

Testimony of

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Before the

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Committee on Commerce, Science, and Transportation**

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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.