

**Written Statement
of
Kevin J. Martin**

Commissioner, Federal Communications Commission

**Before the
Committee on Energy and Commerce
Subcommittee on Telecommunications and the Internet
United States House of Representatives**

H.R. 3717, “The Broadcast Decency Enforcement Act of 2004”

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Summary of Written Statement Kevin J. Martin

Television today contains some of the coarsest and most violent programming ever aired—and more of it. Indeed, the networks appear to be designing programs to “push the envelope” *and* the bounds of decency. At the FCC, we used to receive indecency complaints by the hundreds; now they come in by the hundreds of thousands. Consumers, particularly parents, are increasingly frustrated and, at times, outraged.

Something needs to be done. We need to provide parents with better tools to help them navigate the entertainment waters. The FCC needs to be more responsive. We need to provide parents with more tools to watch television as a family and to protect their children from violent and indecent programming. I propose four steps:

1. Aggressively enforce the law. For over a year, I have been calling on the Commission to aggressively enforce our statutory mandate against obscene, indecent and profane language. Our fines have been inadequate. We need to make the decision to air indecent or profane language a bad business decision. The Commission should levy higher fines by fining violators “per utterance,” not per program. I also strongly support the pending legislation to increase fines. We also should enforce the statutory prohibition against profanity, and respond to the hundreds of thousands of pending complaints. It doesn’t matter how tough our fining authority is if we don’t actually enforce the rules.

2. Affirm local broadcasters’ ability to reject inappropriate programming. We need to grant the network affiliates’ request to clarify that our rules protect a local 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. Network affiliates provide a natural check on the control of network programming in the marketplace, rather than through direct government oversight of network content.

3. Urge broadcasters to reinstate the family hour. For over a year, I have been urging broadcasters to devote the first hour of prime time to family-friendly programs that parents and children could enjoy together. The Commission also should put out for comment Paxson Communications’s proposed voluntary Public Interest Code of Conduct, which includes the concept of a Family Hour.

4. Address cable and satellite programming. With more than 85% of homes receiving their television programming from cable and satellite providers, we need a comprehensive solution. Over a year ago, I urged cable and satellite operators to help us address this issue. Thus far, there has been no response. Something needs to be done. Cable and satellite operators could offer an exclusively family-friendly programming package. Alternatively, cable and DBS operators could offer programming in a more a la carte manner; they could permit parents to request not to receive certain programming and reduce the package price accordingly. I am sympathetic to the many people calling 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.

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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

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).

family-oriented choices, but parents cannot subscribe to those channels alone. Rather, they are forced to buy the channels they do not want their families to view in order to obtain the family-friendly channels they desire (e.g., they must buy the “Touch the Hooker” episode of Spike TV’s Joe Schmo show in order to get the Discovery Channel).

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

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

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

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

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

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

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

have to wait years to have their complaints heard. And broadcasters should expect that if they violate our rules, we will respond swiftly.

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

3. We Should Urge Broadcasters to Reinstate the Family Hour. Over a year ago, I called on broadcasters to reestablish the Family Hour, devoting the first hour of prime time to family-friendly programs that parents and children could enjoy together. Such a Family Hour used to be standard and was even incorporated into the National Association of Broadcasters' Code of Conduct. When the Code was abandoned due to unrelated antitrust concerns, the Family Hour went with it. Broadcasters should bring

back the Family Hour. They should give families at least one hour, five days a week, when they can turn to broadcast television with comfort, confidence, and enthusiasm.

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

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

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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.