

**WRITTEN STATEMENT**

**of**

**MICHAEL J. COPPS**

**Commissioner**

**Federal Communications Commission**

**on**

**H.R. 3717, the "Broadcast Decency Enforcement Act of 2004"**

**Before the**

**Subcommittee on Telecommunications and the Internet**

**Committee on Energy and Commerce**

**United States House of Representatives**

**Washington, DC**

**Wednesday, February 11, 2004**

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.