measured by the first amendment standard and one of the parts of that is that it has to be the least restrictive means possible. So we've run into that before and I'd hate to see us spend three or 4 years going down the wrong road to only have it flap back in our lap because in the Playboy case the Court said, "Yes,

the government has an interest in restricting Playboy but there are less restrictive ways in the ways they were employing."

There are going to be a lot less restrictive possibilities in cable than there are in broadcasting. Something worth thinking about.

I definitely believe that the Commission ought to hold itself to a high standard on shot clocks, but I would just introduce for your consideration things, problems I have with shot clocks. I've seen them before at the Commission, 90 days for 271 approvals, other things. Sometimes I'm worried what you do is if you really don't make sure the resources are there, you put more pressure to get rid of complaints. I'm almost worried that you can actually, that the perverse result is less gets brought because you're still going to have to follow certain basic investigatory and due process obligations in order to prosecute somebody. And if it's Day 89 and you just haven't gotten what you need, then I'm just worried it's going to be this sort of classic bureaucratic pressure to dismiss it or to punt it.

So if there were a clock, I do think you're talking orders similar to what Commissioner Martin just said as opposed to things like 90 days because I think with all candor it will be another committee that decides whether we actually get the money to do it and I can tell you with all certainty that if you wanted 249,000 in a year done in 90 days it's not physically possible without an equally committed order of increase in resources.

Mr. ADELSTEIN. I think we do need to explore all of these options to determine how to help parents get control over what happens on cable. I think that they feel that it's a little out of control and their kids don't distinguish between channel 4 and channel 30. They don't know whether it's cable or otherwise and we have very little control over what goes out over cable currently. So we need to empower parents to help them.

I think one of the most frustrating things I have with cable is that the current rules do provide that parents are able to block a channel if they want to. As a matter of fact, the Playboy decision that's been referred to limited the ability of us, of Congress, as a matter of fact, or the FCC to control cable precisely because cable allows its customer to block a channel. And yet, I don't think most parents are aware they can do that.

In the case of MTV, for example, a lot of people were alarmed when that sort of MTV culture intruded into their living rooms during the Super Bowl and they were alarmed by what they saw. And they might think geez, I never thought about it, but I don't want my kids watching that channel. They don't realize that they have a right under the law and under our rules to block that. And the cable industry needs to do more to ensure that parents have ability to do that, that it's easier for them, that it's transparent for them, that they know what their rights are and that they can take advantage of them easily.

Mr. COPPS. Cable absolutely needs to be a part of any long-term solution to this. It's become so pervasive in our homes and so intertwined with broadcast. Most people get their broadcast from cable television, so it needs to be included.

Now we may need some legislative help in that, but that doesn't mean, I think, that there's nothing that we can be doing right now

or that cable should be flying blithely up there saying oh, the Commission can't touch us, the Commission can't touch us. They do use the airwaves. We do have a Supreme Court decision that says there's a compelling government interest to protect children against indecency on cable. Have we found the least restrictive means to get there? No. Does that mean we can't be looking for something? No. I don't think it does. I think we need to be going down that road. I think there are compelling government interests that would make that desirable to do.

On the blocking of programs, that's fine, but you're still making families pay, I think, for channels that they don't want and that's why I'm more attracted to the idea of a family tier type of system like Commissioner Martin has mentioned.

On the shot clock, I understand the difficulties with that, but I think we ought to set ourselves a target of 90 days for a first initial decision. I don't think that denies due process. There may be times when we're utterly overwhelmed when that doesn't work, but I think the world ought to be on notice and the industry ought to be on notice that we have a time certain in which we are attempting to wind these things up.

Mr. UPTON. Mr. Rush.

Mr. RUSH. Thank you, Mr. Chairman. Mr. Copps, in your statement you correctly stated that excessive violence is ever bit as indecent as anything else that is broadcast. In addition, you stated that wanton violence, on the people's airwaves have gone unaddressed too long in a quote. That said, what can we do in the Congress, how can we help you to enforce nonviolent programming.

Mr. COPPS. I think there are a couple of options. No. 1, you can bring statutory clarity to it by putting it into law and making our attention to that mandatory. Short of that, I think you could be encouraging us or instructing us to tee up an item on this. We don't need a lot more studies. We've had 50 years of studies on this, Congress has been looking at this for nearly half a century. We have two U.S. Surgeons General who have reported on the link between violence on the media and aggressive behavior in our kids, it's like 300 studies out there. So we need to get on with it and tee up an item and get a public record built so that we can proceed on this.

I know it's delicate. I know it's sensitive, but there is violence on television that a kid should not be expected to see and should not be available to them.

Mr. RUSH. Also in your testimony you state that cable and satellite should explore options such as offering family tier channels and I think Mr. Martin also addressed that issue. Do you believe that the route of legislation and regulation is too long and it would be contested by the cable and satellite industry and how can we compel the industries to do the right thing absent legislation and regulation?

Mr. COPPS. I don't know that absent strong direction you can compel. We can certainly try to persuade. I talked in my statement about trying to convene some kind of a broadcaster, cable, satellite summit and I think there may be enough grass roots sentiment in the United States right now and enough concern about this where if such a summit gathered, that it would propel it in the direction

of doing something substantive or moving in that direction, of doing something substantive.

Again, you can't use a summit like that for purposes of letting people off the hook or coming up with some kind of a pablum that doesn't really address the problem, but it seems to me that that's the least that the industry could be doing and if I was Eddie Fritts at the National Association of Broadcasters or Robert Sachs at the National Cabel and Telecommunications Association, I would be urging my guys to get out and live up to their responsibilities. They used to have, for broadcasters, a voluntary code of conduct. It was not perfect. It was not a golden age of broadcasting, but at least it was a credible effort to put some limitations on the depiction of graphic sex, drug addiction, violence and it made some positive contributions on children's programming and things like that. That can help us get there. It doesn't substitute for us doing our job. It doesn't substitute for enforcing the law, but in some way, that the industry can step up to the plate after hearing your concern today and hearing your concern and say okay, we've heard it, we can help, we can take some steps, let's get together and figure out what we can do. Absent that, you really wonder if they've heard a thing.

Mr. RUSH. Can you offer some suggestions then? We've talked about the FCC. We've talked about the Congress and the industry, what can the average citizen do? What can they do in terms of helping to put pressure?

Mr. COPPS. I think the average citizen has helped bring us to where we are today. I think the average citizen has kind of compelled the attention of the Federal Communications Commission for the first time in many, many, many, many years or even going farther back. I have a great trust in the average citizen when he or she speaks out, and if given the facts I hold to that quaint notion that the American people will probably arrive at the conclusion of what is the right thing to do for the country. I think millions of Americans have arrived at the conclusion that the time is now to do something on indecency and I'm looking to you and I'm looking even more at us to do something about it.

So I think they've already done a lot. I think our leaders also, like Brent Bozell and the Parents Television Council, Jim Steyer, Common Sense Media, the list goes on and churches and others who have been instrumental in this, not because they're directing an orchestra, but because they're responsive to the grass roots and they appreciate the sentiment that's out there and how widespread it is in every nook and corner of this land.

Mr. RUSH. I'm just a little concerned. I just think that we're here primarily because of the sexual indecencies that have occurred both at the Super Bowl and around other events also and I'm afraid that we've missed or we're going to miss the target in terms of violence which is to me just as obscene as some of the provocative sexual matters that we've been subjected to. So can you—do you have the same kind of apprehensions about which way we're going and the focus on the sexual indecencies that are occurring? Do you have the same concern as it relates to violence?

Mr. COPPS. Yes, I absolutely do and I think the American people do too and I think, as I said earlier, I think the excessive violence

we see in the media is every bit as indecent as the graphic sex that we've seen and that needs to be tackled.

But to your other point, the future is now. If we're really going to do this, this is the time. If we're really serious, this is really the time to bring it home both legislatively and in a regulatory fashion. We've got everybody's attention and we've got support around the country and if we miss this opportunity, I would be apprehensive. I don't think we will. I'm optimistic. I think we have turned the corner in this, but we've got to bring it home now.

Mr. RUSH. Thank you.

Mr. UPTON. Mr. Engel.

Mr. ENGEL. Thank you, Mr. Chairman and thank you to all the Commissioners for testifying. I think if nothing else, you've learned one thing today that the bad thing about being on the first panel is you have to sit through everybody's opening statements, but the bad thing about being on the second panel is you have to sit here until 5:45 and miss your dinner.

So I'm going to try to be——

Mr. UPTON. How about lunch?

Mr. ENGEL. What's that, Mr. Chairman?

A lot of the questions that I have have been touched on but let me try just a couple. Several hours ago I asked Mr. Karmazin what he thought we should all be doing. And he said and I wrote it down that we in the Congress ought to urge the FCC to have rulemaking on indecency. And I just wonder if any of you would care to comment on his—I'm assuming you were here when he said that. If not, I'm wondering if anyone would care to comment on that.

Mr. POWELL. I commented on that earlier. I'll be happy to do so again. I would be very cautious about accepting that invitation because it presumes that our indecency rules are not clear and enforceable. The indecency definition that we employ has been with us for virtually 30 or so years. It has been specifically approved by the Supreme Court. It is a definition that has passed constitutional muster. I think we believe that we can forcefully prosecute against it. This Commission can also make decisions on a case specific basis in rulemakings without all of the extensive process associated with rulemaking. If I did a rulemaking on indecency tomorrow it would be a year in the making. I can rule on an indecency case tomorrow and it will be just as effective as law as any rule.

The delicacy, and I think we all are honest and faithful enough to understanding the parameters of the first amendment, is that context can matter, specific facts can matter. Words that we find offensive can be protected or if in the right context acceptable. I think we can all agree violence in Schindler's List can't be removed and it shouldn't somehow be expunged from our society. So the idea that there's a one rule, a rulemaking that will somehow pronounce for the country clearer parameters than the ones we're using, I'm just quite a bit suspect about. I think that that actually detracts us from enforcement and adjudication which I think we're talking about increasing aggressively. I think we'll make more progress that way in the next couple of months rather than next year in a rulemaking.

Mr. COPPS. Can I add to that?

Mr. ENGEL. Yes, please.

Mr. COPPS. I was really distressed by a little bit of the presentation I heard earlier today about woe is me, if only we knew what the standards of indecency were we could maybe do a better job of cleaning up our act. If you look at some of these transcripts and look at the WKRK-FM case in Detroit or the Opie and Anthony or the list goes on, I don't think there's any ambiguity or confusion or lack of understanding that these things are contrary to the standards of the statute, so I think the definition we have is workable, if we're resolute in trying to see it through. If you want to conclude that three citations out of 240,000 isn't very much and we need a new definition of indecency, fine, but in the meantime I hope we wouldn't stop enforcing the one that we have.

Mr. ADELSTEIN. I would agree with my colleagues. I think that this is not really a valid request. He says he wants clarity on our rules. We say right in our regulations that indecency is material that offends community standards for the broadcast medium involving sexual and excretory activities and organs. Now in the Detroit case, Infinity owns that station, the transcript is one of the most disgusting things I've ever seen. It combines sexual and excretory activities and why hasn't CBS owned up to that? Why are they fighting that? Why are they not saying we're wrong? Why do they say they don't have any guidance? If that is the most extreme case and they say we don't know what it means. I think they know what it means. I think we know it when we see it and we saw it in that case and if he doesn't know it in that case, then there's no definition of indecency that he could possibly find acceptable.

Mr. ENGEL. Anybody else?

Ms. ABERNATHY. I think the only thing I'd add is if you look at what this Commission has done to sort of rethink prior precedent, we didn't need a rulemaking for that. So for example, when Commissioner Martin and others discuss the per utterance violation, we put that into an order. When Commissioner Copps talked about license revocation and the need to put them on notice, we did that in response to a complaint and when we're talking about what specific words may or may not be indecent, we're going to be dealing with that recently too.

So the beauty of the Notice of Apparent Liability procedure is that we can immediately, as a Commission, reinterpret, reapply our rules and put all the parties on notice immediately that this is what we expect.

Mr. ENGEL. Thank you. Commissioner Martin?

Mr. MARTIN. I agree with my colleagues that I think that's the—we can continue to proceed through the enforcement actions that we have.

Mr. ENGEL. Chairman Powell, I'm told that when I left to go to my other committee, by the way, to listen to the testimony of Secretary Powell that you had said when Mr. Stupak asked the question that you didn't believe that the FCC could on its own add violence to the indecency standard. A lot of my colleagues have talked about violence and obviously that's a major concern.

I just want to make sure that I was told that that's what you had said and I wanted just to make sure that that was what you had said and I wanted to also ask your colleagues if they would agree with what you purportedly said.

Mr. POWELL. I would say this, I think it can be a matter of debate. But first of all, I would absolutely associate myself with the comments of Congressman Rush and others. I think violence is a very significant problem. For example, today in the Senate we were talking about little boys don't watch TV any more. They play X-Box. You'll see it in Nielsen ratings. You have a whole generation of young men who really have moved to video games which I don't know if it's bad in and of itself, but have you seen one of—Grand Theft Auto will put to shame anything we're talking about on television.

So if we're serious about this, we can talk about broadcast TV which certainly has a lot to do to improve itself, but it's by no means the most serious in these things. And what I said about violence is that it's unchartered territory. I've looked at this very hard as a legal matter. I think we would be taking a big risk if we thought the Commission will just suddenly after 40 years of defining indecency say it also means excessive violence which the Supreme Court has never said.

Indecency is a bit of a legal term of art. And I think that if we were serious about it, we should go right to what we think we need which is a legislative backdrop for that right from the beginning as opposed to spending several years, I think, probably putzing around with it, probably lose in court and then it would be back to Congress anyway.

So my view is yes, the best course, if I were to recommend one is that there would need to be a legislative statute to give the Commission clear jurisdiction there.

Mr. ENGEL. Is there anyone who would disagree with that?

Mr. COPPS. I would like to see us tee up an item on that and develop a public record and see what the reaction is. We know this is a huge issue. We know the American people are concerned, same airwaves we're talking about. Credible arguments have been made that you can include violence under the indecency—let's have a record and look at it and if we think we can do it then, fine, proceed. If the record says you folks need legislative endorsement to do this, then come up and tell you and we already have a record and I think we can probably expedite a little bit.

Mr. ENGEL. Thank you. Thank you, Mr. Chairman.

Mr. UPTON. I'm told Mr. Davis has one more question.

Mr. DAVIS. Thank you, Mr. Chairman, you are generous. Chairman Powell, I thought I heard you say earlier that you found little or any merit in the concept of the proposal from Clear Channel and perhaps others to engage in some sort of rulemaking or national rule on indecency or obscenity. Do I understand that correct?

Mr. POWELL. I was referring to the same thing I think we just spoke with Mr. Engel about the idea of whether Mr. Karmazin's suggestion that you need a rulemaking to clarify indecency and my comments about I think that's a bit of a red herring went to that, yes sir.

Mr. DAVIS. Thank you. And so my question was do any of the other Commissioners have a different view as to whether that idea or concept would have any merit as we try to meaningfully tackle the issue here?

Mr. ADELSTEIN. I would agree with the Chairman that it has no merit. I think we have authority. We have clear authority. We have a clear standard that's been developed over the years. We have clear guidance. I believe and I voted that Viacom has violated that. Thus far, they haven't agreed. But we tend to address these on a case by case basis.

We have a standard, we're enforcing it now. We can send strong signals that way. We can send a signal about the "F-word," for example, in the case on the Golden Globes and that is the rule. There is the standard. Do you want to know what the standard is? Look at what you did in Detroit. That's unacceptable. Do you want to know what the standard is? Look at what you did with Opie and Anthony. That is unacceptable. That's the definition right there.

Mr. POWELL. Could I add something, Congressman?

Mr. DAVIS. Yes sir.

Mr. POWELL. It might be useful to you. The Commission in the settlement that you've heard about in 1995, part of that settlement including the Commission developing in 2001, it issued indecency guidelines to broadcasters. While it's not a rule per se, it's an effort to try to find examples of things that the Commission has done in the past to help put you on notice about what's reliable.

So I think the Commission has attempted to be responsive, that broadcasters do have a right to have some understanding of what's in the parameter, but we have consistently tried to do that and I would agree with Commissioner Adelstein.

I think if you took us down the rat hole of go off for a year and do rulemaking, we'd come back to the same place we are right now, probably with the same definition and maybe be accused in court that we can't enforce our current definition because we've raised questions about its continuing vitality and I just—I really recommend against it.

Mr. MARTIN. Mr. Congressman, I agree with my colleagues that I don't think we need to have a proceeding at this time. I think some of the comments that Clear Channel may have made in the past about having a national, some kind of national proceeding, they were also talking about having something that said that everyone had to play by the same rules.

And I think that gets to some of the other discussion that we've had today about making sure that the same kind of rules apply to everybody. I think that may have been some of their comments that I've seen publicly recently in response.

Mr. DAVIS. Same kind of rules in terms of all the providers being——

Mr. MARTIN. Exactly, exactly. For example, some of the very radio personalities that we find in the past in the radio context have now moved to satellite radio, for example, and I think that's raising some of the same kind of concerns about making sure that everybody is playing by the same rules.

Mr. DAVIS. Thank you. Thank you, Mr. Chairman.

Mr. UPTON. Well, thank you all. Chairman Powell, your dad said if we finish by six he'd give you a ride home.

I don't know. I want to compliment all of you and my colleagues as well on both sides of the aisle. I just would like to say a couple of things in closing.

Commissioner Adelstein, I want to particularly commend you for your statement with regard to the case with Infinity. If we don't know that that's gross and indecent, where is the standard? I think every one of you share that thought as well as the members of this subcommittee.

I would just note that in, as I prepared a letter to one of America's largest newspapers on this very issue, I couldn't even reference some of the descriptions of the case because they're so gross and indecent that I just struck it. I just couldn't go that far. And I would hope that we would see some movement in that case or very soon, particularly with regard to getting to the final conclusion in terms of the fine.

I want to say from start to finish, the last 8 hours we have had a very good hearing. I'm going to ask that the record stay open for members' questions that they may not have been able to ask this morning and this afternoon and this evening and for those members that were not able to be here because of other events and I would appreciate the answers of all of you, as well as the earlier panel.

I also want to thank you for your positive words and your statements and your remarks today with regard to H.R. 3717, a bill that I would note that on the last series of votes, a number of members came to me on the floor and asked that I put their name as a cosponsor. So we're over a hundred, that is for sure.

It's our desire to move this legislation as quickly as we can. We've had some early discussions with the Senate, but I know that the Administration supports it. My leadership supports it. Obviously, the majority of this subcommittee supports it in terms of cosponsorship. We are intending to mark it up tomorrow morning in subcommittee and I know that Joe Barton, the next chairman of this full committee is very supportive and will be moving it as soon as he can.

As I indicated this morning, I made a commitment to my good friend Mr. Dingell that we'll have another hearing with those that were not here today, but those that were invited today and we will hear them after the break.

Again, I appreciate your time. I look forward to working with all of you as we look to make this even a better bill.

[Whereupon, at 6:01 p.m., the hearing was concluded.]

[Additional material submitted for the record follows:]

RESPONSE FOR THE RECORD OF HON. MICHAEL K. POWELL, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Question 1. What current authority does the FCC possess to demand or seize records, tapes, transcripts or the like from broadcast licensees in furtherance of investigations of complaints for violating 18 U.S.C. § 1464?

Response: The FCC has broad authority to obtain such material from broadcasters under investigation. *See e.g.,* 47 U.S.C. §§ 308(b), 403, 409. The FCC typically obtains such materials through a letter of inquiry, but has authority to issue subpoenas if necessary.

Question 2. Would requiring broadcast licensees to retain tapes or transcripts of their programming for a relatively short period of time assist the Commission in its investigations of Section 1464 complaints? If Congress were to require such record keeping for purposes of FCC investigations of indecency complaints, what would be an appropriate amount of time to require the keeping of such tapes or transcripts by broadcast licensees?

Response: Requiring broadcast licensees to retain tapes or transcripts of their programming would assist the Commission in our Section 1464 investigations. Commission staff is currently working on a proposal for such a requirement. We think an appropriate amount of time for retention would be six months after the broadcast. Complaints are not always filed immediately after a broadcast and a six-month period would ensure that broadcast licensees still have the material at the time an FCC investigation commences. Should Congress enact a six month deadline for the FCC to act on complaints, this period could be shorter.

Question 3. What is the Commission's policy and case precedent concerning the issue of nudity or partial nudity on broadcast television, for both live and non-live, scripted programming?

Response: The Commission defines indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." *Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C.* § 1464 and Enforcement Policies Regarding Broadcast Indecency, 16 FCC Rcd 7999 (2001). Indecency determinations involve two distinct determinations. First, the material alleged to be indecent must fall within the subject matter scope of the indecency definition—*i.e.,* the material must describe or depict sexual or excretory organs or activities. Second, the material must be patently offensive as measured by contemporary community standards for the broadcast medium. *Indecency Policy Statement,* 16 FCC Rcd at 8002. In evaluating the second prong, the Commission considers three factors: (1) whether the material is graphic or explicit; (2) whether the material dwells on sexual or excretory activities or organs; and (3) whether the material is used to pander, titillate or for shock value.

In evaluating whether material is indecent, including material containing nudity, the Commission looks at the context of the specific material broadcast. The Commission has stated previously that, "nudity itself is not *per* se indecent." *WPBN/WTOM License Subsidiary, Inc.,* Memorandum Opinion and Order, 15 FCC Rcd 1838 (2000). In *WPBN/WTOM,* the Commission denied a complaint alleging that full frontal nudity contained in the network presentation of *Schindler's List* was actionably indecent because the material broadcast depicted a historical view of World War II and wartime atrocities which, viewed in that context, was not presented in a pandering, titillating or vulgar manner or in any way that would be considered patently offensive.

The Commission has, in another case, proposed enforcement action where such nudity was fleeting. In a recent Notice of Apparent Liability the Commission proposed a $27,500 forfeiture against a broadcast station for airing an interview during a live news program in which one of the interviewees briefly exposed his genitals. In so ruling, the Commission held that the exposure, although fleeting, was in its overall context intended to pander, titillate and shock and, therefore, was patently offensive and apparently indecent. *Young Broadcasting of San Francisco, Inc.,* Notice of Apparent Liability, FCC 04-16 (rel. Jan. 27, 2004). The licensee filed a response to the NAL on February 26, 2004.

Question 4. How many complaints has the FCC received in the past five (5) years concerning nudity or partial nudity on broadcast television and how many individual programs did these complaints encompass? Please list the number of complaints and programs with their corresponding year from 1999-2003.

See Exhibit 1.

Question 5. How many proceedings has the FCC opened in the past five (5) years in response to complaints concerning nudity or partial nudity on broadcast television? How many complaints on this subject have been formally dismissed by the FCC with notice given to complainants? How many Notices of Apparent Liability or Forfeiture Orders has the FCC issued in response to such complaints?

See Exhibit 1.

Question 6. Has the FCC received any complaints about a commercial during the 2004 NFL Super Bowl for an episode of the CBS sitcom "Two and a Half Men" depicting the partially nude buttocks of a woman while a pre-teenage boy looked on? If so, how many complaints have been received by the FCC? Has the FCC opened an investigation into this matter? Is this matter included in the FCC's investigation of the programming broadcast before, during, and after the Super Bowl?

As of March 2, 2004, the FCC received 11 complaints about the above commercial. The FCC is reviewing this commercial as part of its ongoing investigation of the Super Bowl broadcast.Exhibit 1

Nudity-Related Indecency Complaints [1]

	Number of Complaints [2]	Number of Programs (Episodes)	Number of Investigations Commenced for Such Programs [3]	Number of Such Complaints Dismissed/Denied [4]	Notices of Apparent Liability Issued
2004	530,830 [5]	3	1	0	0
2003	41,706 [5]	20 [7]	4	2	0
2002	12,906 [8]	21	9	12,873	1 [9]
2001	7	7	1	7	0

[1] Reliable statistics are unavailable for 1999 and 2000. We also note that no forfeiture orders have been issued in any of these matters.
[2] We have included complaints alleging nudity that has been pixilated or otherwise obscured.
[3] This column reflects complaint proceedings in which Letters of Inquiry were issued.
[4] In some cases in which we received multiple complaints about the same program, we issued a single dismissal or denial to the lead complainant.
[5] This number reflects 530,828 complaints regarding the recent Super Bowl broadcast.
[6] This figure reflects 41,529 complaints regarding the February 25, 2003 episode of ''NYPD Blue'' and 159 complaints regarding the April 7, 2003 episode of ''Married By America.''
[7] Some complaints from 2003 are still being reviewed for possible investigation or dismissal/denial.
[8] This figure reflects 12,856 complaints regarding ''Girl Next Door: Playboy Centerfold.''
[9] The NAL for this complaint was issued in January, 2004; it is the ***Young Broadcasting*** case mentioned in response to question 3 above.

THE BEST OF THE BEST

EXAMPLES OF LOCALISM AND INDEPENDENCE AT INFINITY RADIO STATIONS

local and independent music: infinity airs local, unsigned and independent label artists

Atlanta

WZGC

Each week on Sunday night WZGC airs a legendary program called "The Dunhams." The Dunhams is an hour-long show, beginning at 9:00 pm, which features live local performances from local and independent artists such as Stealth Trucks Band, moe., Disco Biscuits, Vicki Salz, and Sloppy Joe, among very many others. Most of the artists played on The Dunhams get little to no radio airplay otherwise and many are local bands.

Austin

KKMJ

KKMJ-FM (Majic 95.5) airs "The Majic of Austin Music Show" every Sunday Night. This is a two-hour slot where 90% of the music played is by local artists on small or no labels. For example, on a recent program local singer Ashley Culler visited the station to give a live performance. Majic also features numerous local artists during the "Majic of Christmas" programming, where for over a month Majic plays only Christmas music. Many cuts are from local artists and groups, while some are from local church choirs.

Baltimore

WXYV

WXYV's usual menu of talk programming is an unusual but fruitful haven for local, unsigned and independent label artists. Each week, the "Out to Lunch" program features live performances by local, unsigned artists. The program's duration is one hour, but often extends an additional half-hour, based upon listener reaction to, and input about, the performances.

Boston

WBCN-FM

WBCN has played independent/small label music since its inception in 1968 and continues to do so. When Viacom purchased CBS/Infinity, WBCN's programming was not altered. Currently, the Transplants (Hellcat), Interpol (Matador), and Hot Hot Heat (Sub Pop) are in rotation. Other bands being played on labels that are not part of the "big five" labels include Creed (Wind-Up), Moby (V2), and the White Stripes (V2).

Further, WBCN's weekly new music show on Sunday nights, "Nocturnal Emissions," features two hours of brand new music with over 90% from small or independent labels. This show has been in existence since the late seventies.

Nocturnal Emissions is followed by "Boston Emissions," two hours of new Boston music selected from tapes, records and discs. A number of these bands do not even have local record labels.

WBCN also features a "Local Band of the Month," which the station features on air and on its Web site. The station Web site provides exposure for the local artist by providing an opportunity for listeners to listen to a song from the artist any time, posting a biography of the artist, and posting a link to the artist's Web site for more information. The station also features a "Local Song of the Week" and an "Indie Song of the Week" on air and on its Web site.

In addition, for the past 24 years, WBCN has presented an annual Battle of the Bands called the "WBCN Rock 'n' Roll Rumble." The Rock 'n' Roll Rumble displays the talents of 24 local bands over nine nights at a local venue. To participate in the Rumble a band cannot have a major label deal.

Charlotte

WPEG

WPEG has a specialty show entitled "Future Flavas" that spotlights local talent and new artists. It's a weekly one-hour show that has been on the air for about a year. Future Flavas has spotlighted local artists such as Inifinique, Low Key, and Supastition just to name a few. Infinique has since signed a record deal with Rico Wade of the Dungeon Family which is based out of Atlanta. Each week WPEG gets over 20 CDs submitted by up-and-coming artists. A team of street team listeners review the products and present the best 5 for that week to be showcased on the air. Future Flavas is an important show to up-and-coming artists because it gives them an avenue to reach the station's listeners and help further their careers.

Chicago

WXRT-FM

WXRT has a weekly show featuring the music critics of the Chicago Tribune and Sun-Times. This live, local show discusses the local music scene. It often plays new music from local bands.

In addition, WXRT features a local music show each Sunday night ("Local Anesthetic"—see below). Since 1991 WXRT has been airing "Local Anesthetic." It currently airs weekly in prime time (Sundays at 7:30pm). 90% of the labels aired on "Local Anesthetic" are "local" and 80% of artists who receive airplay on Local Anesthetic are unsigned in any form. There is also a short-form feature version of the program, "Anesthetic Capsules," which airs six times per week in various P.M. dayparts (12Noon-12Mid). Here is the description from the station's monthly Program Calendar (press release):

> *Local Anesthetic* with Richard Milne. Chicago's longest-running radio show devoted to local artists and music; offering a weekly overview of the Chicago music community, featuring exclusive interviews and live performances, as well as artist profiles of the area's top musicians and leading cultural figures.

The station also airs a weekly show entitled "The Big Beat," featuring esoteric music from domestic and international artists rarely heard on American radio.

In addition, WXRT airs a weekly locally produced concert show featuring music recorded at local Chicago venues.

Cincinnati

WAQZ

WAQZ airs a show on Sunday Nights from 8pm-10pm called "Miss Sally's Playhouse." This is a "Newest in New Rock" feature that plays small label, indie, and unsigned bands. The station has two features on its website that promote these bands as well, called the "What's Next" page and the "Miss Sally's Play list" page. The latter Web page has links to the bands played on the air on the show.

Columbus

WAZU

This year WAZU hosted "Cringefest," which is a local hard rock festival featuring 18-20 local rock bands. The event draws around 1300-1500 people in the station's demo. Eighteen local active rock bands performed.

Dallas

KOAI-FM

KOAI's annual Jazz festival gives the stage to many local artists, including Joseph Vincelli, FACES and Joe McBride. The station heavily promotes their appearance on air, and gives their songs airplay exposure.

KOAI is the presenting sponsor for "Smooth Jazz Music in the Atrium" every Thursday evening at the Dallas Museum of Art featuring local smooth jazz artists. KOAI provides on air mentions and website exposure for the featured local talents each week. The station also heavily promotes their appearance on air, and gives their songs airplay exposure.

KOAI is the presenting sponsor for "Smooth Jazz Sunday Brunch" every Sunday afternoon at the Dallas Museum of Art featuring local smooth jazz artists. The station heavily promotes their appearance on air, and gives their songs airplay exposure.

KOAI is the presenting sponsor for "Smooth Jazz Fridays" every Friday evening at the Renaissance Worthington Hotel in Fort Worth featuring local smooth jazz artists. The station heavily promotes their appearance on air, and gives their songs airplay exposure.

KOAI has provided "top of page" website exposure for local talents.

Denver

KDJM

KDJM hosts an annual Battle of the Bands competition among local unsigned bands. The winning band becomes KDJM's "house band" and performs at station events over the next year.

Houston

KILT-FM

KILT-FM airs the "Roadhouse" show on Saturday nights from 7p-12midnight featuring music from local Texas artists such as Roger Creager, Robert Earl Keen, Pat Green and Cory Morrow. KILT-FM provides email blasts to over 30,000 listeners and website exposure of when and where the musicians (major and local) will be playing and how listeners can purchase their music.

Kansas City

KMXV

KMXV hosted a 16-week promotion at Raoul's Velet Room in Overland Park, KS called "The Search for Kansas City's Best Band." The winning band opened at the station's annual Red, White and Boom concert in June at Verizon Wireless Amphitheatre.

Los Angeles

KROQ-FM

KROQ has a demonstrated commitment to supporting small/independent label music with shows such as:

"Jed the Fish's Catch of the Day"—Every day at 4:40pm Jed features an artist or song that is not on KROQ yet. Quite often he plays things that are not even signed to a label.

Jason Bentley—Electronic show every Saturday night from midnight-3am. Jason exposes music from primarily independent labels such as Ministry of Sound, Perfecto, K7, Pitch Black, and Forensic.

Rodney on the ROQ—Independent Music show every Sunday night from midnight-3am. For the last 15 years Rodney has done his show focusing on new bands on small and independent labels such as Saddle Creek, Creation Records, Nitro, and Food Records.

Mixmaster Mike—Mix show every Friday night from 10-11pm. Mike exposes the newest in hip hop and rock music quite often playing "white label" cuts and many independent releases.

Memphis

WMFS

93X Locals Only, Memphis radio's only local music spotlight, features three different songs from three local artists every weeknight.

In addition, certain local bands warrant regular airplay rotation on 93X. Examples include artists that later secured major label deals including Dust for Life (Wind Up), Saliva (Island/Def Jam) and Breaking Point (Wind Up).

WMFS's Annual Christmas show, 93Xmas, is a two night event with the first night dedicated exclusively to local bands. This year's event (7th annual) expanded to a three-night event with two nights of local music.

Other regular WMFS events throughout the year that spotlight local talent include Dingo Fest, Budweiser True Music Live, Locals Only Live at Hard Rock Café, Memphis in May Locals Only Stage and major label talent showcases.

Philadelphia

WYSP

WYSP airs "Loud and Local" a one-hour program every week at 10pm on Sunday nights. The show features bands and artists that are *exclusively* from the Philadelphia area. Bands like Sinch, CKY, Familiar 48, Liquid Gang, Sound Of Urchin, Tidewater Grain and Silvertide among others, have been featured first on Loud and Local have gone on to major label record deals. The show is hosted by Tommy Conwell, who was also a local rock star who went on to national fame. Tommy's connection to the bands in the area and the community gives the station a connection to the local scene that no other station in the city can match. Most recently, bands that have been featured this year on Loud and Local such as Octane and 13 Even have had successful record releases and headlining shows at the Trocadero and the TLA, two venues often reserved for national acts. Although the music from these bands has been featured on local shows on other stations, only the WYSP and Loud and Local were invited to these shows to introduce the bands on stage. Any station can *play* local bands, but WYSP's Loud and Local takes the next step to actually *support* local bands.

WYSP is the only station in Philadelphia to put local, unsigned acts into regular rotation on the station. Most recently, for example, the station has put the local band Octane into regular rotation, and continues to support the band both with airplay and promotional support, as well as helping the band by utilizing industry connections. Since June, WYSP has played Octane's single "I For One"' over 400 times. WYSP helped Octane establish management, enabled the band to use famed producer Phil Nicolo to produce their album and have promoted the band by putting them on the bill with several national acts, such as Mudvayne and Poison. The effect of WYSP's support has been incredible. The band's album, which was released on September 16th, sold over 1000 copies in its first week, while selling out the TLA for their own headlining show on the day of the record's release.

Exposed is a one-hour program aired weekly on WYSP on Sunday nights at 9pm. The show focuses on new music, often times on very small labels, and often times on no label at all. Just this year, Exposed has featured unsigned acts Bombchild (CA), and My Downfall (Scranton, PA). Also, Exposed has featured several acts on small labels, such as The Fire Theft, Shadow's Fall, Godhead, and Murder One.

Phoenix

KZON-FM

KZON broadcasts a daily feature showcasing local talent and invites unsigned local artists to the station to play on air as part of a show called "The Local Zone," which airs from 8PM-midnight on Sundays.

The station also includes local artists in its regular playlist, and at least one credits the station with providing the exposure necessary to get signed:

> [The Daylytes] have also garnered the attention of the independent label "Knot Known Records." Label President, Chris Richardson heard the Daylytes being played on Arizona's leading rock radio station, 101.5 KZON, during DJ Tracy Lea's midday show. He immediately set about making contact with the band's management and Knot Known have since teamed up with the band to release "SPIN", and are helping the Daylytes to realize their potential. www.daylytes.com/band/index.php.

The station also puts out an annual compilation CD to showcase local artists called the "Local Zone Compilation." The station has also partnered with a weekly

publication, "The New Times" on a local music showcase that attracts large crowds. The most recent event drew more than 15,000 people.

Portland

KLTH

KLTH sponsors "Museum After Hours" each week from October through April at the Portland Art Museum. Each week, a different local artist plays live at Museum After Hours, and KLTH supports each week's event with at least $6,000 in promotional support. These on-air promos, which air in all dayparts, include examples of the music performed by the local artists appearing at Museum After Hours.

KINK-FM

KINK plays many local/independent artists as part of its regular and special programming.

In addition, KINK features three programs made up primarily of small and independent artists:

- "Sunday Night Blues" (Sunday, 7-10 PM),
- "Lights Out" (Sunday-Thursday, 10PM-midnight), and
- "Acoustic Sunrise" (Sunday, 7-10AM).

KINK also airs a daily weekday feature at 9PM called the "Local Music Spotlight." The station picks a song by a local artist and the jock talks about the artist, the CD, and airs the song.

Regarding local and unsigned artists, KINK has a feature that runs weekday evenings called "Local Music Spotlight," which features local Northwest artists, mostly unsigned. The show gets highlighted throughout the day on KINK in its regular programming, as well as on its website. KINK announces a run-down of local musicians playing in clubs daily at 6:20 p.m. In addition, the station sponsors a series of concerts called "Rising Star Showcase," in which unsigned and newly signed artists play a concert for $1.02.

Rochester

WCMF

The "Radio Free Wease Musical Styles" program airs each Saturday morning from 10am-12n. This program features relatively obscure and unrecognized artists and material from independent/small labels.

Local musicians and groups are regularly featured on the "Radio Free Wease" morning program. Appearances include interviews as well as performances.

"Homegrown", a weekly 2-hour program that features local music exclusively, has aired continuously on WCMF since 1970. Few of these bands have any type of commercial releases of any kind.

WCMF promotes live local performances at Rochester area nightclubs on a daily basis.

Sacramento

KXOA-FM

KXOA has promoted many unsigned local bands over the past few years. Every year, KXOA has a "Club Concert Series" that features not only established bands but up and coming unsigned local acts. These bands, like "The Atomic Punks", "Deconstruct", "Barking at Flies", "Larger Than Life", "Larissa Brisky", "Soul Taco", and others have received promotional campaigns on-air in connection with either the "Club Concert Series", or as local opening acts for major shows starring nationally signed bands at one of Sacramento's major venues.

KXOA also held a "battle of the bands" series with the local unsigned band winner getting to open for a major concert-in this event the winner opened for a Journey concert. In addition, KXOA assisted in getting unsigned local band "Deconstruct" local promotion as they opened for a major concert event, headlining established acts including Iron Maiden, Dio and Motorhead. KXOA plans to run a similar promotion this next summer.

San Francisco

KITS-FM

KITS has a history of airing local musicians and unsigned artists. Aaron Axelson, the station's music director, is responsible for the playing and the subsequent signing of dozens of local bands. Examples include Papa Roach, Greenday, Third Eye

Blind and Rancid just to name a few. All got their start with heavy airplay on KITS, many before they had much more than a test pressing. That tradition continues today with KITS breaking AFI and The Donnas in the last 12 months alone.

KITS also promotes these local artists by creating local lounge showcases that get bands in front of thousands of people. The station's goal is to have at least four local lounge showcases per year. The station also attaches local band involvement to just about every show it produces.

Recently the station had a "Locals-Only" music weekend where it showcased 12 Bay Area local bands on the air in a heavy rotation. This included artist interviews and magazine-style "info blasts."

Examples of local/independent music on KITS also include the "11 o-clock Rewind," which runs Monday through Friday. This is a flashback show that highlights the music that was popular in San Francisco over the past 16 years. A quarter of the titles in this program were only played in San Francisco.

Another example is a weekly show called "Fast Forward." This program runs every Wednesday at 4 PM. Locally hosted by KITS's personality, Jared, this one-hour program provides an opportunity for local record company representatives, San Francisco publication writers, band managers and regular listeners the opportunity to bring in music they like and play it on the air. The three guests and the moderator discuss and rank the selections that are heard. Over a third of the selections on the show are from local bands and a quarter of the music is from bands and artists who have no label.

KITS also airs two weekend programs that garner much listener interest and showcase music and content that is not avidly being promoted:

- "Subsonic" is KITS's weekly electronica program. This Saturday 10PM to 4AM program features cutting edge electronic and dance music catered to San Francisco's rich electronic community.
- "Sound Check" is KITS's weekly two-hour new music program that features much new music both local and international in offering. Again, many of the selections come from the unsigned artists or artists on small labels.

KLLC-FM

KLLC features a monthly Emerging Artist Showcase program. The station solicits tapes from Bay Area musicians then selected national and local artists are invited to play live at Bay Area nightclubs. The program is free for local musicians to participate and for listeners to attend the shows.

KLLC replaced its Saturday night nationally syndicated program with the locally produced "Thump Radio" program. The five-hour show features local and national mix DJ's.

Each Sunday from 9AM to 2PM, KLLC broadcasts a specialty "Chill" music program. The show plays down tempo music from local, national, and international artists. The program is designed to play songs and artists rarely heard on commercial radio. Small and independent record labels have their music featured on a weekly basis and they include Sub Pop, Skint, ESL and Minty Fresh.

The KLLC Morning Show regularly talks about the local live music scene and once per week features a song from a local artist during the "Pick of the Week." Local bands that have been featured include AFI, Los Mocosas, The Pleased, One Man Army, Imperial Teen, The Dwarves, Divit, The Roofies, and The Transplants.

Seattle

KMPS

KMPS-FM airs a regular feature during its morning show called "Music From Our Own Backyard," which features Seattle-area musicians. A recent "Music From Our Own Backyard" show featured local country musician Myron Thomas Kline and R & B band Bump Kitchen. Bump Kitchen posted the following on its Web site, www.bumpkitchen.com: "Bump Kitchen would like to thank everyone at KMPS 94.1 for playing our song, "Big Ol' Bones"! When we checked out our guestbook we were blown away at all the entries from people who heard us on KMPS!"

KMPS takes music calls and music service from all of the Independent Labels. Artists from independent labels were part of the station's program "5 O'Clock Test Track" on which the station airs new music. Many of the songs were also added to regular airplay due to popularity with the audience.

Washington, D.C.

WPGC-FM

Each summer WPGC holds "Streetjams" weekly around the DC area. In conjunction with area police departments and local community leaders, the station shuts down a street, erects a stage and brings out its promotional and broadcast vehicles. WPGC then brings local talent to perform, broadcasts live and has community and church leaders present to speak to the neighborhoods about empowerment and peace on the streets. These are free and open to everyone and been very successful. The station has done these every summer for the past 12 years.

WPGC-FM has a Sunday evening show that has aired for 13 years, called "DC Homejams". It is a 30-minute program where the station features local artists exclusively. This program, hosted by DJ Flexx, has given airtime to many groups who would normally never have a chance to be on a major market radio station. One of the station's biggest discoveries was a local group called "Shai". The group gave the station a demo tape, which it played on the air. The response from listeners was strong so the station gave the song a high rotation and the group was signed to MCA records. The song the station played, "If I Ever Fall In Love Again" went on to be a national hit!

On Friday nights, the station's night show, the Hometeam has a show called, "Friday Night Mic Fight" where local rap artists come on the show and do a freestyle rap of their music. The weekly winner stays on to take on a challenger the next week. It is another way to expose local talent and give them publicity.

WPGC-FM recently held a contest to find the next "dj/mixer" for the station. The winner received a shift on WPGC. To win, they had to be from the DC/Baltimore area and had to send the station a demo tape of their work. The winner is now handling a weekend shift on the station.

WHFS-FM

WHFS has a long tradition of strong support for local artists and bands, epitomized by its annual "Big Break" competition, a month-long talent competition that gives local, unsigned bands exposure and airplay on WHFS. Bands submit material and perform live for the opportunity to be one of the featured acts at the HFStival. WHFS has conducted this contest since 1998, and devoted a substantial amount of airtime recruiting local artists to participate in this massive talent search. Finalists receive extensive promotion, publicity and exposure on WHFS. A panel of music industry executives and WHFS personnel have acted as judges and chosen the most talented local artists to receive prizes that have included recording studio time, a slot on the Main Stage at the HFStival, slots on the "Locals Only" stage at HFStival, and airplay on WHFS. Several of the station's local acts have subsequently been signed to recording contracts as a direct result of their heightened profile during this contest, including Jimmie's Chicken Shack, Good Charlotte, SR-71, O.A.R., Sev and many others.

"Now Hear This" is a long-standing Sunday night program on WHFS that airs mostly independent and unsigned bands. The nature of the program favors an artists' first release rather than their later projects. Artists sometimes "break" on this program and then get airplay on the rest of WHFS.

West Palm

WPBZ

In March of 2003 WPBZ-FM began airing Buzz Junior, a weekly two-hour show featuring the music of up and coming independent bands as well as local bands and area musicians. The show airs Sundays from 10pm to 12 midnight and plays a wide mix of music from Indy labels artists such as "The Fire Theft" on Rykodisc, "Hot Hot Heat" (Sub Pop), "Mando Diao" on Mute Records in addition to local bands like as Legends of Rodeo, Boxelder, Darwin's Waiting Room and Ashley Red to name a few. In short more than 75% of the programming on Buzz Junior is derived from bands that are not signed by a major record label.

Aside from Buzz Junior, WPBZ-FM has supported local music by holding five Buzz Battle of the Bands competitions in 2003. The last three competitions select local bands to play the "local" stage at the station's annual concert event, Buzz Bake Sale 2003, which was held on Saturday December 6th at Sound Advice Amphitheatre in West Palm Beach. The estimated crowd for this event is 15,000.

WPBZ also supports local music through its website: www.buzz103.com. On it the station features a "local band of the week" section where listeners and web goers can sample and/or download music. Each Friday WPBZ-FM's morning show features a segment called "Live and Local Fridays" where a "local band" is invited into the

studio to perform live on air. This has been an ongoing morning show segment for two years during the fall and spring ratings periods.

LOCAL INVOLVEMENT:

INFINITY STATIONS ARE INVOLVED WITH THEIR COMMUNITIES AND CHARITABLE CAUSES

Boston

WBCN-FM

For the past 9 years WBCN has been putting together the River Rave concert, which is held in the spring. Over 20-plus bands participate in the all-day event and portions of the proceeds are donated to the charities the station has selected as benefactors of the rave. Over the last 9 years the station has donated hundreds of thousands of dollars to these charities. Charities involved over the years have been The Surfrider Foundation, Metro West Humane Society, Save the Music, Community Servings, Stop Handgun Violence, MassMic, LifeBeat, The Jordan Boys and Girls Club of Chelsea, The Dana-Farber Roni Sunshine Fund and more.

For the past 7 years WBCN has been putting together its X-Mas Rave concert, which is held in the winter. The concert consists of over 20 bands playing in different bar locations all over Boston. All proceeds generated for this concert are distributed to charities the station has selected as benefactors of the concert. Over the past 7 years WBCN has donated over hundreds of thousands of dollars to these charities. Charities that have been involved over the years are Stop Handgun Violence, the Dana-Farber Roni Sunshine Fund, The Mark Sandman Music Education Fund, Conservation Law Foundation, Boston Living Center, Margaret Fuller House and more.

For over 29 years WBCN has held their annual "Rock n Roll Up Your Sleeve" Blood Drive in July making significant contributions to the Region's volunteer blood donor program for the American Red Cross. WBCN sets-up stands and holds live broadcasts from 4 different locations around Boston. Prizes are given away to everyone that participates in the blood drive as well. It is the largest blood drive promotion in Massachusetts.

WBCN is responsible for setting up The Roni Sunshine Fund at the Dana-Farber Cancer Institute. The fund was set up in memory of the station's co-worker, Roni Sunshine. As a result of WBCN's efforts, the Fund continues to make an extraordinary impact on the lives of women fighting breast and gynecologic cancers at the Institute.

WBZ

Every year for more than 25 years, WBZ proudly teams with WBZ-TV to promote and hold a joint telethon/radiothon to benefit Children's Hospital of Boston. In 2003, WBZ held the radiothon on December 14 and WBZ's on-air talent participated as hosts of the December 16 telethon. The station promoted the event on air for several weeks. Altogether the event raised 3.1 million dollars for Children's Hospital.

WBMX

The single biggest commitment WBMX has made toward helping the community is the "Mix Cares For Kids Radiothon," which WBMX staged in 2003 on July 25th & 26th. The two-day broadcast brought the station talent live from the local Children's Hospital, with a mix of interviews and songs integrated with stories of families helped by Children's Hospital, and a call to action to donate money. The station fundraiser raised over $460,000 during the broadcast.

WBMX is also a major supporter of the "Susan G. Komen Race for the Cure Boston" benefiting breast cancer research each September. In conjunction with the race, WBMX has produced four (4) "Live from the Mix Lounge" CDs, with the net proceeds benefiting the Race for the Cure, as well as the Dana Farber Cancer institute in Boston. Typically, each CD has raised between $40,000—$100,000 for the two charities.

In addition, the station has utilized its annual holiday concert "Mix 98-5 Holiday Hoedown" as an opportunity to collect toys for the New England Home for Little Wanderers. Dating back to 1799, the mission of the Home is to ensure the healthy development of children at risk, their families and communities through an integrated system of prevention, advocacy, research and direct services.

Buffalo

WJYE

WJYE has been awarded the "Media Award" from the local chapter of the Leukemia and Lymphoma Society three years running for the Leukemia Society's "Light The Night Walk," which brings more than 3,500 walkers every year to Buffalo's historic Delaware Park.

WJYE this year partnered with Hospice for their Playhouse Project, featuring miniature homes that families toured, and then purchased through auction, as well as Hospice's 5k Walk. The monies raised through both events combined totaled $500,000 to benefit Hospice.

CLUSTER

The Infinity Buffalo cluster conducted a RadioThon with Children's Miracle Network raising $50,000 to benefit Buffalo's Women's and Children's Hospital.

For the last four years Infinity Buffalo as a cluster held a holiday lights event in Buffalo's Delaware Park from the week prior to Thanksgiving through Christmas. The event was called Lights In The Park with a portion of the proceeds going to the United Way of Buffalo and Erie County. The contribution to the United Way totaled over $200,000.

The Buffalo cluster this fall is, for the second consecutive year, doing remote broadcasts, and hosting events to raise money for the Buffalo City Mission. Last year with the help of Infinity Buffalo, the City Mission raised 1.3 million dollars.

Charlotte

WPEG

WPEG has served its community with over 3.5 million dollars in donations, partnerships, and sponsorships over the past 10 years. In just this past year alone, WPEG has been a part of the following:

- January 2003 WPEG-FM sponsored the annual United Negro College Fund Telethon at the First Union Atrium in Charlotte. The live broadcast efforts raised a total of over $350,000 for the area Historical Black Colleges and Universities.
- Also in January 2003 WPEG-FM sponsored the Annual Martin Luther King Jr. Prayer Breakfast at First Union Atrium in Charlotte. More than 850 attended.
- February 2003 Tone-X & Fly-Ty, members of the Breakfast Brothers Morning Show, sponsored "Boys To Men" an outing for African-American boys. The day included a limousine ride, lunch, shopping and a one-on-one conversation with a member of the morning show. The goal was for morning show personalities to bond with a young black male and teach him responsibility and respect.
- March 2003 WPEG-FM News Director Sheila Stewart spearheaded a Step Show Competition co-sponsored by Charlotte Mecklenberg Schools. The show featured 15 area high schools. More than 1500 attended the event at the Grady Cole Center in Charlotte. The event raised enough funds for nine scholarships.
- April 2003 WPEG-FM co-sponsored the Syphilis Elimination Campaign with the Charlotte Health Department to raise awareness about the disease.
- May 2003 Janine Davis co-host of the Breakfast Brothers Morning Show, collected new and used prom dresses for young ladies who were unable to afford a dress of their own. Davis collected more than 250 gowns. The event was held at the Afro-American Culture Center.
- August 2003, WPEG-FM co-sponsored a Back To School Drive for Kids, hosted by evening air personality No-Limit Larry at Eastland Mall. WPEG collected school supplies and donated them to the Charlotte-Mecklenburg school system.
- September 2003, WPEG-FM co-sponsored the Annual "Guess Who's Coming to Dinner" Program for the Metrolina Aids Project to help fund AIDS research and counseling. More than $150,000 was raised.
- October 2003, WPEG-FM sponsored the Susan Komen Annual Race for the Cure. The event raised more than $800,000. The event serves as an annual fundraiser in the fight against breast cancer.
- November 2003, WPEG-FM worked closely with the Charlotte NAACP, Charlotte Chapter Black Political Caucus Banquet and the Hispanic Voter Coalition to encourage minorities to vote in the November 4th elections.

WSOC

Following is a representative list of WSOC Community Service Projects during 2003:

January 22, 2003: Rockin' Country Christmas Show at Dale Earnhardt, Inc., WSOC sold over 500 tickets to this event and its "Loyal Listeners" attended the show that featured Andy Griggs and Steve Holy. This event raised over $13,500 and benefited the Juvenile Diabetes Research Foundation and the Dale Earnhardt Foundation.

The Juvenile Diabetes Foundation—WSOC's Jeff Roper from the Jeff Roper Morning Show was the Celebrity Co-chair and he and WSOC helped the JDRF raise over 1 million dollars this year during their Walk to Cure Juvenile Diabetes, which was held at Paramount's Carowinds on Saturday, March 29th.

WSOC partnered with Outback Steakhouse to raise over $5,000 to benefit the Tim Hayes Fund, a local EMT who lost his legs in January while helping another injured motorist. WSOC also formed a "WSOC FM 103 Good Neighbor Fund", in February in which the station partnered with area Wachovia Banks and encouraged the station's "Loyal Listeners" to contribute to this fund and in turn, the station gave to a local charity or organization in need of financial assistance. The amount of money raised for this fund was over $500.00, so WSOC donated the money to the Kannapolis, NC Non-denominational church, who gave the money to help some of the 700 Pillowtex workers who were laid off due to the company folding.

On April 22nd, WSOC hosted the Tim Hayes Golf Tournament that also helped raise money for the Tim Hayes Foundation, with all proceeds benefiting Tim Hayes, the Charlotte CMT who lost his legs while helping another injured citizen. The combination of money collected during this golf tournament and through the WSOC FM 103/Outback Steakhouse Fundraiser, enabled Tim to receive two prosthetic legs, which will contribute to him walking again someday soon!

WSOC was the selected host and official sponsor of the Charlotte Firefighters annual fundraiser. This year's event was held at the Cricket Arena and featured Country Music Artist, Ricky Van Shelton. The event raised over $150,000 for Charlotte area firefighters.

WSOC was once again chosen as the official sponsor and presenting Media partner to participate in the Harris Teeter Race Fest held on May 19th at the Charlotte Knights Stadium, in Rock Hill, SC. This event featured an autograph session with NASCAR Busch Series and Winston Cup Series Drivers, a silent auction featuring lots of sheet metal and autographed NASCAR memorabilia. The event benefited Motor Racing Outreach and raised over $450,000.

WSOC partnered with area Charlotte-Mecklenburg Humane Society and conducted a Poker Run on August 16th which raised over $250,000 to help unwanted animals in the community.

WSOC partnered and supported National Readers Day on November 13th. Several on-air personalities took time out of their schedules to read to students at the Balls Creek Elementary School in Newton, NC.

Chicago

WUSN-FM

WUSN conducts a radiothon for St Jude's Children's cancer research each year during the weekend before Christmas and raises over $1 million in pledges. In 2003, the radiothon collected more than $1.3 million, the largest amount in the radiothon's history.

Dallas

KRLD(AM)

KRLD has a proud history of supporting local charities and community organizations, the arts and economic development efforts. In 1993, KRLD received the NAB's Crystal Award, which is presented to one station across the nation each year in recognition of its community service efforts

Here are just a few of the highlights of KRLD's involvement:

Local Charities—2003 marked the 25th anniversary of KRLD's Christmas is for Caring charity drive, benefiting people with severe developmental disabilities at the Denton State School. In addition to providing two gifts for each of these less fortunate citizens each year, this program has raised millions of dollars for the facility. Among other things, these monies have been used to build a custom wheelchair workshop (and hundreds of wheelchairs) and to refurbish the outdated medical facilities at the school, including the purchase of much-needed diagnostic equipment.

August will mark the fourth annual "KRLD Restaurant Week," benefiting the North Texas Food Bank and the Lena Pope Home for children. Modeled after a similar program in New York, KRLD recruits local restaurants to provide a 3-course

Prix Fixe meal at a discounted price with $6 from each meal donated to the charities. More than $100,000 has been raised through this effort.

Community Organizations—KRLD has been a longtime partner with the Greater Dallas Chamber of Commerce, supporting their varied efforts across the area. Some of the specific initiatives KRLD supports include "BusinessPlace," the largest chamber-sponsored business-to-business trade show in the country and the annual Women's Business Conference. KRLD also participates in various efforts of the Fort Worth and Hurst-Euless-Bedford Chambers.

For the second consecutive year, KRLD will be a host organization for Junior Achievement of Dallas's "Job Shadow Day." This is an opportunity for local high school students to spend a day in a business environment, learning about the careers available in that organization. KRLD hosts 14 students each year. KRLD also supports Junior Achievement's annual "Business Hall of Fame" fundraiser and charity golf tournament.

Detroit

WKRK

WKRK is involved in its community and supports numerous local and national charities in various ways, including:

- Conducts Bob Bauer's Marathon for Meals, one of the longest-running charitable initiatives in Metro Detroit, this event feeds thousands of need local Detroiters. Bob has been the driving force behind his "Marathon for Meals" food drive and 2003 will be the 19th year of this incredible initiative. Each year in December, Bob lives in a trailer at the corner of 13th and Woodward collecting food for The Detroit Hunger Coalition.
- Raised over $40,000 to help Pat and Ethel Hawley, an elderly couple from Harland, MI, rebuild their home, which was destroyed by a tornado.
- Organized a charity paintball game to benefit the family of Michael Scanlon, a slain Detroit Police Officer. Scanlon was killed in the line of duty and left behind a wife and two very young children. Several hundred listeners participated.
- Launched a fundraiser for Ms. Chiquita Washington who lost her 11 year old honor roll student son in a drive-by shooting and then suffered a heart attack the following day.

Fresno

KSKS

KSKS sponsors an annual KIDS Radiothon benefiting the Children's Hospital of Central California. The 2003 event raised more than $465,300. As part of the Radiothon, KSKS recruited more than 1,300 listeners to act as "change bandits" who collected $150,000. Because of these phenomenal results, KSKS was selected to represent central California at the national Children's Miracle Network Conference where it was given an award for setting a North American Record.

Hartford

WTIC-FM

WTIC is involved in its community and supports numerous local and national charities in various ways, including:

- WTIC-FM's morning personality founded the "We Are the Children" charity which provides an annual Christmas Day celebration for more than 1,400 underprivileged children, including food, entertainment and presents.
- WTIC-FM also conducted a 28-hour radiothon and benefit dinner with members of the cast from "The Sopranos" that raised more than $90,000 for the "We Are the Children" charity.
- WTIC-FM conducts an annual "All Star Christmas" event with tickets to the show given for free in exchange for toy donations.
- WTIC-FM constructed eight traveling "Walls of Support" billboards and took them to twenty-two different locations to be signed by listeners to show their support for U.S. military troops and then delivered them to the Connecticut National Guard to display for troops as they returned home.
- WTIC-FM has annually produced an "Acoustic Café CD" generating more than $50,000 for the Hartford Wolf Pack Foundation, an umbrella charity for 100 local children's charities.

Houston

KILT-FM

KILT makes every effort to support charitable organizations in many ways. This effort has not gone unnoticed! In August 2003, KILT won the Bonner McClain Award for Community Service from the Texas Association of Broadcasters.

In 2003, the station supported the following causes:

- *Rodeo Houston 2003* The Houston Livestock Show and Rodeo is an entertainment and educational charity, which benefits the youth of Texas. Since 1957, more than 18,000 students throughout Texas have received educational assistance from the show, totaling more than $85 million. HSL&R events include *BBQ-Cook-Off, Go Texan Weekend, Trail rides, the Rodeo Parade, International Days, Rodeo Run, the Horse Show, an all-star concert line-up* and much more! KILT donated more than $695,150 in promotional time for this event. In addition, the station contributed sponsorship dollars and provided personalities and live broadcasts at the event.
- *KILT-FM City-Wide Fireworks Spectacular*—In 2003, KILT-FM helped 30 Houston area communities celebrate the 4th of July in-style. KILT-FM provided a custom soundtrack for each community, filled with a variety of patriotic favorites. The station also provided directions to each fireworks celebration, fireworks safety tips and facts about America's History on www.KILT.com. KILT provided on air promotional support for this event and the fireworks simulcast for these events on 100.3 KILT.
- *Joe Nichols Benefit Concert for Save the Music*—KILT completely produced the Joe Nichols Benefit Concert that raised money for Save the Music. 100.3 KILT secured the artist, produced the event, ran promotional announcements and featured it on the KILT website.
- *Fort Bend County Cook-off, Parade and Fair* in Rosenberg, TX. The proceeds help support local youth and benefiting education. KILT-FM was an official sponsor of the fair and rodeo, providing promotional airtime, live broadcasts, a website feature and an on-site promotional staff.
- *Brazoria County Fair* in Angleton, TX. Known for its old-fashioned fair atmosphere and traditional fair entertainment such as carnival rides, rodeo, concessions and agricultural displays. The fair benefits various local non-profit organizations in and around Angleton. KILT-FM is an official sponsor of the fair, providing promotional airtime, live broadcasts, a website feature and an on-site promotional staff.
- *Bob Tallman's Pasture Pool Classic*—KILT-FM sponsored this golf tournament, which benefited The Pediatric Programs at M. D. Anderson Cancer Center and the Justin Cowboy Crisis Fund. KILT provided promotional airtime in support of this event.
- *Wings Over Houston*—The Wings Over Houston Air Show—Scholarship Program is intended to assist and reward students who have demonstrated academic potential, leadership and extracurricular involvement. KILT-FM was an official sponsor for the Wings Over Houston Festival. The station provided on-air promos, website promotion and inclusion in listener newsletters and Promotions staff on-site.
- *Bike Drop*—Each year, KILT-FM partners with the Houston Police Department for the "Blue Santa Bike Drop." Donations from the Blue Santa Bike Drop provided underprivileged children with a new bike for Christmas. KILT-FM provided on-air promos, website promotion, inclusion in the listener newsletter, a full promotions staff, donation incentives, on-air personalities and all the equipment necessary to make this event a success!

Los Angeles

KRTH-FM

K-EARTH 101 answered the emergency call from the U.S. Marines for help with the 2003 Toys For Tots Holiday Toy Drive. Because of the war, Marine staffing and budgets were taxed and this year's campaign was in jeopardy of having the lowest donation response in ten years. Therefore, the Marines were in danger of not having the toys to fill the wish lists of thousands of Southern California children. The Stations response was affirmative and immediate. Within 24 hours of the request from the Marines for help, the station moved into action with hourly appeals to K-EARTH Listeners that ran through the weekend, soliciting support for the drive. The station also served as an official drop-off site with a collection bin prominently placed in its lobby and the station also plugged drop-off sites at two different Toys

"R" US locations, on the air as well as on the station's website. Station listeners responded famously! By Monday the station had collected hundreds of toys for this effort including books, which the Marines informed us are always in short supply because they are rarely donated. A children's book author heard the appeals by K-EARTH 101 Morning Man, Gary Bryant, and came in with scores of her newest book. She made an appearance on the station's Public Affairs Program, "It's Happening," on Sunday morning. She discussed the campaign and her donation with the station's Public Affairs Director, Vivian Porter, who made an additional appeal to the station's listeners for donations.

The KRTH "Care For Kids" Radiothons have raised nearly $1,000,000, benefiting the LAC/USC Pediatric Pavilion and a number of other children's organizations.

KNX(AM)

KNX has a long and award-winning history of providing various types of assistance to local and charitable groups for more than 30 years. It has been the game plan of the KNX community services department to seek out local groups and to offer a wide range of assistance aimed at improving the lives of listeners. KNX has been recognized repeatedly for its outreach and community service, even being singled out by President Clinton in a speech at the Radio and Records Convention. Here's part of the KNX story.

KNX teamed up with the Rescue Mission Alliance of the San Fernando Valley to conduct the *KNX Drive Away Hunger Day,* which raised more than $31,000 to feed the less fortunate during the holiday season. KNX employees collected checks from listeners at the Valley homeless shelter.

For its 32nd straight year, KNX honored a *Citizen of the Week* for outstanding public service or heroic actions. Their stories of commitment become the core of a station documentary called *The Good People* and the highlight of a station luncheon honoring their community spirit.

KNX remains the lone radio sponsor of the Governor's Conference for Women, a one-day event focusing on personal finance, professional development and testimonials from famous women. This year KNX anchor Gail Eichenthal is serving as a moderator for one of the conference panels and KNX Community Services director David P. Ysais served as a scholarship judge.

KNX reporters and anchors serve as celebrity bartenders at the annual Block Party for the Concern Foundation. The Concern Foundation event raised $1.5 million dollars in a single night. KNX anchor Frank Mottek serves as emcee.

KNX Community Services director David P. Ysais serves at Principal for a Day throughout low-performing, inner-city schools. This is his fifth straight year of serving as principal at schools throughout Los Angeles. He delivers a speech at every location talking about careers in broadcasting and the importance of staying in school.

This is KNX's fourth straight year of hosting a Coro Foundation fellow. The Coro Foundation develops disadvantaged students in the areas of public policy, public service and public development. For one week, the Coro fellow works in both the newsroom and community services department, in order to understand the media coverage of public policy. Graduates of the program now work in Los Angeles government.

KNX received an award from WeTip as a Radio Station of the Year for the eight straight year. KNX has been a solid partner of WeTip, promoting the anonymous anti-crime hotline after its crime stories. KNX listeners continue to be among the top ten resources for crime tips in Southern California.

KNX also is in its fourth year of sponsoring the Well Woman Conference at Good Samaritan Hospital in downtown Los Angeles. The conference is designed to offer the latest services and information for minority communities. KNX offered public service support as well as interviews with doctors at the event. More than 1000 women attend every year.

KTWV-FM

KTWV 94.7FM—The Wave has consistently been in the forefront with renowned involvement among local communities and charitable causes. Listed are examples of significant contributions made to local charitable causes benefiting Los Angeles and Orange Counties.

October 2001

"A WAVE OF PEACE" CONCERT.

The first free concert in Los Angeles held at the Forum in Inglewood on October 14, 2001 to directly benefit the American Red Cross Disaster Relief Fund. This, once

in a lifetime, free, All Star Jam Session featured over 20 Top Smooth Jazz Recording Artists with a special appearance and performance by recording artist Stevie Wonder. "A Wave of Peace" raised over $100,000 for the victims of the September 11th terrorist attacks. Free general admission tickets were distributed to the public at area Best Buy locations. The American Red Cross was on-site at the event accepting monetary donations.

August, 2002

WAVE L.A.

Over 5000 KTWV Fans and supporters attended this sold-out concert event benefiting the "Magic Johnson Foundation" and the "Neil Bogart Memorial Fund," a division of the TJ Martell Foundation. KTWV's General Manager, Tim Pohlman presented a check on-stage to these charities addressing issues facing youth today and Children's Hospital Los Angeles. KTWV lent its support by heavy on-air promotion of the event. Several interviews were also conducted on KTWV's morning drive program with guests from a Smooth Jazz artist line-up and Magic Johnson.

April, 2003

NATIONAL FATHERHOOD INITIATIVE CAMPAIGN

KTWV's morning drive personality, Dave Koz, joined forces with Warner Brothers in awarding the first "Golden Dads" awards to 500 good fathers deemed "Golden Dads" in five major U.S. cities including Los Angeles. The initiative program is designed to promote involved, responsible, committed fatherhood by recognizing and rewarding the work of good fathers. Celebrity fathers such as, Jason Alexander, Randy Jackson, Stephen Collins, Alan Thicke, Bob Sagat, David Benoit, and more, were involved as spokespersons for the campaign.

September, 2003

"GET IN THE GAME."

KTWV staffers participated as chaperones in this wonderful event where 100 deserving under-privileged children from Hoover Elementary School in South Central Los Angeles were escorted to Dodger Stadium for a Los Angeles Dodgers baseball game. This event made a huge difference to many of the children whom had never had the opportunity to leave the inner city to attend a sporting function. It was a first for the children and a wonderfully safe time was experienced with many lasting memories.

"WAVEFEST" CONCERT.

Over 7000 KTWV Fans and supporters attended this sold-out concert event benefiting the VH1's "Save The Music" Foundation in a yearlong commitment to bring greater attention to the lifelong benefits of music education and to restore music education programs in America's public schools. This program has pledged to raise $1 million this year to help restore public school music programs at a time when funding for music education is being cut or eliminated nationwide. Many Smooth Jazz artists performed at the event starring Natalie Cole and Mr. George Benson. KTWV clients and advertising partners set up boots at the event offering the audience a wide variety of sampling products and services. Numerous on-air promotional mentions were made in support of what has become Southern California's marquee "Smooth Jazz" musical event of the year.

New York

WFAN

WFAN conducts a 28½ hour annual Radiothon each spring to benefit local charities that are associated with the Hackensack (NJ) University Medical Center: The Tomorrow's Children's Fund (kids with cancer) and the CJ foundation for SIDS (Sudden Infant Death Syndrome) along with the Imus Ranch (kids with cancer attend the session at the Ranch). The station's 28½ hour Radiothons (its done 14 annual Radiothons) have raised over $35 million dollars for the charities. Each Radiothon begins on a Thursday at 5:30am with Imus in the Morning and continues through 10am that Friday.

WFAN is also a heavy participant in the World Hunger Year "Hungerthon," an annual event held the Saturday and Tuesday before Thanksgiving. This year WFAN raised over $175,000 for World Hunger Year.

CLUSTER

Infinity's New York stations in 2004 announced that they will provide financial aid, mentoring and tutoring to New York City public schools and will use air time to urge other business to do the same. Each Infinity New York station will adopt a school and will provide that school with at least $10,000 of financial aid as well as at least five hours per week of mentoring and tutoring services in an effort to help rebuild the New York public school system.

Philadelphia

WOGL

For two years running now, WOGL suspends regular programming for FOUR days to raise money for The Children's Hospital of Philadelphia. Over the past two years, WOGL has raised over $800,000. No other media outlet in the city raises the kind of money WOGL does for a local organization! 100% of the money raised benefits patient care programs at Children's Hospital. For four solid days, WOGL lends the airwaves to Children's Hospital to air the Oldies 98.1 Loves Our Kids Radiothon. This year it aired Thursday, September 18 through Sunday, September 21, 2003. Morning Show Hosts Don Cannon and Valerie Knight chair the radiothon but every single air personality comes out to lend a hand. Whether they do an airshift or come to be on the celebrity phone bank, the entire radio station devotes four days to help raise money for the kids at Children's Hospital.

Phoenix

KMLE-FM

KMLE sponsored a special performance of Child's Play Arizona's production of "Charlotte's Web" in June at the Herberger Theater for a group of under-privileged kids.

The 2nd annual KMLE Radio-thon was held in the spring of 2002 and raised over $340,000 for Phoenix Children's Hospital. The station did a follow-up show on July 7, 2002, on how the money KMLE Country raised for the new Phoenix Children's Hospital was being used. The KMLE Radio-Thon is proof positive that Country Music listeners respond to a good cause. In just 3 short years, the KMLE and its listeners have helped raised over $1,200,000.00 to benefit the Phoenix Children's Hospital. KMLE has literally played a vital role in helping to provide the funds to build from the facility from the ground up. KMLE Country 108 Teen Room is part of the facility. The Phoenix Children's Hospital is a not-for-profit provider.

Pittsburgh

KDKA-AM

Children's Hospital of Pittsburgh Free Care Fund: 2003 will mark the 57th consecutive year that KDKA has supported and raised money for the Free Care Fund. Without a doubt, this annual 4Q/Holiday campaign is Pittsburgh's most well-known fundraising campaign. The Children's Hospital Free Care Fund provides medical care and treatment for kids within a 150-mile radius of Pittsburgh, regardless of their family's ability to pay. In 2002, KDKA Radio's campaign brought in more than $128,000—and since 1946, has raised over $15-million. This annual campaign runs roughly from Thanksgiving through Christmas—and features station remote broadcasts from all over the Pittsburgh area, as KDKA "takes" the campaign throughout Western Pennsylvania. The campaign also features heavy client involvement—as KDKA asks each client in the campaign to make a donation to Children's Hospital. In recent years, KDKA Radio and Children's Hospital have joined forces with KDKA-TV and The Pittsburgh Post-Gazette to form the "Free Care Friends," which allows all three entities to cooperate on support and promotion of this campaign. In 2002, KDKA and Children's Hospital debuted a custom-built Gingerbread House, which acts as the Downtown-Pittsburgh headquarters of KDKA's Children's Hospital broadcasts during most of December.

Portland

KINK-FM

KINK does extensive work for the Oregon Food Bank. KINK releases a biennial CD compilation from the "Lights Out" program, the proceeds of which benefit the Oregon Food Bank. The station has released 8 albums/CDs, which together have raised over $1 million dollars for the Food Bank. KINK has also sponsored a four-

day blues festival to benefit the Food Bank, which raised more than $250,000 and over 300,000 pounds of food last year alone.

KVMX-FM

KVMX is very active with the local charities. In 2001, the station initiated Truckload of Coats as a response to the local need for help. In the Fall of 2001, as was very much needed, money and goods were flooding to New York from all over the country. Many local charities were being ignored. In Portland, the homeless shelters were at an all time low for supplies. KVMX's morning show pledged to stay on the air until it filled a moving truck with coats and goods to supply local homeless shelters. The station filled the massive truck in 11 hours—as well as 5 other vehicles. The event is in its third year, and all of the goods go to Portland's less fortunate. The station has expanded this event to include 2 moving trucks and both sides of the Portland Metro.

Riverside

KFRG/KVFG/KXFG

In 2003, KFRG/KVFG/KXFG raised over $297,000 for Loma Linda University Children's Hospital during a 2-day Radiothon.

In 2003, KFRG/KVFG/KXFG raised over $356,000 for St. Jude Children's Research Hospital during a 2-day Radiothon.

San Francisco

KFRC-FM

KFRC created the "O! What a Party" Blood Drive in conjunction with the Stanford Blood Bank in Palo Alto to raise awareness for the shortage of Type O blood. Listeners who donated were treated to free food and beverages as well as door prizes including baseball tickets, CDs, DVDs and more. The event was the most successful blood drive in Stanford Blood Center History.

KITS-FM

BFD is KITS's annual concert/festival. Typically for BFD, KITS chooses an environmental agency to donate a portion of the proceeds to. In 2003, KITS raised over $20,000 for Save the Music, with all funding going to Bay Area schools' music education programs. Also at BFD, KITS has a Green Zone, a tabling area for non-profit organizations. The station asks between 10 and 12 organizations to set up tables for the day. The organizations can reach 22,000 people on that particular day.

KLLC-FM

In response to the September 11, 2001 tragedy, KLLC turned its annual concert event held September 23, 2001 into a fundraiser for the American Red Cross Disaster Relief Fund. Willie Brown, The Mayor of San Francisco, proclaimed the event as "A Day of Healing in San Francisco." That day, with contributions from ticket sales and on-site donations, the station raised $150,000 for the fund.

A local non-profit organization that collected second hand prom dresses to give to the needy was robbed. KLLC's morning show went on the air and did a Prom Dress Drive, collecting enough dresses (and more) to—replace the stolen items.

Six years ago, when KLLC in San Francisco—started broadcasting a new format, it made a commitment to make a difference in the local community. The San Francisco Bay Area is known to have one of the highest incidences—of Breast Cancer in the country. Since KLLC's core audience is women, it made sense for the station to—be an advocate in the fight against breast cancer and help raise funds for local breast cancer organizations to continue their work. This inspired an annual music CD project now in 2003 going into its 7th year. "This is Alice Music," Volumes 1-6 have raised $800,000 for the following local breast cancer charities:

- The Susan G. Komen Breast Cancer Foundation—the mission of the local chapter is to eradicate breast cancer as a life threatening disease by advancing research, education, screening and treatment.
- The Community Breast Health Project—founded in 1994 by a breast cancer survivor and her surgeon. The project serves individuals in the Bay Area, providing services free of charge from diagnosis through treatment and beyond.
- The Breast Cancer Fund—strives to unearth and eliminate the preventable causes of breast cancer, identify safe, reliable detection methods, develop non-toxic treatments and secure access to care for all.

- The Carol Franc Buck Breast Care Center at the UCSF Comprehensive Cancer Center—meets the needs of patients with breast problems, breast cancer or general concerns about breast health.
- Art For Recovery Breast Cancer Quilts at the UCSF Comprehensive Cancer Center—created the Bay Area Breast Cancer Quilts workshop as an outlet to express the breast cancer journey and are frequently on display at local events and around the country.

See Alice Run-KLLC's Annual Run event in Golden Gate Park helps raise money for Camp Okizu. Camp Okizu is a small local non-profit that provides a camp for kids with cancer. Camp Okizu works with seven local hospitals to provide a special camp in Northern California for children with cancer. The Okizu Foundation is a very small organization that could not otherwise offer camp programs without help from the local community. These programs are the result of a collaborative effort of the foundation and the pediatric oncology treatment programs in northern California.

KLLC has dedicated the last 4 years to building community awareness about Camp Okizu. Every year at See Alice Run, Camp Okizu is given a free booth to help promote camp awareness and sell Camp Okizu merchandise. Additionally, almost every year, some of the Alice Run advertisers make a cash donation from the main stage. Combined donations from See Alice Run and corporations who have heard about Camp Okizu through KLLC amount to over $200,000.

KLLC's Morning Show has taken a special interest in Camp Okizu, by visiting the camp and participating in the first ever Karma for Kids yoga program to benefit Camp Okizu. Launched in 2002 and sponsored by KLLC, the Karma For Kids program raised over $500,000.

KLLC's 3-Minute Film Festival, which promotes the art of film-making with an on-air campaign, website program that promotes the Bay Area Video Coalition and the Film Arts Foundation, both non-profit organizations dedicated to supporting the Bay Area Film community. Both organizations also receive a donation from ticket sales.

St. Louis

KMOX

KMOX was one of the first stations to receive the NAB Crystal Award, which is presented to one station across the nation each year in recognition of its community service involvement. Following are some of the highlights of KMOX's involvement with the community and charitable organizations:

KMOX has produced the KMOX Student of Achievement program for eleven years. Students are nominated by their counselors or principals. The criteria for selection of a Student of Achievement lies within the hands of school administrators, but it is suggested that high academic, athletic, and extra-curricular achievements be the basis for the nomination. Only one student can be nominated from each school. The St. Louis Metro Area has about 150 high schools. Thirty students each year are selected to become a "KMOX Student of Achievement". Each student is interviewed and an audio vignette highlights him or her for one week as that week's KMOX Student of Achievement. The student also appears as the KMOX Student of Achievement on the local public television station. Each student is also honored at the KMOX Student of Achievement luncheon in June. Students are invited to bring up to three guests to the luncheon where they will receive a $100 savings bond, plaque, opportunity for a scholarship to Southeast Missouri State University, and gifts from sponsors.

KMOX has been the official sponsor of St. Louis Women of Achievement for over thirty years. St. Louis Women of Achievement is the oldest on-going program in the area whose sole mission is to honor and recognize the commitment and dedication of women. The annual award is given to ten women who have made a significant difference in the community. The award recognizes volunteer service and volunteer leadership in the St. Louis region.

KMOX uses its airwaves to give a "voice" to charitable organizations that are making a difference in the community. Each month, KMOX chooses an organization to be its "Voice of Caring" Partner for that month. Not only does KMOX devote 45 of its monthly public service announcements to the organization, KMOX airs three interviews—one in Total Information AM, one in Total Information PM, and one on a weekend morning show for the organization to get its message to the public. Some of the organizations for this year are: Our Little Haven, Junior Achievement, St. Louis Symphony, Animal Protective Association and the Progressive Youth Connection.

For the past four years, KMOX Talk Show Host John Carney has held the "Taste of Restaurant Tuesday Spooktacular." Restaurants which have been guests on John's "Restaurant Tuesday" program, prepare their favorite dishes at this benefit which raises money for the St. Louis Bereavement Center for Young People which helps children deal with the death of a loved one.

For 26 hours, KMOX aired a Radiothon to benefit Forest Park Forever, which included numerous interviews, and testimonials coupled with challenges among on-air personalities to generate new "Keepers of the Park", friends of Forest Park Forever at the $100 level or above. The Radiothon's purpose was to raise awareness of Forest Park's ongoing maintenance needs. KMOX attracted new Park donors from a wide swath of the St. Louis region.

Tampa

WQYK-FM

Some of the station's largest fundraisers include its St. Jude Children's Hospital 48-Hour Radio-thon, which has raised over $3.5 million for the hospital in the past twelve years. For the last 13 years WQYK has been instrumental in promoting and securing artists for the Charlie Daniels Angelus Country Concert. Last year's concert weekend raised over $300,000 for the Angelus, a home for severely handicapped children in Pasco County.

Tampa is home to MacDill Air Force Base, which houses U.S. Central Command. WQYK has for years supported the armed forces through a variety of charitable causes. The station continued this during 2002-03 with free concerts for the troops at the base including Phil Vassar, Neal McCoy, Ronnie Milsap, Toby Keith, Darryl Worley, and Gary Allan. This past Christmas the station's Morning Show with Skip Mahaffey collected over 10,000 holiday postcards and 20,000 free phone minutes. During the Iraqi War, the station aired "Postcards From the Front," greetings from soldiers overseas to their families in Tampa. And in July the station was instrumental in putting together the "2003 Freedom Concert" to honor active and retired military personnel in the Tampa Bay area. The 3-hour concert was broadcast live and commercial free on WQYK and on Armed Forces Radio all over the globe and was shown tape-delayed on Armed Forces TV. The show featured performances by Charlie Daniels, Jo Dee Messina, Darryl Worley, Chris Cagle, Lee Greenwood, Rebecca Lynn Howard, and Ashley Gearing. Other dignitaries on hand included Gen. Tommy Franks, Florida Governor Jeb Bush, Tampa Mayor Pam Iorio, and Buccaneer players Joe Jurevicius and John Lynch.

INDEPENDENT AND LOCAL PROGRAMMING:

INFINITY STATIONS MAKE INDEPENDENT PROGRAMMING DECISIONS TO ADDRESS THE NEEDS OF THEIR COMMUNITIES

Atlanta

WAOK

WAOK prides itself on its connection to the community dubbing itself "The Voice of the Community." The station chooses guests and topics to best address the needs of its listeners. For example, the station invited a member of the Minority Professional Network to the station to discuss business advice for entrepreneurs and the need for community pride. In addition, Lorraine Jacques White, host of WAOK's "Power Talk" has a book club in which she invites listeners to join her in reading a book each month. During the month, Ms. White hosts a meeting of the book club at a local bookstore, attended by listeners, Ms. White and the author or some other special guest.

Once a month, WAOK hosts a show called "The WAOK Town Hall Meeting", a live broadcast from various different locations in Atlanta. Each community has access to the airwaves to discuss issues and solutions to problems that pertain to their community. The station works in conjunction with The Concerned Black Clergy of Atlanta to execute these broadcasts.

Boston

WBCN-FM

The "Boston Sunday Review" is a two-hour public affairs program that airs every Sunday, 7AM-9AM. This program covers issues that are of concern to people in the Boston area. The host of The Review, Mat Schaffer, schedules guests to discuss issues of local importance each week.

WBCN has 128 scheduled spots per week dedicated to both written and recorded Public Service Announcements. A great majority of these PSAs cover issue-related topics.

WBZ

WBZ Radio's Business Editor, Anthony Silva, hosts a daily feature that reaches out to Massachusetts small business owners and highlights their accomplishments and successes. In fact, Mr. Silva was named "The Small Business Administration Reporter of the Year" for 2003.

WBZ NewsRadio 1030 is committed to the local business community and provides an ongoing, invaluable and topical series of breakfast forums. The WBZ Business to Business Breakfasts are offered quarterly as a free service and continually draw more than 700 distinguished CEO's, executives, professionals, small business owners and listeners to each event.

WBZ Radio Host Jordan Rich takes listeners on a radio tour through New England with the family friendly weekend feature "New England Weekend." Six times per weekend Jordan highlights some of the flavor of New England and informs listeners how they can join in on the fun.

WBZ Radio provides non-profit telephone information, referral and action service dedicated to resolving listener's consumer problems. WBZ's Call For Action uses professionally trained volunteers to act as a buffer between the consumer and the company. Call for Action serves as a source of information about community problems, and acts as a referral agency for people with nowhere to turn. Call For Action recovers thousands of dollars in goods and services for New England consumers every year.

WBMX

While the opportunity to carry nationally produced or syndicated public affairs programs at no cost is available to the station, WBMX has instead elected to produce, at its own cost, two 30:00 minute weekly shows specifically aimed to address local interests. *Boston Neighborhood Forum* and *New England Lifestyles* are focused squarely on the people and issues shaping the community of which the station is a part.

WZLX

WZLX is proud to offer its weekly public affairs program "Common Ground" (all locally produced) at a "prime time" Sundays 7-9a leading into the extremely popular Blues Show. Common Ground discusses local and national people and publications of interest to the local community.

In response to listener feedback, the station extended the length of the "Sunday Morning Blues Show" from two to three hours.

Charlotte

WBAV

WBAV prides itself on being the voice of Charlotte's African-American community. Every morning the station provides live local, state, and national news coverage in an hour-long program called "Front Page with Beatrice Thompson." The show includes a live-interview segment with a local community leader or newsmaker and provides up-to-the-minute coverage of news and information of importance to the local community. Each week, WBAV'S "Straight Talk" provides an hour of live talk Sunday mornings from 11:00am until 12:00 Noon. The show has tackled a variety of topics including, but not limited to:

- Health care issues—Diabetes, transplants, sickle cell, HIV/AIDS, smoking.
- Political—area city council decisions, taxation questions, laws impacting daily life of listeners.
- Education—desegregation issues, bussing/transportation, achievement goals.
- Civic/economic—uptown development, business involvement in the community.

Chicago

WBBM(AM)

WBBM is a 24-hour a day all-news station, all locally produced and originated (with the exception of the top of the hour CBS newscasts.) It is Chicago's most-listened-to station. Some specific programming highlights:

- WBBM Sponsored and broadcast debates between the Democratic, then Republican Gubernatorial candidates.
- WBBM Sponsored and broadcast a debate between the Republican and Democratic U.S. nominees.
- WBBM reporter Steve Miller produced and reported a series that lead to a GAO investigation. Indigent veterans were buried, incorrectly, in pauper's graves, rather than in Veteran's cemeteries with appropriate military burial. Some graves were exhumed and the bodies re-buried as a result of Steve's series.
- WBBM actively solicits "newstips" from listeners.
- WBBM, in conjunction with the Chicago Public Schools, originates a monthly primetime program, "Talk to the Schools" which features the Chicago Schools Superintendent taking calls from Chicagoland residents. The program is co-hosted by Chicago Public School Superintendent Arnie Duncan, giving listeners an opportunity to directly address education-related issues.
- WBBM features a full-time Business Editor based at the Chicago Stock Exchange as opposed to a syndicated business news service.
- WBBM features a "suburban bureau" specifically covering issues of importance to the suburban community, staffed 5 days a week.
- WBBM regularly presents long-form, live coverage of election campaign debates.

Dallas

KRLD(AM)

KRLD recognizes the contributions made to the local community by African-Americans over the years. In February, KRLD airs a series of 28 reports, profiling local African-American citizens who have contributed in both tangible and intangible ways to the quality of life in Dallas/Fort Worth.

Detroit

WXYT

As the radio station where sports fans gather to talk about their favorite teams, WXYT broadcasts local programming from 10 a.m. until 10 p.m. Monday-Friday. This period extends even later when night games are occurring.

Frequent show issues include the involvement of young people with athletics, the financing of athletics, the impact of major sports teams on the Southeast Michigan's economy and image, and defining the line between professional and amateur at Michigan's Big 10 schools.

The shows take local callers and provide an outlet for the frequently frustrated Detroit sports fan, as well as interviews with major players in the Detroit sports world.

Several metro Detroit sports writers serve as contributors to WXYT including Drew Sharp and Curt Sylvester of the Detroit Free Press, and Pat Caputo of the Oakland Press (Oakland University).

Station is home to the "Ask the Handyman" show, celebrating its twentieth year. The show includes weekly guests and offers advice to listeners on making home repairs and avoiding related problems.

WVMV

Each week, WVMV acknowledges a local person who has voluntarily helped individuals or groups with its Acts of Kindness salute. These on-air tributes run 14 times per week. The individual receives a plaque from the station and is eligible for a special Acts of Kindness award announced at the United Way's Celebrate Volunteers Luncheon each April.

WWJ

WWJ focuses on crime and law enforcement by airing a monthly *Chat with the Chief* program, and on the educational needs of the Detroit Public Schools by airing a monthly *Making the Grade* program with the superintendent of the Detroit Public Schools.

WWJ's reporters and anchors produce a large number of local interest features, including:

- *Automotive Insight* with John McElroy—looking at design, marketing and business issues in the auto community.
- *Car Chronicles* with Jeff Gilbert—a review of new cars
- *Peter's Principles*—Health and Fitness tips with Peter Nielsen

- *Great Lakes IT Report*—an update on the Michigan IT world with GLITR editor Matt Roush
- *The Feldman Report*—Business and consumer information from Murray Feldman
- *Making the Grade*—A report on schools and education with Greg Bowman
- *GreatStuff*—A daily feature on what's happening around town in arts and entertainment with Roberta Jasina
- *Making a Difference in Southeast Michigan*—A profile of charitable giving and individual initiatives with Bill Stevens
- Detroit History Minute—A daily look at a unique and interesting moment from Detroit's past, with Joe Donovan.

WWJ has partnered with the Community Foundation for Southeastern Michigan to produce the program "Making a Difference in Southeast Michigan," a weekly series that profiles people and organizations that "make a real difference in the lives of Southeast Michigan."

Hartford

WRCH

WRCH obtains recorded messages from local US military service personnel station around the world and broadcasts them to their families in Connecticut and central Massachusetts each hour throughout the month of December.

WTIC(AM)

WTIC broadcasts a weekly half-hour "Face Connecticut" public affairs show focused on important issues in the state.

WTIC conducts a weekly public affairs program addressing issues that specifically affect the community's elderly population.

WTIC NewsTalk 1080 broadcasts a monthly one-hour "Community Connection" program which features representatives from United Way organizations to discuss various volunteer efforts in the community.

In 2002 WTIC NewsTalk 1080 replaced a popular nationally syndicated radio program with the two-hour local program "Connecticut Today."

WTIC NewsTalk 1080 conducted extensive coverage of ceremonies for Connecticut service personnel as they departed for the Iraqi conflict, welcome-home ceremonies for National Guard and Reserve troops and for submarine crews returning to the Groton naval submarine base.

Kansas City

KFKF

In 2003, KFKF replaced syndicated Lia program with local jock Lisa Foxx. In addition, NASCAR race coverage has been dropped and replaced with more live/local hours of broadcasting. This was a direct result of researching the core audience.

Los Angeles

KFWB(AM)

KFWB created and executed a half-day Saturday seminar on the California energy crisis; much of the seminar was carried live and highlights were rebroadcast in a two-hour special program.

KFWB's special programming provides a voice to the community with monthly call-in programs featuring the Mayor of Los Angeles, Los Angeles Police Chief and Superintendent of Los Angeles Unified Schools. KFWB's investigative reporting has led to changes in how local ports are patrolled and the local water supply is protected. KFWB provides balanced coverage on candidates and issues. In addition to regular news reports, in October 2002, KFWB pre-empted a regular broadcast of Larry King Live to present an hour-long live call-in program featuring both sides on two secession measures on the November 2002 ballot.

During the war in Iraq, KFWB on several occasions was able to air live interviews with US soldiers on the front lines in Iraq (via cell phone or satellite phone) who were either from the station's listening area, or who were based at military installations in the station's listening area. This kind of one-on-one journalism localized the story in a way that using reports from journalists on-scene simply could not do.

KFWB devoted substantial coverage to the California Gubernatorial recall election (as well as the court challenges surrounding it). Beyond the ongoing news coverage, KFWB has provided all qualified candidates—free airtime—to deliver their campaign platform message to its audience. KFWB also broke format to provide ongoing live coverage on October 7 (election day) of this historic vote.

KFWB organizes and executes several "Power Breakfasts" throughout the year. These public forums focus on providing small business owners and operators with expertise on how to better navigate the business world and be more successful in their field. Attendance can range from 250 to 600 people.

KFWB's website contains a "Community Calendar" that any local community or non-profit organization can use to post an announcement identifying their event and who it benefits. The calendar—uses a tool allowing the organization to input its own information.

The website also has an entire section devoted to offering earthquake preparedness information . . . a key service in the station's listening area.

During the station's broadcasts of Los Angeles Dodgers baseball, it inserts several "news briefs" between innings for those people who still depend on KFWB for news even as its carrying the play-by-play of the game. Also during the ballgames, the station does traffic updates at the top and bottom of the hour.

The general manager of the station served recently on a panel at the Homeland Security Summit organized by Los Angeles Mayor James Hahn. The topic of the panel was "Improving Communication between the Government and Media in Time of Crisis".

KLSX-FM

KLSX is a personality and entertainment talk station. For nearly eight years, KLSX has hosted a live call-in public affairs program called "Sunday Edition." It was awarded "Best Public Affairs Show" in 2000 by the Literacy Network of Greater Los Angeles.

KNX(AM)

The last week of every year KNX produces a series of reports that review and explain new and revised laws that take effect in California on January 1 of the new year. It's designed to explain the impact of new directives and help listeners avoid pitfalls that could result from ignorance of changes in existing laws or implementation of new ones.

In election years, KNX routinely provides its audience with an in-depth examination, in series form, of the pros and cons of ballot propositions as explained by people involved in promoting or opposing the initiatives.

KNX offers the community affairs program *On the Scene* where local non-profits are featured every Saturday. KNX Community Services Director David P. Ysais interviews the non-profit representatives at their location focusing on special events and service offered to the local community. There is emphasis on small and medium-size organizations throughout Southern California.

KNX singles out a *Citizen of the Week* from the listening community who has either performed a heroic action or has performed outstanding public service. These stories are then broadcast as an interview with KNX anchor Jack Salvatore. The stories are of people pulling strangers out of burning buildings, or offer a healthy kidney to a stranger in need of a transplant, or giving 35 years to Boy Scouts. The citizens then gather for a luncheon in January where KNX selects a Man and Woman of the Year, and the citizen stories are repeated.

KNX Consumer reporter Jackye Shaun has offered tips to listeners about making their money last longer for more than 30 years. Her feature focuses on businesses and services right here in Los Angeles, which are designed to help consumers.

KNX is among the most aggressive stations with regard to informing potential voters about upcoming local and statewide elections. Included in a history of endorsements, are efforts at informing listeners about all issues on the ballot. In the most recent recall ballot, KNX aired 50 political features focusing on each candidate running for governor of the state, in addition to a written description of their campaign direction. In the past, KNX has run endorsement specials right before an election, to explain all of its decisions, and to give voters more information.

Minneapolis

WCCO

WCCO Radio is the only radio station in the Metro that creates and executes live and local programming 24 hours a day Monday through Friday, and on weekends from 6:00 AM-10:30 PM covering, on average, 400 news elements and stories per week.

The Governor of Minnesota hosts his own weekly radio show on WCCO Radio to discuss issues of importance to Minnesotans and to take calls from constituents. He

chose WCCO radio to be the Flagship station because of the station's reach and reputation as a community radio station.

Every weekday for the past 50 years, WCCO Radio has honored a different member of the community that has contributed to their environment in a positive way. This award honors everyone from athletes to cooks to grandparents. If you have made an impact in someone's life, you're deserving of The Good Neighbor Award. Daily winners receive a certificate suitable for framing and a :60 on-air honor twice on the day they are chosen.

Pittsburgh

KDKA-AM

The KDKA Stormcenter: In the winter, KDKA alters regular programming to provide listeners with the most current list of school and event cancellations. KDKA also provides up-to-the-minute weather conditions, crucial traffic tips and updates on power outages Spring/Summer/Fall-the station is the primary carrier in its region for the Emergency Alert System. KDKA provides emergency weather warnings first to its listeners. The station also breaks format during storms with updated weather, traffic, news information as well as taking calls from eyewitnesses describing the scene.

Talk Shows: The station's talk shows consistently interview local leaders about local issues and provide a public forum to better its community. KDKA also deals with national issues and breaks format during wartime, airs important addresses or press conferences and provides all public safety information to its listeners. Pittsburghers listen to the station in time of crisis.

School Talkback program: Took the station's mid-day talk show to 4 different local high schools to provide a forum for students to talk about issues that affect them. The station took calls from listeners who were able to interact with the students.

NAACP program: KDKA airs a weekly 10-minute, commercial-free NAACP program hosted by a former Pittsburgh NAACP president to help address the needs of the African-American community.

Catholic Church talk Program: Sunday evenings the station runs a limited commercial call-in program hosted by a Pittsburgh Catholic priest that deals with religious issues and other concerns of the church. This program deals with controversial topics and allows listeners to call-in and question or support the views of the priest.

Ask the Governor Hour: Once a month the stations airs a Governor's Rendell's show. The Governor takes questions from listeners in a very crucial time for the Commonwealth of Pennsylvania.

Bi-monthly Editorials: These award winning editorials delivered by Infinity Pittsburgh's Senior Vice-President and Market Manager Michael Young take issue and bring to light the fate of various topics not excluding: Pittsburgh's economic crises, the fate of U.S. Airways, and Pennsylvania's budget woes.

Yearly Community Ascertainments: This station staffs and moderates a yearly ascertainment program where various leaders in the Pittsburgh region express their concern on what needs to happen for Western Pennsylvania to succeed.

County Executive Forum: In a year when the Allegheny County Executive is up for re-election the station aired a forum twice between the respective leaders of Democratic and Republican Party. This program was intended to give the station's community to better understand the two politicians and make a better-informed decision come election time.

Portland

KINK-FM

KINK has its own news team and airs news segments twice an hour through morning drive. They have a professor of political science, Dr. Jim Moore, who provides an analysis of political issues of concern to the community. For example, on January 29, 2003, Dr. Moore not only discussed the previous night's State of the Union address, but also provided an analysis of a Special Election measure, "Measure 28," which was a special tax to fund education that did not pass during a local election the night before.

KINK produces several programs to deal with issues important to the local community. The station uses the top 10 issues that are collected in its quarterly ascertainment report by Lacy Turner, Portland Infinity's Public Affairs Director. All decisions on the content of the programs is made locally at KINK and not influenced in any way by corporate, or any other mandates.

- KINK Considers is a 3-minute in-house produced Public Affairs program that deals with one issue that runs six times a week inside its regular programming. The station feels it's important to deal with important issues like the economy, health care, government, etc. in a bit-sized, understandable format that can run during prime hours. KINK Considers runs in AM drive, midday and PM drive times.
- Subject Earth is produced in-house. It is a short-form environmental program that runs 3 times a week during regular programming. The Environment is consistently in the station's top 10 issues list, and this program gives meaningful tips to the station's listeners on what they can do to be more environmentally aware.
- Home Page is a short-form program also produced in-house that deals with important issues like education and youth issues. It runs three times a week during regular programming.
- Discovering the Northwest is a short-form program that deals with tourism and the local Northwest economy. It runs three times a week during regular programming
- Speaking Freely is a 30-minute long-form discussion of one of the station's top ten issues with an expert or newsmaker. It is hosted and produced by KINK's News Director, Sheila Hamilton.

Rochester

WCMF

WCMF-FM replaced the syndicated "Rockline 2" program with local programming in January of 2000.

WCMF-FM replaced the syndicated "Chase Pitkin Home Show" program with local programming in May of 2001.WCMF-FM replaced the syndicated "Opie & Anthony" program with local programming in June of 2002, prior to the program's termination.

San Diego

KPLN AND KYXY

Both Stations are "live and local" 24 hours a day, 7 days a week. All programming decisions, including every record played on KyXy and KPLN, are made locally.

Both stations' music selection relies on frequent music testing with an auditorium full of exclusively San Diego County residents.

Both KyXy and KPLN employ their own dedicated local newscasters and traffic reporters.

Both KyXy and KPLN air a weekly long-form locally produced Public Service talk show, called "Concerning San Diego."

KyXy's highly rated nightly "Love Songs" request and dedication show is one of the few "local" shows of its kind left.

Seattle

KMPS/ KYCW

All of the programming on KMPS-FM is generated locally. Each of the station's on-air personalities focuses on local content and entertainment between songs. They are active in their schools, churches and communities in which they live.

KMPS carries the Washington State Cougars Football and Basketball as well as Hydro Racing, which is very popular in the Northwest. It is also the official Radio Station of the General Motors Cup at Seafair and the Seafair Torchlight Parade.

KYCW-AM is a fine example of a local, independent programming decision-making. KYCW-AM serves a niche audience and airs two highly acclaimed local programs "Music with Moskowitz" and "Legends of Country." Music With Moskowitz is a well loved locally produced program of new and vintage comedy songs and Legends of Country plays classic and influential country and western music from the 1940s to the 1970s. Both shows have a small, but fervently loyal, fan base. In August of 2001, the station switched 1090 AM from Classic Country 1090 to Extreme Talk 1090. The outpouring of letters, phone calls and e-mails from the community made it clear that the community wanted Classic Country back on the air. The will of the local listening public prevailed, and in a very rare occurrence, KYCW-AM returned to serving its niche local audience in May 2002.

For over 25 years the station's News Director, Don Riggs has produced a local public affairs program called "Introspect Northwest." This show airs every Sunday on KMPS-FM and KYCW-AM. Don regularly attends the community ascertainment meetings and documents the needs of the local area.

Every Friday, Don Riggs features a list of weekend community events during his newscasts from 5:30am to 9:30am.

Tampa

WLLD

WLLD relishes in the fact that out of 168 hours of programming, weekly, it only has four of them dedicated to syndicated programs. This allows the station to focus on local culture and interests. The station also made the decision to append each club advertisement with a "*don't be stupid, don't drink and drive*" tag line. This has been standard procedure with the station's nightclub ads for all 5 years of the station's existence. The staff is quite proud of the station's active involvement with the Pinellas, Hillsborough, Sarasota, and school boards. The staff speaks at various schools covering subjects such as; staying in school, career planning, and marketing.

Washington, D.C.

WPGC-FM

Each summer WPGC holds "Streetjams" weekly around the DC area. In conjunction with area police departments and local community leaders, the station shuts down a street, erects a stage and brings out its promotional and broadcast vehicles. WPGC then brings local talent to perform, broadcasts live and has community and church leaders present to speak to the neighborhoods about empowerment and peace on the streets. These are free and open to everyone and been very successful. The station has done these every summer for the past 12 years.

WPGC is one of the few music stations in DC that has a real news department. The station's news director, David Haines, is on call 24 hours a day for breaking stories. He has full authority to go on air and interrupt regular programming with a news bulletin at any time and does this often. Recently hurricane Isabelle threatened the area, and David was on air with weather and storm updates as well as closings and cancellations, day and night. David provided the same kind of round the clock updates last fall when there was the sniper loose in the DC area.

WPGC-FM has a Sunday evening show that has aired for 13 years, called "DC Homejams". It is a 30-minute program where the station features local artists exclusively. This program, hosted by DJ Flexx, has given airtime to many groups who would normally never have a chance to be on a major market radio station. One of the station's biggest discoveries was a local group called "Shai". The group gave the station a demo tape, which it played on the air. The response from listeners was strong so the station gave the song a high rotation and the group was signed to MCA records. The song the station played, "If I Ever Fall In Love Again" went on to be a national hit!

WPGC airs a semi-regular show called, "YO Listen Up". It is a 60-minute show that is aimed at teens covering subjects such as teen pregnancy, violence in the schools and AIDS & teens. It is hosted by the station's night show hosts, the Hometeam, and includes guests who take calls from listeners on the various topics it covers.

LOCAL NEWS AND INFORMATION:

INFINITY STATIONS ASSURE COVERAGE OF LOCAL AND NATIONAL EMERGENCY NEWS AND INFORMATION

Baltimore

WQSR

In 2003, coverage of Hurricane Isabel's effect on Baltimore was comprehensive. Throughout the four-day period of the greatest impact of the storm, WQSR offered a series of bulletins and twice-hourly news reports. During the height of the storm, WQSR introduced a group discussion, dropping the music format and offering listeners a place to discuss their feelings and receive important emergency information. Representatives of FEMA, American Red Cross, the Governor and Lieutenant Governor of Maryland, and other important officials were interviewed. They provided important life-saving information to WQSR listeners.

As electrical power was disconnected for many of the station's listeners for several days, WQSR offered programming for those in the dark, and even solicited for temporary housing for some of those affected by the storm's worst damage.

Chicago

WBBM(AM)

WBBM is the first choice of Chicagoans for emergency coverage providing wall-to-wall, commercial free coverage of breaking news, most-recently a hostage situation and multiple homicide on the Southside, and of the enormous NYC/Cleveland/Detroit blackout its impact on the Chicago area. WBBM-AM has 10 fulltime local reporters.

WBBM offers a "News-tip" hotline that is answered 24 hours a day and regularly contributes to the station's news effort. WBBM actively solicits "newstips" from listeners.

Dallas

KRLD(AM)

KRLD was one of the focal stations in Dallas/Fort Worth in the development of the original "Amber Plan", the program that has proven successful in returning abducted children to their families. KRLD is one of the stations that originates the Amber Plan alerts in Dallas/Fort Worth. KRLD's General Manager, Jerry Bobo and News/Operations Director, Tyler Cox, were part of the team that developed the original Amber Plan that is now growing across the nation.

KRLD is the only all news radio station serving Dallas/Fort Worth. The station has devoted more resources than any other radio station (and more than some TV stations) to reporting news in North Texas. With a 30+ person news staff (including the only full-time radio-only meteorologist in the Dallas/Fort Worth area), KRLD provides around-the-clock news coverage every day. During severe weather, KRLD interrupts regular news coverage to provide extensive detailed news coverage of the path of the storm and to alert listeners to impending danger.

On February 1, 2003, the space shuttle "Challenger" broke apart over the skies of North Texas during its re-entry into Earth's atmosphere. The entire KRLD news staff mobilized within minutes, and pre-empted all commercial programming and content for the next 26 hours to provide non-stop coverage of the disaster. Shuttle debris was scattered across the KRLD listening area. KRLD programming provided information to listeners about what to do and not do with any debris they came across.

Three weeks later, the Dallas area was hit with a severe ice storm that shut down business and schools for 3 days. As the All News station for North Texas, KRLD's coverage was extensive, providing information on not only school and business closings but also safety information and traffic advisories throughout the duration of the weather emergency.

When war broke out in Iraq, KRLD provided untold hours of continuous coverage. The station not only covered news developments in Iraq, but provided extensive coverage of the impact of the war on families and communities in the North Texas area.

Spring and late Summer severe weather is commonplace in North Texas. With the only "radio only" full-time meteorologist in the market, KRLD provided extensive coverage of weather emergencies, frequently interrupting regularly scheduled programming to provide weather emergencies. It—is not uncommon for KRLD to interrupt Texas Ranger baseball games with frequent weather advisories.

One of the key economic "engines" in the Dallas area is American Airlines. When the air carrier was on the verge of bankruptcy, KRLD provided extensive coverage of the union negotiations that averted bankruptcy. Coverage went beyond the immediate impact to American Airlines, to also include the potential impact on the many families employed by American, and the ancillary businesses that would be harmed if American Airlines did file for bankruptcy.

Detroit

WKRK

WKRK assisted the Hazel Park Police Dept. in spreading the word about raising funds for non-lethal weapons. Chief David Niedermeier visited the studio and explained how non-lethal weapons are a safer option for his officers and the public.

WKRK took a lead role in providing non-stop coverage and news information during the nation's worst blackout. WKRK provided necessary emergency information throughout the entire crisis.

WKRK provides local weather and traffic updates every fifteen minutes throughout the day.

WKRK airs a localized Dow Jones Money report 3X each day. This report provides stock and business information focused on the local business community.

When severe weather threatens metro Detroit, the station's talent will break away from local programming to provide weather updates.

Provides coverage and discussion of issues relevant to the Detroit area. Recent examples include:

- Reported that a slim majority of Michigan voters support a State Constitutional Amendment banning affirmative action—sought listener reaction.
- Local man faces charges of animal cruelty felony firearm counts after killing two pit bulls who repeatedly entered his yard—should he be convicted?
- Detroit Metro Airport will be "Color Coding" passengers based on criteria including age, destination, etc. Some passengers will be required to pass extra security or may have to talk to police—sought listener reaction.
- Reported that identity theft is spreading in Detroit—sought listeners experiences.
- Sought listener reaction regarding a local Detroit resident sentenced to thirty-months after being convicted of filing ninety false state tax returns.
- Sought listener reaction regarding plans for a drive-in movie theatre in the parking lot of the Silverdome.

Hartford

WTIC(AM)

WTIC NewsTalk 1080 has a strong commitment to local news, weather, traffic and sports. The station has news anchors on duty twenty-four hours a day, seven days a week and features news updates every half-hour.

WTIC NewsTalk 1080 maintains a news staff of six full-time and six-part time news employees and two full-time and two part-time meteorologists to provide custom weather forecasts.

WTIC NewsTalk 1080 listeners can get in touch with the station by telephone, cellular phone, or email—not only though extensions from the main station switchboard, but through direct phone lines to the newsroom and a special cellular phone speed-dial number for traffic information.

WTIC NewsTalk 1080 maintains phone lines to provide line-quality broadcasts from the Connecticut State Capitol and the state Armory, where the Office of Emergency Management is located.

WTIC NewsTalk 1080's station news vehicle is equipped with two-way radio, cellular telephone communications, an audio mixer and RPU feed capability on two frequencies to provide high-quality feeds from news locations.

WTIC NewsTalk 1080 has an automated system with nearly 3,000 organizations, schools and businesses whereby they can report weather-related cancellations which are broadcast on air and posted on the station's website.

When a fire broke out at a Hartford nursing home in February 2003. The station's coverage of the event garnered its own story in the *Hartford Courant.* In addition to having two reporters on the scene, the station featured live news briefings from city officials and telephone interviews with health and safety officials.

WTIC NewsTalk 1080 produced and broadcast all five Connecticut gubernatorial debates in 2002.

WTIC NewsTalk 1080 is a primary broadcaster for the Emergency Alert System and the Amber Alert program.

In November 2002, when an ice storm left 130,000 Connecticut residents without power, WTIC NewsTalk 1080 brought in extra news and weather staff for an expanded broadcast of the situation. As further preparation for future similar events, WTIC NewsTalk 1080 contacted local mayors, selectmen and emergency operations directors providing information on how they could contact the station in similar emergencies to education the community.

In 2003, WTIC produced a special report on the Blizzard of 1978—25 years later. The broadcast featured interviews with present and former state employees as well as listeners covering that they remember about the event.

WTIC abandons regularly scheduled programming to provide minute-by-minute reporting when local and national events break.

Los Angeles

KFWB(AM)

In case of emergency such as earthquake or wildfire, KFWB tells residents where to go for shelter, medical attention, financial support, etc. Many schools and businesses list KFWB as the place to turn for emergency information. During a recent

brushfire, the Red Cross tuned radios in its offices and shelters to KFWB for the benefit of workers and residents.

KFWB provides invaluable information to residents who have family and friends in other countries facing disaster. During the recent Colima earthquake, bilingual KFWB reporters provided information to KFWB's Mexican-American community on the earthquake.

Year-round, KFWB airs reports to educate the public on how to deal with emergencies. In April, California's Emergency Preparedness Month, KFWB broadcasts special reports several times a day, every day, on emergency preparedness.

KFWB was the leading source of information on the California Energy Crisis. The station was the only media outlet in a position to broadcast specific warnings in advance of "rolling blackouts" and dispatch alerts to listeners in the station's e-mail base.

KFWB listeners get personal attention whether they call or email. KFWB's phones are open 24 hours a day, 7 days a week, and all letter and emails receive a personal reply (with copy to the public file).

KFWB also provided commercial-free news coverage in the initial hours of the war in Iraq, and regularly broke format to provide program-length coverage of military briefings, Presidential speeches, and Homeland security updates during the course of the war. All decisions on what programming to air, and when to eliminate commercials so as to maintain continuity, were made by station management (with no oversight from corporate). During the war, KFWB also provided special news reports to sister stations KRTH, KTWV and KLSX to ensure that listeners to those stations received the latest news updates on this ongoing story.

KNX(AM)

KNX has won more journalism awards than any other station, for its ability to inform listeners. The KNX Community Services department has gone a step further by setting up an emergency hotline where businesses and school districts can call for truthful information about street or school closures, or emergency evacuation plans. But in a crisis or an emergency, KNX is prepared to provide up-to-the minute coverage of local emergencies.

When two teenaged girls were kidnapped in mid-summer 2002, KNX frequently broadcast Amber Alerts in the pre-dawn hours and into morning drive. Police received numerous tips from drivers who recognized the car from Amber Alerts and the girls were rescued.

In the Northridge quake, KNX provided vital information to residents who were trying to get to loved ones in destroyed buildings. KNX also uncovered several stores gouging quake victims for such supplies as water and food. Several store owners were arrested. Not only did KNX offer assistance during the quake, it developed a quake checklist and has handed out millions of the brochures so people can prepare for the next temblor.

In the Laguna and Malibu fires, KNX provided information to homeowners trying to decide whether to stay in harm's way and protect their homes or evacuate. KNX kept people informed about Red Cross shelters, insurance information and tips on federal assistance.

A heart transplant patient waiting for the proper organ, was vacationing near the Salton Sea. KNX announced a compatible heart had been found and began announcing it on the air. Within two hours, the patient had been located by other KNX listeners out in the middle of the desert. The patient was airlifted to the hospital and the transplant was successful.

KNX provides updates every six minutes on traffic and provides current information to listeners coping with emergencies such as brush fires, floods and earthquakes.

New York

WCBS(AM)

WCBS devotes millions of dollars of resources to providing a 24-hour news product locally with a news staff of more than 75 people. The station has field reporters spread across the tri-state area providing listeners with local news. In addition, WCBS covers local business, local sports and local traffic and weather every hour around the clock.

The station participates in the Amber Alert system reporting immediately on any missing children. Once an alert is sounded, the station repeats the information frequently every hour in conjunction with consulting local law enforcement officials.

During local emergencies, the station provides wall-to-wall news programming on the emergency. The most recent example was the "black-out" of the east coast and

New York Metropolitan area. The station dropped all commercials and other programming and focused completely on the emergency, providing residents with their only source of information, since electrical power was unavailable.

Philadelphia

KYW

KYW Newsradio is the most relied upon source in the market for information during emergencies and severe weather. In addition to coverage, the station has a comprehensive snow and school closing program that registers thousands of schools and non-profit organizations to have their status reported on-air during inclement weather without charge.

The station also participates in the Amber Alert program of notification when a child is abducted.

Two employees staff the KYW newsroom phones during all shifts. They can take information from listeners, refer listeners to city and community resources in an emergency, repeat information listeners may have missed hearing, as well as refer them to the KYW web site.

WOGL

When it's appropriate WOGL will always suspend its normal music programming to provide the urgent information that the listeners need. Just a few weeks ago a tornado touched down in a small suburb within the station's listening area, and the station's news director immediately broke into WOGL regular programming to alert its listeners and to provide the necessary precautions to keep them out of harm's way. And should emergency personnel every need to reach the air studio, they'll find that there is always someone available to talk to them on the phone. The station is live and local all day and night long.

Phoenix

KOOL-FM, KMLE-FM & KZON-FM

In September 2003, severe gasoline shortages suddenly and unexpectedly hit Phoenix. The city's drivers were brought to a virtual standstill as hundreds of gasoline retailers were forced to close their pumps. Panic buying ensued, accentuating the gravity of the situation.

KMLE, KOOL and KZON each broadcast regular updates on where gasoline was available for purchase. Listeners called on their cell phones from their cars when they found gasoline available: the station in turn relayed this information to its audiences.

This information was an integral component of KMLE, KOOL and KZON for the three worst days of the shortages. The public received timely and vital information where they needed it; when they were behind the wheel in search of hard to find gasoline.

In November 2002, KOOL (and KZON and KMLE) broadcasted the first Amber Alert message since the system went in place. Because a conscientious listener heard the message on KOOL, an Arizona child was returned home safely.

The story from the Arizona Republic newspaper follows:

CHILD ABDUCTION SYSTEM SUCCESSFUL ON ITS FIRST TRY

By Lindsey Collom, The Arizona Republic, Nov. 24, 2002

Fredrick Ruiz couldn't believe his eyes when the red truck crept into his right field of vision.

Moments before, Ruiz, a truck driver for Albertson's, was listening to KOOL-FM when a message from the state's Child Abduction Alert System boomed from the cab speakers in his semi. It said a 6-year-old girl had been abducted from her home in Bridgeport by her father Saturday morning and was likely headed toward Phoenix. The vehicle: a red Toyota extended cab pickup truck with a tool chest and tinted windows.

Ruiz, 47, was driving through Wickenburg on U.S. 60 when he spotted the vehicle and matched the description and license plate.

11I said, 'Oh, my God, this is the truck they were looking for,'" said the Chandler man, who then called 911. "I got nervous when I saw that. I said, 'This can't be happening.'"

Law enforcement officials are calling the first use of the alert system a success after 6-year-old Emily Housley was returned unharmed a mere three hours after

her abduction. Sheriff's Lt. James Jarrell of Yavapai County said Emily was taken around 8 a.m. Saturday when her father, James Housley Jr., 38, burst into the home she shared with her mother, Deana. James grabbed Emily and stormed out of the home, telling her mother she'd "never see her again," Jarrell added.

Housley completed a four-year sentence for theft in Maricopa County in August and was denied custodial rights.

Saturday was the first time the Arizona Child Abduction Alert System had been activated since its inception in the fall.

Pittsburgh

KDKA-AM

The station's award-winning newsroom delivers the most listened to newscasts in the city. KDKA is one of the original stations helping to institute the Amber plan in Pennsylvania. It is the designated station in the 6 county region to report EAS information. KDKA focuses its news on local issues, traffic, weather & breaking news—providing information in times of trouble. One of its news reporters followed, on foot, a local war protest throughout town for nearly 3 hours to keep KDKA's listeners informed. The station conducts man-on-the-street interviews when necessary to get the pulse of what Pittsburghers think of a particular story. The station uses a system of checks-and-balances, discussing how it reports stories so it keeps its opinions and emotions out of the news and leave that to the station's talk show hosts. The station uses its website to list recall and other safety information so its listeners can read more about a story after it has aired.

Rochester

WCMF

After the September 11th attacks, WCMF-FM suspended normal music programming and broadcast continuous locally originated news and information. Additionally, the "Radio Free Wease" program remained on the air from 6:00am until 8:00pm on September 12, 13 and 14 to allow continuous talk programming where Rochester area listeners were able to participate in discussions and dissemination of information and opinion.

During the Ice Storm of 2003, WCMF-FM broadcast frequent updates on the availability of life sustaining supplies during the state of emergency.

Sacramento

KZZO

KZZO considers local news of the utmost importance and does not restrict coverage to "morning drive", nor does it farm news out to syndication. News Director Marshall Phillips does numerous call-ins and field reports throughout the day when the situation warrants. In the past few months, KZZO has been reporting on the recall election, the Laci Peterson case, AMBER alerts and breaking news around the clock. As far as reporting emergencies, KZZO carries all EAS tests and alerts. These are augmented by reports from Marshall Phillips. One recent example: when the Sacramento area was ravaged by a series of powerful thunder and lightening storms on May 8th, 2003, Marshall covered the storms' paths and damage including advisories on how to stay safe and what roads to avoid.

KNCI-FM

KNCI always uses the Emergency Alert System as directed, and it has been used recently for area flooding information.

The station has successfully used the Amber Alert System, which is controlled by CHP locally. It has met with the local officials to discuss how to properly use "Amber Alert." KNCI, in conjunction with the CHP, carries every Amber Emergency Alert message that has direct significance to the Sacramento metro area.

KNCI worked with local and state energy officials to broadcast all local area "black-out" energy announcements.

The station reports any local major accidents immediately. KNCI features 27 daily local traffic reports.

KNCI has installed a toll-free "800" phone line for area listeners, which is often used to report news and emergency information. In addition, KNCI's local request lines are answered 24 hours a day, 7 days a week. Phone calls, mail, and e-mail can be directed to one of two people in KNCI's news department. In addition, listeners can reach the program director who does not screen phone calls. The station address for correspondence is broadcast and listed on the station's website.

KNCI provided live election night coverage for the October 7th re-call election in California.

San Jose

KEZR

Although KEZR is primarily a pop music station, it is fully and locally staffed with live talent from 5:30 AM to midnight. No syndicated or voice tracked talent is used, and the station has a local live news talent on during morning drive time. In addition, all of the station's non-news talent have deep roots in the local community and are well qualified to provide coverage when local emergencies develop. Just one recent example of this is the devastating fire at San Jose's new Santana Row shopping mall. While this large development was under construction, a huge fire broke out, causing millions of dollars in damage and also forcing the evacuation of nearby homes and apartments that were damaged and causing already busy afternoon rush hour traffic to come to a halt. KEZR stopped the music and dedicated itself to ongoing live coverage until the immediate danger had passed.

Seattle

KBKS

KBKS provides regular news updates in morning drive and breaking news as it happens 24/7. The station has the resources of CNN to bring news on a national/world basis to its listeners. When major local emergencies happen, the station's staff rallies to provide immediate and continuous coverage. One example of this occurred after a major earthquake struck Seattle and the Puget Sound region in February of 2001. The morning show went back on the air to anchor continuous, commercial free local coverage. All airstaff participated for the bulk of the day, relaying reports on damage and casualties. A key component of the coverage was the constant input from listeners via phone on their personal experiences and eyewitness accounts of the day.

Washington, D.C.

WJFK-FM

On the night Hurricane Isabel pummeled the DC area, the Ron and Fez show devoted their entire nighttime show to coverage of the hurricane and acted as a conduit for listeners to call in and share their experiences with problems like power outages and food shortages. Instead of airing normal syndicated programming after the show, the station decided to air a special edition of "El Jefe's Hideout." Normally a Saturday night show, El Jefe continued to help the community get through the crisis by broadcasting vital information and allowing listeners to share experiences well into the night. Additionally, the station replaced its normal PSAs with hurricane specific ones during the time of Hurricane Isabel and her aftermath.

At the start of the latest War in Iraq, WJFK-FM brought in newsman Buzz Burbank to give its listeners the latest updates on the war and how it would affect local residents and families of the many service people involved in the conflict. The station preempted the Don and Mike Show and played a news feed in between Buzz segments. Ron and Fez also devoted copious amounts of time to the conflict in the Gulf, including preempting their show for Presidential addresses and other important matters.

WJFK-FM participates in the Amber Alert system.

PREPARED STATEMENT OF PATRICK J. VAUGHN, GENERAL COUNSEL, AMERICAN FAMILY ASSOCIATION, INC.

Much of the raunchy material on television and radio today is the fruit of the FCC's lax enforcement policy concerning broadcast indecency.

The Federal Communications Commission (FCC) is charged with enforcement of the law banning broadcasts of obscenity, indecency, and profanity. 18 U.S.C. § 1464, ("[W]hoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than $10,000 or imprisoned not more than two years, or both.") The FCC has not adopted regulations to implement this statute. Instead, the Commission has adopted a Policy Statement that sets forth an extremely narrow definition of indecency, completely ignores profanity, and places such a high documentation burden on anyone attempting to file an indecency complaint that most are rejected by the FCC without the station becoming aware that a complaint has been filed. *Policy Statement, In the Matter of Industry Guidance On*

the Commission's Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency, FCC 01-90, 2001.

The American Family Association, Inc. (AFA) recommends that Congress instruct the FCC to (1) Adopt a more comprehensive definition of broadcast indecency; (2) Enforce the statutory ban on broadcast profanity; (3) Reform its enforcement practices so that indecency and profanity complaints receive the same level of investigation as other types of complaints.

1. The law protecting minors from the broadcast of obscenity, indecency, and profanity is constitutional.

Of all forms of communication, broadcast speech is entitled to the most limited First Amendment protection. *FCC v. Pacifica Foundation,* 438 U.S. 726, 748 (1978). The Supreme Court has stated a variety of reasons that justify broadcasting's lower level of constitutional protection, including the fact that the broadcasting media confront citizens in "the privacy of the home, where the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder," and that "because the broadcast audience is constantly tuning in and out, prior warnings cannot completely protect the listener or viewer form unexpected program content." *Ginsberg v. New York,* 390 U.S. 629 (1968). Therefore, the FCC can appropriately regulate offensive broadcasts, even when they do not sink to the level of criminal obscenity. *FCC v. Pacifica Foundation,* at 750-751 ("when the Commission finds that a pig has entered the parlor, the exercise of its regulatory power does not depend on proof that the pig is obscene.").

The courts have found a compelling Government interest in restricting offensive broadcasts to (1) support parental supervision of children, and to (2) protect children's physical and emotional well-being, as well as their ethical and moral development. *ACT III,* at 661, 662 (citing, *Ginsberg* at 641). The DC Circuit Court of Appeals has reaffirmed that "the 'channeling' of indecent broadcasts to the hours between midnight and 6:00 a.m. would not unduly burden the First Amendment." *Action for Children's Television III,* 58 F. 3d 654, 656 (1995).

Given this statutory mandate, which falls with constitutional authority, how has the FCC gone about enforcing the prohibition against the broadcast of obscenity, indecency, and profanity?

2. The FCC's current definition of indecency misses a lot of material that is bad for kids.

Addressing the last point first, FCC policy totally ignores the statutory ban on the broadcast of profanity. To define broadcast indecency, the FCC uses a two prong test: (1) "the material must describe or depict sexual or excretory organs or activities"; and (2) "the broadcast must be *patently offensive* as measured by contemporary community standards for the broadcast medium." *Policy Statement,* at ¶¶ 7, 8. Applying this test, David H. Solomon, the Chief of the FCC Enforcement Bureau, found that broadcast of the word "f*cking" during the broadcast of the 2003 Golden Globe Awards did not fit the definition. Solomon ruled:

> As a threshold matter, the material aired during the "Golden Globe Awards" program does not describe or depict sexual and excretory activities and organs . . . Indeed, in similar circumstances we have found that offensive language used as an insult rather than as a description of sexual or excretory activity or organs is not within the scope of the Commission's prohibition of indecent program content.
>
> Moreover, we have previously found that fleeting and isolated remarks of this nature do not warrant Commission action. Thus, because the complained-of material does not fall within the scope of the Commission's indecency prohibition, we reject the claims that this program content is indecent, and we need not reach the second element of the indecency analysis.

Complaints Against Various Broadcast Licensees Regarding Their Airing of the "Golden Glove Awards" Program, FCC File No. EB-03-IH-0110 at ¶¶ 5, 6 (2003).

This ruling highlights the excessive narrowness of the FCC's definition of indecency. It becomes apparent that the FCC has failed to enforce the law when you measure its "Golden Globe" decision against the Government's compelling interest in restricting offensive broadcasts to (1) support parental supervision of children, and to (2) protect children's physical and emotional well-being, as well as their ethical and moral development. *See ACT III,* at 661, 662.

Although the FCC has adopted an extremely narrow range of subject matter that it will evaluate for indecency, even within that narrow range, broadcasts to children of the depiction of sexual or excretory organs or activities may be acceptable to the FCC in many cases. The Commission defines the *patently offensive* standard to refer to the standards of an average national broadcast viewer. *Id.* Although the FCC's

use of a national standard for what is patently offensive, imposes the morals of New York City or Los Angeles on every community, the FCC's standard of what is offensively indecent has a far worse flaw. The FCC's "average broadcast viewer" standard applies an adult standard to law that is designed to protect children. The Commission has lost sight of the fact the constitutional justification of the broadcast indecency prohibition is to protect children from material that would be harmful to their physical and emotional well-being, as well as their ethical and moral development. *See ACT III,* at 661, 662.

Further, the Commission has plunged its indecency regulations into a relativistic quagmire by stating:

> [T]he *full context* in which the material appeared is critically important . . . Moreover, contextual determinations are necessarily highly fact-specific, making it difficult to catalog comprehensively all of the possible contextual factors that might exacerbate or mitigate the patent offensiveness of particular material.

Id. at ¶ 9. First, the FCC's fuzzy policy regarding "full context" ensures that there are no bright-line rules. Undoubtedly, material that is indecent in a teen sitcom might appropriately be covered in an educational broadcast of an anatomy class or on a National Geographic special. However, the vagaries of the FCC's full context doctrine encourages broadcasters who want to pander to young audiences by being "edgy" to include more and more indecent or profane material, but "in context."

Second, the full context doctrine overlooks the fact that one of the constitutional justifications for the regulation of broadcast speech is "because the broadcast audience is constantly tuning in and out, prior warnings cannot completely protect the listener or viewer from unexpected program content." *Ginsberg v. New York,* 390 U.S. 629 (1968). Full context does not rescue a channel surfer.

Finally, the FCC has used its "full context" doctrine to impose insurmountable burdens on anyone attempting to file an indecency complaint.

3. The FCC's foot dragging regarding broadcast indecency is most apparent in the way it has handled complaints filed by the public.

Many complaints are returned unprocessed. It is the FCC's current practice to refuse to process a citizen's complaint about broadcast indecency unless the complainant happens to have, "a full or partial tape or transcript or significant excerpts of the program." *Policy Statement,* at ¶ 24. A dad driving his kids to school, who is shocked by indecency while tuning across the radio dial cannot provide such documentation. Few people startled by an offensive incident in a television program have a tape or transcript of the program. The courts have cited the fact that broadcast indecency normally catches the audience unawares as a basic justification for Government regulation in this area. *See Ginsberg v. New York,* 390 U.S. 629 (1968). In contexts other than indecency, the FCC employs standard investigatory procedures. The complainant reports what they saw or heard and the FCC requires the broadcaster to state under oath whether or not it had aired the material that was the subject of the complaint. By placing an insurmountable burden for documentation on indecency complaints, (1) the FCC has discouraged the public from filing broadcast indecency complaints, and (2) the FCC has shielded broadcasters from indecency complaints.

To illustrate the tools at the FCC's disposal to investigate a complaint regarding something broadcast, I have attached as Exhibit 1 a copy of an investigatory letter that AFA recently received after one of its noncommercial stations aired a wrongly worded underwriting acknowledgment. *Mea culpa.* Letter from William D. Freedman, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to American Family Association, Licensee Station WAEF(FM), EB-03-IH-0427, December 1, 2003. In this case the FCC required AFA to state under oath whether or not they had broadcast the material, or something similar, required AFA to provide a transcript and a tape, required AFA to state what was broadcast before and after the underwriting spot. The FCC's enforcement of the advertising ban on noncommercial stations is altogether appropriate, and believe me, we take pains to avoid errors such as the cited above. The Commission should apply no less zeal and use no weaker enforcement tools when the public complains about the broadcast of indecency or profanity.

4. Conclusion.

Congress should reprimand the FCC for dereliction of its duty to protect children from broadcasts of material that is harmful to their physical and emotional well-being, as well as their ethical and moral development. Congress should instruct the Commission to (1) Adopt a more comprehensive definition of broadcast indecency; (2) Enforce the statutory ban on broadcast profanity; (3) Reform its enforcement

practices so that indecency and profanity complaints receive the same level of investigation as other types of complaints.

FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Investigations and Hearings Division
445 12th Street, S.W., Suite 3-B443
Washington, D.C. 20554

December 1, 2003

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

American Family Association, Licensee
Station WBJY(FM)
P. O. Drawer 2440
Tupelo, Mississippi 38803

Re: EB-03-IH-0427
ID # 82835

Dear Licensee:

The Enforcement Bureau is investigating allegations that American Family Association ("AFA") licensee of Station WBJY(FM), Americus, Georgia, may have broadcast an advertising announcement in violation of Section 399B of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 399b. We direct AFA, as defined herein, pursuant to sections 308(b) and 403 of the Act, 47 U.S.C. §§ 308(b) and 403, to provide the information and documents specified herein, within twenty (20) calendar days from the date of this letter.

Instructions

If AFA requests that any information or Documents, as defined herein, responsive to this letter be treated in a confidential manner, it shall submit, along with all responsive information and Documents, as defined herein, a statement in accordance with Section 0.459 of the Commission's rules. 47 C.F.R. § 0.459. Requests for confidential treatment must comply with the requirements of Section 0.459, including the standards of specificity mandated by Section 0.459(b). Accordingly, "blanket" requests for confidentiality of a large set of documents are unacceptable. Pursuant with Section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of Section 0.459.

If AFA withholds any information or Documents under claim of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item, the numbered inquiry to which each item responds and the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific grounds for claiming that the item is privileged.

Each requested Document not subject to a claim of privilege shall be submitted in its entirety, even if only a portion of that Document is responsive to an inquiry made herein, unless the Document is a recording or transcript, in which case it should be provided only for the period of time of the broadcast specified in the pertinent inquiry herein.. This means that the Document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other Documents referred to in the Document or attachments. All written materials necessary to understand any Document responsive to these inquiries must also be submitted.

If a Document responsive to any inquiry made herein existed but is no longer available, or if AFA is unable for any reason to produce a Document responsive to any inquiry, identify each such Document by author, recipient, date, title, and specific subject matter, and explain fully why the Document is no longer available or why AFA is otherwise unable to produce it.

With respect only to Documents responsive to the specific inquiries made herein and any other Documents relevant to those inquiries, AFA is directed to retain the originals of those Documents for twenty-four (24) months from the date of this letter unless (1) AFA is directed or informed by the Enforcement Bureau in writing to retain such Documents for some shorter or longer period of time or (2) the Enforcement Bureau and/or the Commission releases any item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case, AFA must retain all such Documents until the matter has been finally concluded by payment of any monetary penalty, satisfaction of *all* conditions, expiration of all possible appeals, conclusion of any collection action brought by the United States Department of Justice or execution and implementation of a final settlement with the Commission or the Enforcement Bureau.

The specific inquiries made herein are continuing in nature. AFA is required to produce in the future any and all Documents and information that are responsive to the inquiries made herein but not initially produced at the time, date and place specified herein. In this regard, AFA must supplement its responses (a) if AFA learns that, in some material respect, the Documents and information initially disclosed were incomplete or incorrect or (b) if additional responsive Documents or information are acquired by or become known to AFA after the initial production. The requirement to update the record will continue for twenty-four (24) months from the date of this letter unless (1) AFA is directed or informed by the Enforcement Bureau in writing that AFA's obligation to update the record will continue for some shorter or longer period of time or (2) the Enforcement Bureau and/or the Commission releases an item on the subject of this

investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case the obligation to update the record will continue until the release of such item.

For each Document or statement submitted in response to the inquiries below, indicate, by number, to which inquiry it is responsive and identify the persons from whose files the Document was retrieved. If any Document is not dated, state the date on which it was prepared. If any Document does not identify its authors or recipients, state, if known, the names of the authors or recipients. AFA must identify with reasonable specificity all Documents provided in response to these inquiries.

Unless otherwise indicated, the period of time covered by these inquiries is January 1, 2003, to the present.

Definitions

For purposes of this letter, the following definitions apply:

"Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."

"Broadcast," when used as noun, shall mean any audible sounds or language that Station WBJY(FM) transmitted or disseminated during the course of a radio broadcast.

"Broadcast," when used as a verb, shall mean the transmission or dissemination of radio communications intended to be received by the public. The verb broadcast may be used interchangeably with the verb "air."

"Document" shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any broadcast, radio program, advertisement, book, pamphlet, periodical, contract, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tapes, disks and such codes or instructions as will transform such computer materials into easily understandable form).

"Identify," when used with reference to a person or persons, shall mean to state his/her full legal name, current business address, and phone number. "Identify," when used with reference to a document, shall mean to state the date, author, addressee, type of document (*e.g.*, the types of document, as described above), a brief description of the subject matter, its present or last known location and its custodian. "Identify," when used with reference to an entity other than a person, shall mean to state its name, current or last known business address, and current or last known business telephone number.

"Licensee" or "AFA" shall mean the holder of the license for WBJY(FM), and any predecessor-in-interest, affiliate, parent company, any wholly or partially owned subsidiary, or other affiliated company or business, and all owners, including but not limited to, partners or principals, and all directors, officers, employees, or agents, including consultants and any other persons working for or on behalf of the foregoing at any time during the period covered by this letter.

Inquiries: Documents and Information to be Provided

1. State whether AFA broadcast the material described at Exhibit A over Station WBJY(FM) on September 5, 2003, and/or at any other time. If so, provide the date and time of each such broadcast.

2. With regard to the broadcast referred to in the response to Inquiry 1 above, if the programming reflected at Exhibit A does not accurately reflect the material broadcast over Station WBJY(FM), describe any inaccuracies.

3. With regard to the broadcast referred to in the response to Inquiry 1 above, provide any and all compact discs, tapes, transcripts or other Documents reproducing or discussing the material reflected in Inquiry 1, plus the fifteen (15) minutes of material broadcast immediately before and after the material referred to in Inquiry 1. Provide any and all such recordings on compact disc (CD-R).

4. State whether AFA broadcast all or any portion of the material reflected in Exhibit A over any other noncommercial station licensed to it other than WBJY(FM).

5. If AFA's response to Inquiry 4, above, is "yes," provide with regard to each such broadcast and announcement:

(a) the call sign, community of license and licensee;

(b) the number of times that the announcement aired;

(c) the dates and times that the announcement aired; and

(d) any and all audiotapes, transcripts or other Documents that reproduce or discuss the material in the announcement. Provide all recordings on compact disc (CD-R).

6. With regard to each announcement and broadcast identified in the responses to Inquiries 1 and 5, above:

(a) Identify each person that requested that AFA air the announcement;

(b) state the terms of the agreement between AFA and each person requesting that AFA broadcast the announcement;

(c) state whether any person requesting that the announcement be aired provided, or promised to provide AFA, its employees, or its station programmers, any remuneration or other consideration in exchange for the broadcast of the announcement;

(d) state whether any person requesting that the announcement be aired is a general station contributor or a specific program underwriting sponsor;

(e) state whether any person requesting that the announcement be aired was, at the time of the request, a representative of a not-for-profit enterprise, and, if so, provide copies of any and all Documents that support this characterization; and

(f) provide copies of all Documents that reproduce or discuss the agreement between AFA and each person requesting that the announcement be aired relating to the broadcast of the announcement.

7. Describe AFA's past and current policies for accepting donations and airing donor and underwriting announcements. Provide any and all Documents that reflect AFA's policies or otherwise support the response to this Inquiry.

8. What procedures does AFA employ to determine whether donor acknowledgements meet the Commission's standards for noncommercial underwriting announcements (i.e., section 399B of the Act, section 73.503(d) of the Commission's rules and interpretive rulings)? Provide copies of all Documents that outline or pertain to such procedures or otherwise support the response to this Inquiry.

9. If AFA believes that a defense to the subject allegations exists, state concisely the nature of the defense.

We direct AFA to support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of AFA with personal knowledge of the representations provided in AFA's response, verifying the truth and accuracy of the information therein and that all of the Documents and information

requested by this letter which are in AFA's possession, custody, control or knowledge have been produced. If multiple AFA employees contribute to the response, in addition to such general affidavit or declaration of the authorized officer of AFA noted above, provide separate affidavits or declarations of each such individual that identify clearly to which responses the affiant or declarant is attesting. All such declarations provided should comply with section 1.16 of the Commission's rules. 47 C.F.R. § 1.16, and be substantially in the form set forth therein. To knowingly and willfully make any false statement or conceal any material fact in reply to this inquiry is punishable by fine or imprisonment. *See* 18 U.S.C. § 1001; *see also* 47 C.F.R. § 1.17.

AFA should submit its response, by hand delivery, to the attention of Kenneth M. Scheibel, Jr., Esq., Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-A325, Washington, DC 20554. At the same time, it should transmit its response, including all supporting Documents to the extent practicable, via facsimile at 202-418-2080 or via email, to Kenneth.Scheibel@fcc.gov.

Direct any questions regarding this investigation to Kenneth M. Scheibel, Jr., Esq. at 202-418-1420.

Sincerely,

William D. Freedman
Deputy Chief
Investigations & Hearings Division
Enforcement Bureau

Enclosure

Exhibit A

Set forth below is the text of an announcement allegedly aired on Station WAEF(FM), Cordele, GA, on September 5, 2003:

Dr. Joel M. Johnson (45 seconds)

For surgical excellence that's close to home, Dr. Joel M. Johnson offers both the advanced care and convenience you deserve, for all your general and vascular surgery needs. You may contact Dr. Joel M. Johnson at the South Georgia Surgical Clinic at 382-9733. Dr. Johnson's lifelong commitment has been to help people live whole, healthy lives and he is confident that you will notice this the moment that you meet. Dr. Joel M. Johnson is a proud underwriter of positive Christian music in South Georgia. 382-9733.

THE BROADCAST DECENCY ACT OF 2004

THURSDAY, FEBRUARY 26, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS
AND THE INTERNET,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2123, Rayburn House Office Building, Hon. Fred Upton (chairman) presiding.

Members present: Representatives Upton, Bilirakis, Barton, Stearns, Gillmor, Cox, Whitfield, Shimkus, Wilson, Pickering, Bass, Walden, Terry, Markey, Rush, McCarthy, Davis, Towns, Stupak, Wynn, Green, and Dingell (ex officio).

Also present: Representative Gonzalez.

Staff present: Kelly Zerzan, majority counsel; Neil Fried, majority counsel; Howard Waltzman, majority counsel; Will Carty, legislative clerk; Gregg Rothschild, minority counsel; and Peter Filon, minority counsel.

Mr. UPTON. Good morning. My good friend Ed Markey is on the way, and he has sent word that we could start, knowing that he will probably be here before the opening statements are over. So, with that, we will get started.

Today we will be examining a bill that I have introduced, along with Mr. Markey, Mr. Tauzin, Mr. Dingell, Mr. Barton, to greatly strengthen the FCC's enforcement of broad case indecency laws. I am pleased to say that we have already reported this legislation out of this subcommittee, and we look to have a full committee markup on H.R. 3717, the Broadcast Indecency Enforcement Act next week. That markup, it is my hope that we will be in agreement on ways that we can strengthen the bill, and that the bill will be on the House floor shortly thereafter.

I commend FCC Chairman Michael Powell and his colleagues on that Commission for their work to clean up the airwaves. Chairman Powell admitted in early January that the fines for indecency were too small. He asked, and we delivered. After introduction of the bill, we held our first hearing on January 28, and also received the support of the Bush Administration that very same day.

Our bill was already on the fast track, and then came the Super Bowl, bringing the issue of indecency directly to the living room of nearly 100 million homes nationwide.

What we are talking about is the public airwaves that are owned by the United States taxpayers. Using the airwaves comes with a responsibility to follow the FCC decency standards that apply to

programming that airs during the family hours of 6 in the morning until 10 at night, the likeliest times that children may be tuned in. There must be a level of expectation when a parent turns on that TV or radio between those hours that the content will be suitable for children. You should not have to think twice about the content on the public airwaves. Unfortunately, that situation is far from reality.

Since we have introduced our legislation in mid-January, we have seen some very positive steps taken by the broadcast industry. The Grammys were broadcast with a 5-minute delay. The Oscars this Sunday apparently will be run with a 5-second delay.

Mel Karmazin, chairman of Viacom, who testified before this subcommittee on February 11, appears to have heard the message loud and clear. It was reported in the February 19 edition of the New York Post that following our hearing, Mr. Karmazin had a conference call with the execs of all 180 Infinity radio stations, telling them that they will be fired if they violate the company's new zero-tolerance policy on obscenity. "If you don't comply, you will be fired for cause," Karmazin reportedly said. "This company won't be a poster child for indecency."

According to the story, after the conference call, Infinity execs issued a blunt memo to all personnel: When in doubt, leave it out, said the memo, which also ordered all stations to install programming delay units for on-the-fly censoring immediately.

Just this week, Clear Channel gave the pink slip to shock jock Bubba the Love Sponge, who garnered Clear Channel an FCC fine of $755,000 in January for multiple indecency offenses. And yesterday Clear Channel announced its new responsible broadcasting initiatives, something that we will hear about in testimony today, to ensure that all material used by radio stations conforms to decency standards.

In compliance with the new policy, upon listening to yesterday's Howard Stern program, Tuesday's Howard Stern's program, Clear Channel announced that they were removing this shock jock's program from their station until further notice. That was a bold step, and I commend them for it.

The company has also gone so far that all of its contracts with on-air performers are now being modified to ensure DJs share financial responsibility if they utter indecent material on the air.

I also have assurances that the cable industry is in the process of putting together a massive public awareness campaign to incorporate other ideas that were brought up during our previous hearing to enable parents and consumers to block unwanted cable channels. I applaud every one of those steps as a step in the right direction, but these measures should never have been necessary. As I said before, it was as if broadcasters were in a race to the bottom, and unfortunately they were all willing participants.

Are these measures positive steps? Of course they are. Networks are being proactive in the effort to clean up the airwaves. But these steps do not lessen the need for our legislation to increase the fines significantly for those who violate the FCC's indecency standards. Although I do not question the merits of the actions by broadcasters to clean up their act, will they still be as vigilant without the eyes of Congress staring down upon them?

Fines for indecency as they currently stand seem to be an accepted cost of doing business. By significantly increasing the fines for indecency, the fines will be at a level where they cannot be ignored. We now have the attention of broadcasters nationwide, and the passage of our bill will maintain the broadcasters' heightened level of awareness of decency standards for years to come.

I am pleased to have broad bipartisan support for this commonsense legislation. As of this morning we have 134 Members from both sides of the aisle, leaders on both sides of the aisle that have cosponsored the bill.

There is no question that we need to clean up the airwaves. I thank my colleagues on this subcommittee and in the Congress for their continued support and input. We are nearing the end zone, and I look forward to our markup next week, and I yield to my good friend, Mr. Green from Texas, for an opening statement.

Mr. GREEN. Thank you, Mr. Chairman. And I want to thank you for your patience and perseverance on this issue. We are holding our third subcommittee hearing, and I look forward to our full committee markup on this legislation. I am proud to be a cosponsor of our legislation increasing indecency fines tenfold.

I want to welcome our panel of witnesses this morning who are helping us put together a full and complete record before Congress takes action on the sensitive issue of television and radio indecency.

We have all had plenty of chances to make our opinions on indecency known, and I want to state the most important questions, in my view, which are unanswered. First, is the FCC's indecency standard sufficiently clear in the eyes of the public and the eyes of TV and radio broadcasters, both large and small? Second, if the standards are not clear, how can we make them clearer in the shortest possible time period? A media task force has been suggested, and a return to industry task force methods; and again, a code of conduct in the media, and I think that is a good idea. We should be pleased that both NBC, Clear Channel and the National Association of Broadcasters have agreed to voluntary industry efforts.

Once we have standards agreed upon, the next question is about the money. If we are going to increase FCC indecency fines, who should pay these fines? After indecent incidents on the airwaves, we see a round of finger-pointing and buck-passing. I think the affiliates have a good case that they should not bear the bulk of the fines. That is why I have offered an amendment to indemnify affiliates from the amount that H.R. 3717 adds to the FCC indecency fines. It seems self-evident that a local television affiliate owner should not be on the hook for the Super Bowl fines as they are currently.

Since the FCC doesn't levy fines on people who perform the indecency, then the next logical step is the network. The FCC may have the authority to fine the actual person who commits indecency, but never has done so. But then the networks have no incentive for time delays to edit the indecency. These celebrities can afford a $275,000 fine. In fact, they may even consider it an investment in the publicity, as we see from the Super Bowl.

If you feel at risk from a renegade performance artist, then you can include a simple clause in your contracts with these performances. A large radio station owner recently announced that it was their intention to do just that with their disc jockeys. Clearly networks are at risk from the outbursts during award shows, but networks have the best centralized ability to edit their programming before it is beamed nationwide, much better than requiring each affiliate across the country to edit the same word over and over again.

Chairman Upton, again I want to thank you for your work on this legislation and hearing, and I look forward to hearing what we can do to make indecency standards clearer for the public and how we can route the fines toward those who deserve them. Thank you, and I yield back my time.

Mr. UPTON. It now gives me great pleasure for the first time to introduce my Chairman, the very good friend from the great State of Texas, Joe Barton, the chairman of the full committee.

Mr. BARTON. Thank you, Mr. Chairman. I don't think I am quite yet Chairman. I think we still have to vote on it sometime today in the House. I think the House still has to vote. But thank you for that introduction.

I do want to thank our witnesses for appearing voluntarily here today. This committee has a long tradition of trying to do everything possible to get witnesses on controversial issues to be here on a voluntary basis, and I appreciate you gentlemen and Ms. Berman for being here in that capacity.

I have an opening statement, Mr. Chairman, that I am going to submit for the record. Just in terms of kind of an impromptu remark, I think that we have an excellent piece of legislation that is under way here on a bipartisan basis. Mr. Markey and Mr. Dingell are working with Mr. Upton and the committee on our side. We hope to go to full committee markup in the very near future. There will be some amendments that make individual entertainers liable. Congressman Green just talked about that.

Something that I am troubled by is that as we tighten up the standards on the public airwaves, we still have the issue of cable and satellite. There are some clear differences between over the air issues and cable and satellite issues, but to the average individual, if they don't purchase premium channels, they don't see the difference. There is a difference, but it is something that we need to investigate further, perhaps not in this legislation.

I do want to commend Clear Channel Communications for the actions your company has taken in the last several days. I think that sets a good standard. I hope some of your contemporaries would follow that on a voluntary basis, and although our cable friends are not here, I do want to commend them for some things that Chairman Upton and Chairman Powell of the FCC have indicated to me that they are thinking about doing on a voluntary basis to bring decency back to their medium.

So, Mr. Chairman, I look forward to this hearing, and in the very near future I look forward to working with you and others on a bipartisan basis to pass this excellent piece of legislation.

[The prepared statement of Hon. Joe Barton follows:]

PREPARED STATEMENT OF HON. JOE BARTON, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

I would like to thank all of you here attending the hearing. This is our third hearing on this subject matter in less than a month, and this is no accident.

We all know what happened at the Super Bowl, and many of us have heard about what happened at the Golden Globe's last year. These are not isolated incidents. Our airwaves, our broadcasts and our very culture are under attack. The slippery slope has simply slipped too far, and it is time that someone to say "stop."

I am as appalled as most of us are by the incident that happened on Super Bowl Sunday and the use of such language that is beginning to become commonplace on our airwaves. I have already expressed my concern to the FCC, and am pleased to know through many public pronouncements that they do not support the incident at the Super Bowl nor the use of profane language on the public airwaves.

Chairman Michael Powell of the FCC had an interesting statement in response to the Super Bowl incident. He stated:

> "I am outraged at what I saw during the halftime show of the Super Bowl. Like millions of Americans . . . I gathered around the television for a celebration. Instead, that celebration was tainted by a classless, crass and deplorable stunt. Our nation's children, parents and citizens deserve better."

I agree Chairman Powell; we deserve better.

I would like to thank Chairman Upton. H.R. 3717 is a good first step. It begins to say "stop" to the rising tide of indecency on our airwaves. In its present form, it increases fines by tenfold for breaches of indecency. Such an increase, I believe will begin to empower the FCC to take our airwaves back.

I also want to seriously look at issues such as a "three strikes" penalty and how licenses are renewed.

Another issue that I believe must be addressed in some way is the behavior of the individuals themselves. In the case of the Super Bowl incident, Janet Jackson and her choreographer were about the only ones who knew that she was going to commit the act that she did.

We heard from both Mr. Karmazin of Viacom-CBS and Mr. Tagliabue of the NFL at our last hearing that they had no idea that what happened at the Super Bowl was going to occur. They both mention that the dress rehearsal for the halftime show did not include the inappropriate removal of Janet Jackson's top. Janet Jackson, herself, has also verified this in a statement.

A 5 minute delay, such as the one CBS instituted for the Grammy Awards earlier this month was a good start. However, we must encourage a better system of culpability for the actual perpetrators of lewd and indecent acts. The present system is not strong enough, and there is simply no incentive for a performer to behave.

For example, there is not a sufficient penalty to assess the individual. A "non-licensee," or individual under present law only has to pay $11,000 for a violation. Moreover, this violation only can be assessed after a formal finding by the FCC. Even after such a finding, the individual will not be fined. Instead, they get a free pass and simply warned not to do it again or risk up to that $11,000 amount.

Well, such "mulligans" may be acceptable in a casual round of golf but are not acceptable to the millions of parents who watch our airwaves with their children. The indecency will have occurred and the damage will have been done.

Consequently, such a bureaucracy has made even the thought of enforcing this provision nonexistent.

This needs to change. We must give teeth to these fines and hold those who want to commit indecent acts on our airwaves accountable, especially if those acts are committed willfully and knowingly.

I am pleased by those earlier comments and testimony by Chairman Powell, as well as other members of the FCC that he wants to be tough on this incident. I also am pleased that he plans to reverse past FCC decisions concerning foul language and to implement a "per se" rule against the use of certain words. I agree that some words by their very nature are indecent. Nevertheless, the bottom line is that all of us, whether we are legislators, network executives, programmers, performers or parents, need to work to protect our children from unwarranted attacks of indecent material.

I come to this hearing with an open mind, and will listen to the witnesses intently. However, the recent actions do raise a lot of questions, and I look forward to hearing answers to many of those questions.

Mr. UPTON. Thank you.

I yield to the gentleman from the great State of Michigan, Mr. Dingell.

Mr. DINGELL. Mr. Chairman, I thank you. I commend you for calling this hearing today. I thank you for your cooperation with the Minority, and I observe that the Minority will try and work closely with you and our colleagues on the Majority to achieve good legislation here.

I note that this is the subcommittee's third hearing into the subject of broadcast indecency. Your honoring of my request that we develop a full and complete record on the subject of broadcast indecency is very much appreciated. With this, we can better understand the problem before us and have an opportunity to properly examine the benefits and the pitfalls and the adequacy of the suggested remedies.

Today I am particularly interested in hearing discussion of two questions: Why there continues to be so much offensive material broadcast over the public airwaves; and, second, who is responsible for the enforcement of proper custody of the public trust in matters of this kind.

Based upon the two previous hearings two points have become apparent. First, the Federal Communications Commission, under Chairman Powell, has simply refused to effectively and fully use its authority under the Communications Act to enforce against broadcast indecency, particularly against those companies that have repeatedly violated FCC's rules. The Commission has woken from a deep slumber in a somewhat peevish mood, and I am interested to see how their response will be as this matter proceeds through the Congress. I would hope that their alertness and the vigor with which they pronounce such energy for the first time would continue unabated, although having observed the Commission over the years, I think that they will return to a period of tranquil rest at the earliest possible moment. For these reasons, although I appreciate the FCC's Chairman's newfound attention and enthusiasm on the issue, I remain, as I have said, skeptical about how long that enthusiasm will last. It is my experience that deathbed conversions usually don't last long enough to secure the payment of the doctor's bills.

For this reason, I will seek to include in the indecency legislation a provision requiring the Commission each year in its annual report to provide this committee a full and complete accounting of its actions to enforce against indecent broadcasting. That way they will inform us of what they are doing, and perhaps focus their own attention on what they are doing and what they should be doing. That will also allow us to call them to account for what they do not do. Perhaps this reporting requirement will encourage the Commission's Chairman to maintain his acute newly found sense of virtue. Let us hope.

Second, the broadcast industry does not fully appreciate the level of concern amongst the members of this committee regarding the kind of broadcasting that permeates our airwaves, and, very frankly, outrages the listenership and leads the members of this committee and elsewhere throughout the Congress to large numbers of complaints from concerned citizens. At least based on the testimony during last week's hearings, it appears that the broadcast industry seems to fault the current indecency rules far more than it faults its own behavior. We will see whether this panel has the same

view. In my view, it is not an adequate way to explain what is happening today.

Certainly indecency regulation is subjective, as a matter of constitutional art, it cannot be otherwise. It is clear to me, however, that much of the filth that we see and hear on the public airwaves, particularly on radio, is so outrageous and offensive that any attempt by a licensee to blame the regulator simply demonstrates a lack of respect for the law and a contempt for its own responsibilities as a trustee of the public spectrum.

Legislation must then address these shortcomings. In doing so, it must strike the proper balance between respecting the first amendment and the rights of broadcasters thereunder, and, second, properly protecting children from harmful, indecent programming. It must also recognize that we are not legislating in a vacuum. Broadcasters must compete every day with cable networks, and any legislation must not work to unduly disadvantage the broadcast industry, which is an important resource, and which is full of very decent people who appear to be pressed to a race to the bottom because of inadequate support of decency at the Commission.

Legislation must afford the FCC greater authority to fight indecency, and it must compel the Agency to get tough on repeat offenders, something which the record does not indicate now happens. It must also raise the level of potential penalties to a point where large corporations that own multiple licenses feel the pinch of Agency enforcement. To be fair, however, the legislation must differentiate between those larger licensees that often originate and syndicate indecent programming and the smaller market broadcasters whose revenues are far smaller and whose culpability is probably less by comparison.

Finally, many of my colleagues on this subcommittee have suggested the committee empower the FCC to act against excessive and graphic violence over the broadcast media that is harmful to children. I support those efforts.

I want to thank the witnesses for appearing here today. They are representing the finest of American broadcast companies, and I look forward to their testimony. I thank you for your courtesy to me, Mr. Chairman.

Mr. UPTON. Thank you, Mr. Dingell.

Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I, too, want to commend you for scheduling today's hearing. I would first like to personally welcome all of today's witnesses, but especially my longtime friends Harry Pappas from California and Mr. Bud Paxson from Florida.

Like all of us, we have heard from so many of our constituents regarding their concerns about indecency on today's television programs, and I would say from their comments it is very apparent that they are fed up with the current trend toward indecent programming. As a consequence, I do believe that additional action is necessary, and H.R. 3717, which I have cosponsored, is certainly one step in the right direction.

As we heard during our previous hearing,some companies consider the current fines from the FCC as the price of doing business. This is a clear indication that the current fine structure is not a

sufficient deterrent to bad behavior. The bill increases the penalties tenfold to $275,000 per incident with a cap of $3 million for continuing violations. And I strongly support that increase in forfeiture authority. I am not sure if that is enough, quite frankly.

However, as we consider, Mr. Chairman, and I emphasized this in the last hearing, increasing the penalties that can be imposed upon broadcasters, I am particularly concerned about the ability of local television affiliates to reject programming that they consider unsuitable for their communities.

My staff and I have spoken with a variety of individuals regarding their relationships between the networks and the affiliate stations. We received a wide range of perspectives on the ability of local affiliates to preempt programming that they find objectionable. Consequently, I believe that it is imperative that we examine ways to clarify an affiliate's ability to preempt programming that is unsuitable for its local community, and I am anxious to hear from today's witnesses, get their perspectives on this important issue. Mr. Chairman, depending on what we hear from the witnesses today, I would hope that we will seriously address this particular point, and maybe even by virtue of an amendment to the basic bill.

Again, Mr. Chairman, I look forward to working with you and our colleagues on this very important issue and moving your bill, H.R. 3717, through the legislative process. Thank you, sir.

Mr. UPTON. Thank you.

I would recognize the gentlelady from Missouri, Ms. McCarthy.

Ms. MCCARTHY. Thank you very much, Mr. Chairman.

At our last hearing, I called upon the industry to act responsibly in the matter before us, and I commend the witnesses who are here today for their companies' initiatives and recent actions to make changes in policy and programming, and I look forward very much to an opportunity to discuss those matters with you following your testimony.

But in particular, stations like ABC and others have grappled with how best to strengthen the live delay, and how the public can be more aware of the V-Chip and other educational information and content, all a part of the original Telecom Act, and all out there to be utilized by the public, and I appreciate all of the efforts made to make the public aware of those.

With regard to the question of fairness raised by both Chairman Barton and Chairman Upton, I agree with the need for the FCC to review regulatory parity between basic cable and the network channels, as many of you raised in your testimony today. And I share your concern about running afoul of our first amendment rights as something that I commented upon in the last hearing. And I do share your concern about where we are going with all of this.

My question to you today, and I didn't see it particularly illustrated in any of the testimony, but I hope you will comment on it as appropriate, is the concern about who is best to decide what is in the community's interest? Several of you made reference to the company you represent making that decision. My question to you today is where are we going with this? For example, as we air the news in the future, who will decide how to present what is seen

and viewed by the public of all ages? Newscasts are not regulated, nor should they be. But the sensibilities of the public are an issue, and will the news in the future be censored or regulated by a corporate head for America's viewers?

I would like to explore that with you in this hearing, and I want to thank you again for being here, and, Mr. Chairman, thank you very much for this third hearing on a very important issue. I would yield back.

Mr. UPTON. Thank you.

I would recognize the gentlelady from New Mexico, Mrs. Wilson.

Mrs. WILSON. Thank you, Mr. Chairman. I wanted to thank you again for holding this series of hearings and for introducing legislation. And I wanted to thank Mr. Markey as well, who is joining us. As a result of these hearings, a lot has happened in the last couple of weeks, and I wanted to praise you and also Mr. Markey for your leadership, because some good things are starting to happen.

As I have said before, it is hard to raise G-rated kids in an R-rated world. Families should be able to watch the Super Bowl or to drive to work or to school with the radio on and not have to worry about what they are going to hear.

I know that most people in this room heard what I had to say to the CEO of Viacom, the owner of MTV and CBS and Infinity Broadcasting, and their corporate strategy to use profanity and indecency to drive their market share and to earn money. As I said then, if executives in charge of the entertainment industry do not take immediate steps to stop indecent programming coming into our homes, the legislation we are considering here today will only be the first step in more aggressive action to fix the problem. At least one executive who is testifying here today has decided to give responsible broadcasting a thumbs up. I hope it works for his company, and I hope others in the entertainment industry follow his lead.

I look forward to marking up this legislation in the full committee, and I intend to work on a bipartisan basis to gain acceptance of an amendment I intend to offer to include indecency violations as a factor in broadcast license renewal.

I also am going to be interested in witness testimony today about strengthening the right of local broadcasters to decline to air programs, giving greater real control back to local communities and their general managers who are more directly accountable to the communities where they live.

Thank you for your leadership, Mr. Chairman, and thank you for this hearing.

Mr. UPTON. I recognize for an opening statement the gentleman from Florida, Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

I want to urge the witnesses in their testimony if they will cover a few of the points that we are focused on here today. One is a number of you, in your prepared remarks, have urged this committee to take cable into the mix. You are aware that the first amendment understandably limits the authority of the Congress to act with respect to your organizations as well as cable. You all have a lot of very able people advising you on the range of authority available to this Congress. So please give us some advice as to

how you think that we can appropriately deal with the issue of cable.

Second, I have talked to a number of affiliates in my area, the Tampa Bay area, who believe that contractually and practically speaking, they have very little ability to control the content of the programming the networks are providing to them. And this seems to be a topic in which the point of view reflected, I think, in your written testimony and what some of us are hearing are not the same. So we need to get some resolution as to exactly what is happening out there on that particular point.

As a parent, I would like to urge you as you reexamine your ratings system to make sure that you are giving it the careful attention that it deserves in making sound judgments to advise parents to help make the right decisions to help protect their own children. I know you all have ratings systems in place. I just want to urge you to take this opportunity to make sure that you have got the best system possible.

Finally, there has been a proposal, it has not been reduced to writing yet, to provide for a more progressive form of fine on the part of FCC that would somehow reflect the level of revenue of the particular violator. I would appreciate your comments on that particular point as well. Thank you very much.

Thank you, Mr. Chairman.

Mr. UPTON. Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Timing is everything. I happen to have with me a Brooke Colclasure, who is an 18-year-old student from Illinois with the National Youth Leadership Conference. It would be interesting if she was up here asking the questions, or as a panelist, as we talk about the media and how we can try to get control of the public airwaves.

When I get to the opportunity to ask questions, I will ask each of you to comment on your deployment, of your own networks' .kids.us site, which is a project that we have been working on in this committee to see how well you have investigated and attempted to deploy the World Wide Web in a child-friendly environment to make sure that kids who want to have information on your network program can do so in a safe and friendly environment.

That will give you time to turn back to your hired guns and find out what the heck Shimkus is talking about. But I would hope that you would look at that as a way to really address the issue of how we do another aspect of protection of kids, which is truly deploy the .kids.us kid-friendly site on the World Wide Web. We think it can be of great help in making sure that—another tool for parents in keeping kids safe on another medium.

We have been through this now again—this is three times. We look forward to questions. The voice of the public has spoken. We will move. There are probably gaps in the legislation which I hope we will address, but I think what is important for me now, that we do so in a way that is constitutionally sound, that will not get bogged down in the courts, and we can reclaim the airwaves.

And the other thing that I hope that additional riders which may be proposed that might not make it a truly bipartisan bill, which could occur as this thing moves through the process, also doesn't

occur. I think the problem is clear. It is identifiable. The public is engaged, and we should move.

So, Mr. Chairman, again, let's continue to work forward. I thank you for this time.

Mr. UPTON. Thank you.

Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman. I want to thank you and Mr. Markey for holding this hearing today. I want to thank the witnesses for appearing here today. With three hearings under our belt, it would be hard to accuse this subcommittee of failing to do its homework on this issue.

We have learned a great deal over the past few weeks about indecency over our public airwaves. We have learned that the FCC has provided, at best, weak enforcement of the indecency standard, and they can do a lot more to enforce this standard, even without Congress pursuing a bill to increase indecency fines.

We have learned that the networks and the media giants that own them have at times failed to take seriously their obligation when using public airwaves to provide appropriate programming. They have a privilege to use public airwaves. With that privilege comes responsibility, including the obligation to air appropriate programming when young people are likely to be in the audience.

That being said, I am glad to see that the industry has recently begun to better police themselves. We have only briefly addressed the issue of graphic television violence on network programming. Excessive and graphic television violence has surged as networks compete for young viewers, all in the name of higher advertising profits. Meanwhile multiple studies have found that this kind of TV violence has a harmful impact on children. If indecency rules and higher fines are intended to protect our kids, why isn't violence included under the indecency definition?

Finally, we also need to take another hard look at the new media consolidation rules; specifically, how more consolidation impactsour children, on what they see on television. Indecent and obscene programming on radio and television has become the norm rather than the exception, as local communities are losing their power to tell the big media conglomerates no. Meanwhile, our affiliates have lost their right to reject network programming that they deem offensive or inappropriate for their community viewers.

So, Mr. Chairman, one more time I look forward to discussing these issues with today's panel, and thank you and look forward to working with you as we move to a markup on this legislation.

Mr. UPTON. Mr. Walden.

Mr. WALDEN. Thank you, Mr. Chairman. I want to thank you for your continued efforts to find a way to clean up the Nation's airwaves. Parents need all of the help that they can get. Now it is clear from the testimony of our witnesses today that the Nation's broadcasters and networks are hearing the concerns of our constituents.

I commend you, Mr. Hogan, for dumping Bubba the Love Sponge into the garbage disposal and for suspending Howard Stern's program on Clear Channel stations. Mr. Stern was quoted on the news this morning, as I was listening to the radio station, as saying our

hearings are like McCarthyism, and that he and his sidekick, quote, woke up in a different world.

Well, you can tell Mr. Stern he is wrong on one point and right on another. As a licensee, you and he as your on-air talent have already agreed to operate within the rules of the FCC and the laws of this Nation. Reminding him of that obligation, responsibility is hardly McCarthysim.

We represent a lot of people who are simply sick and tired of the vulgarity. However, many of us hope that indeed it is a different world today. Your testimony and that of others on this panel certainly would have us believe that it is, and we welcome that. But it is also clear that despite our witnesses' pledges to use audio and video delays, hold their own employees accountable, and provide various training requirements, all of which are laudatory, at least two important issues remain.

One is a lack of clear direction from the FCC. While most of us know what obscenity and indecency and profanity are, when the FCC hands down just a couple of notices of apparent liability a year, there is a lack of clarity for broadcasters, and the result is a push to the limit to grab audience share, and to compete for that audience against completely unregulated entertainment providers. This is a very competitive industry.

While for some the size of the fine is what will get their attention, for most broadcasters it is probably even more important to get consistent guidance from the Commission, and, Mr. Chairman, I would say the hearings are giving the Commission and the broadcasters the guidance both have needed. Networks are digitally delaying higher-risk programming. Bubba the Love Sponge is out, Howard Stern is on hold, and new standards are in. I commend the networks and broadcasters for responding to our call for action.

Second, I believe many viewers do not differentiate between the over-the-air broadcast programming and the programming they get through their cable and satellite systems. As I have said before, our legislation may clean up the first five or six channels on the family TV, but what about the remaining 800? I recognize these are paid subscriber services, but can anyone deny that these programs do not also have a uniquely pervasive presence in the lives of Americans because they are sent in the privacy of the home and are viewed as uniquely accessible to children, even those too young to read?

If we are not going to give the FCC the authority to clean up these channels, then the burden to do so is even greater on those providers themselves. Now, perhaps technology provides parents with all of the tools they need, but should they really have to pay for trash programs they have to block?

And, finally, Mr. Chairman, despite our frustrations with broadcasters, we all recognize their important and unique commitment to providing public service to our communities, and we all know they do it quite well and quite often. Most broadcasters agree with the sentiments of this committee and our constituents and welcome the push to improve and clean up programming.

In this highly competitive business, we must also keep in mind that broadcasters' only means of staying in business is to sell advertising, whose value is tied directly to audience share. As we af-

fect their ability to program, we must remember they are competing against cable and satellite providers who both charge for their services and sell advertising, and both of whom are unregulated when it comes to content. They produce programming that sometimes is very successful, programs like the Sopranos and Sex and the City. But certainly those programs attract great audience share and are competitive. So while it is important for the Nation's broadcasters to clean up the bad apples, it is our responsibility not to overact to the point that we destroy the viability of free over-the-air broadcasting, which we all so much appreciate.

Thank you, Mr. Chairman.

Mr. UPTON. I recognize the ranking member of the subcommittee, my good friend Ed Markey from Massachusetts.

Mr. MARKEY. Thank you, Mr. Chairman. Thank you for having this hearing.

From our recent hearings, we have learned a number of things. We have learned that although the Federal Communications Commission is charged with ensuring that licensees serve the public interest, and that stations do not air obscene, indecent or profane content in violation of the law and Commission rules, that until very recently the Commission has not been an aggressive enforcer of its rules.

Testimony from FCC Chairman Powell that cases are still languishing from 2 to 3 years ago are not very encouraging indications. We also learned that although the FCC has numerous enforcement tools, including the ability to revoke a station's license, it appears as though the industry has largely concluded that the Commission is a paper tiger. The rare and paltry fine the Commission assesses have become nothing more than a joke, and the Commission never raises license revocation as a consequence for indecency violations, even in the most egregious cases for repeat violators.

And, finally, we have also learned that the industry needs to do a better job in educating parents about the tools they already may possess or can utilize to address the myriad concerns they raise with us about what is on TV. Parents can use the ratings system and the V-Chip, which stems from legislation which I authored 7 years ago. However, we have a huge educational challenge with the TV ratings system and how parents can use it in conjunction with the V-Chip.

Studies indicate that if a parent of a child 12 and under has a V-Chip-ready TV set and knows that they do, that some 47 percent of such parents use the V-Chip and like it. The problem is with the qualifiers. Almost half of those who have bought one of the approximately 100 million V-Chip capable televisions since 2000 are not aware that the TV possesses a V-Chip.

In addition, many parents express confusion over the TV ratings system itself, and one major network still does not use the comprehensive ratings system utilized by everyone else in the television industry. The industry did a good job, and with much fanfare after the TV ratings system was initially finalized, in doing public service announcements and other educational messages regarding the ratings, yet those efforts have waned dramatically in recent

years. In my view, we need a comprehensive, industrywide campaign to address this issue.

The TV set manufacturers and electronics retailers need to do a better job in alerting television buyers to the V-Chip, in part because many retail employees at the stores are apparently unaware of its existence in the TV sets that they are selling.

In addition, print media ought to include the television ratings of programs in the television guide so that parents see them when they look up what is on TV that day or evening.

And, finally, I believe that broadcast industry should renew its educational efforts in order to ensure that television ratings are well understood by parents, so that they can assist parents. And I am going to address questions on that subject to each one of the panelists this morning. Specifically, I will be looking for answers today to the following questions: One, will your network air additional public service ads on the television ratings system, and will those PSAs indicate how parents can use it with the V-Chip? I will request that the networks spell out to the committee in writing what their commitments will be in this regard, such as how many PSAs, over what timeframe, at what times of the day, and for how many rating points, and how long the ads will be.

Second, will your network display the television rating icon not only at the top of the show, but also when returning to the show after commercial breaks? This is important, especially for parents who don't have a V-Chip set, yet who still try to utilize the ratings system as a tool. In addition, it assists channel surfers who land on that show during commercials and ensures that they get a timely warning as the show resumes.

Third, will your network provide an audio voiceover when the ratings icon appears on the screen? If Dad or Mom is in the kitchen, out of the room or distracted reading a newspaper, they may not see the icon when it appears. A voiceover would help parents hear the rating as the show begins and prompt them to change the channel and protect their children from inappropriate programming.

Fourth, to the extent to which your corporate parent also includes newspapers or television guides, will you work to include the television ratings in the television guides to better help parents?

And with respect to cable programming, I renew my call to the cable industry to educate parents about the TV ratings system through PSAs as well, and in particular, I urge the cable industry to make more useful the provisions of the Cable Act of 1992 that permit any cable subscriber to request a blocking mechanism to block out any cable channel parents find objectionable. Right now if a family buys the expanded tier of basic cable, but does not want MTV in its house, they can request equipment from the cable operator that effectively blocks out MTV. This is an option that many subscribers simply do not know that they have, and we should explore ways of improving the effectiveness of this provision, such as putting notices in cable bills that alert parents to this.

The cable industry called me after the last hearing when I raised this question. They told me that they want to cooperate on this issue. So I would like to work with the broadcast and cable industry in putting together a comprehensive plan of education for par-

ents, and ensuring that they understand the technological tools which are at their disposal in order to protect their children.

I can't thank you enough, Mr. Chairman, for holding this hearing.

Mr. UPTON. Thank you.

Mr. Terry.

Mr. TERRY. Pass.

Mr. UPTON. Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman. And thank you for holding the hearing.

I also, like my colleague Mr. Bilirakis, want to welcome my good friend Mr. Bud Paxson, chairman and CEO of Paxson CommunicationsCorporation from West Palm Beach, Florida. I appreciate taking his valuable to time come here and be a witness. So we thank you, Bud.

My colleagues, we are not here to impede the first amendment, obviously, but we do represent constituents that are complaining. All of us have received daily e-mails and calls and letters demanding that we as Members of Congress take a stand, draw a line and say no more. And I think we have done that with this hearing, Mr. Chairman.

And I think, as pointed out earlier, we are glad that Clear Channel has taken some action. The question that Members have posed, would action have been taken if we had not had this hearing? And I think a lot of us say it would not have occurred. So we are very pleased that they have started to institute some family viewing policies, some zero tolerance policies, responsible broadcasting initiatives. All of this is very good.

I think a larger question has to be is programming becoming the lowest common denominator for a culture that is tending toward indecency or deviancy down? And we as Members of Congress have to say, and represent our constituents that—we are asking that we must somehow combat this slide, whether it is through hearings like this or through legislation.

The Supreme Court has talked about this in keeping our children free of indecent material over the public airwaves. I think the industry needs to return to the intent of that standard and publicly reembrace the idea of a family viewing policy.

In regard to this policy, I plan to offer an amendment in the full committee—I offered it in the subcommittee—urging NAB to reinstitute that policy. So I look forward to increasing—to working with the chairman on that. And also I have an amendment to increase fines on the individual offenders who continue to exploit the airwaves for their own publicity, and I think that would go to stemming the tide here.

I want to compliment FOX TV for their aggressive four-part content plan among their affiliates. What the public needs to see is not reactionary policy by these executives to avoid fines, but genuine leadership from the industry to develop programming that entertains and not offends, and I hope the executives and the industry will do that. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Whitfield.

Mr. WHITFIELD. Mr. Chairman, I am going to waive.

Mr. UPTON. Mr. Cox.

Mr. COX. Thank you, Mr. Chairman. I will just be very brief, because I want to begin by thanking you for continuing this series of important hearings.

Second, I want to thank you for considering, based on our previous hearings, expanding the legislation to include not just individual stations, but also the networks within the scope of legislation that we are considering.

And I just want to say that this issue for me is not really about what people get to say in public or in private. When it comes to artistic expression or even just entertainment that its authors would never claim aspires to art, I am a libertarian, I don't want the government to dictate what Americans can say in public or in private.

But we are here today for two important reasons. First, broadcast television and radio is using public assets, the electromagnetic spectrum, which in other hearings and other legislation this committee is seeing auctioned off. There are billions of dollars here in the form of subsidies. So we are using a public good for prurient entertainment. I can't in many cases see the difference between cable television product and broadcast television product, but, of course, in one case people have to pay to get their entertainment product out electronically, and in the other case the taxpayers are paying for it. I am missing the public purpose that is being served by much of what we are calling entertainment here, or at least the distinction between the parts that the taxpayers subsidize to the tune of billions of dollars and those parts they do not.

The second reason we are here is that for many people, turning it off isn't enough. You can't escape this. It is so pervasive that for parents trying to protect their children, you can't get away from it.

I just want to share, last night I was wrestling with my 5-year-old. We had a little wrestling match on the living room rug, and he was getting the better of me, and I didn't want to be pinned, so I went over and sat down on the couch and said, "Half-time." And he jumped up on the coffee table and ripped off his t-shirt and said, "Half-time show."

Now, this kid is 5 years old. I was with him—I was with him for the Super Bowl, and he didn't see the half-time show, but he goes to kindergarten. And, I mean, that is what people are talking about. That is what the popular culture is doing to us as parents, making it very, very difficult to raise children in America.

And what we are asking for here is some judgment, which is so lacking, and people are making a lot of money selling things that are very harmful to our society. And I just wish we had better judgment and people of responsibility.

I thank you, Mr. Chairman.

Mr. UPTON. At this point I would just note there are a lot of subcommittees meeting today. I will ask unanimous consent that all members of the subcommittee be able to offer their opening statement as part of the record.

And I would recognize Mr. Gonzalez, a soon-to-be member of the subcommittee, and a faithful fellow who is coming—I guess next week it will happen, but would the gentleman like to make an opening statement?

Mr. GONZALEZ. Waive opening, Mr. Chairman.

Mr. UPTON. With that, our opening statements are concluded.
[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. PAUL E. GILLMOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

I thank the Chairman for calling this timely hearing to examine H.R. 3717 with respect to the FCC's enforcement role in preventing broadcast indecency.

I am proud to be an original co-sponsor of H.R. 3717, the "Broadcast Decency Enforcement Act of 2004." The efforts contained in this measure to increase penalties ten-fold for obscene, indecent, or profane broadcasts are a significant step towards achieving the quality broadcasting that my constituents within the Fifth District of Ohio have demanded. Nevertheless, I look forward to any efforts to further strengthen this measure.

Indecency continues to invade our radio and television airwaves at an increasing rate. This subcommittee and the FCC have taken many recent measures to investigate and curb the tide of indecency delivered during family viewing hours. And yet the business of telecommunications is so lucrative that monetary penalties offer minimal recourse. The effort to increase penalties ten-fold is significant and will have a great impact on many stations throughout the year. However, the exploits displayed at the Super Bowl XXXVII Halftime Show cannot be remedied solely through monetary penalties.

The 2004 Super Bowl attracted an audience of over 143 million viewers watching all or part of the game with an average viewership of almost 90 million viewers. This was the most watched Super Bowl in history and the most watched television program on any network since Super Bowl XXXII in 1998. In addition to the Super Bowl, the post game show reached almost 59 million viewers and the premier of Survivor: All-Stars reached over 33 million.

As viewership rates reached an all-time high, a 30-second television advertisement during this year's Super Bowl cost approximately 2.3 million dollars. Since 1994, the cost of advertising in the Super Bowl has risen over 250 percent! With soaring ad revenue and rising viewship, we must impose upon the telecommunications industry additional incentives to produce quality programming.

I look forward to hearing from the well-balanced panel of witnesses regarding standards of decency at future live television performances. In addition, I look forward to examining the scope of the pending legislation as well as proposals for furthering the penalties available to the FCC. Again, I thank the Chairman and yield back the remainder of my time.

PREPARED STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Thank you, Mr. Chairman.

This is now the third hearing on this matter in the last two months. We've heard from the FCC, broadcasters, community activists and other interested parties about what is happening on the public's airwaves, and how we can act as a Congress to enact proper disincentives to indecent broadcasts without sullying the First Amendment.

The consensus thus far has been that Chairman Upton's bill, of which I am a co-sponsor, is narrowly tailored enough to combine with increased efforts at the FCC to curb profanity and nudity in programs where Americans simply are not expecting to find them. These aren't late night, pay-per-view instances of indecency, but family-hour, family-watched programming.

It's difficult to apply historical norms to what we do and say in society, as we live in ever-changing times. However, regardless of the decade, we can expect B and demand B that people act in a civil manner when they are afforded access to the public's airwaves.

Some have taken the Committee's actions thus far as an affront to free speech, or an imposition of censors on programming B or worse yet, may be trying to use it as an effort to put the federal government into the production business. None of this is the case. We are simply updating the penalties for indecent broadcasts. Broadcasters have responded by establishing or recommitting to standards for the safe harbor period of the programming day. They are adopting delays for live programming, ensuring on-air talent has some skin in the game should their behavior result in fines, and realizing they have an obligation to a civil society.

The reason I support the Chairman on this matter is that he has avoided pursuing prohibitions on words, or changes that could rewrite the indecency standard,

or legislation that may not pass constitutional muster. This is a simple and focused bill that has already paid dividends by anyone's standards, and I would like to commend him for his actions on the matter of indecency. Thank you Mr. Chairman, and I look forward to working with you to pass this bill which appears to be long overdue.

I yield back the balance of my time.

PREPARED STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. Chairman, I would like to thank you for continuing to draw attention to this topic. I would also like to thank our distinguished panel of witnesses, including Mr. Pappas, for being here today. I would like to take a moment to point out that Mr. Pappas owns KMTV in Omaha, in my District, so I'm particularly interested in hearing what he has to say.

Mr. Chairman, I wish that this hearing wasn't necessary. But I recognize that, while cable television content is looked at as envelope pushing, much—or quite frankly, most—of the television programming that has been the subject of indecency complaints by the public is network-originated programming. And I believe that our principal purpose in taking a hard look at legislation is to create an economic disincentive from airing this offensive material.

In order to achieve that, I believe we must ensure that the larger fines we are empowering the Federal Communications Commission to levy be applied against the originators of such content, with limited indemnification for the affiliates who—as in the Super Bowl case—were simply retransmitting live network programming and had no ability to shield their viewers from the "surprise" offensive content.

I am pleased that today we will be privy to, thanks to our witnesses, the affiliates' perspective of this debate. I'm also eager to hear what the rest of the distinguished panel has to say.

I am dedicated to working with all parties involved to encourage the entertainment industry to show the responsibility it's been lacking for so long.

As many in the room know, whenever something indecent is aired, it's usually the local broadcasters who receive the brunt of complaints. It is important to get the affiliates perspective, since they are the ones who have the closest contact with the public.

Thank you, Mr. Chairman, and I look forward to hearing the testimony today.

Mr. UPTON. We welcome our very good panelists before us this morning, and we will be led off by Mr. Alex Wallau, President of ABC TV Network; Ms. Gail Berman, President of Entertainment for Fox Broadcast Company; Dr. Alan Wurtzel, President of Research and Media Development for NBC; Mr. Bud Paxson, Chairman and CEO of Paxson Communications; Mr. John Hogan, President and Chief Executive Officer of Clear Channel Radio; and Mr. Harry Pappas, Chairman and Chief Executive Officer of Pappas Telecasting Companies.

Ladies and gentlemen, we appreciate your compliance with our subcommittee rules on supplying your testimony in advance. I think all of us had an opportunity to look at it last night.

Your opening statements are made part of the record in its entirety, and we would like you to spend 5 minutes summarizing that testimony before we go to questions. And, Mr. Wallau, we will lead off with you. Welcome.

STATEMENTS OF ALEX WALLAU, PRESIDENT, ABC TELEVISION NETWORK; GAIL BERMAN, PRESIDENT OF ENTERTAINMENT, FOX BROADCASTING COMPANY; ALAN WURTZEL, PRESIDENT, RESEARCH AND MEDIA DEVELOPMENT, NATIONAL BROADCASTING COMPANY; LOWELL W. "BUD" PAXSON, CHAIRMAN AND CEO, PAXSON COMMUNICATIONS CORPORATION; JOHN HOGAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CLEAR CHANNEL RADIO; AND HARRY J. PAPPAS, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, PAPPAS TELECASTING COMPANIES.

Mr. WALLAU. Thank you. And good morning, Chairman Upton, Mr. Markey and members of the committee. I am Alex Wallau, president of the ABC Television Network. We at ABC and the Walt Disney Company take our roles as broadcasters and stewards of the public airwaves very seriously. We never forget our status and responsibilities as guests in the homes of the viewers, and we strive always to honor the trust they have placed in us.

Certainly we do not allow material on our air that would violate the law against indecent broadcasts, and the guidelines issued by the Federal Communications Commission interpreting that law, but our standards go far beyond the indecency rules.

In scheduling our shows, and in reviewing each episode of those shows, we take great care to make sure that each is suitable for its time period and intended audience. ABC has a 24-person standards and practices department that carefully reviews all episodes of our prime-time dramas and comedies, our reality shows and specials, our made-for-television movies and theatrical motion pictures, and children's programming, as well as commercials, promos and public service announcements to ensure that they meet our standards for taste and responsibility. This includes a detailed review of language, themes, plots and visuals.

Live prime-time entertainment programming is subject to an audio and video delay mechanism staffed by experienced broadcast standard editors. We have used delay mechanisms on live music and comedy award shows and other programming very effectively for more than a decade to prevent inappropriate audio and video material from being broadcast on the ABC television network. This Sunday we will employ our delay mechanism during our prime-time telecast of the Academy Awards, the first time in the 76-year history of the awards that such a delay will be used.

We believe strongly that we have a responsibility to enable our viewers to make informed choices about the programs they want to watch and they want their children to watch. For this reason we go to great lengths to let viewers and parents know ahead of time that a program may contain material not suitable for children, or simply not in keeping with their own taste or sensibilities.

Every episode of our entertainment programs carries an on-screen rating indicating its age suitability and, when appropriate, a designation indicating the presence of adult language or content. These ratings are carried in an on-screen icon at the beginning of every show. When appropriate, we add a full-screen video and audio viewer discretionary advisory at the start of a program to alert audiences that this show contains material some may find objectionable. Such advisories are also included in on-air promotional

messages for the show. Additionally the rating program is encoded within the show to enable blocking by TV sets with the V-Chip. Millions of such sets are in American homes today.

We agree with Congressman Markey's suggestion that a renewed public education effort about the V-Chip is useful and worthwhile, and we pledge that we will once again support such a campaign with public service announcements and related efforts.

We will also pursue other steps to make information about our programs, including their rating, even more accessible to viewers. For example, we intend to place the rating icon on the screen after every commercial break; another good suggestion by Congressman Markey. When appropriate, we will repeat the full-screen viewer discretion advisory with audio at later points in a broadcast. We will also add the ratings and advisory to our on-line Internet listings.

We go to great lengths and expense to ensure that our programming violates neither FCC rules and regulation on indecency, nor even our more stringent standards. And while we are determined to maintain those high standards, as over-the-air broadcasters, we feel an obligation to question the lack of regulatory parity that exists between us and basic cable channels in this regard.

As you know, the current rules that apply to broadcasters are very different than those that apply to cable or satellite providers. We don't believe that this distinction makes such sense in today's world, where the combined audience for the cable and satellite channels exceeds a combined audience for the broadcast channels.

For the parent or child surfing with a remote control in the one of the 84 percent of American homes that receive pay television, the distinction between broadcast and basic cable or satellite channels simply no longest exists. Indeed it seems that some of the programming that people have in mind when they complain about objectionable programming and television material is actually on cable, not broadcast. Not only does this call into question the effectiveness of the indecency rules, it also raises troubling issues of fairness that will only be exacerbated by any efforts to impose even more stringent requirements on broadcasts alone.

Mr. Chairman, one argument that has been made during a series of hearings is that the broadcast affiliates, the affiliated stations that are distributors of our signal, are powerless to preempt programming that they deem to be objectionable. Nothing could be farther from the truth. In our affiliation agreements our affiliates are guaranteed the right to reject or refuse network programming which the station reasonably believes to be "unsatisfactory, unsuitable or contrary to the public interest."

Though our affiliates have this preemption right, they choose to exercise it very rarely to reject programming they believe to be indecent or otherwise unsuitable for reasons of content. When they do, we respect and abide by their decisions. For example, two ABC affiliates have chosen to preempt the series NYPD Blue entirely since it premiered in 1993. They remain valued affiliates of our network. Affiliates also have the right to decline to carry individual episodes of our entertainment series if they are uncomfortable with their content, and they occasionally do so.

In conclusion, we at the ABC Television Network are proud that millions of Americans rely on us every day to bring them quality television programming. We will continue to make every effort to honor their trust. Thank you, Mr. Chairman.

[The prepared statement of Alex Wallau follows:]

PREPARED STATEMENT OF ALEX WALLAU, PRESIDENT, ABC TELEVISION NETWORK

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Certainly, we do not allow material on our air that would violate the law against indecent broadcasts and the guidelines issued by the Federal Communications Commission interpreting that law. But our standards go far beyond the indecency rules. In scheduling our shows, and in reviewing each episode of those shows, we take great care to make sure that each is suitable for its time period and its intended audience.

ABC has a 24-person Standards and Practices department that carefully reviews every episode of our reality shows, specials, primetime dramas and comedies, made for television movies, theatrical motion pictures, and children's programming—as well as commercials, promos, and public service announcements—to ensure that it meets our standards for taste and responsibility. This includes a detailed review of language, themes, plots, and visuals.

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We believe strongly that we have a responsibility to enable our viewers to make informed choices about the programs that they want to watch and that they want their children to watch. For this reason, we go to great lengths to let viewers and parents know ahead of time that a program may contain material not suitable for children or simply not in keeping with their own tastes or sensibilities.

Every episode of our entertainment programs carries an on-screen rating indicating its age suitability and, when appropriate, a designation indicating the presence of adult language or content. These ratings are carried in an on-screen icon at the beginning of every show. When appropriate, we add a full screen video and audio "Viewers Discretion" advisory at the start of the program to alert audiences that the show contains material some may find objectionable; such advisories are also included in on-air promotional messages for the show.

Additionally, the rating for each program is encoded within the show to enable blocking by television sets with the v-chip. Millions of such televisions are in American homes today. We agree with Congressman Markey's suggestion that a renewed public education effort about the v-chip would be useful and worthwhile, and we pledge that we will once again support such a campaign with public service announcements and related efforts.

We will also pursue other steps to make information about our programs, including their rating, even more accessible to our viewers. For example, we intend to place the rating icon on the screen after every commercial break, another good suggestion by Congressman Markey. When appropriate, we will repeat the full-screen "Viewers Discretion" advisory at later points in a broadcast. We will also add the ratings and advisories to our on-line internet listings.

We go to great lengths and expense to ensure that the programming we air violates neither FCC rules and regulations on indecency nor our own more stringent standards. And while we are determined to maintain these high standards, as over-the-air broadcasters, we feel an obligation to question the lack of regulatory parity that exists between us and basic cable channels in this regard. As you know, the current rules that apply to broadcasters are very different from those that apply to cable or satellite providers. We don't believe that this distinction makes much sense in today's world where the combined audience for the cable and satellite channels exceeds the combined audience for the broadcast channels. To the parent or child surfing with a remote control in one of the 84 percent of American homes that re-

ceive pay television, the distinction between broadcast and basic cable or satellite channels simply no longer exists. Indeed, it seems that some of the programming that people have in mind when they complain about objectionable television material is actually on cable, not broadcast. Not only does this call into question the effectiveness of the indecency rules; it also raises troubling issues of fairness that would only be exacerbated by any efforts to impose even more stringent restrictions on broadcasters alone.

Mr. Chairman, one argument that has been made during your series of hearings is that the broadcast affiliates are powerless to pre-empt programming that they deem to be objectionable.

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In conclusion, we at the ABC Television Network are proud that millions of Americans rely on us every day to bring them quality television programming. We will continue to make every effort to honor their trust.

Mr. UPTON. Thank you.

Ms. Berman.

Hit the mike button on there. You of all people should know that.

Ms. BERMAN. I know. You would think I was technologically savvy, wouldn't you?

STATEMENT OF GAIL BERMAN

Ms. BERMAN. Good morning, Chairman Upton, Ranking Member Markey, and members of the subcommittee. I appreciate the opportunity to appear before you today to talk about the very difficult and complex issue of broadcast indecency. Before proceeding, let me say that we have heard you, and we are already taking steps to address this important issue.

I approach this subject wearing two hats: One as the president of entertainment for the Fox Broadcasting Company, and one as the mother of 11-year-old twins. As a network president I have heard and as a parent I understand the concerns being expressed by the American public and this subcommittee that television content can at times be inappropriate for children. At the same time, I think we all recognize that the first amendment requires us to tread lightly when it comes to translating concerns about television content into government regulation.

In the first instance these competing concerns can best be addressed by the voluntary efforts of the broadcast industry. Last week Fox announced the adoption of an aggressive four-part plan designed to ensure our content on television is both appropriate and appropriately viewed. This plan recognizes first and foremost that we have a responsibility to air programming that complies with the law and takes into account the sensibilities of our viewing public. Under the first part of this plan, Fox has improved procedures for preventing inappropriate content on live entertainment programming. We are all aware of the now infamous words and actions by talent appearing during the super Bowl half-time and on

award shows, including regretful incidents that occurred on Fox during the Billboard Music Awards.

To help ensure this does not happen again, we have added personnel and equipment to our delay process for live shows to permit review by multiple teams, each of which has the authority to remove audio or video content that is deemed inappropriate.

A second step under the Fox plan is improvements to our Broadcast Standards and Practices Department to address nonlive programming. These efforts include all shows must now be delivered to Fox in a timely manner to allow for adequate standards review. The creative executives and producers of all Fox shows are advised that broadcast standards is the single greatest priority for the network, and additional personnel have been hired to ensure onsite supervision of every unscripted program.

To educate our creative executives, producers and writers, we have undertaken the following: Fox conducted an unprecedented seminar with panels that consisted of representatives from public interest groups, including Brent Bozell of the Parents Television Council, the government, and executives and producers from other entertainment companies to provoke thoughtful discussion of the many complex issues surrounding indecent and violent programming. And importantly, the seminar was attended by virtually every creative executive in Fox's entertain divisions.

Fox is entering into a consultative relationship with the Kaiser Family Foundation whose work in dealing with the effect of television on children is widely respected.

The third piece of Fox's content plan is an educational campaign designed to provide information about the underutilized V-Chip and ratings system which can help parents control what their children watch on television.

We are partnering with Thomson/RCA to launch this week a national print advertising campaign with ads in the Washington Post, USA Today and Newsweek. We are aggressively airing Fox's V-Chip/ratings PSA on the network and on our broadcast and cable channels. The Fox News Channel will produce a news special on the indecency issue, including information about the V-Chip and ratings system. And the Fox on-screen ratings depicter is being redesigned so that it is much more prominent during the 15 seconds it is on screen, and we are making sure that ratings are prominently displayed on the Fox.com Website.

The fourth piece of Fox's content plan is a reaffirmation that our affiliates have an unequivocal right to reject network programming that they reasonably believe is unsuitable. Fox hopes this reaffirmation removes any remaining impediment to working cooperatively with our affiliates and other broadcasters at the NAB Summit on Indecency.

I am proud of the program Fox has put together. We feel it strikes the right balance between the responsibilities of Fox as a broadcaster, the rights of parents to decide what programming is appropriate for their children and the requirements of the first amendment. Parental choice is crucial, given that the views of individual parents about what is appropriate for their children may vary widely.

In closing, I would like to confirm that we at Fox have heard your concerns loud and clear. We sincerely regret that a few instances of inappropriate programming have overshadowed the good shows we proudly air on Fox every week. It is for this reason that we have responded so aggressively to address concerns about indecency. Thank you for the opportunity to appear before you today. I welcome you questions.

[The prepared statement of Gail Berman follows:]

PREPARED STATEMENT OF GAIL BERMAN, PRESIDENT OF ENTERTAINMENT, FOX BROADCASTING COMPANY

Chairman Upton, Ranking Member Markey, and Members of the Subcommittee, I appreciate the opportunity to appear before you today to talk about the very difficult and complex issue of broadcast indecency. And before proceeding further with my statement, let me say that we have heard you and we are already taking steps to demonstrate that we understand the importance of this issue.

I approach this subject wearing two hats: one as the President of Entertainment for the Fox Broadcasting Company, and one as the parent of eleven-year-old twins. As a network President I have heard, and as a parent I understand, the concerns being expressed by the American public and by this Subcommittee that television content can at times be inappropriate for children, particularly during live events that are widely viewed as "family friendly." At the same time, I think we all recognize that the First Amendment requires us as a society to tread lightly when it comes to translating concerns about television content into government regulation.

In the first instance, these competing concerns can best be addressed by the voluntary efforts of the broadcast industry. Last week, FOX announced the adoption of an aggressive four-part plan (attached to this testimony) designed to ensure our content on television is both appropriate, and appropriately viewed. This plan recognizes, first and foremost, that we have a responsibility to our viewers to air programming that complies with the law, and takes into account the sensibilities of the viewing public. Thus, we have taken steps to improve our broadcast standards procedures for live and scripted programming, to educate our creative executives, producers and writers, and to better inform parents about the tools available to control what their children watch.

Under the first part of this plan, FOX has adopted new procedures for preventing inappropriate content on live entertainment programming. We are all aware of the now infamous incidents of the use of inappropriate words or actions by talent appearing on awards shows and during the Super Bowl half-time. Unfortunately, we have experienced incidents of this nature on the FOX network during the Billboard Music Awards. All of us at FOX regret that the procedures we had in place did not prevent the live broadcast of inappropriate language, and we have now implemented improved procedures to help ensure that it does not happen again. These include:

- Adding personnel and equipment to our delay process for live shows to permit review by multiple teams, each of which has the authority to remove audio or video content that is deemed inappropriate for broadcast television;
- Investing in additional equipment to ensure that the time-delay system includes redundant hardware to protect against equipment failure during live events; and
- Adding a time delay to all live syndicated programming produced by Twentieth Television.

A second step under the FOX plan is improvement of our Broadcast Standards and Practices Department to address non-live programming. These efforts include:

- All shows must now be delivered to FOX in a timely manner to allow for adequate standards review;
- The creative executives and producers of all FOX shows are advised that broadcast standards is the single greatest priority for the network; and
- Additional personnel have been hired to ensure on site supervision of each and every unscripted program.

To educate our creative executives, producers and writers of non-live programming on the sensitivities surrounding the indecency issue, we have undertaken the following:

- FOX conducted an unprecedented, half-day seminar to provoke thoughtful discussion of the many complex issues surrounding indecent and violent programming, including the First Amendment. This seminar, which was held on Feb-

ruary 5, 2004 in Los Angeles, was attended by virtually every creative executive in FOX's television, cable, television studio, and motion picture divisions; and

- FOX is entering into a consultative relationship with the Kaiser Family Foundation, whereby twice a year, Kaiser will brief me and other top creative executives at the network to discuss how FOX can best incorporate sexual health messages into story lines in a responsible way.

The third piece of FOX's content plan is an educational campaign designed to provide information about the V-Chip and ratings system, which can help parents control what their children watch on television. I think we can all agree that, while the V-Chip and ratings system in concept makes a lot of sense, it is being underutilized. In order to make information about this system more widely available, we are undertaking the following initiatives:

- Partnering with Thomson/RCA to launch a national print advertising campaign targeting parents. That campaign was launched this week with ads in the *Washington Post, USA Today,* and *Newsweek;*
- Aggressively airing FOX's V-Chip/ratings public service announcement on the network during prime time, on all 35 FOX owned stations, and on Fox Sports Networks' 12 owned-and-operated regional sports networks, FX, The National Geographic Channel, Fox Movie Channel, Speed Channel, Fox Sports World, FUEL, and the TV Guide Channel;
- The Fox News Channel will be producing a news special that examines all sides of the indecency issue, including information about the V-Chip and ratings system, for airing on the Fox News Channel and for distribution to other FOX programming entities; and
- Redesigning the FOX on-screen ratings depicter so that it is much more prominent during the 15 seconds it is on screen at the start of every rated show on FOX, and making sure ratings are prominently displayed on the fox.com website.

Fourth, the FOX content plan reaffirms that our affiliates have an unequivocal right to reject network programming that they reasonably believe is "unsatisfactory, unsuitable or contrary to the public interest." FOX hopes that this reaffirmation of the contractual rights of FOX affiliates removes any remaining impediment to working cooperatively with our affiliates and other broadcasters at the All-Industry Summit being hosted by the National Association of Broadcasters.

I am proud of the program FOX has put together. We feel it strikes the right balance between the responsibilities of FOX as a broadcaster, the rights of parents to decide what programming is appropriate for their children, and the very important First Amendment considerations at stake. Parental choice is crucial, given that the views of individual parents about what is appropriate for their particular child to watch at any given age may vary widely, depending on the maturity of the child, the family's values, or a parent's views about the quality of a particular show. We feel that educating parents about the V-Chip/ratings system is the most respectful way of ensuring that parents have the tools to make wise decisions for their children.

In closing, I would like to affirm that we at FOX have heard your concerns loud and clear. We sincerely regret that a few incidents of inappropriate programming have overshadowed the good shows we proudly air on FOX every week. It is for this reason that we have responded aggressively to address concerns about indecency.

Thank you for the opportunity to appear before you today, and I welcome your questions.

FOX FOUR-PART CONTENT PLAN

1. **New Procedures for Ensuring Appropriate Content on Live Entertainment Programming.** With the immediacy of live television comes the possibility that performers will spontaneously deviate from the script and do or say something that is offensive to some viewers. In an effort to reduce the risks associated with live entertainment broadcasts, FOX has invested significant time and resources in order to implement several compelling enhancements to its pre-existing time-delay system and operational protocols.

- FOX is adding personnel to permit simultaneous but parallel and separate review of live programming by up to four separate teams. Each team will have their own set of equipment that will allow them to independently remove audio and video that is deemed inappropriate. FOX is undertaking extensive training of team members to ensure the highest possible level of performance in this important function.

- FOX has invested in additional equipment to ensure that the entire time-delay system includes redundant hardware to protect against equipment failure during live events.
- FOX is adding a time delay to all live syndicated programming produced by Twentieth Television, including *Good Day Live* and *On Air With Ryan Seacrest.*
- FOX will continue to monitor and improve its procedures for live programming as developments occur.

2. **New Procedures for Ensuring Appropriate Content on Scripted and Unscripted Programming.** Significant changes have been made to FOX's Broadcast Standards and Practices Department ("BSP") to improve the robustness of its implementation of FOX's internal broadcast standards. These changes include:

- Taking steps to ensure timely delivery of all shows for review by FOX's BSP;
- Ensuring the presence of a BSP person on site to supervise each and every unscripted program;
- Providing guidelines to creative executives and producers for all programs, conducting a preliminary production meeting with them to discuss various standards issues, and advising them that broadcast standards is the single greatest priority for the network;
- Changing the reporting of the BSP to the President and CEO of FOX Networks Group;
- Hiring additional BSP personnel to ensure maximal implementation of these changes.
- **FOX Content Seminar.** On February 5, 2004, Fox Entertainment Group conducted an unprecedented, half-day seminar for FOX executives designed to provoke thoughtful discussion on the issues surrounding indecent and violent programming on television. This seminar was attended by virtually every creative executive in Fox's television, cable, television studios, and motion picture division. Enclosed is a copy of the agenda for that program.
- **Consultative Relationship with Kaiser Family Foundation.** At least twice a year, Kaiser will brief the top creative executives at FOX to discuss the results of ongoing research by Kaiser, and on how FOX programs can best incorporate health-related messages into story lines in a responsible and accurate way. In addition, FOX will consult with Kaiser on a periodic basis to ensure that its treatment of sensitive health-related issues in Fox programming is done responsibly.

3. **V-Chip/Ratings Educational Campaign.** In addition to ensuring the appropriateness of live and scripted programming for its audience, FOX believes it is vital to provide parents with the knowledge and tools they need to help them regulate and control the images and words their children are exposed to on television. This education is necessary where different parents have different ideas about what programming content is appropriate for their individual children. The campaign will educate parents on how to use the V-chip and ratings system to assist them in making decisions about responsible television viewing. The campaign will include the following components:

- **FOX/Thomson Partnership.** Thomson/RCA, an electronics manufacturer with a leading market share of TV sets in the United States, will partner with FOX to launch a national print advertising campaign, with buys in daily newspapers, weekly and monthly magazines targeted at parents. Enclosed is a copy of the advertisement that will be used in that campaign. In addition, Thomson/RCA and FOX will work together on other projects to improve the visibility of the V-Chip with consumers and in retail stores.
- **FOX's V-Chip/Ratings Public Service Announcement ("PSA").** Will be aggressively aired on Fox's 35 owned and operated television stations, and during prime time on the FOX network. Enclosed with this letter is a videocassette copy of this PSA. In addition, FOX's V-Chip/ratings PSA will be more prominently displayed on the fox.com website. Finally, this PSA will run on Fox Sports Networks' 12 owned-and-operated regional sports networks, and on FX, The National Geographic Channel, Fox Movie Channel, Speed Channel, Fox Sports World, FUEL, and the TV Guide Channel.
- **Fox News Channel Program on V-Chip/Ratings.** Given the significant news value of the program content issue, the Fox News Channel has decided to produce a special one-hour news program devoted to the issue of indecency. After airing on the Fox News Channel, this program will be made available to other Fox programming entities for wider distribution. In addition, this program will be distributed to parent/teacher groups and will be available on the fox.com website.

- **Increased Prominence of FOX Ratings Information.** FOX will redesign its on-screen ratings depicter so that it is more prominent to viewers. These ratings, which appear on air for 15 seconds, will be more accessible to parents who may be in the process of deciding at the beginning of a show whether it is appropriate for their children. The ratings for individual FOX programs will also be prominently displayed on the fox.com website. Finally, the FOX website will include a prominently displayed guide for parents that contains basic and easy-to-understand information on the V-Chip/TV ratings system.

4. **Ongoing Efforts.** FOX clarifies and reaffirms the unequivocal contractual right of FOX affiliates to reject network programming that it reasonably believes to be "unsatisfactory, unsuitable or contrary to the public interest." FOX hopes this clarification removes any remaining impediment to working cooperatively with its affiliates and other broadcasters at the National Association of Broadcaster's All-Industry Summit, to pursue additional voluntary avenues for promoting programming responsibility. In addition, FOX will continue to consider improvements to its broadcast standards efforts, and additional initiatives related to the program content issue.

Mr. UPTON. Thank you.

Dr. Wurtzel.

STATEMENT OF ALAN WURTZEL

Mr. WURTZEL. Thank you, Subcommittee Chairman Upton and Congressman Markey, Full Committee Chairman Barton, and Congressman Dingell and members of the subcommittee. Thanks for providing NBC with the opportunity to address the important matter of broadcast responsibility as well as H.R. 3717. I am Alan Wurtzel, the president of research and media development and the chief executive for broadcast standards and practices at NBC.

As the head of NBC Standards and Practices Group, I can commit to you without qualification that we take seriously our obligation to our viewers not to air programming that is indecent, profane or obscene. NBC has been committed to doing so since the earliest days of black and white television, and we continue to honor that obligation. As an over-the-air broadcast network, our goal is to reach a large, diverse viewing audience with programming that is appropriate, acceptable and consistent with all congressional and FCC requirements.

There is absolutely no question that any indecent content on our network entertainment programming is completely antithetical to NBC's core beliefs. Accordingly, NBC has committed the necessary resources to fulfill its obligation to broadcast appropriate content.

In NBC Standards and Practices Department, we maintain a fully staffed team of 17 experienced professionals whose only job is to ensure that both the programming and the commercial advertising aired on the NBC network are consistent with NBC's own high standards, and we believe that NBC's internal policies and safeguards have been remarkably successful in preventing obscene, indecent or profane programming from airing on our network, especially in light of NBC's long history with live television, and considering the fact that NBC transmits literally thousands of hours of network programming every year. We are proud of this distinguished record.

So within this historical context, NBC has previously expressed its sincere regret and does so again about the entertainer Bono's spontaneous and unfortunate choice of an unacceptable word during a live broadcast of the 2003 Golden Globes. Bono's utterance of a clearly offensive word was completely unexpected by everyone in-

volved in the live broadcast. That isolated incident stands in stark contrast to NBC's long history of broadcasting live programming free of inappropriate content.

The Bono incident has caused NBC to take additional steps to protect our viewers. We have instituted the routine practice of running all live award shows on a 10-second video and audio delay. And NBC continues to impress upon producers and talent that the use of this delay in no way absolves them from their responsibility to provide programming that is consistent with NBC standards.

As a further precaution we have increased the voluntary TV rating category assigned to live entertainment programming to remind parents that the programming may include live, spontaneous, and unpredictable content. And we support Mr. Markey's suggestion to increase the exposure of the V-Chip and our "The More You Know" PSA campaigns.

NBC's affiliates also benefit from these enhanced safeguards. Moreover, under NBC's affiliate contracts and the FCC rules, every NBC affiliate has the right to reject or preempt any program if that affiliate reasonably believes that such programming is unsatisfactory, unsuitable or otherwise contrary to the public interest in its local community. For example, we have worked with—the NBC affiliate for years in Salt Lake City preempts Saturday Night Live every week because the station believes that the program is incompatible with their prevailing community standards, and we respect that decision.

NBC is also extremely sensitive to concerns about TV violence. In the mid-1990's NBC conducted a comprehensive review of its prime-time programming. The result was the development of an essentially nonviolent prime-time schedule. Current NBC prime-time programs rarely, if ever, include graphic depictions of interpersonal violence. NBC's long-running Law and Order series, I think, is a good example of that approach. Rather than show the actual act of violence, the series focuses on the negative social and human consequences of violence and deals with the legal ramifications facing those who would commit violent acts.

To NBC and our stations, no fine that we might pay to the FCC is ever dismissed out of hand as merely doing the cost of business. However, NBC does recognize that the current limits may have hindered the FCC's ability to deter the atypical broadcast licensee that commits repeated and intentional violations. Accordingly, NBC supports H.R. 3717 as introduced, which will increase the statutory maximum of FCC penalties tenfold. NBC would also be pleased to participate in a voluntary industrywide initiative involving all program content distributors, broadcasters, cable operators and direct broadcast satellite providers.

As you have heard, but it is worth repeating, the reality is that 85 percent of TV households receive their television, both broadcast stations and cable networks, over cable and DBS, and for those viewers all channels are equal, just a click of a remote away.

Several members of the subcommittee as well as several FCC Commissioners have called for such an industrywide effort. We at NBC applaud their vision and welcome the opportunity to participate in an appropriate, all-industry initiative.

In conclusion, I want to remind everyone that for over half a century the NBC Television Network together with its affiliate stations has provided quality news and entertaining programming to the Nation's television households. Recently new forms of media competitors have arrived, many of which are subject to far fewer limitations on their program and advertising content than are we. But despite these competitive challenges, NBC continues its commitment to quality through its standards and practices review process. We believe it is both good business and responsible corporate citizenship to ensure that our programming is compatible with our standards, standards that are responsive to our affiliates, to our advertisers and, most importantly, to our viewers, and we have every intention of continuing with that commitment.

Thank you. I welcome the opportunity to answer any questions you may have.

[The prepared statement of Alan Wurtzel follows:]

PREPARED STATEMENT OF ALAN WURTZEL, PRESIDENT, RESEARCH AND MEDIA DEVELOPMENT, AND CHIEF EXECUTIVE, BROADCAST STANDARDS AND PRACTICES, NBC

Subcommittee Chairman Upton and Congressman Markey, Full Committee Chairman Barton and Congressman Dingell, and Members of the Subcommittee, thank you for providing NBC with the opportunity to address the important matter of broadcast responsibility as well as H.R. 3717, the "Broadcast Decency Enforcement Act of 2004." I am Dr. Alan Wurtzel, the President of Research and Media Development and Chief Executive for Broadcast Standards and Practices at NBC. I have over 25 years experience in broadcast network television, and I am currently responsible for establishing and implementing the—NBC Television Network's—entertainment broadcast content policies and standards.

NBC'S COMMITMENT AND OBJECTIVE IS TO BROADCAST QUALITY PROGRAMMING

As the head of NBC's Standards and Practices group, I can unequivocally commit to you that NBC takes seriously our obligation to our viewers to air programming that is not indecent, profane or obscene. NBC has been committed to doing so since the earliest days of black and white television, and NBC continues to honor that obligation. NBC also acknowledges that we are fully responsible for all content that is transmitted over the NBC Television Network. As an over-the-air television broadcast network, our goal is to reach a large, heterogeneous viewing audience with programming that is appropriate, acceptable, and consistent with all Congressional and FCC requirements. There is absolutely no question that any indecent content in our network programming is antithetical to NBC's core beliefs.

NBC HAS INTERNAL SAFEGUARDS IN PLACE TO ENSURE BROADCASTS ADHERE TO HIGH STANDARDS

NBC has committed the necessary resources to fulfill its obligation to broadcast appropriate content in *all* of its program offerings. NBC maintains a fully staffed team of 17 highly experienced professionals in our Broadcast Standards and Practices group. Their *only* job is to ensure that both the entertainment programming and the commercial advertising aired on the NBC Television Network are consistent with NBC's own internal standards. We actively review all of NBC's network programming, ranging from scripted programming, to reality shows, to *Saturday Night Live.* The Standards and Practices Department also determines the placement of the appropriate voluntary rating on programming, and exercises vigilant oversight to ensure that NBC's entertainment programming does not contain inappropriate content. We are not the only group at NBC that ensures the quality of NBC's network entertainment programming. NBC inculcates in all of its personnel the importance of observing these standards in order to serve our large and broadly diverse viewing audience.

THE BONO INCIDENT WAS A RARE AND REGRETTABLE OCCURRENCE IN NBC'S LONG HISTORY WITH LIVE TV BROADCASTS

In light of NBC's long history with live television and considering that the NBC Television Network transmits thousands of hours of network content annually, we

believe that NBC's internal policies and safeguards have been remarkably successful in preventing obscene, indecent or profane programming from airing on our network. Occurrences of inappropriate content in our network entertainment programming have been extraordinarily rare and regrettable exceptions.

In this regard, NBC deeply regrets the entertainer Bono's spontaneous and unfortunate choice of an unacceptable word during the live broadcast of the Golden Globes awards show in January 2003. That incident stands in stark contrast to NBC's long history of broadcasting live entertainment programming as well as the history of the Golden Globes broadcast. NBC had broadcast the Golden Globes live since 1996 without incident prior to Bono's remark. Furthermore, the producer of the program, Dick Clark Productions, has a long-standing reputation for professionalism and programming quality. As in years past, the producer, prior to the 2003 Golden Globes, had instructed every participant in the event that they needed to observe appropriate broadcast decorum. Therefore, Bono's utterance of a profanity was completely unexpected by everyone involved in the broadcast of the live program. In response to this unexpected incident, NBC immediately deleted the word from its transmissions to affiliated stations in the Mountain and Pacific time zones, which did not air the program live. NBC sincerely regrets that it was unable to delete the word as part of the live broadcast to the Eastern and Central time zones.

But the isolated Bono incident is a rare exception in NBC's long history with live entertainment programming. It is unfortunate that what happened for a fleeting second on the 2003 Golden Globes has overshadowed an otherwise exemplary record of live entertainment broadcasting by NBC over many decades. In any event, NBC has strengthened its practices with regard to live event programming.

NBC HAS INSTITUTED ADDITIONAL SAFEGUARDS

In an effort to take additional affirmative steps to protect our viewers from another Bono incident, NBC has instituted the routine practice of running all live award shows on a ten second delay. Since the Radio Music Awards in November 2003, all live awards shows have been—and will be—broadcast with both a video and audio delay in effect. This technological measure will safeguard future network audiences from a repetition of anything like the Bono incident. While the delay process cannot be foolproof, NBC's Standards professionals are among the most practiced in the industry and the application of their expertise should help prevent any further incidents. Furthermore, NBC continues to impress upon the producers and talent of live programs that our use of the delay in no way absolves them from their responsibility to provide programming that is consistent with the standards of the NBC Television Network. That means absolutely no indecent language or behavior. As a further precaution, NBC has also increased the voluntary rating category that we assign to live entertainment programming to remind parents that certain programming may include live, spontaneous and unpredictable content.

NBC'S INTERNAL SAFEGUARDS BENEFIT AFFILIATE STATIONS

The NBC Television Network has implemented its internal standards and safeguards to protect not only the network and our owned and operated television stations, but also for the benefit of our affiliates and our advertisers. NBC recognizes the public interest obligations of FCC licensees. We are fully cognizant that broadcast stations—both NBC's owned and operated stations and NBC affiliates—have an obligation to their viewing audience to air programming that is not indecent, profane or obscene. NBC's goal in broadcasting our programming is to reach a large, heterogeneous viewing audience. Therefore, the NBC Television Network strives to create quality programming that conforms to the local community standards within which all of our affiliate stations operate. Given the many different communities that enjoy NBC programming, this can be a challenge. But, as a result, NBC affiliates benefit not only from the ability to air NBC's quality programming, but also from NBC's Broadcast Standards' procedures and safeguards.

As a practical matter, nearly all affiliates have found these precautions to be sufficient for many years of programming. However, we recognize that there may be rare instances in which an affiliate believes that certain NBC network programming does not meet its specific local community standards. Under NBC's affiliate contracts (and Section 73.658(e) of the FCC's rules), every NBC affiliate has the right to reject or preempt any program—without penalty—if an affiliate reasonably believes that such programming is unsatisfactory, unsuitable, or otherwise contrary to the public interest in its specific community. For example, the NBC Television Network has worked with our affiliate in Salt Lake City to preempt *Saturday Night Live* every week due to the station's concern that the program is incompatible with its prevailing community standards. I should note that *Saturday Night Live* is aired

well outside the "safe harbor" time period, is an immensely popular and long-running series seen by the vast majority of our other NBC's affiliates as a highly valued program and has enjoyed an excellent record of staying within the bounds of decency over its 27-year history. Nevertheless, we respect our Salt Lake affiliate's decision, which is based on its judgment of what is appropriate for that community.

NBC'S COMMITMENT TO AVOIDING GRATUITOUS VIOLENCE

At the previous Subcommittee hearings on broadcast indecency and at the Subcommittee markup of H.R. 3717, a number of Members expressed concerns about TV violence. NBC is extremely sensitive to those concerns and has already responded to them. In the mid 1990s, NBC conducted a comprehensive review of its primetime programming due to increasing concerns, which viewers articulated through their elected representatives in Congress, about the potentially negative effects of violent programming. The result was the development of an essentially nonviolent primetime program schedule which exists on the Network to this day. On the current NBC primetime schedule, programs rarely—if ever—depict interpersonal violence in a graphic or gratuitous manner. For example, NBC's long running Law & Order series—and its off-shoots, *Law & Order: Special Victims Unit* and *Law & Order: Criminal Intent*—exemplify our approach to violence. Rather than show the actual act of violence, the *Law & Order* franchise focuses on the negative interpersonal ramifications of violence and deals with the legal consequences facing those who would commit acts of violence.

NBC SUPPORTS H.R. 3717 AS INTRODUCED

To NBC and our owned and operated stations, the FCC's current authority is adequate to ensure compliance. This is because NBC regards any fine—regardless of the amount—as a serious matter and not simply the cost of doing business. At the same time, we recognize that some have argued for tougher sanctions, particularly in order to deter flagrant and repeat violators. In light of this specific focus, NBC supports H.R. 3717, the "Broadcast Decency Enforcement Act of 2004," as introduced, which will increase tenfold the statutory maximum of FCC forfeiture penalties. We need to be mindful, however, of the important First Amendment principles that are implicated by any content regulation. It is for that reason that the Supreme Court has only given very limited approval of any attempt to regulate broadcast indecency. We would therefore caution against any enforcement regime that would establish set responses without regard to the context of a broadcaster's violations or the broadcaster's rights to a fair hearing, or that would impose penalties that are disproportionate to the gravity of the offense.

VOLUNTARY INDUSTRY GUIDELINES TO PROMOTE GREATER RESPONSIBILITY

NBC believes that concerns about indecent and inappropriate programming content should be addressed on an industry-wide basis, encompassing cable and satellite operators as well as broadcasters. In today's media environment, approximately 85 percent of television households subscribe to cable or DBS. Those viewers, on average, receive 110 channels of programming, both retransmitted broadcast signals and cable networks. For most viewers, there is no meaningful difference between a broadcast station and a cable channel—each is just another click on the same remote control. In light of this new competitive reality, NBC shares the views expressed by several Members of this Subcommittee as well as several FCC Commissioners that all industries that distribute programming to American viewers must be a part of any serious effort to come to grips with issues of appropriate program content. NBC pledges to participate in an appropriate industry-wide, voluntary effort.

CONCLUSION

For over half a century, the NBC Television Network, together with its affiliated stations, has provided quality news and entertainment programming to the nation's television households. Recently, multiple new forms of media competitors have arrived on the scene. These are essentially indistinguishable to the average viewer, yet compared to broadcast networks they are subject to far fewer limitations on their entertainment and advertising content. Despite these competitive challenges, NBC remains committed to quality through its Standards and Practices review process. We believe it is both good business as well as responsible corporate citizenship to ensure that our programming observes standards of suitability and appropriateness that are responsive to our affiliates, our advertisers, and most importantly, our viewers.

We have every intention to continuing that commitment.
Thank you and I welcome any questions you may have.

Mr. UPTON. Thank you.
Mr. Paxson.

STATEMENT OF LOWELL W. "BUD" PAXSON

Mr. PAXSON. Thank you, Mr. Chairman, Ranking Member Markey, and distinguished members of the subcommittee, for providing me with the opportunity to address you today.

My name is Lowell "Bud" Paxson. I am chairman and chief executive officer of Paxson Communications Corporation. My company operates 61 full-power television stations and PAX TV, a broadcast television network now in 95 million homes, 89 percent of the TV households. Our network is dedicated to providing family television free from gratuitous violence, explicit sex and foul language. Since 1998, we have worked very hard at PAX TV to show that you can be successful and make money in American television by providing programming that is wholesome and entertaining, and I am very proud of that, and I am very proud of the hundreds of people who work under that mantra at PAX. I have been a holder of a radio or a television license now for over 50 years, and let me say that no station under my watch has ever broadcast indecent or obscene programming.

This indecency hearing was called in part because of a few seconds of a Super Bowl fiasco and the indecent escapade in St. Patrick's Cathedral in New York and others. The FCC and Congress and many of you here today have said that we have authority to regulate indecency on the broadcast airways because the airways belong to and are owned by the people of the United States of America, and I agree. Therefore, I give my unqualified support for Chairman Upton's bill, H.R. 3717, and also Congressman Markey's initiatives, which my company will adopt.

Now I have a few observations. The Super Bowl fiasco was a matter of seconds; but just 2 days ago, Tuesday, here in Washington, DC, cable and satellite providers carried 675 hours of pornography. Yes, a total of 675 hours of filth in one 24-hour period, and at all hours of the day. And here is the point. Cable and satellite use satellite orbital positions licensed by the FCC and owned by the people of America, they use microwave frequencies licensed by the FCC and owned by the people of America, and they use the right of ways ON streets that are owned by people. Cable and satellite television could not function without the public's right of ways or the public's spectrum. And I am not attacking HBO, Showtime or the hundreds of other cable networks that can go farther than broadcasters can go in the area of indecency. I am really not talking about indecency. I am talking about 675 hours of hardcore pornography in one 24-hour period, Tuesday, here in the Nation's Capital.

No one sitting in this room can sit here and tell me that it is in the public interest that cable and satellite providers use the public's spectrum and public right of ways to fight indecent and obscene material into American living room at all hours of the day without any constraints or limitations, but that is what is happening day after day in every city of America.

How to prevent and fix this pervasive evil? Empower the FCC; enact legislation. If necessary, have an amendment to the Constitution. You are the lawmakers. You represent the people who own the airways and the rights of way. You can do it.

Just a note or two. The Bresnan Cable systems and company in Colorado, Wyoming, Montana and Utah carry no pornography channels. I salute and praise them. And, oh, yes, they are profitable, very profitable. I am involved with dozens of church clergy, and they would step to this microphone individually and in unison and tell you that the No. 1 family counseling problem is pornography on cable and satellites.

Ladies and gentlemen, if you need names on petitions to do something about this pervasive evil, just tell us how many millions. They will be provided. Please do not say that pornography is okay because it is scrambled or somehow protected by the first amendment. The fact is that the people in the home that know best how to use the remote control are the kids, and you only need a remote control and a click on a pay-per-view channel to unscramble those pornographic signals.

In addition to that, the titles of the shows and the descriptions of the shows are not scrambled. The people of America who own the airways, the spectrum, the orbital position, the rights of way, do not want pornography on what they own.

Finally, the proceeding of Multicast Must Carry for the public's digital TV licenses is over 3 years old at the Federal Communications Commission. It is the one thing necessary for the DTV transition to really work, and it has not happened yet. The cable and satellite providers say they have no spectrum for the additional program streams that would provide companies like mine with the ability to offer more family friendly programming, minority-oriented programming, locally oriented programming and faith-based programming.

Take action. Tell cable and satellite to get the pornography off. They have got room for our multicast channels. The majority of American people have values and morals. The majority of American people, your constituents, do not want what they own to be used for pornography in any way.

Thank you, Mr. Chairman. I will be happy to address any questions.

[The prepared statement of Lowell W. "Bud" Paxson follows:]

PREPARED STATEMENT OF LOWELL W. "BUD" PAXSON, CHAIRMAN AND CEO, PAXSON COMMUNICATIONS CORPORATION

Thank you Mr. Chairman, Mr. Vice-Chairman and distinguished members of the Subcommittee for providing me with the opportunity to address you today. My name is Lowell Bud Paxson, and I am Chairman and Chief Executive Officer of Paxson Communications Corporation. My company operates 61 full power television stations and PAXTV, a full service broadcast television network now in 95 million homes—89% of America's TV homes. Our network is dedicated to providing family television, free from gratuitous violence, explicit sex and foul language. Since 1998 we've worked very hard at PAXTV to show that you can be successful and make money in American television by providing programming that is wholesome and entertaining, and I'm very proud of that. I have been a holder of a radio or television broadcast license for over 50 years, and let me say that no station under my watch ever has broadcast indecent or obscene programming.

This indecency hearing was called in part because of a few seconds of a Super Bowl fiasco and the indecent escapade in St. Patrick's Cathedral in New York. The

FCC and Congress say they have authority to regulate indecency on the broadcast airwaves because they belong to the people of the United States of America, and I agree.

Therefore, I give my unqualified support for Chairman Upton's bill, HR 3717.

Now, I have a few observations followed by a question. The Super Bowl fiasco was a matter of seconds. But just two days ago, Tuesday, here in Washington, D. C., cable and satellite providers carried 675 hours of pornography mostly on pay per view channels. Yes, a total of 675 hours of filth in one 24 hour period—and at all hours of the day. Now, here's the point. Cable and satellite use the public satellite orbital positions licensed by the FCC. They use microwave frequencies licensed by the FCC and owned by the people and the right of ways on streets also owned by the people. Cable and satellite television could not function without the public's right of ways or the public's spectrum.

I'm not attacking HBO, Showtime or the hundred of other cable networks that go further than broadcasters in the area of indecency. I'm talking about 675 hours of pornography in one 24 hour period—Tuesday, here in the nation's capital.

No one sitting in this room can tell me it is in the public interest for cable and satellite providers to use the public spectrum and right of ways to pipe indecent and obscene programming into America's living rooms at all hours of the day without any constraints or limitations. But that is what is happening, day after day.

How to fix this moral decay? Empower the FCC; enact legislation; have an amendment to the Constitution if necessary. You are the lawmakers. You can do it.

Just a note: The Bresnan Cable systems in Colorado, Montana, Wyoming and Utah carry no pornography channels. I salute and praise them. Oh, yes, they're profitable—very profitable.

I've talked with dozens of church clergy, and they would step to this microphone and tell you that the number one family counseling problem is pornography on cable, satellite and the Internet.

If you need voters' names on petitions to do something about this pervasive evil, just tell me how many millions. It will be done.

Please don't say that pornography is okay because it is scrambled. In fact, the people in the home who know how to use a remote control best are the kids, and you only need a remote control to click on a pay per view channel to unscramble those signals.

Finally, the proceeding of Multicast Must Carry for the public's digital TV licenses is over three years old at the FCC. It's the one thing necessary for the DTV transition to work, and it hasn't happened yet. The cable and satellite providers say they have no spectrum for the additional program streams that would provide companies like mine with the ability to offer more family friendly programming, minority oriented programming and faith based programming. Tell cable and satellite to get the pornography off. They've got room for our multicast channels.

The majority of American people have values and morals. The majority of America people do not want what they own to be used for pornography in any way.

Thank you for the opportunity to speak and I'll be happy to address any of your questions.

Mr. UPTON. Thank you.

Mr. Hogan.

STATEMENT OF JOHN HOGAN

Mr. HOGAN. Good morning, Chairman Upton, Ranking Member Markey and members of the subcommittee. My name is John Hogan, and I am the president and CEO of Clear Channel Radio.

In the past when I have heard people testify before congressional committees, they have stated that it was a pleasure to be here. That is not the case for me today. More than anything else, I am embarrassed to be here. I have read the transcripts of the Bubba radio show. As a broadcaster, as the CEO, and as the father of a 9-year-old girl, I am ashamed to be associated in any way with those words. They are tasteless, they are vulgar; they should not, do not and will not represent what our radio stations are all about.

So let me start my testimony today with an apology to our listeners, to the public in general and to you in this room. We were

wrong to air that material, and I accept full responsibility for our mistake.

While we cannot take back those words that were aired on our radio stations, we are taking steps to ensure that it will not happen again. First, as you have heard earlier, we have ended our relationship with the personality known as Bubba. He will no longer be heard on any Clear Channel radio stations. His dismissal is costly and contentious, but for us it is the right thing to do.

Since we have received the notice of apparent liability from the FCC, my top management team has spent considerable time trying to figure out what went wrong and what we need to do to ensure that our station's broadcast material is consistent with the standards and sensibilities of the communities that we serve. The result has been the adoption and implementation of what we are calling our Responsible Broadcasting Initiative, which we are implementing as we speak. It consists of five components which I would like to share with you briefly.

The first element of the initiative is companywide training. This will entail indecency tutorials on what the FCC does not permit broadcasters to air. It will also include components that educate our employees about their communities and our company, its values, its mission and its sense of corporate and community responsibility. My goal is not only to put an end to the broadcasts such as Bubba's, but to ensure that our stations accurately reflect and consistently reflect what Clear Channel and our communities are all about.

The second component will take effect if somehow that training fails. I have to tell you, I hope that we never receive another notice of apparent liability, but if we do, this is what we will do. First the DJ who has been cited will be automatically suspended, and we will conduct a swift and thorough investigation. Second, we will require that DJ and those involved in the production of that program will under go remedial training on the FCC indecency area. Third, we will subject any future broadcasts from that DJ to a significant time delay so that a program monitor will have the ability to interrupt a broadcast if its content crosses the line. The third component of our plan is mandatory termination. If a notice of apparent liability is issued by the FCC and is then adjudicated, and Clear Channel is found to have aired an indecent program, the offending DJ will be immediately terminated. No immediate steps, no appeals. If someone breaks the law by broadcasting indecent material on our air, they will not work for Clear Channel Radio.

In addition, on a going-forward basis, our contracts with on-air talent will include a provision that requires them to share in the financial responsibility of any fines that may be issued. We understand that this in no way absolves us of our legal responsibility as a licensee, but believe that it will serve as a deterrent, a further deterrent, to the airing of material that crosses the line.

Finally, we volunteer to fully participate with representatives of the broadcast, cable and satellite industry to develop an industry-wide response to indecency and violence. In our view, industry-developed guidelines will be as effective as government-imposed regulations without running afoul of the important first amendment protections.

Mr. Chairman, I think it is important to mention that the Responsible Broadcasting Initiative which I have just described represents a departure for Clear Channel. Historically we have managed on a very decentralized basis. Localism is at the heart and soul of radio, and it is the heart and soul of Clear Channel, and localism requires local control. Clearly when it comes to the airing of the type of material that this hearing is learning of, a different approach is required. As it must, the buck stops here. We will provide specific direction to our local managers in this area and impose a response to the problem that is companywide.

Finally, Mr. Chairman, I would like to point out that Clear Channel Radio airs tens of thousands of hours of programming each week that is in line with community standards and sensibilities. I hope that the subcommittee will understand that the Bubbas of the world and the Howard Sterns of the world are the exception rather than the rule, and that they will no longer have a platform on our stations.

As an industry leader I hope to help lead the way in cleaning up our airways. Thank you for your time this morning. I look forward to answering your questions.

[The prepared statement of John Hogan follows:]

PREPARED STATEMENT OF JOHN HOGAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CLEAR CHANNEL RADIO

Good Morning, Chairman Upton, Ranking Member Markey, and Members of the Subcommittee. My name is John Hogan, and I am the CEO of Clear Channel Radio.

In the past when I've heard people testify before a Congressional Committee, they've stated that it's a pleasure to be here. Unfortunately, that is not the case for me today.

Today, more than anything else I'm embarrassed. I've read the transcript of a Clear Channel radio show featuring the personality known as Bubba the Love Sponge. As you may know, Clear Channel recently received a substantial Notice of Apparent Liability from the FCC for the content of that show. As a broadcaster, as a CEO, and as a parent of a nine-year-old girl, I am ashamed to be in any way associated with those words. They are tasteless, they are vulgar, and they should not, do not—**and will not**—represent what Clear Channel is about.

So let me begin my testimony today with an apology—to our listeners; to the public at large; and to you in this room. We were wrong to air that material; I accept responsibility for our mistake; and my company will live with the consequences of its actions.

While we cannot "take back" the words that were aired on our stations, we can take steps to ensure that it won't happen again. We are turning the page on how we deal with and prevent inappropriate content from airing on our stations, and that is what I'd like to focus on with you here today.

First, Clear Channel has ended its contractual relationship with the on-air personality known as "Bubba." His show will no longer be carried by any Clear Channel station. His dismissal will be costly and contentious but it is the right thing to do. Because of employee confidentiality rights, I can't go into much detail regarding his dismissal. But I can assure this Subcommittee that Clear Channel stations will no longer serve as his platform to reach an audience.

But dismissing an on-air talent or DJ isn't enough, and we recognize that. In the days since we received the Notice of Apparent Liability from the FCC, our top executives have devoted considerable time to trying to figure out what went wrong; what we need to do differently; and above all else, what we need to do to ensure that our stations broadcast material that is consistent with the standards and sensibilities of the communities we serve.

The result has been the adoption of what we are calling our "Responsible Broadcasting Initiative" which we are now implementing throughout the Company. It consists of five components, which I'd like to share with you:

1. The first element of the Initiative is Company-wide training. This will of course entail indecency tutorials on what the FCC does not permit broadcasters to air. But it will also include components that educate our employees about our Com-

pany—its values, its mission, and its sense of corporate responsibility. My goal is not only to put an end to broadcasts such as Bubba's, but to ensure that our stations accurately reflect what Clear Channel and our communities are all about.

2. The second component will take effect in cases where our training has failed—when a Clear Channel station receives a Notice of Apparent Liability from the FCC for a broadcast that the Commission believes to be indecent. While I hope that there will never again be a case when a Clear Channel station receives such a Notice, if one does we will do the following:
   - First, automatically suspend the DJ who was cited;
   - Second, require that DJ and anyone else associated with the offending broadcast to undergo remedial training on the FCC's indecency regulations and satisfy station management that they understand where the Commission draws the line; and
   - Third, subject that DJ's broadcasts to a significant time delay, so that a program monitor will have the ability to interrupt a broadcast if its content crosses the line. In fact, our engineers are now in the process of developing equipment with the capability of imposing a five minute delay, something unprecedented in the radio business, at significant cost to the company. This will help to ensure that the monitor has sufficient time to exercise discretion and remove any portion of the broadcast that crosses the line.
3. The third component is mandatory termination. If a Notice of Apparent Liability issued by the FCC is adjudicated and Clear Channel is found to have aired an indecent program, the offending DJ will be terminated without delay. No appeals; no intermediate steps. If they break the law by broadcasting indecent material, they will not work for Clear Channel.
4. We have been implementing the fourth component for several months now, and we believe it will pay significant dividends. Our contracts with our on-air performers are being modified to make sure that these performers share financial responsibility if they utter indecent material on the air. This in no way absolves us of our legal responsibilities as licensees, but we hope that it will act as a deterrent to airing material that crosses the line. On a going-forward basis, every contract Clear Channel enters into will include these provisions.
5. Finally, we volunteer to fully participate with other representatives of the broadcast, cable and satellite industries to develop an industry-wide response to indecency and violence. In our view industry-developed guidelines will be as effective as Government-imposed regulations without running afoul of First Amendment protections that we all respect.

Mr. Chairman, I think it is important to mention that the "Responsible Broadcasting Initiative" I've just discussed represents a dramatic departure from Clear Channel's historical approach to our business. As a company, our success has always been based on our *decentralized* management approach. We have over 950 program directors in local markets across the country making decisions about what gets aired based on the preferences of the communities in which they live. Localism is at the heart and soul of our industry and of Clear Channel, and localism requires local control.

But clearly when it comes to the airing of the type of material that is the subject of this hearing, a different approach is required. As it must, the buck stops here. So in an effort to better serve our listeners and the communities in which they live, we will provide specific direction to our local managers in this area impose a response to the problem that is applied company-wide.

Finally, Mr. Chairman, I'd like to point out that our stations broadcast tens of thousands of hours of programming each week that is entertaining, informative, and completely in line with the standards of our local communities. That success doesn't absolve us of our responsibility for the excesses of the few that have broadcasted irresponsibly. But I hope that this Subcommittee will recognize that the Bubbas of our world are the exception to the rule. They don't represent what Clear Channel is all about, they will no longer have a platform on our stations, and I hope we will be evaluated as a licensee based on all that we do.

We certainly don't want to be associated with indecency. As the CEO, I won't have any more of it. And as an industry leader it's our responsibility to be part of the solution to the problem, and I intend to see that we help to lead the way.

THE LEGISLATION

Clear Channel supports H.R. 3717 as introduced. A ten-fold increase in the amount of fines that the FCC can levy will act as an effective deterrent to Clear Channel and the entire broadcast industry. It will also serve as a "shot across the

bow" of the industry, putting us all on notice that Congress and the FCC are serious about cleaning up the airwaves.

At Clear Channel we're serious about it too. Our "Responsible Broadcasting Initiative" is designed to ensure that Clear Channel isn't charged with indecency in the future. But if we fail, and are ultimately ordered to pay a fine for broadcasting indecent material, I believe the levels contemplated in the legislation are reasonable and just.

THE AMENDMENTS

It is my understanding that, when this Subcommittee considered the legislation two weeks ago, several Members offered amendments that were then withdrawn. Without commenting on each of them, let me lay out two broad concerns that I have with the amendments that I've seen.

Revocation of Licenses

The first is that the punishment should fit the crime—that whatever the FCC decides to do should be proportionate to the licensee's transgression. This is not only common sense, but our lawyers tell me that there is also a long-establish body of Constitutional law holding that penalties imposed by the Government must be proportionate to the related offenses.

Clear Channel's 1200 radio stations broadcast approximately 125,000 hours of live/local programming each week. The broadcasts for which we're received the Notice of Apparent Liability represent a fraction of 1% of the programming we air in one week. I don't say that in an attempt to minimize the significance of either the NAL or the associated broadcasts, but only to add a little perspective. We erred in permitting those broadcasts to air; we regret that we did so, and we will live with the consequences.

But radio stations are valuable assets. We have paid more than $100 million for a station in a large market. For the Government to revoke the license of such a station for such a transgression seems to me to be disproportionate.

I'm also concerned that threatening to revoke licenses will force us to contest any allegation of indecency by the Commission because the stakes will be so high. Although this isn't the case with every licensee, in the past Clear Channel has admitted wrong-doing and paid its fines without contesting the allegation. Upping the ante to include revocation as a sanction will put an end to that, since we will have no choice but to protect our company's assets.

Finally, I'm concerned about the proverbial "law of unintended consequences." Although offensive, indecent speech is protected under the First Amendment. If we're forced to contest FCC allegations of indecency in court, it is conceivable that the judiciary may weaken the ability of the FCC to protect the public. That's not an outcome that we want, and I'm sure it's not an outcome that Congress wants either. But when the stakes get raised to the point of endangering our licenses, our duty to our shareholders will force us to resist, and doing so may result in court decisions that are contrary to what any of us want.

Due Process

It appears that there may be an amendment offered that uses the issuance of a Notice of Apparent Liability as a trigger for a revocation hearing. A NAL is an allegation of wrong-doing. But having been accused, the Constitution guarantees a licensee due process rights that include a hearing before an impartial tribunal. In Clear Channel's view the resolution of an indecency complaint should only be viewed as final when an order has been entered by a court of competent jurisdiction, or when a licensee admits to having broadcast indecent programming.

As a general matter, Clear Channel stands ready to work with the Subcommittee to ensure that any amendments to H.R. 3717 are constitutional and will not result in an outcome that is contrary to what Congress is trying to achieve.

CONCLUSION

Let me conclude where I started—with an apology. I regret that our stations aired this material, and accept full responsibility for it. As I indicated earlier, I'm not happy or proud to be here today. I hope that the steps we are implementing will keep me from ever having to return under similar circumstances in the future. I thank you for your courtesy, and I'll be happy to answer any questions that you may have.

Mr. UPTON. Thank you.

Mr. Pappas.

STATEMENT OF HARRY J. PAPPAS

Mr. PAPPAS. Mr. Chairman, Mr. Markey and members of the committee, good morning. I am Harry Pappas. I am pleased to testify before you today as a broadcast station owner serving 45 million viewers and also as a concerned citizen, husband and father of two young children. You are well aware that the majority of Americans are outraged and disgusted by the indecent and profane language and visual content that have too long been continuously and routinely broadcast over America's TV networks, but I am, too.

Chairman Upton, I commend you and the entire committee for your leadership. You all have it right. I also commend the FCC Chairman Powell and all four Commissioners for their recent reaffirmation before this subcommittee of the lawful right of local affiliates to reject network programming, and it is encouraging to hear my network colleagues reaffirm those rights here today. But in practice the exercise of these rights is circumscribed by contract in many affiliation agreements as well as by network practices relating to the delivery and clearance of network programming. The bottom line is that local broadcasters are and can be the best defense against offensive program material.

The problem of indecency is by no means limited to live programming. Increasingly, taped network programming has imitated some cable network shows in a race to the lowest common denominator of poor taste, sexual or violent content and profanity. I cannot tell what you it feels like to be asked by our viewers across America, as I often am, why I and others are broadcasting obscenity and profanity into their living rooms, nor what it feels like to have to answer, "Because the networks do not allow me to preview or reject it, except perhaps at the risk of losing my affiliation."

I have been a broadcast station licensee for 39 years, and this was never about being a cookie-cutter McDonald's franchise. Unfortunately, unless we reverse the trend, local stations will become mere passive conduits for national and network programs, and that is not what Congress intended. Free over-the-air broadcasters have a special responsibility and duty to air programming reflecting the interests and values of the communities we serve. If we choose to emulate cable, rather than to show leadership in stemming the tide of profanity, indecency and gratuitous violence, we abandon our unique mission, our commitment to localism and our statutory obligation to program for our local viewers.

The Communications Act specifically grants local broadcasters the right to reject or preempt network programs. In practice, though, local broadcasters today do so at great peril. This tension between the law and the realities of the network-affiliate relationship has been clearly outlined by NASA, the National Affiliated Stations Alliance, in its petition filed 3 years ago before the FCC. Today local affiliates have been virtually stripped of any right to preview and evaluate any network programming in advance. The clearance process has become a mere rubber stamp. An affiliate risks losing its affiliation if it preempts any or more than a few hours of network programming without the network's prior consent, and such consent is rarely given.

These contractual provisions are clearly described in and appended to a NASA provision, and I would refer the committee to

that document. I am submitting to the subcommittee a copy of a NASA petition and I respectfully request, Mr. Chairman, that it be inserted into the record of these hearings.

Mr. UPTON. Without objection.

Mr. PAPPAS. Mr. Chairman, our stations are affiliated with Fox, CBS, ABC, the WB, UPN, and Azteca America Networks in 15 markets in 10 States across the country. And I will attest to the fact that our network partners produce a lot of very high-quality programming. However, the audiences we are licensed to serve in Los Angeles or San Francisco are very different from the audiences we serve in Greensboro or Fresno or Omaha or El Paso, and as a result of unduly relaxed Federal oversight, the networks now deny local stations the ability as a practical matter to clear and reject network programming that is simply unsuitable.

Mr. Chairman, I wholeheartedly support this committee's legislation aimed at increasing the penalties for indecent broadcast, and I personally would be willing to accept the punishment if I were to commit the offense; however, the Catch 22 for local broadcasters is that while we as licensees are the legally liable entities, it is typically network programming that potentially places us at greatest risk for sanction. I applaud Congressman Green for recognizing this and for proposing an amendment that is designed to indemnify affiliates for network-originated content, but I also believe that more must be done to protect the interest of the public we serve.

There is no one thing the FCC could do at this moment to more effectively and quickly stop the race to the bottom than to restore to local stations and their communities the ability to accept or reject national network programming, for, while I do believe it is appropriate for affiliates to be indemnified by the networks for the indecent content that they might originate, our primary responsibility is to our audiences and to stopping such content from ever getting on the air in the first place. We only request that the FCC unequivocally reaffirm our existing legal right to reject unsuitable network programming so that we are truly enabled to discharge our responsibilities to our viewers and your constituents.

Thank you, Mr. Chairman.

[The prepared statement of Harry J. Pappas follows:]

PREPARED STATEMENT OF HARRY J. PAPPAS, CHAIRMAN AND CEO, PAPPAS TELECASTING COMPANIES

Mr. Chairman, Mr. Markey, and Members of the Subcommittee, good morning and thank you for this opportunity to speak on an issue of great public importance to the millions of viewers of broadcast television programming, and to nearly 1,000 local television stations throughout the nation that are affiliated with the national television networks. I am pleased to testify before you today not only as a broadcaster but also as a concerned citizen, husband and father of two young children. As the members of this committee demonstrated by their thoughtful comments during the previous hearings on this subject, you are well aware that the majority of Americans are outraged by the indecent and profane language and visual content that is now routinely broadcast over America's TV networks. Such program material, which is deeply offensive to most of our viewers and especially harmful to our children, has become all too commonplace on over-the-air television, and on cable and DBS channels—at all hours of the day and evening when there are substantial numbers of children in the audience.

This disturbing trend reached a crescendo several weeks ago during the Super Bowl half-time show when millions of Americans and their children were watching one of America's great sporting events, only to be unwittingly subjected to a particularly offensive display. This and other recent episodes have spurred a reassessment

at the Commission and in the Congress, and the introduction of commendable legislation aimed at stemming the tide of indecency and profanity on radio and television. I commend Chairman Upton for his leadership, and I applaud FCC Chairman Powell for condemning this latest incident so forcefully and for personally overseeing the Commission's investigation of it. I particularly wish to commend Chairman Powell and all four Commissioners for their reaffirmation before this subcommittee of the lawful right of local affiliates to reject network programming. Lastly, I commend our network partners for implementing certain enhancements in their tape-delay systems to reduce the risk of broadcasting objectionable content during live broadcasts and for taking other remedial measures, but these steps do not adequately address the root problem or provide the necessary root solution. The bottom line is that local broadcasters are the best defense against offensive program material.

While certain blatant incidents of profanity during live programming may be what has brought us here today, the prevalence of indecent or inappropriate material on television is by no means limited to such instances—whether scripted or not—during live programming. Increasingly, taped network series and other taped programming have imitated many of the cable network programs in a race to the lowest common denominator of poor taste, sexual or violent content, and profanity. Much of network daytime and prime-time programming today makes routine use of profane language, sexual innuendo and gratuitous, graphic violence. I cannot tell you what it feels like to be asked by our viewers across America—as I often am—why I am broadcasting obscenity and profanity into their living rooms. Nor what it feels like to have to answer: "Because my networks do not allow me to reject it—short of running the risk of losing my affiliation."

Mr. Chairman, I have been in this business for 39 years and this was never about being a cookie-cutter McDonald's franchise. Unfortunately, unless we reverse this trend, local stations will become mere passive network conduits for national network programs, and I don't believe that is what Congress intended.

My view is this: I believe that as free over-the-air broadcasters, we have a special and honorable responsibility to program in a manner reflective of the interests and values of the local communities we are entrusted by FCC license to serve. We are a ubiquitous and free over-the-air service that makes use of public spectrum, and as such, have special responsibilities to serve our local communities. We have, for decades, been perpetual guests in America's living rooms. If we choose to emulate cable rather than to show leadership in stemming the tide of profanity and indecency and gratuitous violence, I believe we lose our unique mission, which is our commitment to localism and our statutory obligation to program for our local viewers.

Congress authorized local broadcast stations and gave them special responsibilities to serve "local" communities. That is the unique character of and what has made the American broadcast system the envy of the free world. It is a tribute to the genius of Congress when, in l934, it designed a broadcast system to assure that local stations in local communities—not national network executives in Hollywood or New York—would pick the programs for those communities. The holder of the local station license—as a public trustee—is charged under Section 310(d) of the Act and Section 73.658 of the FCC's rules with the legal duty of accepting or rejecting network programs and deciding what programs are most appropriate for that community. A broadcaster cannot abdicate or delegate that duty. Both the FCC and the courts have said so repeatedly. Here's what the FCC said when it adopted the right-to-reject rule:

> "It is the station, not the network, which is licensed to serve the public interest. The licensee has the duty of determining what programs shall be broadcast over his station's facilities, and cannot lawfully delegate this duty or transfer that control of his station directly to the network . . . The licensee is obliged to reserve to himself the final decision as to what programs will best serve the public interest." [1]

Section 310 (d) of the Communications Act of 1934, as amended, specifically delegated to local broadcast licensees the responsibility of programming in a manner reflective of the needs and interests of diverse local communities and the concomitant responsibility to control the content that we disseminate to our viewers in each local market. Section 73.658 (e) of the Commission's Rules clearly states: "No license shall be granted to a television broadcast station having any contract, arrangement

[1] *Report on Chain Broadcasting,* Commission Order No. 37, Docket No. 5060, at 66 (May 2, 1941) ("*Chain Broadcasting Report*"), *modified, Supplemental Report on Chain Broadcasting* (1941), *appeal dismissed sub nom., NBC v. United States,* 47 F. Supp. 940 (1942), *Aff'd,* 319 U.S. 190 (1943).

or understanding, express or implied, with a network organization which, with respect to programs offered or already contracted for pursuant to an affiliation contract, prevents or hinders the station from: (1) Rejecting or refusing network programs which the station reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest, or (2) Substituting a program which, in the station's opinion, is of greater local or national importance."

Mr. Chairman, I watched the last hearing of this subcommittee on the subject of indecency with great interest, and I was heartened to hear Chairman Powell and all four FCC Commissioners reaffirm so clearly the statutory and regulatory right and obligation of local station licensees to reject or preempt network programming that includes objectionable content. But the fact remains that many of the current form of network affiliation contracts include provisions that inhibit the exercise of those statutory and regulatory duties. Those responsibilities, which Congress expressly delegated to local broadcasters to ensure their ability to program in a manner reflective of the needs and interests of diverse local communities, have been diminished over time. In reality, networks have strong-armed affiliates with their superior bargaining power to require affiliates to relinquish their programming responsibilities by contract. Networks today routinely abrogate the right to reject or preempt national network programming through the use of contractual provisions that explicitly threaten termination of the affiliation as a consequence of "unauthorized" rejection or preemption of network programming and substitution of non-network programming. As a consequence, the networks have largely succeeded through contract in reducing the statutory rights and public stewardship responsibilities of local broadcasters to accept or reject network programming to a mere vestige of the clear and unambiguous duties expressly mandated by Congress. If the right to reject rule says what it appears to say unequivocally, then such contractual provisions are clearly incompatible with both the law and FCC regulation.

Let us be clear: There is a significant causal connection between the increasing prevalence of profanity and indecency on network television and the erosion of broadcast licensees' rights under the Communications Act of 1934, as amended, to control the content that we broadcast on our stations to our local viewers. While the Communications Act specifically grants the right to reject or pre-empt, local broadcasters today do so only at great peril. This tension between the law and the true realities of the network-affiliate relationship have been clearly outlined by the Network Affiliated Stations Alliance in its petition filed on behalf of the CBS, ABC and NBC Affiliates Associations before the Federal Communications Commission in March of 2001. The NASA Petition documents the manner in which the networks now demand and obtain contract provisions that effectively require affiliates to air *all* of the programming of a network rather than a locally selected mix of programming—which provisions plainly violate the Communications Act, the localism principle, and the basic Commission requirement that local stations retain the right to select programming. The Report and Statement of FCC Policy from the 1960 En Banc Programming Inquiry states that "broadcast licensees must assume responsibility for all material which is broadcast through their facilities."[2] However, today, local affiliates have been virtually stripped of any right to receive network programming in advance and to evaluate its content. The "clearance" process has become a mere rubber-stamp. The truth is that in virtually every current network affiliation agreement, an affiliate risks losing its affiliation if it preempts any or more than a few hours of network programming without the network's prior consent. Such consent is rarely given.

I am submitting to the Subcommittee a copy of the initial "Petition For Inquiry Into Network Practices" and a follow-up pleading entitled "NASA's Early Comments and Motion For Declaratory Ruling" that local network affiliates filed with the FCC on the very issues being addressed by this hearing. I respectfully request that these documents be inserted into and made a part of the record of these hearings. A brief summary of the Petition is attached to this statement as Attachment A.

The network practices outlined in the NASA Petition threaten core public interest values of program diversity and localism and must be addressed. In all fairness to the networks, I understand that it is the job of network executives to get their programs shown on all of their affiliated stations. Conversely, however, it is the legal responsibility of local station licensees to make sure those programs are both suitable and of interest to their communities of license. The networks are the most important business partners local network affiliated stations have. My stations are affiliated with Fox, CBS, ABC, the WB, UPN and Azteca America in 15 markets in 10 states across the country, and I will attest to the fact that the networks produce

[2] *Report And Statement Of Policy Re: Commission En Banc Programming Inquiry,* FC 560-970, 91874 at 2303.

a lot of very high quality programming for a national audience. It is certainly not my intent to suggest otherwise. However, the truth remains that the audience I am licensed to serve in Los Angeles or San Francisco is very different from the audience I am licensed to serve in Greensboro or Fresno or Omaha or El Paso. And as the result of unduly relaxed federal oversight, the networks—in a competitive effort to maximize profits—now are in a position to effectively deny local stations the ability to reject network programs that may simply be unsuitable for their markets, or to substitute programs of greater local interest or importance. This difference, of course, presents, a conflict. That conflict has grown in intensity in recent years as the networks have grown more powerful and local stations have been forced increasingly to succumb to the networks' demands to the detriment of our viewers.

Mr. Chairman, I commend you and Mr. Markey for introducing H.R. 3717, The Broadcast Decency Enforcement Act, which would increase the penalties that the Commission could apply for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane content. I, too, am deeply troubled by the now commonplace profanity on network television, and by the upset it has caused to most of our viewers, as well as by the potential legal liability that it entails for our stations for unwittingly, and indeed unwillingly, transmitting such material over our airwaves. I support your efforts to increase the penalties for indecent broadcasts, and I, personally, would be willing to accept the punishment if I were to commit the offense. However, the conundrum for local broadcasters is that while we, as licensees, are the legally liable entities, it is typically network-originated programming that potentially places us at risk of sanction. The truth is my fellow local broadcasters have done a good job on the whole of adhering to the indecency prohibitions. As a consequence, of the thousands of complaints received by the FCC over the last several years relating to television, only a fraction related to locally originated programming. I am greatly appreciative that many of the members of this subcommittee have publicly acknowledged during these proceedings that the local affiliate is often placed between a rock and a hard place, and I applaud Congressman Green for proposing an amendment that is designed to indemnify affiliates for network-originated content. But I also believe that we can do even more to protect the interests of the public we serve by reaffirming our statutory rights to program.

In order for the more robust fining regime you are considering to be truly effective, the FCC should at a minimum reverse the Enforcement Bureau's unfortunate decision in the Bono case and start to actively levy fines against the networks for indecent broadcasts in whatever form they take. Congress should also reaffirm the prohibition against any use of profane language regardless of its context during the hours of 6AM and 10 PM—and in so doing, remove the ambiguity that has clouded this matter to the detriment of the vast majority of the viewing public.

There are ample studies that clearly demonstrate that exposure to indecent content is harmful to children, and Congress should not be reticent to make such a finding. Nor should Congress be reluctant to legislate in this area for fear that ridding our families' living rooms of indecent content cannot pass Constitutional muster. Certainly there is a distinction to be drawn between First Amendment protection of political speech or content that adults choose to view or read, on the one hand, and content that is beamed into the home at all times of the day and night when children are watching what is, after all, still America's great pastime. If shouting fire in a crowded theatre when not true is impermissible speech, surely so is conduct in speech or image on our airwaves which demonstrably harms the most vulnerable in our society—our children.

As the Commerce Committee undertakes hearings into the critical matter, I respectfully request that members of the Committee bear in mind that stemming the tide of indecency on the nation's airwaves requires a reaffirmation by the FCC of the local licensee's unfettered right and responsibility to broadcast only that programming which the licensee, as public trustee, deems appropriate to and reflective of the tastes and mores of the community the licensee has been licensed to serve. Frankly, there is no one thing the FCC could do at the moment to more effectively and quickly stop the "race to the bottom," as Chairman Upton so aptly described it, than to take action to restore to local stations and their communities the ability to accept or reject national network programming. For, while I do believe it is appropriate that affiliates be indemnified by the networks for indecent content that is network-originated, our primary responsibility is to our audiences and to ensuring that we discharge our responsibilities to them. We proudly accept the public stewardship that Congress entrusted to us as local broadcasters. We only request, in turn, that the FCC unequivocally reaffirm our legal right to reject unsuitable network programming and to air non-network programming of greater local importance, and thereby to enable us to discharge our responsibilities to our viewers and

your constituents. Once our right to clear and reject network programs is affirmed, we, as local broadcasters, will gladly accept the responsibility for the content of those programs. After all, if we are to be subject to penalties because we bear the legal responsibility and liability for the content we transmit over our airwaves, then we must also be given back the de facto ability to prevent the broadcast of sanctionable content. It is my firm belief that local broadcasters are—as Congressman Markey suggested two weeks ago—the best defense against offensive, profane or indecent program content. I respectfully urge this subcommittee to do whatever it can to enable local broadcasters to discharge that critical responsibility for the benefit of our viewers.

Mr. Chairman, I commend you and the subcommittee for taking this important legislative initiative.

Thank you.

Mr. UPTON. Thank you all for your testimony.

At this point members on the subcommittee will be able to ask questions for 5-minute periods. We will alternate between the Republican and Democratic side.

We appreciate all your testimony, that is for sure. And I will say from the start, and I will 'fess up that I am no fan of Howard Stern nor some of the things that he has said on his show. And I think, at least for me, and I would suspect a number of members on this panel, that we were very happy to see today's news, whether it be in the newspaper or in the broadcast world, that, in fact, part of his show has been scrubbed.

I have actually had the chance to look at the transcript from earlier this week, which I presume was the primary reason why the plug was pulled, but I have to say this as one that does not listen to Howard Stern, I do not think that what he said earlier this week is probably much different than what he has been saying for a number of years ago, particularly knowing that for a long time he had the record fine or the highest settlement in an FCC ruling for some of the things that he has said. And I just wonder, Mr. Hogan, we welcome your statement this morning but why did not this happen earlier? Were you unaware of some of the remarks that he was saying on air? And again, I do not know if it has changed much as you look at some of the other networks, though it is not on Clear Channel, as to whether he has actually changed his tune.

Mr. HOGAN. Mr. Congressman, I do not think he has changed his tune, but we have changed ours. We are going in a different direction. We have heard you and your committee. We have heard the FCC. We have heard our listeners, and we have heard the American public. We are going to go in a different direction at Clear Channel Radio, and that sort of inappropriate material does not have a place on our air.

Mr. UPTON. Mr. Karmazin was here a couple of weeks ago, and I asked him about the FCC's notice of apparent liability against the show that discussed sex between a father and his daughter, clearly indecent, particularly when you looked at the transcript. He refused at that point to admit that the broadcast was indecent and indicated that they had not yet paid the fine, was waiting for the course to run.

Do you admit that Bubba the Love Sponge, whose show has now been pulled, which is the subject of the an FCC notice of apparent liability, is indecent, and do you expect to pay that fine at the appropriate time?

Mr. HOGAN. Mr. Congressman, the appropriate time that we have to confirm whether we are going to pay or not pay the fine is March 4, and it is a very serious issue for us with significant legal implications. I am not an attorney. I do not pretend to understand all of the legal nuances involved in this.

The very short answer is we have not decided what we will do about that fine. Our attorneys are working on it and giving it the utmost concern.

Mr. UPTON. I was asked by a number of folks a couple of weeks ago about the level of the FCC's enforcement and whether perhaps our bill H.R. 3717 was going to require more staffing and more money for the FCC to enforce the new bill, the new legislation. My immediate response was I was hoping that the fines would be significantly higher; that, in fact, it would send a signal to all industry folks, whether it be radio or TV, that they would not have to cross that line, that, in fact, the number of complaints would dramatically drop because the notice would be there, the fines would be high enough that they would really hurt, and hopefully we would have fewer incidences, not greater, that they would have to investigate.

Based on your comments this morning and your testimony, would all of you agree with my assessment, or would you disagree? Mr. Pappas, we will start with you.

Mr. PAPPAS. I agree with your assessment.

Mr. UPTON. Mr. Hogan?

Mr. HOGAN. I agree.

Mr. UPTON. Mr. Paxson?

Mr. PAXSON. I think if the fines are large enough, it will cover the expenses.

Mr. UPTON. Dr. Wurtzel.

Mr. WURTZEL. I would agree.

Mr. UPTON. Ms. Berman.

Ms. BERMAN. I would agree, sir.

Mr. UPTON. Mr. Wallau?

Mr. WALLAU. I would have to make it unanimous, Mr. Chairman.

Mr. UPTON. That is good.

The last question I have as my time is expiring, a number of companies are moving toward holding talent responsible for the indecent material that they may put out on the airways. Clear Channel, for instance, as I understand it, will require its employees to sign contracts that will make the talent responsible for 50 percent of the FCC fine. Do you all expect your organizations to do something similar? Again quickly down the line. Mr. Pappas.

Mr. PAPPAS. Mr. Chairman, we have always held our employees responsible and accountable for conforming with FCC rules. And, in fact, from the time I became a broadcast station licensee, the original rules in place do, in fact, place the potential for penalties on individuals who are on broadcast airwaves as well as on licensees. I think if you need to clarify that today, that that should be done.

Mr. UPTON. Mr. Hogan, you have already indicated.

Mr. Paxson.

Mr. PAXSON. Yes.

Mr. UPTON. Dr. Wurtzel.

Mr. WURTZEL. Yes, I agree.

Mr. UPTON. Ms. Berman.

Ms. BERMAN. I would just like to point out that we do not want to create an environment where talent is afraid to show up. So while I agree with the position that we would accept that as something we would do, it is ultimately our responsibility as a broadcast company to be responsible for what goes out over the airwaves. We do not want to create an environment where people feel they should not show up for a show because they might commit an accident of some kind.

That said, we do believe that we have to inform individuals of their responsibilities that they have when they go over the broadcast. So, yes, I agree, but it is with a slight caveat.

Mr. UPTON. Mr. Wallau.

Mr. WALLAU. Mr. Chairman, ultimately I agree with Gail that our responsibility at the end of the day is what matters. We have obviously the scripted series and dramas and theatrical movies; all of the things that are not live programming we require and have an agreement with the providers, the suppliers of the content, that they provide us with content that is suitable for air. If they do not comply with our standards, we reject the programming.

In live programming where the people who are appearing at an awards ceremony are not technically employees or not suppliers, they are talent going on to a show, I frankly have not had discussions about how we hold them financially responsible because we have embraced the idea of our own responsibility. We do inform them about the fact of what the responsibility is and what is appropriate conduct and what is not appropriate conduct, and we do have those discussions. But if somebody chooses to do something indecent or obscene as a participant in a live awards show is the most obvious example, how we would get to a system of them having some financial responsibility we have not discussed yet. I am not saying we would not do it, I just do not have anything to tell you about it right now.

Mr. UPTON. Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman.

I would like to ask each of the networks a series of questions that can help us establish a baseline to what parents can expect in the future to information that helps them with the television programming. I will go down each one of you. Will you display the TV ratings icon not only at the beginning of the show, but also after commercial breaks? Mr. Wallau.

Mr. WALLAU. Yes.

Ms. BERMAN. At present that is not our plan, Congressman. We plan on changing the icon that we currently have, making it more predominant so that people can see it and animating it. We do feel that it is very important that our concentration then go to informing people about what that means for them, that icon means, and how they can use the icon better to service their needs as consumers and as protectors of their children.

Mr. MARKEY. The point is that a lot of times people tune in to a program that is already in progress. So the first time that a parent would actually be able to see the rating for the show is at that commercial break. So it would be helpful for the parents to see the

rating at the commercial break so that they could then change the channel if they wanted to. Would you consider at Fox putting it on?

Ms. BERMAN. Yes, I would absolutely consider it. I wear two hats as I sit here today as it relates to the network. I am responsible for what goes out over the broadcast. I am also responsible for the esthetic of the broadcast.

Mr. MARKEY. Just putting it on for 5 or 10 seconds at a commercial break in the corner is not any great——

Ms. BERMAN. It is completely doable, and we will absolutely consider it.

Mr. MARKEY. That is important.

Mr. Wurtzel.

Mr. WURTZEL. This is the first I have actually heard of it, so we would have to take it under consideration. But I understand the objective, and it certainly sounds like it makes a lot of sense. So what I would like to do is to be able to consider it and respond to you when we come back to you with the written requests that you asked for.

Mr. MARKEY. But there is no technological obstacle.

Mr. WURTZEL. There is no technological. I think, as Gail mentioned, there is an esthetic issue, there is a practical issue with respect to how does it work best. The way we do these things is mock them up and take a look at it.

Mr. MARKEY. People have just come out of 2 minutes of commercials for God knows what, so the esthetic of having a little warning on the show cannot possibly be that——

Mr. WURTZEL. I understand. But you asked a number of questions including at each commercial break and when, and honestly, at this point I am not in a position to give you a commitment on it. But it is something we would certainly take seriously under consideration.

Mr. MARKEY. Mr. Paxson.

Mr. PAXSON. Actually we have never showed anything on the network in all the years we have been on that would require anything other than the family friendly icon. We have only done it once, and we did it this week. That was when we showed the making of The Passion of the Christ, and we did address it before the program began and at each break in the program. And if it comes to the point again of having to portray that kind of program, we would follow the same concept we have in the past of doing it after every break.

Mr. MARKEY. Would you air an audio voiceover when the ratings icon appears on the screen at the beginning of the show; would you give a voiceover? Mr. Wallau.

Mr. WALLAU. Yes.

Ms. BERMAN. Yes, we would consider doing that. We have not done that yet.

Mr. WURTZEL. We would consider it as well.

Mr. MARKEY. Seriously consider it, or are you favorably inclined toward that?

Mr. WURTZEL. We do our own advisories in addition to the TV advisories. Those do appear with both video and audio, so it is not as if we have not done those in the past. So the fact of the matter

is we have experience doing it, and I think that is something we would seriously look at.

Mr. MARKEY. Will you do that, Mr. Paxson?

Mr. PAXSON. Yes.

Mr. MARKEY. Will you provide us in writing your network's plan for airing PSAs on the TV ratings systems, spelling out the number of PSAs, for how long, over what timeframe, and what times of the day? Will each of you provide your plan to the committee to ensure an enhanced usage through PSA advertising of the V-Chip?

Mr. Wallau.

Mr. WALLAU. Absolutely. We aired a campaign in 1999 to the end of 2000. We aired approximately 185 PSAs, 50-second PSAs, about 15 percent of them in prime time. We would expect to exceed that campaign both in the amount, the number, the span of time of that campaign, and we would lay out the entirety of the plan and report to it at whatever time intervals that you find necessary.

Mr. MARKEY. My time is going to run out.

Would you dramatically increase the PSAs on the V-Chip, Ms. Berman?

Ms. BERMAN. Yes, we are, Congressman, already, and we will be happy to provide you with a plan Mr. WURTZEL. We will provide you with a plan.

Mr. MARKEY. A dramatic increase?

Mr. WURTZEL. We intend to include them in The More You Know. At this current time it is about 4 to 5 minutes of spots, about 22 to 25 spots per week, and they would be a substantial part of that.

Mr. MARKEY. Mr. Paxson.

Mr. PAXSON. We have been doing it ever since we met you in your office many years ago, and we will continue, but the quantity and number we will put on paper.

Mr. MARKEY. If you all promoted the V-Chip and the rating system the way you promote a new show, we would be in great shape.

Again, 47 percent of parents with kids 12 and under use the V-Chip if they know there is a V-Chip in their TV set and that information is made available to them. I think you are in a position, if you take this opportunity, to give the parents the information they need, and only you are in that position.

I will ask you this question, Ms. Berman. TV Guide is a news company, and they do not actually put the ratings in the TV Guide. Do you think it is time for TV Guide and newspapers to put the ratings there so the parents can see it on a daily basis and use it as guidance for the programs people watch?

Ms. BERMAN. I do know, Congressman, that TV Guide provides the ratings on their onsite channel. I also know they provide it on their Website. I do not know the intricacies of the magazine as that is Gemstar, and it is somewhat separate from my purview, but I will get you that information as soon as I can.

Mr. MARKEY. That would help tremendously. It is the way in which people follow television.

Ms. BERMAN. Yes. I understand your point.

Mr. MARKEY. It would really help a lot, and I think it would solve a lot of problems if the parents had the information and the

knowledge to use the technology to protect their kids in their own home.

Thank you, Mr. Chairman.

Mr. UPTON. Mr. Barton.

Mr. BARTON. Thank you, Mr. Chairman. I just have one or two questions. My first question is on an issue that I alluded to in my opening statement. It is the fact that we seem to have fairly good agreement that we need to increase the fines on over-the-air broadcasters. We seem to have agreement that we need to have some ability to sanction the individuals who commit the indecent or state the indecent comment on the air or the radio or television. But when I was talking to one of you yesterday, a point was brought up that as we do that on the public over-the-air stations and radio stations and television stations, we create a situation where you can move the more questionable material and acts to satellites and to cable television where there are no sanctions right now.

So my question to the panel, this may not be the bill to tackle that issue, but is there any interest in trying to come up with a series of fines and/or sanctions that would be applicable to satellite and to radio stations like XM? Because if my daughter picks up the clicker and turns on TV, there is no difference to her whether it is—whether it is ABC over the cable system or whether it is a cable channel, and the FCC right now apparently has no jurisdiction over the cable channels. So is that an issue that concerns you folks?

Mr. WALLAU. Yes, it does. I spoke earlier, Mr. Congressman, about the fact that our standards, I believe, keep all of the networks inside of the indecency limit, legal limit, and that a lot of what is seen to be the deterioration of television is not what is being broadcast over the air, but rather what is on cable and satellite. And so it is a great concern to us, and a level playing field, especially in a universe in which there is more viewing done on cable and satellite today than is done on the networks that are represented here, is something that makes a lot of sense to us, yes.

Mr. WURTZEL. I would say that any meaningful dialog with respect to content needs to bring all of the providers to the table. The four networks account for 38 percent of market share of viewing. Cable in equity accounts for 50. If anybody wants to really have a conversation about content, it is indispensable that everybody who provides the content be a participant.

Mr. PAXSON. I believe the big issue here is what the American public own. They own the air ways. They own the satellite orbital positions. They own the right of ways of the streets, and they own the microwave frequencies. You do have the power under the existing law.

I am aware of a major communication law firm that is pro bono doing the work to substantiate that legally that you have the right to regulate obscene, indecency, and especially pornography, and we will submit that to the committee.

Mr. BARTON. Mr. Hogan and Mr. Pappas.

Mr. HOGAN. Congressman Barton, it is a concern for us, and before I consider the other media, I have a concern that there is consistent expectation and enforcement inside the radio industry first,

but we would be very concerned that the playing field is as level as it can possibly be.

Mr. BARTON. Mr. Pappas.

Mr. PAPPAS. Mr. Barton, I think you very correctly assess how the American people think of this. They have made their mind up already. And you are right. To them, there is little distinction between indecency or profanity that is occasioned by one means of transmission over that of another having some sort of skirt to hide behind.

I am not a lawyer. I am just a broadcaster, and I think we do not need to ask lawyers for what duty is about or what decency is about. Moreover, if shouting "Fire" in a crowded theater when that is not true is an impermissible form of speech, then I believe this Congress can clearly adopt hundreds of studies that have already been done as the record and basis for finding that the broadcast of indecent or profane material at times when children are able to watch it over any medium of communications in fact would be something that could be constitutionally constrained.

Mr. BARTON. My time has expired. I do not want to mislead the panel. First of all, I agree with what all of you all said. I understand there is a difference between, as the cable industry is beginning to do, repackaging so that your premium channels and your adult-oriented channels, somehow you had to pay more, and there is obviously an informed knowledge that somebody is making an affirmative step that they want to purchase that as an add-on to their basic package. But if it is the basic cable so that a child that picks up the clicker and turns on the television has no differentiation between the over-the-air broadcast that originates at the affiliate and the broadcast that originates on the cable channel, I think we can do something about that. And I know our friends in cable and satellite are going to be willing to work with us on it, but I am very pleased to hear the answers that you all gave.

Mr. Chairman, I yield back.

Mr. UPTON. The gentleman from Michigan Mr. Dingell.

Mr. DINGELL. Mr. Chairman, thank you.

Ladies and gentlemen of the panel, welcome, and thank you. I also thank NBC, Fox and ABC for your timely responses to my letter.

Today I want to question the effect of raising the maximum penalty beyond the $275,000 per violation originally proposed and compelling the FCC to refer to revocation proceedings the licenses of repeat offenders, and removing the presumption of license renewals from these licensees that violate the indecency rules. I am going to ask questions, and I hope that you will each answer this question yes or no.

The first question, if you please, gentlemen and lady, is a $275,000 maximum penalty sufficient to deter the behavior of companies that have billions of dollars in annual revenue? If you would please start on the left, sir. On your right. Is it enough or not, yes or no?

Mr. WALLAU. I am sorry, Congressman. The fines presently are fines of our affiliates.

Mr. DINGELL. I apologize. My time is very limited. Yes or no? Is it enough to deter, or is it not enough?

Mr. WALLAU. No.

Mr. DINGELL. Ma'am, if you please?

Ms. BERMAN. I believe it is enough. I believe the current fines are enough in order to take responsibility for our actions. That is the goal here.

Mr. DINGELL. Yes or no?

Ms. BERMAN. Yes.

Mr. DINGELL. Next witness.

Mr. WURTZEL. I think the fine be could be raised in terms of the deterrence.

Mr. PAXSON. I believe the fine should be set at whatever limit you all determine, but the timing of the FCC actions to complete the process is more important.

Mr. DINGELL. Next.

Mr. HOGAN. Yes, it is sufficient.

Mr. DINGELL. Next panel member.

Mr. PAPPAS. Mr. Dingell, the increase is sufficient, but it does not go far enough. The idea is to keep such contents off the air, and I would respectfully recommend that this committee assure——

Mr. DINGELL. If you please, I have such limited time. I do not mean to be discourteous, but it is just the way the cookie crumbles around here.

The second question, starting again on your right, lady and gentlemen, should the FCC be required to designate to a revocation proceeding those licenses where the licensee is determined to have violated the indecency rule on three occasions during the license term? If you please, sir, yes or no?

Mr. WALLAU. I honestly am not qualified in terms of my knowledge of the legal issues involved, Mr. Congressman. Respectfully, I do not know the answer to that question.

Mr. DINGELL. Ma'am, if you please.

Ms. BERMAN. I am also in a similar position to Mr. Wallau. I cannot answer that because I do not know the information well enough, sir.

Mr. DINGELL. Thank you.

Mr. WURTZEL. No, sir.

Mr. PAXSON. Yes.

Mr. HOGAN. Yes, if there is sufficient due process.

Mr. PAPPAS. If I do the crime, I will pay the time, but not if I am not the one who did not originate the content. That would be totally unfair.

Mr. DINGELL. Next question. This will go to the network witnesses for NBC, ABC and Fox in any order you choose. Again, yes or no. As a matter of common practice, do the affiliates have the right to review, and by that I mean actually review the network programming in order to determine whether the content may be indecent or otherwise unsuitable to their local communities? If you please?

Mr. WALLAU. Absolutely.

Ms. BERMAN. They do have that right. They may not have the time depending on what particular program it is, to be honest with you, sir. Some things come in rather late, and it is very difficult to get them out to an affiliate, but what that affiliate is provided with on a weekly and if not daily basis is information about the

programming coming, promotional information, et cetera, so no programming should come as any surprise to them.

Mr. DINGELL. Thank you.

Sir.

Mr. WURTZEL. We have the right. As a matter of policy we actually send down, prefeed certain programs that we feel are sensitive and may be an issue so the affiliates can make a judgment on their own.

Mr. DINGELL. Mr. Pappas, if you please. You are concerned about the future of local broadcastings. I have observed your written testimony, and it was excellent. I commend it to my colleagues. I would like to have you take a minute to describe your perspective on the program clearance process in today's marketplace. Specifically, what is your experience in working with the networks as far as previewing, clearly programming and editing or ordering content which you believe may or may not be suitable for your local audience?

Mr. PAPPAS. I will site a most recent example. About a month ago we sent a letter to Tony Vincicara at Fox Network requesting that in the future we be provided in advance episodes of certain telecasters, certain programs. He has yet to answer our letter, sir.

Our experience is one that we are frequently told that shows are either delivered too late or that there are practical impediments. Unfortunately, I take the approach that these folks to my right are our partners, and we jointly have been part of something over the last 75 years that brought the greatest system of entertainment to this country, but the last 10 or 15 years things have gone awry. So my experience is things have gone off track, and the balance is now off kilter, sir.

Mr. DINGELL. Thank you. Ladies and gentlemen of the panel, I apologize to all of you for constraining you so much on time, but you will observe I have exhausted my time by a minute and 14 seconds.

Mr. Chairman, I thank you.

Mr. UPTON. Thank you.

Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I am going to follow up on Mr. Dingell's questions.

The right to reject rule. Mr. Pappas, could you briefly explain that rule, number 1? And, number 2, tell us if you feel that the FCC is enforcing the rule.

Mr. PAPPAS. The right to reject rule was put in place a long time ago in order to ensure that if local licensees, reflecting their local markets, tastes, needs and interests, would be able to review and then accept or reject network programs, or for that matter substitute a program which in their reasonable judgment would be of greater local importance.

The FCC has not been enforcing that rule, sir. And this petition that was submitted by the group representing over 800 affiliates, in fact, maybe nearly 1,000 affiliates, contains all of the documentation that provides further answers to your question.

Mr. BILIRAKIS. That was submitted to the FCC when?

Mr. PAPPAS. Three years ago, sir.

Mr. BILIRAKIS. Have you had any communications with them regarding that petition, any reasons why they haven't responded to it, et cetera?

Mr. PAPPAS. I think it is fair to say that numerous broadcasters representing the National Affiliated Stations Alliance, and even including I, have made trips to the FCC. I was there last December, the very first week of December, in fact, asking why action had not been taken.

Mr. BILIRAKIS. I specifically asked every one of the Commissioners in the last hearing what their position was on that rule; in other words, giving the local affiliates who have the responsibility if, in fact, it is bad, indecent programming, they have to pay the fine, et cetera, if they feel that, in fact, the affiliates should have that right to reject if they wanted, and every one of them said yes.

I don't think it is even worth—I mean, it wasn't even an interpretation on my part. Every one of them said yes. Now, why in the world they haven't responded consistent with that, I can't quite understand. What would you like Congress to do, Mr. Pappas?

Mr. PAPPAS. Well, I think that whatever process this committee and Congress follows, it should result in a genuine lawful—an established by law process that assures that the regulations that are now on the books are truly enforced and that a broadcaster is free, without penalty and without punitive business result, to review, accept and reject programming.

We are the last bulwark. As Congressman Markey put it 2 weeks ago, the local broadcaster can be the best defense against defensive or profane programming.

Mr. BILIRAKIS. Well, do you—you are sitting here with your partners, as you refer to them. And now this thing is being highlighted as a result of the hearings and whatnot.

Do you have a level of confidence that the networks will, in fact, truly grant the affiliates these rights to reject, or do you still feel that there has got to be action taken on the part of the Congress, if you will, and certainly maybe a clarification of the rule by the FCC?

Mr. PAPPAS. Well, Congressman, I am very encouraged by what they have said today, but in the affairs of men, and in order to maintain civilized and regular conduct that protects society,we need laws, and that is why we are here. That is why you are here as the best bulwark for the benefit of our citizenry. So I think strong, clearly understandable laws are absolutely what are required.

Mr. BILIRAKIS. Do you feel that networks have strong-armed affiliates in their affiliation contracts such that affiliates have little control over their programming, no matter what we say here? And we talk about the rule, et cetera, et cetera. What—is that something that you feel you can safely answer? And I use the word "safely" underlined.

Mr. PAPPAS. It depends on the strength of the affiliate group. The stronger or bigger or more financially invulnerable the group, the less likely that they would have succumbed to pressure, or sometimes the groups are as well quite highly principled.

But, in too many cases, yes, they have been strong-armed. All it takes, as we know, in activities such as you refer to, are a few ex-

amples to be made of. And, unfortunately, that has happened over the last 10 years. And it is good, though, that things are coming back to a center point. I mean, the magic when things work right of the network and affiliate relationship is terrific, and when strong local stations that really reflect the local markets interests are coupled with wonderful networks who are doing their best to maintain effective and competitive programming, but where there is a balance of genuine power on the clearance of that content, then that is when we have had the best of broadcasting in this country.

Mr. BILIRAKIS. Well, my time has expired. Thank you, Mr. Chairman.

Thank you, Mr. Pappas.

Mr. UPTON. Thank you.

Ms. McCarthy.

Ms. MCCARTHY. Thank you, Mr. Chairman. And thanks to the witnesses for their testimony today and their interest in our effort here in the Congress.

I wanted to reflect on some of the comments shared in the testimony about a concern about running afoul of our first amendment rights. And I know, Ms. Berman, in some of your remarks in your testimony, and also Mr. Hogan, you talked, while focusing primarily on the entertainment programming, you know, about establishing new standards for broadcast news, for broadcast channels, that will reflect the sensibility for the viewing public, and I applaud you for that.

As you establish those, I just wondered—and in my opening remarks I posed this question to you—about in that decisionmaking process, while today's hearing is about entertainment, I wondered if media news is the subject of these conversations as far as how best to present that, since the—at least the evening news runs during the supper hour and is available to all levels of viewers.

I wondered if, Mr. Hogan or Ms. Berman, you would like to reflect on how to carry that sensibility for the viewing public as you establish it into place so that it is consistent for your channels, and also without running afoul of our first amendment rights.

Mr. HOGAN. I would be happy to, Congresswoman, because it is something that I am dealing with today. Without any exaggeration since yesterday afternoon, when we announced that we were taking Howard Stern off the air, I have had several hundred e-mails, many, many, many of them accusing me of ignoring first amendment rights and making a very, very poor decision.

Some of the individuals felt like they didn't need to be protected by a media organization. And what I would say is that we have—as a licensee, we have a legal obligation to prevent inappropriate, indecent material on our air at those times when children are most likely to be listening, and that for us will be the foundation of our guidelines going forward.

Ms. MCCARTHY. Including, Mr. Hogan, during the news hour that runs early in the evening over the suppertime?

Mr. HOGAN. Well, the hours for radio and television are a little bit different. Our prime time tends to be in the morning, not so much in the evenings. But it would be consistent throughout the day.

Ms. MCCARTHY. Thank you.

Ms. Berman.

Ms. BERMAN. Well, just to let you know, Congresswoman, our prime time on FOX runs from 8 p.m. To 10 p.m. So under my purview at the network are the hours of prime time. However, I appreciate your point very much, because obviously probably some of the greatest violence shown on television is shown in the news.

What I do think is interesting about what you had said earlier in your opening statement was the fact that we have an opportunity, I think, in terms of the news these days, to see multiple perspectives on the news. It is not something that when I was growing up we necessarily had. So I do think that even though I have at times turned a news broadcast off when my children have entered the room, and that goes sort of across the board, I have turned off many different newscasts across the board, I recognize it as a—as an issue and a problem. And I am concerned about it as a parent.

I do think that it is important that the news be able to explore the reality of the world that we live in, and some of that is not terribly pretty or nice. And I do think that where it is being exploitative, one should have a good look at it. But it is not in my purview, and I do want to let you know that. I appreciate the point.

Ms. MCCARTHY. I appreciate your answer, your response, and your testimony and what you are attempting to achieve, both in your work space and in the industry overall, and I am glad for your sensitivities to it. If any other member of the panel wants to weigh in, I would appreciate that, hearing from them, if my time—my time has expired.

Mr. UPTON. The gentleman from Illinois Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman.

I gave everyone a heads up at the opening statement, so I am going to follow up, and we will just go down the table. Mr. Wallau, what is—not Disney's, okay? What is ABC Television's response and receptiveness to the .kids.us Web site?

Mr. WALLAU. We are engaged in a process working with the Web site. We will have content on the Web site by mid-April.

Mr. SHIMKUS. Thank you.

Ms. Berman, the mother of two 11-year-old twins.

Ms. BERMAN. Boy and a girl.

Mr. SHIMKUS. I have an 11-year-old son.

So what is the great Fox Broadcasting Company going to do with .kids.us Web site?

Ms. BERMAN. We think it is a good idea to provide a safe haven on the Web. We will definitely look into it, sir. I can also let you know that our Web site has a very interesting part of it which informs parents of the use of the V-Chip and informs parents about the ratings system and what each rating means. And I think it is very important as more and more people and individuals and youngsters are surfing the Web.

Mr. WURTZEL. Well, to be fair, it is the first that I have heard of it.

Mr. SHIMKUS. That is why I asked.

Mr. WURTZEL. But honestly, I think—I would commend you and the other Members who have put forth a Web site, or at least an initiative to try to have a safe harbor within the Internet space.

This is something that we would absolutely consider partnering with.

Candidly, we have a moreyouknow Web site, and also the NBC dot-com Web site is also very family oriented.

Mr. SHIMKUS. I am going to talk over the different provisions, but a commitment to look and try to deploy would be well received, I think, from this committee.

Mr. Paxson.

Mr. PAXSON. Well, for approximately 4 years we have offered our viewers Paxway, which is access to the Internet which is family friendly, which filters all things that the parents really don't want their children to see.

We have thousands of members who utilize that service, and we want to obviously look and see how we can pair this service which we are trying to add more and more people to on a daily basis, for a commercial reason, how we might interact with that concept. And we will get back to you, because, as Mr. Wurtzel, I am not that familiar with it actually.

Mr. SHIMKUS. I would have hoped that you would have been more, based upon our discussions previously, because I think it is just what you all are trying to do.

Mr. Hogan.

Mr. MARKEY. Will the gentleman yield briefly? So the panelists understand, that was a bipartisan bill, and there is no disagreement, and any help you give us, I think, would be very much appreciated by all of the members of this committee.

Thank you. I thank the gentleman.

Mr. UPTON. I want to underscore that as well. Dot-kids is important to all of us here in lots of ways, whether we are dads and moms, or certainly as members of this subcommittee.

As I told the gentleman from Illinois, we intend to have an oversight hearing on the progress of where we are at before the next month is out is my goal. And we are all working, at least in my office, to actually have an Upton.kids work with our ISP here on the Hill. I applaud the gentleman's leadership and yield back.

Mr. SHIMKUS. Thank you.

Mr. Hogan.

Mr. HOGAN. That certainly is something that we can endorse and that we will be sharing with our individual managers of the Web sites.

Mr. PAPPAS. It is a fine initiative.

Mr. SHIMKUS. Great.

I would also respectfully ask that maybe you could have your folks here in DC. Maybe come by my office and keep me updated on your progress, especially as we move to the hearing that the chairman has promised.

The Washington Post, and I am not a daily reader of that, but they did an article on February 20 that just talked about firms ignore the kids-only Internet domain, and I ask, Mr. Chairman, for a unanimous consent that this article be submitted for the record.

Mr. UPTON. Okay.

Mr. SHIMKUS. In there I am quoted, and I say, the reality is I have to get more engaged and keep pushing. If we—and when I said we, that is the committee and really the intent to be—I have

to keep pushing for it to be successful, and those that follow the committee know that I am a one-trick pony on this issue right now.

But it also says, no dot-kids Web sites are dedicated to soccer, dinosaurs, cartoons and other topics dear to kids' hearts. And so I would encourage folks to go through it.

Sites must meet strict content restrictions that bar sexuality, violence and profanity. They are not permitted to gather information from visitors, nor are they allowed to include chat rooms or links to sites outside of kids.us. That is the key.

You all may have a dot-org, you may have a dot-com. What we try to do is make sure kids aren't exploited on the World Wide Web. And that—so you can't hyperlink out. You can't establish chat rooms. So I think if you really take a good review of what is offered on this site, I think in addressing the protection of kids, my kids now are starting to gravitate to the World Wide Web, it scares me to death.

And I would like to see HarryPotter.kids.us. It is the chicken and the egg debate. From 12 sites up, what kid is going to go surf the kids.us site? So it might take a little risk. It might take some adventures to get your children appropriate material identified for kids. But, again, as the ranking member and the chairman have said, if you do, I think it will go—help us great ways of helping clean up the Internet and directing kids to child-appropriate programs and shows that you are broadcasting. We all know the inappropriate stuff. There is some appropriate stuff out there, and we ought to direct appropriate-age kids and viewers to those sites. Let's make .kids.us one of the ways. Thank you for agreeing to keep us updated.

Thank you, Mr. Chairman, for calling a hearing on that. And I look forward to working. I yield back my time.

Mr. UPTON. Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman.

My first question to both Mr. Wallau, Ms. Berman and Dr. Wurtzel, all the networks agree that the networks are responsible for network programming that they produce. Should the affiliates be responsible for the entire FCC fine when a network produced a program that it is deemed indecent by the FCC?

Mr. WALLAU. If an affiliate was fined because it relied on our judgment about what was indecent, we would stand behind our judgment, and we would stand behind our affiliate, and we would indemnify our affiliate.

Mr. GREEN. Is that in the contract with your affiliates?

Mr. WALLAU. It is.

Mr. GREEN. Ms. Berman.

Ms. BERMAN. I do not believe it is in our contract, but I would have to check for you, Congressman. Right now in the incident that we are approaching as related to the Billboard Music Awards, we have agreed to stand behind our affiliates for the accidental use of the expletive words that came out over that broadcast.

Mr. GREEN. Or any clothing malfunctions?

Ms. BERMAN. That we have assumed as our responsibility. But I do not believe that is policy.

Mr. WURTZEL. I can't tell you whether it is in the contract, but I would be happy to get back to you on that. What we do is by

sending down programming in advance to our affiliates, we really give them the opportunity, which is the ultimate objective, to decide for themselves whether or not a program is appropriate for their particular market.

Mr. GREEN. That brings up the next question. I understand that potential news shows used to be sent for preview to your local affiliates, and feedback from the affiliates. Does this still happen?

Mr. WURTZEL. Sure.

Mr. GREEN. Does it happen in ABC and Fox?

Mr. WALLAU. We have a process of informing our affiliates. We show them the pilots of new shows .We inform them of the content of continuing shows. If there is any shows that have an advisory, generally we prefeed them.

We also—if there is a show that is—there is not a precedent for, if it is opening new ground, we preview the show to them for their ability to look at it to see if it conforms with what they want to have on their station.

I think the important thing, Congressman, to know about the process, I can only speak for ABC, is that we have never had an affiliate complain about the process. No one said, you know what, you sent something down to me, or you didn't send something down, but you should have.

I have been sitting on the board of Governors that represents the affiliate body for a dozen years. I have been to every affiliate meeting. Never has an affiliate raised an issue about the process that we have in place for them to look at the shows that we give to them and decide whether they are appropriate for their station.

So I assume, by the lack of this being an issue of any kind, that the process works. If they get to a point where there is a situation where it doesn't work, then I assume they will communicate it to us. They just have not.

Mr. GREEN. Okay. Have any of the affiliates—and a good example, again, community standards in New York and California are obviously different in Houston, Texas. Do those different affiliates, say, for example, in Texas, have the opportunity, and have they commented on them, on network programming? And what is the status of that? Do they have the ability to reject it?

Mr. WALLAU. Yes.

Mr. WURTZEL. There is a constant dialog with the affiliate and the network all of the time, and they have every right, if they feel that there is a program that they have seen that isn't appropriate for them, to cancel. I mentioned earlier about Saturday Night Live, for example. I mean Salt Lake City feels it is not appropriate, and we respect that decision.

Mr. WALLAU. Congressman, if I can just say, to the point that Larry Pappas has ABC stations, he is an esteemed broadcaster and a partner of ours, I would like to enter in the record the contract we have with Mr. Pappas' station which says the following: Nothing herein contained—nothing herein contained in the contract shall be construed to prevent or hinder you from rejecting or refusing network programs which you reasonably believe to be unsatisfactory, unsuitable or contrary to the public interest.

Mr. GREEN. Okay.

Mr. WALLAU. To me that is about as definitive as we can be about the right of the affiliate to control the content.

I have told you the process makes sense. I would also just as a matter of procedure since——

Mr. GREEN. Well, let me get Mr. Pappas' follow-up, though, because I only have 12 seconds left on my time.

Mr. Pappas, I have a question of you, but mainly because I appreciate your support for the indemnification amendment, but you have heard all three networks. I know that you have—I know in Houston you have TBS Ticker. But can you comment on the response, and how it is as an affiliate owner?

Mr. PAPPAS. Yes, sir. First, I don't want to get into a debate on our particular affiliation agreement, but I can state for the record that in our company's case, we were unwilling to sign any other form of agreement than the one that existed in 1990 when we bought the stations.

Second, the NASA petition very clearly contains examples. And this petition represents, as I said, over 800 to 1,000 affiliates' views, and so I think it will speak for itself, and the contents in it speak for itself.

As to the second point, I really do appreciate what my colleagues here have had to say, and I think that their newfound sensitivity and the remarks they have made to you, that they hear you and that they hear the public, are enormously meaningful, and I don't think that they are insincere. However, the paradigm that really exists is that the practical processes that are—that they should be availing, so that if a licensee wants to easily see a show well in advance of the air date, or at least a couple of days in advance of the air date have been unavailing. Again, it is that balance that needs to be restruck.

Mr. GREEN. Well, Mr. Chairman, I know I am out of my time, but I appreciate the extra time. But I also know that we also have some newfound sensitivity by the FCC when they testified before us, but I appreciate that. I think we are moving in the process. And thank you, Mr. Chairman.

Mr. UPTON. Mrs. Wilson.

Mrs. WILSON. Thank you, Mr. Chairman. I was struck in reading the testimony of the differing prescriptives on exactly how much authority affiliates and general managers have with the comment from the networks on the one hand that affiliates very rarely exercise their preemption rights, and they are fully capable of doing so; and then Mr. Pappas' perspective that in practice you can't do it without tremendous risk; and a long list in the addendum which you gave to us of the kinds of tactics that are limiting local broadcasters' decisions to air programs, and I would like to see some further discussion and comment on that from each of you.

Why is it that you believe, from the networks' perspective, that Mr. Pappas is wrong? And, Mr. Pappas, why do you think the networks have their perspective?

Mr. WALLAU. If I could just say, Congresswoman, one thing that might be helpful is to enter in the record, since Mr. Pappas has requested that the NASA petition be entered in—the responses of the networks to that petition would be helpful to the subcommittee in understanding our point of view on what happens so that there

would be a totality of information of the two perspectives. So if that can be done, I would really appreciate it.

I am—I think Harry can speak for himself. I am aware of where his point of view comes from. From our point of view, we have not had complaints about this issue on the ground in terms of people calling us about specific shows. We have had people who did not carry shows that they chose not to screen. We have had many instances of screening shows and then people carrying all of them. When Saving Private Ryan aired, we explained what the content was, we prescreened it on both occasions that we aired the show, the movie, and all of our affiliate body carried it, understanding—having made their own decision that they understood that there was some totally unprecedented content in that movie, but in the context of that movie, it was acceptable for that station. The process works from our perspective, as I said before, based upon the fact that we have had no complaints about it.

We have a NASA petition that, to be fair, Congresswoman, is about our total relationship and trying to position on issues that have nothing to do with indecency, the ability to have control of the content of the affiliate station. It is a much larger position in the NASA petition. And I can't tell you what the reasons are for this being raised in the context of indecency, but I can just tell you that the process that we have in place is not one that our affiliates have ever complained in any forum that I am aware of.

Mrs. WILSON. Mr. Pappas, have you ever complained?

Mr. PAPPAS. Sure we have. I sent letters years ago even to Rupert Murdoch's wife with a carbon copy of what I had sent to Barry Diller and Mr. Murdoch.

Ma'am, the law that this Congress established provides that a licensee's duties are personal and nondelegable, and that law establishes that not a corporation, but rather the officers and the principals of that corporation, are the ones to whom this government looks for responsibility, for adherence to the law.

As I said earlier, I don't want to debate nor do I want to personalize the presentation to this committee. The fact is that at its core the solution that this committee is looking for has to do with reflecting not what Harry Pappas wants, but what the American people want, and the American people don't want that content on the air. And that is who we work for. That is who we have a duty to serve.

And so, ma'am, the reason this is not only appropriate, but is, in fact, central to what you need to consider, is that absent the licensee's unfettered right to accept or reject programming, or to substitute programming that in their judgment is, in fact, of greater local importance, and, in fact, reflects the tastes and the needs and the interest of the public it serves, then all of this about penalties is a mad gesture that will result in no permanent change.

With all respect, my time will pass from this Earth soon enough, but my two children are counting on me to have the integrity to appear before you and to tell you the truth not as a businessman, but to tell you the truth as a licensee. Thank you.

Mrs. WILSON. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Wynn.

Mr. WYNN. Thank you, Mr. Chairman.

Mr. Pappas, obviously your testimony today is very critical. Now, Mr. Wallau, I believe, read into the record a statement saying that nothing in this agreement would abridge your rights to reject programming, in essence. I am trying to use shorthand. Is that true in fact? And, second, is that true in practice?

Mr. PAPPAS. The language exists in some form in various of the affiliation agreements, and depending, as I said earlier, Congressman, on the licensee, it is sometimes modified severely. And therefore, as a practical matter——

Mr. WYNN. Modified to have the effect of nullifying the effect of that language?

Mr. PAPPAS. As a practical matter, yes, sir. That is why these things are detailed in this petition that has been before the Commission for 3 years.

Mr. WYNN. Okay. Can you give me two examples of any type of negative consequences that have occurred as a result of an affiliate challenging a network program or rejecting a network program in light of the fact that Mr. Wallau cites the Salt Lake City example of rejecting Saturday Night Live?

Mr. PAPPAS. Well, the process is such, Congressman, first in the case of local content, say, like local sports and the like, that might be chosen to be substituted or other content, if there is a concern about a particular episode's content, if it doesn't come down the pipe early enough to be previewed, then essentially we have an empty right, and when we have asked for that, what we end up with is our audience is absolutely outraged at us.

And our audiences don't understand it. When they meet me, they say, you own this station. How dare you do this? And when I say, but we ask for the shows, and we are not allowed to get them in advance, that is the consequence. I am breaking faith with my audiences.

Mr. WYNN. So you are saying that you cannot reject a show because you don't get to prescreen it in time?

Mr. PAPPAS. Right. We are not trying to—those are people with whom we have had a symbiotic relationship. We are good for them, they are good for us. We are not trying to pillory them. But there needs to be the reestablishment of some balance that has unfortunately fallen away in this rush to consolidation and bigness.

Mr. WYNN. So you want the FCC to step in and change the contractual relationship or provide some form of protection so that you can either get the shows in a timely fashion or have greater rights to reject them? Is that your——

Mr. PAPPAS. Mr. Congressman, you just hit the nub of it. The FCC used to say that no broadcast station renewal of license will be granted, in essence, to a national network that has any provision in any of its affiliate agreements that in any way prohibits—and then I will go back and quote the language that Mr. Wallau read that is in my affiliation agreement.

But, the FCC, in fact—and it is not—I am not being partisan, because this didn't happen in one administration, and it didn't happen under one political party's leadership, it happened over 10 or 15 years—just stopped enforcing it, sir.

Mr. WYNN. Okay. Thank you.

Mr. WALLAU. Can I just ask—to your point—if Harry would just cite one example of one show that aired from the ABC Television Network on the station in Kearney, Nebraska, that, had he seen it before, he would not have put on the air, and a complaint that he lodged with the network about a show?

Mr. PAPPAS. As I said earlier, Mr. Wallau, I am not here to debate the shows, but you are as familiar with your program schedule and the issues that are involved.

Mr. WYNN. Let me interject. Mr. Pappas, I think that is probably a fair question. I want to give you an opportunity to present your point, but I think that is probably a fair question.

Mr. PAPPAS. Well, our management has complained about shows that had unnecessary nudity that was not necessary to the conveyance of either the theme or the——

Mr. WYNN. Have you rejected that program?

Mr. PAPPAS. Well, if it is not—if it is not provided far enough ahead of time. But if you want to talk about an NYPD Blue, not all of those episodes are bad, Congressman. Some of them have got 90 percent good stuff, and 10 percent that could be edited, were a person allowed the time to do that.

Mr. WYNN. We have regional variations in terms of what is acceptable and appropriate. What is the standard that you believe we ought to use in determining—is it 200 complaints, 100 complaints? Because sometime you get a small group making a lot of complaints and expressing a lot of concern that is not, in fact, reflective of the larger community. How are we, or how was the FCC or any of us to make that, or what do you think would be some guidance on that?

Mr. PAPPAS. I think that wiser heads than mine can suggest an absolute number, and that is you folks. But it seems to me that the basic issues you all have already identified here, that the process should not be one that is slow; when the Commission considers the issues, they should be promptly resolved.

Second, I think if there is willful and intentional and repeated and egregious violations of the laws that prohibit profanity, indecency and obscenity, then if there are three of those that occur, then the perpetrator of those should be subject to greater penalties.

Mr. WYNN. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Walden.

Mr. WALDEN. Thank you, Mr. Chairman.

I want to go back to this issue of Howard Stern. And, Mr. Hogan, maybe you can tell me. You have taken Howard Stern off of your stations, the Clear Channel stations, but he is still on other stations, correct?

Mr. HOGAN. Yes, sir.

Mr. WALDEN. Who actually controls Howard Stern's contract? Who does he work for?

Mr. HOGAN. Ultimately he works for Viacom. I don't know the——

Mr. WALDEN. He is Viacom talent?

Mr. HOGAN. Correct.

Mr. WALDEN. So we get back to Mel Karmazin. He could take the same steps. Do you know, is Howard Stern on CBS stations?

Mr. HOGAN. Yes, he is on CBS stations, sir.

Mr. WALDEN. That is something to flag.

I want to ask, too, about affiliate agreements as they affect radio, because, I mean—I always try and disclose the fact that I am a licensee, too, and in the broadcast business. What about affiliate agreements that your company has through the Premier Network? How do you treat affiliates when it comes to some of these issues about previewing programming? And then I want to get to the TV side with the others. Can you speak to that?

Mr. HOGAN. We try and treat our affiliates the same way we treat our own radio stations, and that is going to be in keeping with our new initiative.

I had communication earlier this morning with the head of Premier to ensure that all of our syndicated hosts are being held to the same level of expectation and responsibility.

Mr. WALDEN. Okay. I hope that others that have affiliate agreements are listening to that, because I think it is an issue that Mr. Green, who has stepped out for the moment, but has raised, and some of us feel pretty strongly; you hear it today on this committee is—you know, who is really controlling the programming?

And do you have a practical—you may have a legal contract that says, you know, I have got the authority to edit, but in practical terms it is nearly impossible in some cases to, you know, see or hear this programming far enough in advance to take an action.

I want to go to the TV networks now. What are your standards in terms of allowing affiliates, such as Mr. Pappas, to preview network programming? Do you have a written plan that says, we will give all affiliates 24 hours, 36 hours, whatever it is, in advance to—if they request, to review a program? Do any of you have this?

Mr. WURTZEL. We don't have a written standards. What we do is a lot of this is great common sense. First of all, I should say that we encourage feedback from affiliates, because, as everybody has mentioned, we live in a very diverse country with many, many communities of varying standards, so we would like to hear from them.

We do send, as a matter of course, episodes of programs that we feel may have a concern on the part of some of our affiliates. The fact is we don't prefeed the entire schedule because it would be just impossible to do that, and the affiliates would be overwhelmed.

Mr. WALDEN. Okay. Ms. Berman.

Ms. BERMAN. We have a similar procedure, Congressman. But I would like to also add that our interaction with our affiliates is daily. It is not just occasionally we—it occurs to us that we have to interact with our affiliates.

Our affiliates make up the body of our network. I am on the phone with the affiliates. I am on the phone with the board of Governors on a monthly basis. Our staff is on the phone with our affiliates daily. We provide our affiliates with the tools that they need in order to sell the programming that we are offering.

Mr. WALDEN. I understand that.

Ms. BERMAN. So I want to say all of these things, because even in the event that they don't see a particular program, because, as Dr. Wurtzel said, the unwieldy nature of that, with 182 affiliates, and sometimes, in fact, there is late delivery on a particular program, and certainly with reality shows those—that programming

arrives later than we have—even normally have. So I want to make it clear that our interaction is daily.

Mr. WALDEN. I appreciate that.

I have less than a minute to go.

Mr. WALLAU. We have the same situation as they described. It would be a waste of both of our time to feed all of our shows, because the vast majority of our shows do not have an issue. We prefed NYPD Blue for 7 years. The affiliates didn't seem to think it was necessary anymore, except when there was this one episode that was further—more adult than normal. We prefed those. We have been prefeeding it for the last year. We started again to prefeed it.

I would just go to the point that was made by Mr. Pappas that you cited NYPD Blue, and we have an affiliate who has not cleared that show for 11 years, and he is still an affiliate of ours. They did not lose their affiliation.

Mr. WALDEN. I have read your testimony. What I am hearing from this particular affiliate is perhaps if there were some standards networks had that said I call up 24 hours in advance or 36 or whatever it is, and have the right to be able to preview a show, I am not talking prefeeding every show.

Mr. WALLAU. We have that process.

Mr. WALDEN. I guess I am trying to bridge some communication here. Maybe I will give up because I am out of time. But what I am hearing is that that right may be so nebulous as to be ineffective, and that it would seem to me that if you had a standard that said any affiliate has the right 24 hours in advance to preview any show, or 36, or whatever is practical, in their agreements, you might solve that. But I will leave that up to you all to fight out. I understand what you are saying, Mr. Wallau. I am just suggesting that.

Thank you, Mr. Chairman.

Mr. UPTON. Mr. Rush.

Mr. RUSH. Thank you, Mr. Chairman.

To the panel, while much of the focus of our hearing today, and part of the reason why we are here after at least three hearings on this particular matter, most of the focus has been concentrated on sexually indecent programming. And I am concerned that too little time has been spent focusing on violent video programming, which can be just as inappropriate for children as content containing sexual acts or dialog.

And as such I would like to ask Mr. Wallau, Ms. Berman, and Dr. Wurtzel the following questions. According to the National Cable Television Association-funded national television violence study that was released back in 1998, which, by the way, is the largest content analysis of programming, nearly two of three programs studied contained some violence averaging about six violent acts per hour. More troubling, however, according to the study, is the typical hour of programming, children's shows featured more than twice as many violent incidents, 14 as a matter of fact, than other types of programming, 6. Additionally, the average child who watches a mere 2 hours of cartoons a day may see nearly 10,000 violent incidents each year, of which researchers estimate that at

least 500 are high risk for learning and imitating aggression and becoming desensitized to violence.

And this is the study right here. And I am going to ask Mr. Wallau, Ms. Berman and Dr. Wurtzel, are you aware of this study, No. 1; and, two, do you think that watching repeated acts of violence on television is harmful to children?

Mr. WALLAU. Mr. Congressman, I believe that the process we have that we have spoken about, including standards, in terms of addressing standards for our programs does not address just the indecency issues that we have talked about, but also addresses violence.

If you look at our programs, we take theatrical movies that come over with violence that is not acceptable on network television, and we take out the excessive acts of violence that are acceptable in theatres but not acceptable over the public airwaves. We make multiple edits. There have been cases of 400 or 500 specific edits requested by our standards people to make theatrical movies, which contain the most potential violence. We have standards to address these issues.

Mr. RUSH. I am rapidly running out of time. I have two other witnesses that I want them to respond.

Are you aware of this program?

Mr. WALLAU. I may have read the study, but—I have read a lot of the studies on violence and its impact on children.

Mr. RUSH. Ms. Berman?

Ms. BERMAN. Congressman Rush, I don't know whether I have read that particular study. I have read studies on violence and television. I believe the conclusions that these studies tend to reach are inconclusive; however, common sense tell us that viewing a lot of violence can equate to violent behavior. I think that that is just a common-sense point of view.

It is why in our approach to the Congress today we are talking so much about the V-Chip, which Congress wisely enacted 7 years ago. In the use of the V-chip, a parent can prevent children from viewing programming that is—that is rated and considered too violent. And I really want to stress that today, because we find ourselves in situations on the network where we are coming out of, because we are only 2-hour prime time—where we are coming out of a show like American Idol on a Tuesday night at 9 o'clock, entering into a program like 24 which goes on after American Idol.

We are very concerned that the young viewers that might be watching a show like American Idol will be coming into a program like 24. It is why not only do we air our ratings logo or icon, we also air a disclaimer; not only we print it on the air, but we also state it, that viewer discretion is advised due to violent content.

So there are messages that we can send out to prevent viewers from inadvertently falling into programming, but we encourage parents to do this.

Mr. WURTZEL. I have read the study. My training is as a social scientist, so I spent a lot of time in the area of violence. I think that violence is something that has to be handled extraordinarily carefully. In fact, I think we do. As I mentioned in my testimony, NBC's prime-time schedule really is relatively violence-free in the sense that when there is violence, particularly in the Law and

Order franchise programs, it really is about the consequence of the violence, it is about the legal aspects of the violence, but we don't show actually any interpersonal violence, and that is really one of the areas that research would suggest is the problem.

I think the issue with one of the studies is they need to be a little bit more specific with respect to what the source is of the programming that they have concerns are, because I think I would agree with Alex that we spend a great deal of time editing these programs to ensure that some of the issues that we know could be problematic with respect to violence are addressed before they air on the network.

Mr. RUSH. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Pickering.

Mr. PICKERING. Thank you, Mr. Chairman. I want to thank you for not only this hearing, but the hearing before. And our purpose, I think, as a committee and as a Congress and, I believe, as corporate leaders is to reaffirm our standards, change our practices, hopefully have an acceptance of responsibility, and then in the legislation establish accountability so that whether it is through fines or the potential revoking of licensing or making license renewal conditioned upon upholding these standards, I think that is what we are trying to do. And my questions are to that purpose and to that end.

Dr. Wurtzel, one question that I have had as we go forward, as you know, there were several instances, one was the F word incident. And right now NBC is contesting whether that will be viewed as indecent or if the FCC will reverse its decision.

I guess as we all try to accept responsibility and change practices, would you agree that the F word really doesn't have a place in prime time?

Mr. WURTZEL. Absolutely. I don't know how to more unequivocally say this, but it is wrong. It was not something that was ever planned or anticipated, and there is no way that we would ever condone it.

Mr. PICKERING. Does that mean that you will stop contesting it at the FCC and pay the fine?

Mr. WURTZEL. I can't speak to the legal aspect of a regulatory proceeding, but I can just tell you that that sort of obscenity and a number of other obscenities are simply inappropriate. We are not going to have it on NBC.

Mr. PICKERING. In the brief that NBC filed before the FCC, they said that the FCC decision or the complaint was logically bankrupt. Your attorneys said logically bankrupt, but you are saying something completely different today. And I think there needs to be a consistency between what you put on the air and what you contest at the FCC. It is kind of like a principle if you are speeding, you don't contest it; you accept responsibility, and you pay the fine. And I think that is the same for Clear Channel.

I commend their actions of dropping Howard Stern, but you still have proceedings going forward that you are contesting at the FCC and possibly in the courts. And I think it would be best, as we start over, as we start fresh, tell your lawyers, let's pull back, let's accept responsibility, let's stop contesting this, and let's have a new day. And I think if you do that, you will have a greater sense of credi-

bility. You will inspire greater confidence in Congress, and as we go forward into the accountability legislation, I think we will take that as a good faith measure. But, if you are saying one thing here and another thing at the FCC, and another thing in the courts, we don't know which to believe.

So I commend you for your statements today. I commend you for dropping Howard Stern. And I just ask you to go a step further: Pull your lawyers back, accept responsibility, pay the fines, and let's start anew. That is one thing.

Let me ask Mr. Paxson one question I have as it relates to cable is to whether there should be a family tier of programming. Is that something that you think could work, should work? Is there a problem with that? And I realize you are—you have a broadcast network, but as far as a package of programs that would be deemed family friendly, is that something that cable should consider?

Mr. PAXSON. Well, I think that the broadcasters always had to consider what was the family hour? What hours do we protect the kids? And because of the fact that the cable and satellite people use the same airwaves, the same frequencies, the same spectrum as broadcasters, they should have the same responsibilities. And I think that you have the power, because of the Republic's ownership of the spectrum, to carry out the same kind of indecency issues not only with broadcast, but with cable and satellite.

Mr. PICKERING. Let me ask one final question as my time runs out, and the panel can respond to it. We are looking at increasing the fines, but one thing that—for example, I don't want Viacom in the marketplace to stick it in everybody's eye and keep Howard Stern on the air and create a competitive inequity to good conduct by Clear Channel. And if they think that it is just a tenfold fine, they think that they can probably make that up in market share by being on the edge, by being more profane, more indecent. And I think for bad actors like that we have to only have the stick of accountability of a license renewal or conditioning process. Could you please comment on that?

Mr. HOGAN. Congressman, I would like the opportunity to respond and say that I appreciate your words. I think your analogy of a speeding ticket and paying the fine is an interesting one.

The legal—I am not a lawyer, so please forgive me, but the legal implications for paying that fine are significant, and so we are very carefully considering that. And as it relates to whether the fines are big enough or the stick is big enough, I would ask you and your colleagues to consider proportionality, to make sure that the punishment fits the crime. I don't think there is a broadcaster out there that wouldn't agree that if they transgressed, they should be held accountable. If I were speeding, I would hate to be assessed capital punishment. And license revocation for a broadcaster is as bad as it gets. And so I would ask that you consider that as you move forward.

Mr. PICKERING. Could we do like a three strikes or you are out, or enough notices, or enough warning if you continue to have repeat offenses; would that be a fair process?

Mr. HOGAN. Congressman, it is my sincere hope that I nerve have to consider that. We are making a specific decision to go in a different direction, and I think that there are people who are

probably better equipped than I to respond as to whether that is the answer.

Mr. UPTON. Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

I want to follow up on this line of questioning, give some of you all an opportunity to speak who didn't.

I agree with your point, Mr. Hogan, about proportionality. My question is directed to the view of each of you as to what is being described as an amendment that Representative Markey would offer, which would be an aggressive form of penalty that would take into account the size of the company that was found to have provided indecent or obscene programming and perhaps even the gravity of the offense.

Mr. WALLAU. Can I respond, Congressman, just in the context of actually something I said earlier to something that Congressman Pickering said?

Congressman Dingell asked a yes or no question about whether the $275,000 or whatever the amount of the fine was sufficient to deter a major media conglomerate, and I answered that question no.

To the specifics of that question, I think that to the point that was made by Congressman Pickering, market share may be picked up. If you were a real—there might be an equation that would make sense there economically. But the point really is that no fine for indecency is a good thing for any broadcaster for any—no matter how big the company is, No. 1.

No. 2, Congressman Dingell also said there needs to be proportionality in terms of the size of the affiliate. If you have 100 plus stations, $275,000 may be your entire operating income for your station. It may put you out of business. So I do think—there cannot be an absolute number.

The question from the Congressman was about the big media conglomerates. I think when you get—it might not be enough there; might be too much when you get down to the smaller stations.

Mr. DAVIS . But you would further add that just as it should be proportioned if it was a smaller company, that it would be equally true that it would appropriate to be proportionate if it was a larger company?

Mr. WALLAU. I think the deterrent effect would be—if are you talking about deterrent effect, then that makes sense.

Mr. WURTZEL. If I can just clarify for the record as well, because I also said that, no, probably not. And again, what I think I really would have liked to have said, had it not been a yes or no, is the issue of proportionality. In other words, I think that these things are rarely black and white and need to be reviewed on a case by case, and then the proportionality as well.

So I just wanted to clarify my comments.

Mr. DAVIS. So if I understand you correctly, if, given the gravity of the offense and the size of the company, it might be appropriate to have a larger fine than what has been suggested in the bill?

Mr. WURTZEL. Well, I think that a lot of this has to be taken into consideration, but it is one of these three-dimensional chess situa-

tions where you can't look at any one of these aspects without considering everything.

I think you are right. It is proportionality, it is the offense, what exactly was it; whether it is a recidivist kind of thing or it has happened many, many times, or whether it was a one-time extraordinarily anomalous situation which no one had control. I think these are things that really haven't been discussed yet.

Mr. WALLAU. I think the truth is and the fact is, Congressman, that it really—at the end of the day, the fact is that we are going to obey the law. And for us—and we are a big part of the big, big company—the amount of the fine is not relevant. It really isn't. It is really the fact of being fined for indecency. As a television network that has the public interest obligations that we feel, the existing amount, if we got that, and we haven't, and I think that is important to note that these fines have not been meted out to the television broadcast television networks that are here, it has nothing to do with the amount of the fine, it really has to do with obeying the law and observing our public interest and responsibilities.

So at the end of the day, I really think that all of the talk about fines is not of the essence in terms of what our decisionmaking process is.

Mr. WURTZEL. Let me quickly second that, in the sense of what is key here, and I agree with Alex, it is not so much the money as it is our reputation. I mean, that is far more important than any of that. And I think that that is something that we take extraordinarily seriously, whether the fine was small or whether it was large.

Mr. PAXSON. As a licensee for over the last 50 years, I can only remember so many years ago when licenses were revoked. And when was the last time a license was revoked, and under what circumstances? The law exists. It is the enforcement of the law which is left up to the Federal Communications Commission. And I don't see them performing their duty in this area at all in the last 15, 20 years. It has been only—the only one I can remember in the last 15 or 20 years was where the licensee committed a felony other than having something to do with his license, and then he lost his license.

Mr. DAVIS. Mr. Paxson, what would you suggest that Congress do to change the choices that the FCC will make in terms of enforcement?

Mr. PAXSON. I think the FCC has all of the laws that they need in terms of revocation proceedings against a licensee who does one or more events. It is up to the FCC. They are the deciding body. They have the power. Empower them.

The FCC today has been, in my opinion, extremely inactive in this area. As a matter of fact, all of us having licenses here will tell you that we have things pending at the FCC 3 and 4 years, and we can't get decisions. So I think it is an issue of getting the Federal Communications Commission to do the job.

Mr. DAVIS. So you would support a provision in this bill that would allow the FCC to impose a larger fine than is called for now based on the gravity of the offense, the size of the company perhaps, whether it is a repeat situation.

Mr. PAXSON. And in addition to that, a license revocation proceeding, a full hearing before a hearing judge to determine whether that licensee continues to be fit to hold a license.

Mr. PAPPAS. Congressman Davis, I think that Dr. Wurtzel and Mr. Wallau have pointed out, though, the complexity of the answer to the question. It has to include what they have mentioned as well as the issue of was it willful or inadvertent.

Was it, in fact, a continuing pattern or not? Was it, in fact, something that displays bad faith on the part of the perpetrator of the offense? And of course I will take one last opportunity to repeat the punishment should only be visited upon the party responsible for originating the wrong doing.

Thank you, Mr. Chairman.

Mr. UPTON. Mr. Terry.

Mr. TERRY. Thank you, Mr. Chairman.

Let me follow up on Mr. Davis's question. Mr. Paxson, you gave a great opening statement, I appreciate that, and you mentioned my question that I wrote down here about 1½ hours ago. But I want to get it succinctly on the record. Do you feel that the extraordinary time the FCC takes to review indecency complaints against a particular show has in any way encouraged radio and broadcast TV to become more edgy, to push the envelope of decency? Let me start—I would like to have the entire panel's opinion on the record.

Mr. Pappas.

Mr. PAPPAS. Yes.

Mr. TERRY. You are allowed to expand if you want.

Mr. PAPPAS. I just think it is very straightforward. The environment unfortunately, and I am not questioning anybody's goodwill or intent or the like, but this got away from a whole lot of folks, and the process that meant that that consideration of the complaints was delayed meant, therefore, that the effective regulation was denied.

Mr. TERRY. Very good.

Mr. Hogan.

Mr. HOGAN. Mr. Congressman, we have issues before the FCC that have been pending for quite some time, and I can tell you that faster and as well as thorough responses would, I think, have an impact.

Mr. PAXSON. I have to agree with my colleague Mr. Hogan. There is no question about it, the process at the FCC for processing anything today is extremely slow and a very big concern of all broadcasters, and this one in particular, I think, lends itself to, hey, go and do what you got to do; we are not going to stop you.

Mr. WURTZEL. I honestly cannot personally comment because we just have not had the kind of experience with respect to this indecency with the exception of the Bono incident, obviously. So I really do not have an informed opinion on it.

Ms. BERMAN. Congressman, we do not agree with that premise. We have to put programming out on our air on a day-in/day-out basis. The FCC, whether they take time or do not take time, we have to be responsible broadcasters every day, and the timing of their efforts is irrelevant as it relates to how we proceed with our responsibilities on a daily basis.

Mr. WALLAU. Congressman, what drives us is not the amount of fines, is not the amount of time it takes to decide these issues. The thing that drives us as broadcasters is simply the reputation that we have and the fact that we cannot—as the American Broadcast Company as part of the Walt Disney Company, we cannot afford to allow content on our air that would result in something being indecent and there being an indecency finding. For us that is the real driver, and all the rest of it is not of the essence.

Mr. TERRY. I appreciate those answers. I tend to agree with this half of table that I think the inability to timely render decisions not only encourages, but creates confusion within the industry of what the standards are, which leads me to my next question.

During our last hearing, the Chairman Powell stated that he felt that the definition of indecency is clear, understandable and is a term of art determined over a number of years, a number of court cases, and really encouraged us as this committee not to tamper with the definition. Do you all agree that the definition of indecency is clear? Is it clear to you? Let us start down at this end of the table.

Mr. WALLAU. Once again, it does not matter. We are so far inside the line, we do not go up to that.

Mr. TERRY. We will have a conversation about that.

Mr. WALLAU. We do not go up to what we understand to be something that is pushing the envelope in terms of indecency. We are well inside the lines. So at the end of the day, it is not a factor.

Ms. BERMAN. Again, we have to be responsible broadcasters day in and day out. I do not know whether the legal terms of indecency or are accurate as set by the FCC. I know that they have waived on their guidelines. We would appreciate some additional guidelines from them on this issue. They have determined that certain things were indecent, then they were decent, then they were indecent. It is a little confusing, but we cannot operate that way. We have to operated daily, and we have to operate within the commonsense guidelines of decency, and these are the kinds of programs that we put out on a daily basis.

Mr. WURTZEL. I cannot speak to the legal definition of indecency, but, again, with NBC, No. 1, I do not believe we have ever come close to these issues. And second, we are about our own set of standards, standards that we feel are appropriate, standards that we believe are right for our advertisers, for our affiliates, for our audience, and that is what we are responsible for, and that is what we stand behind.

Mr. PAXSON. I think we would love to see as broadcasters it being published, because I would go back to the example where they took almost 12 months to respond to a particular event on one of the networks, and they responded that it did not call for a fine. And that is one of the reasons that you are holding this hearing, because you all did not agree with them. So I think a very clear definition would be very useful to all broadcasters Mr. HOGAN. I think we have both the ability and the responsibility to draw the line for ourselves, and in the case of our radio station, that means that our managers need to be connected to their communities. They need to know their audience. They need to understand what is acceptable

in that community given the great diversity across the markets that we serve.

Mr. PAPPAS. Congressman Terry, part of the answer, as the other witnesses have said, does include some clarification from the FCC. It obviously was recently willing to review the question of whether or not the F word used as an adjective was legally sanctionable if it is used as a verb or a noun.

But I respectfully submit that if the whole thrust of what we are here about today is the maintenance of those high standards to which there has been reference, that—the careful balance that was long ago struck by this Congress, that the general managers of those network-owned stations as well as the managers of the affiliated stations and the owners of those were the last line of defense. And for especially today's society where we have dual—both members of the household working, where so much has changed in terms of the traditional structure and way of life, if ever there was importance to the notion that local communities' needs and tastes and interests be observed, and if there was ever an importance about constitutionality of a permissible structure for keeping content off the air that the local community did not want, then of all times this is the time to reassure and reenforce the ability of the broadcasters working with their network partners to make sure that their local communities do not see the obscene or indecent or profane contents.

So increasing fines is not going to do it alone. Trying to fashion constitutionally permissible definitions or prohibitions by itself is not going to do it. We are talking about the here and now. We are talking about today, about what goes out over the air, over about 1,500 TV stations to America's population. I think if you put the burden where it belongs on the licensee, and then give that licensee the right to really be sure that they are discharging the responsibility, an awful lot of what has gone out of kilter would be restored to the center line.

Mr. TERRY. Thank you. That concludes my time, but I do have other questions for the second round.

Mr. UPTON. I was not going to go to a second round, although Mr. Rush has implored me to allow him one more question.

Mr. Rush.

Mr. RUSH. Thank you, Mr. Chairman, for your generosity. I really appreciate this additional time.

I have a question for Mr. Paxson. Mr. Paxson, of course you've been the holder of a radio/television broadcast license for over 50 years, and you have stated that no station under your watch has ever broadcast indecent or obscene programs. And I want to congratulate you and also commend you for your outstanding work.

In your statement you mention that we should regulate cable and satellite companies in the area of indecency, and that has been stated over and over during this hearing. We had a hearing a week or so ago, and in that hearing Commissioner Cox stated that regulation or legislation should not be an avenue for Congress to pursue when dealing with cable and satellite, but perhaps we should have cable explore such options as offering a family tier so that families do not need to receive channels like MTV in order to get the Disney Channel, and I might even add to get the PAX Channel also. Do

you agree with the statement of Commissioner Cox? Can you on that?

Mr. PAXSON. The answer is yes, I agree with it. I think the family ought to have a choice of what comes into the house. But my testimony here today not only goes to the fact that give the family the choice, but we have heard a lot about the V-Chip.

I have four grandchildren, two great-grandchildren and four children. Now, growing up they all had TV. I did not go into the room and watch what they were watching every time.

I think we have to be very careful about the public's responsibility to their children. Yes, the father and the mother have a responsibility of what their children watches. We also have a real issue here going beyond that. We are talking about the satellite, we are talking about the cable company. We are talking about the right of ways all owned by the public. And I can tell you that a majority of American people would stand up and scream no in no way, scrambled, unscrambled, in no way do we want our right of way, our licenses, our airways to be used for pornography. Let us go past indecency.

Let us go right to the heart of the matter: pornography; 675 hours in one 24-hour period here in the Nation's Capital on Tuesday. That is destroying the family. It is destroying it in every way. The kids can get to the remote. Mom is not in there every minute. A lot of families work. The kids come home in the afternoon. Their parents go to bed at 9. They get up at 11. There is just no way that the pornography issue should be allowed to exist.

As to what is indecency, you could ask a million people and get a million different answers. I think there has to be some level of description. And the one that Chairman Michael Powell offers is one that he has not been able to enforce. They have not done it regularly and with impunity. That is something they should undertake. They have the right to do that today for only the broadcast licenses, and my contention is let us do it for all licenses.

Mr. RUSH. Thank you, Mr. Chairman.

Mr. UPTON. Ladies and gentlemen, I want to thank you for your hours of testimony this morning, for your preparation. I want to particularly thank the Members who participated and the staff.

I want to give notice to both Members and staff that we were intending to mark this bill up next week. An official notice will be going out soon. I appreciate all of their efforts, Members and staff on both sides of the aisle, on sharing thoughts on amendments to strengthen the bill as we look forward to continue to negotiate and discuss an amendment in the nature of a substitute, and that we hope to release when it is ready.

This hearing again was particularly enlightening, and we appreciate it very much. The hearing is now adjourned.

[Whereupon, at 12:51 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

NETWORK AFFILIATED STATIONS ALLIANCE
March 11, 2004

The Honorable FRED UPTON
Chairman
Subcommittee on Telecommunications and the Internet
U.S. House of Representatives
Washington, D.C. 20515

The Honorable EDWARD J. MARKEY
Ranking Member
Subcommittee on Telecommunications and the Internet
U.S. House of Representatives
Washington, D.C. 20515

Re: February 26, 2004 Hearing on H.R. 3717, the Broadcast Decency Enforcement Act of 2004

DEAR CHAIRMAN UPTON and CONGRESSMAN MARKEY: We respectfully submit this letter and request that it be included in the record of the Subcommittee's February 26, 2004 hearing on broadcast decency. In that hearing, representatives of the Fox, NBC, and ABC television networks made certain representations concerning the right of affiliates to reject network programs deemed to be objectionable or of lesser local or national importance than a substitute program. These representations reflected selected excerpts of the networks' affiliation agreements. Congress should be aware, however, that these selected excerpts are undercut by other provisions in the same agreements that strictly limit the right and practical ability of an affiliate to control the content of programming aired on its station and by network pressure to air questionable programming.

The Network Affiliated Stations Alliance (NASA) represents the affiliates' associations of the ABC, CBS and NBC networks. Three years ago it brought to the attention of the Federal Communications Commission the affiliates' deep concerns about the networks' erosion of local licensees' right to reject network programming, by filing a Petition for Inquiry into Network Practices and a Petition for Declaratory Ruling on affiliate independence. The Fox Affiliates Association subsequently expressed its support for NASA's Petitions.

NETWORK AFFILIATION AGREEMENTS

A. The Fox Affiliation Agreement.

The Fox network affiliation agreement asserts control over its affiliates' digital as well as analog signals. In her testimony, Gail Berman, President of Entertainment at Fox Broadcasting Company, stated that Fox affiliates have an "unequivocal" right to reject network programming that they reasonably believe to be unsatisfactory, unsuitable or contrary to the public interest. While the Fox agreement includes a general "savings clause," which states that "the parties acknowledge that the Station has the ultimate responsibility to determine the suitability of the subject matter of program content," that provision does not negate Fox's ability under the contract to terminate the affiliation as a result of three preemptions which Fox determines to be "unauthorized." (As shown in the example below of Fox affiliate WRAZ, Fox narrowly defines what constitutes an "authorized" preemption.) Also, the provision conveys no *right* to the affiliates (it only acknowledges a responsibility) and no corresponding *duty* on the part of the network to respect affiliates' right to reject. The practical effect is to allow risk-free preemptions of only 0.084% of the 2,392 hours of Fox programming each year. In other words, the Fox network has substituted its judgment for that of local affiliates in defining unsuitable programming that an affiliate may reject. Furthermore, the Fox affiliation agreement interferes with an affiliate's right to reject by:

- preventing a station from deeming a Fox program unsatisfactory or unsuitable unless it does not meet "prevailing contemporary standards of good taste in its community of license," whereas the FCC's right-to-reject rule does not limit such determinations to assessments of "good taste" nor to the station's community of license; thus, the Fox agreement leaves out the interests of viewers well within the station's service area who happen to reside outside of the city limits;
- hindering preemptions protected by the right-to-reject rule by allowing Fox to terminate the affiliation agreement if the affiliate makes—or merely "states, in general or specific terms" that it *intends* to make—more than two "unauthorized" preemptions in a year; moreover, even without such a statement by the affiliate, Fox may terminate the affiliation agreement if, in its "reasonable" opinion, such preemptions are likely to occur;

- hindering an affiliate from using independent judgment to reject programs that are, in the station's opinion, of greater local or national importance by requiring the affiliate to pledge up front that it does not foresee *any need* to substitute programming of greater local or national importance "except to present locally originated, non-entertainment, non-religious, timely public interest programming, such as election coverage, live coverage of fast-breaking news events, political debates, town hall-type meetings and telethons that serve the public interest and that are approved by Fox"; thus, Fox restricts both the type of programs that the affiliate may reject and the type of substitute programming its stations may choose to air for its local viewers; and
- demanding control over whatever portion of the affiliate's digital capacity (up to 100%) that Fox at any point during the affiliation agreement decides it would like to use for *any* purpose. The potential consequence for not agreeing to air such content—which could include paid commercial programming, subscription data services, or time-shifted network programming—is termination of the affiliation agreement.

Because of the Fox network's strict limitations on affiliates' right to exercise licensee discretion, an affiliate could not preempt network programming to air religious programs, educational material, public affairs documentaries, local civic events or local sports, and even as to categories of programming for which a Fox affiliate may preempt, Fox must approve the specific program.

Overall, the Fox agreement creates a "chilling" effect whereby affiliates are strongly discouraged from even discussing the *possibility* of rejecting network programming. That is, the Fox network may find that an affiliate merely expressing concern about a particular network series (such as *Who Wants to Marry a Millionaire* or *Temptation Island*) has stated, "in general . . . terms" an intention to make more than two "unauthorized" preemptions in a year. Even if the affiliate hasn't made such "general" representations concerning "unauthorized" preemptions, the affiliate's expressed concerns may lead Fox to "reasonably conclude" that such preemptions will occur. According to the contract, Fox may then terminate the station's affiliation agreement.

B. The NBC Affiliation Agreement.

In his testimony, Dr. Alan Wurtzel, the President of Research and Media Development and Chief Executive for Broadcast Standards and Practices at NBC, stated that an affiliate may reject or preempt "any program—without penalty—if an affiliate reasonably believes that such programming is unsatisfactory, unsuitable, or otherwise contrary to the public interest." But the NBC affiliation agreement is inconsistent with the right-to-reject rule and the requirements of licensee control because it:

- provides than an affiliate may reject a program as unsatisfactory, unsuitable or contrary to the public interest only "based upon a substantial difference between the relevant program's style and content and the style and content of other NBC Programs previously broadcast by Station";
- denies stations the right to air a substitute program it believes to be of greater local or national importance unless the program is of "live coverage of breaking local or national news events";
- imposes financial penalties on affiliates that preempt NBC programs in circumstances that fit squarely under the right-to-reject rule and permits NBC to terminate the affiliation agreement if affiliates fail to pay these penalties; and
- requires affiliates to pledge up front that they do not "foresee the need to substitute programming of *any* kind for NBC Programming, except under those circumstances requiring live coverage of breaking local news events" and to "acknowledge and affirm" that they do not intend over the entire term of the agreement to exercise licensee discretion in determining whether (i) NBC programming is unsatisfactory, unsuitable or contrary to the public interest or (ii) substitute programming, other than live local breaking news, is of greater local or national importance.

The NBC affiliation agreement effectively strips affiliates of their right to reject programming that is indecent or otherwise unsuitable for the communities they serve. To illustrate, an affiliate that aired two episodes of *Fear Factor* could not respond to community feedback and choose to preempt the remaining season's episodes. Another example may be found in the 2003 Golden Globe Awards in which the network broadcast the "F word." Having aired that show, the agreement would prohibit an NBC affiliate from preempting programs which include similar language. In both examples, affiliates are constrained by NBC's narrow definition of what constitutes programming that is unsatisfactory, unsuitable or contrary to the public interest.

Similarly, the agreement's ban on the substitution of network programming with a program of greater local or national importance (except in the narrow case of live breaking news) means that an NBC affiliate cannot choose to air during primetime a local candidate debate (unless it can be defended as a breaking news event), a documentary about a local environmental crisis, a religious special, coverage of a civic event, or local high school sports that the station believes to be of greater local or national interest to the affiliate's local community.

C. The ABC Affiliation Agreement.

In his opening statement, Alex Wallau, President of the ABC Television Network, quoted a selection of his network's agreement which he claimed "guaranteed" the right of affiliates to reject or refuse network programs. That excerpt reads, "nothing herein contained in the [affiliation agreement] shall be construed to prevent or hinder [an affiliate] from rejecting or refusing network programs which [it] reasonably believe[s] to be unsatisfactory, unsuitable, or contrary to the public interest; or substitute a program, which in [its] good faith opinion, is of greater local or national importance." Yet that excerpt does not tell the whole story, nor does it confer any substantive right to the affiliates to object to programming fed to it by the ABC network. Rather, the plain language of specific provisions of the same affiliation agreement strictly limit the right to reject by, for example:

- requiring live clearance of "all the programs supplied by ABC" and providing that a *single* unapproved preemption can trigger a seven day window during which the affiliate either must resume full-line clearance of all ABC programming or risk severe penalties, up to and including termination of the affiliation agreement;
- restricting an affiliate's ability to reject a network program or episode it feels is unsuitable by requiring 14 days' advance notice unless the nature of a *substitute* program makes such notice impracticable; thus, regardless of objectionable content in the network program, an affiliate cannot reject it if it first learns of that content during the 14 days preceding that program's airdate;
- permitting the network to make a second-guess intrusive inspection into the reasons that a local station exercises its right to reject;
- asserting undue control over the affiliate's local programming by requiring the affiliate to maintain "the same schedule of local news programs in its broadcast schedule" throughout the term of the affiliation agreement, so that an affiliate wishing to supplement or adjust its news schedule to serve community interests would be in breach of the agreement if it did so (as illustrated by the recent experience of the ABC affiliate in Eugene, Oregon, described below); and
- authorizing the ABC network to institute a claim for breach of contract (with potential loss of the network affiliation and money damages) against an affiliate for rejecting a network program without ABC's "authorization" when the practical reality is that few, if any, local stations can afford litigation with their networks and risk loss of their network affiliation and liability for money damages each time a dispute develops with the network over the suitability of network programming.

The practical effect of these limiting provisions is to inhibit the discretion of an affiliate to exercise its licensee responsibility for content aired to its local community. To illustrate, if a Providence area affiliate wished to air a primetime news special about the nightclub fire in Rhode Island on the anniversary of that tragic event, it could not do so because the program would occur outside of the affiliate's regular schedule of local news programs. Also, because the public does not typically learn of a program's subject matter until the week before it is aired, and because the affiliate may not have two weeks advance notice that an ABC program will be objectionable, the 14-day rule effectively prohibits affiliates from considering community input in deciding whether to preempt a network program.

Also, the penalties ABC may impose strongly discourage an affiliate from asserting its right to reject. For example, if the Providence station described above were nevertheless to air the primetime documentary on the anniversary of the nightclub fire, it would trigger the seven day window during which the affiliate must resume full clearance of all ABC programming or else risk losing *all* compensation from the network and/or *termination* of the affiliation agreement upon 30—days notice. If during that seven-day period ABC wished to air objectionable programming, the Providence affiliate would be in the dire situation of having to air the programming or accept these very severe penalties.

SPECIFIC EXAMPLES OF NETWORK PRESSURE ON AFFILIATES

NASA also wishes to supplement the record in response to a question of Representative Wynn concerning examples in which negative consequences have occurred when an affiliate rejected or sought to reject a network program. Following are a few examples that illustrate the degree to which affiliates' right to reject programming has been eroded by the networks:

- WFAA-TV, the Dallas, Texas, ABC affiliate, told the network that it wished to preempt *Monday Night Football's* half-time show on November 12, 2001 in order to cover a plane crash by American Airlines, which is based in Dallas. The network refused three different options presented by the station. In the end, WFAA-TV decided to use the limited time allowed for local advertising spots to present a two-minute news package at the end of the half-time show. Of course, this brief time slot did not allow for full coverage of the American Airlines plane crash.
- During the first 2000 Presidential debate between then-Governor Bush and then-Vice President Gore, Fox insisted that its affiliates air its sci-fi series *Dark Angel*, rather than the debate.
- When WRAZ, the Raleigh, North Carolina, Fox affiliate refused to air *Who Wants to Marry A Multimillionaire?*, Fox told the station that the preemption would count against its preemption "basket" (a contractual limit which, under the standard Fox agreement, is 2 per year—.084% of the Fox schedule—on the number of preemptions allowed before an affiliate faces penalties, including possible cancellation of affiliation). The station nonetheless decided to not carry the show because "we felt it was demeaning to women and made a mockery of the institution of marriage." Although this preemption was based on the station's opinion that the program was unsuitable for airing in its community, Fox insisted that the preemption did not fall within the right to reject but rather was subject to the station's limited "basket" of "unauthorized" preemptions.
- When NBC network sports coverage preempted both regularly scheduled core children's programming as well as additional time on Sunday (the typical second home for many station's core educational and informational programming), the network was unwilling to give affiliates permission to preempt three hours of other network programming to meet their responsibility to the public to air three hours of core children's programming each week.
- The ABC network blocked an affiliate in Eugene, Oregon from adding a new half-hour local newscast at 10:00 pm, despite the station's reasonable belief (based on extensive independent research) that the newscast would best serve its local community's interests. This plan would have required moving a three-hour block of network programming to start at 7:00 pm instead of 8:00 pm. The ABC network prohibited its affiliate from implementing the new newscast, claiming that the one-hour shift of network programming would violate its affiliation agreement. Indeed, ABC threatened cancellation of affiliation to force the affiliate to abandon its local news initiative.

Accordingly, the statements presented by network representatives during the recent broadcast decency hearing do not reflect restraints imposed on affiliates, both by the affiliation agreements and otherwise. (It should be noted that two years ago CBS acceded to NASA's requests that its standard affiliation agreement be revised to conform to the FCC's right-to-reject rule.) The law is clear. "[R]esponsibility for selecting program material lies with the licensee. That responsibility can neither be delegated by the licensee to any network or other person or group, or be unduly fettered by contractual arrangements restricting the licensee in his free exercise of his independent judgments." *Cosmopolitan Broadcasting Corp.,* 59 F.C.C.2d 558, 561 (1976); *see also In the Matter of Review of Commission Rules and Regulatory Policies Concerning Network Broadcasting,* 63 F.C.C.2d 674, 690 (1977). It is time for the networks to recognize this core principle not only in the language of their affiliation agreements but also in relationships with their affiliates. Thank you for your time

and consideration in reviewing this information concerning the status of affiliates' right to reject network programming.

Sincerely,

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