

**Remarks of
FCC Chairman Michael Powell
At the
NAB Summit on Responsible Programming
The Renaissance Hotel
Washington D.C.
March 31, 2004**

Good Afternoon. Thank you Eddie for that kind introduction. I applaud you and your members for holding this summit and candidly exploring these issues which have lit up Washington - - - and indeed America - - - as of late.

These are challenging times for the broadcast industry.

For one, we are coming off an explosive debate about media ownership. The heated rhetoric often far exceeded the facts, but in any event, it created a very hostile climate for the media industry that will likely have lasting consequences. Of particular significance, and concern, is that the debate re-energized the previously fading debate about the role of government in content—whether it be restricting offensive content, or promoting favored content and viewpoints. This increased comfort with content intrusion is part of what is on display in the furious debate about broadcast indecency and excessive violence.

In addition, the competitive pressures from other media sources continue to dramatically fragment audiences. Competition continues to grow stronger from cable and satellite, but we are also seeing the use of advanced technology to create many other platforms that folks turn to for entertainment, information and news. The rise of satellite radio, the Internet, video gaming and, of course, TiVo with its ever-so-popular 30-second skip feature all have combined to present sharp threats to traditional broadcasting.

Indeed, I am of the view that competitive pressures much more than consolidation are what account for more programming that tests the limits of indecency and violence. As audience continues to fragment and the number of choices multiplies, it is harder and harder to grab and hold a viewer or listener

The indecency laws are not new, though you would think so listening to the furor of some in response to enforcing them. For 77 years, Congress has had a statute that prohibits any obscene, indecent, or profane utterance over the airwaves. People are more shocked to learn that this statute today resides in the criminal code and that a violation could lead to criminal prosecution.

The FCC has always enforced these laws with varying success. In some periods, the FCC has been fairly light in its enforcement and in other years comparably heavy. I have seen both. Some argue passionately that we should have no such laws out of respect for the First Amendment, and others argue with equal gumption that we should draw even more stringent limits. Such forces have always buffeted the FCC's enforcement efforts --- or content intrusion generally for that matter.

These can be very difficult decisions. It is very hard to balance and reconcile our moral and cultural values on one hand, and the enormous value we place on speech free from government intrusion on the other. At the margins this is quite difficult and the FCC has generally been cautious.

Currently, however, we are not talking about speech or conduct on the margin that has set off the current powder keg in the country. We see increasing - -I might even say escalating - - - complaints from the public because increasingly it seems the media is not playing close to the line, but is outright leaping past the line and in fact daring the audience and daring the government to do anything about it. Some of the transcripts I have been forced to read reveal content that is pure trash, plain and simple, and few, other than staunch libertarians, could possibly stand up and defend it publicly.

I think it is important, however, to understand what the American people are actually upset about. The Superbowl incident and the debate it unleashed is not really about a bare breast. It is not whether our society can accept public displays of the human body. It can. What really upset people was the shock and amazement that such material would appear on that program at that time, without warning, and without any reasonable expectation that they would see such a thing.

In other words, the debate is not best understood as one about what you can do or cannot do on radio or television. Rather, it is more about whether consumers can rely on reasonable expectations about the range of what they will see on a given program at a given time.

It is not Janet's nudity that is decried. It is the fact that "by god it was the Superbowl!" the largest prime television event of the year. An event for friends and family. People do not want to feel that they can be struck by lightning, or hit by a truck at any moment. Similarly, they do not like the sense they have no safe expectation of what they might see or hear during a given program—precisely the formula some are using to grab headlines. By the nature of your medium, consumers expect more of you than most.

A station broadcasts a variety of fare during the day, and is limited by day parts. Consumers expect to arrange their choices around programming at certain times—the morning shows, afternoon soaps and talk shows, primetime, and late night have special meaning in broadcasting, unlike in other media.

Given the free over the air nature of the medium, consumers do not express any prior consent to receive certain sounds and images—at least not to the extent they do with cable or rented videos, for example.

The First Amendment is cherished, but it bends only for you among media services. The Supreme Court and countless legal decisions create a special exception that allows government to demand more from broadcasting, right or wrongly.

Additionally, free spectrum has always been premised on your industry acting as a public trustee. People feel they have a right to demand higher standards from the industry and have different expectations about what they will see, as compared with the movie theater, a comedy club, HBO, or the Internet.

And, last but not least, the law says so.

This industry has always had a proud tradition of serving the public interest and has always relished that honor—wearing it right out on your sleeve. This is a public spirited medium that prides itself on delivering the news, weather, traffic, critical information in an emergency, the Amber Alert and the countless contributions you make to your local community.

It is your “publicness” that also invites strong governmental oversight and interest. The ability to limit these intrusions and protect your commercial viability depends heavily on policing yourselves. I think this industry must set a higher standard commensurate with its privilege as public trustees and with its own traditions. Setting your own standards is your best defense.

In this vein, I want to strongly encourage you to develop and adopt a new voluntary code to guide your actions in the same spirit you have in years past. I believe you can create such best practices and guidelines, consistent with the law. It would be in your interest to do so.

Finally, I have heard some of you call for an FCC rulemaking to create more “clarity” as to what is prohibited. I want to warn you that this is unwise. You do not want to ask the government to write a “Red Book” of Dos and Don’ts. I understand the complaint about knowing where the line is, but heavier government entanglement through a “Dirty Conduct Code” will not only chill speech, it may deep freeze it. It might be an ice age that would last a very long time.

I will conclude, as I once concluded a speech on the First Amendment several years ago: “We should think twice before allowing the government the discretion to filter information to us as they see fit, for the King always takes his ransom.”

Thank you.

- FCC -