

Remarks of Michael K. Powell
Chairman, Federal Communications Commission
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FCC Chairman's Breakfast
"Conversation with Sam Donaldson"

MR. DONALDSON: Mr. Chairman, it's very good to be with you again. How have you been?

CHAIRMAN POWELL: I've been fine. Thank you, Sam.

MR. DONALDSON: I'll begin with what the late Potter Stewart famously said about pornography. "You know, I can't define it, but I know it when I see it." You and the Commission now have suddenly seen it when it comes to indecency. What's different? What took you so long?

CHAIRMAN POWELL: I think it's a misconception that there's something dramatically new. A couple of points of reference, which I think are important. It's important to recognize that Congress passed the federal statute that we administer in 1927. It's well over 70 years old. And every Commission that has preceded this one has enforced that statute to varying degrees, but nonetheless has had a legal obligation to enforce it, and under its rules have had those rules challenged several times and has had them found constitutional.

So the Commission is duty-bound to enforce the provisions, and it does so in response to concerns from the public. And I think what you've seen in terms of the increase in the Commission's enforcement efforts in this area is a direct response to the increase of public complaints.

For example, in 2002, we received 14,000 indecency complaints. In 2003, we received 250,000 complaints from the American people, and already this year, up to this point, we have received nearly 540,000 complaints.

MR. DONALDSON: Are you telling me you're just bowing to public pressure?

CHAIRMAN POWELL: No. We're being responsive to public concern, which is the way that the indecency statute is written.

MR. DONALDSON: I must beg to suggest that in one case -- Clear Channel -- there were 21 violations in one instance since 2001. You didn't move until all of a sudden you got really tough with a huge fine. I mean, where were you all this time?

CHAIRMAN POWELL: Oh, I think that's not an accurate reflection of the facts. We have waded through indecency cases for the last four years. And, indeed, I've been on the Commission for seven years, and in a Commission led by a previous administration we dealt with indecency complaints. We will all remember --

MR. DONALDSON: With fines of that size?

CHAIRMAN POWELL: Not with fines of that size. The Commission has absolutely -- what the Commission has focused on is increasing the substantiality of its enforcement. And so it has pursued higher fines for separate utterances, and I think that is in response to a perception that, as administered before, it was not having the effect that Congress had intended, because of the growing rise of complaints.

So I think that we are administering the same law. We are rightly administering it more forcefully, and what we are trying to do is be swifter about it, so you see a more concerted effort to try to process and produce these things in a much quicker time than it has done before.

MR. DONALDSON: Well, sir, some things may be very obvious, but not always. Potter Stewart again. Mel Karmazin wants the Commission to define legally -- and lawyers out there will understand this -- where the line is. I mean, how can you fine someone in an ex post facto sense when they've done something that they don't have a guidepost to say he's wrong?

CHAIRMAN POWELL: I think this argument, to a great degree, is a red herring. Laws can be specific, bright line rules, or they can be standards that require interpretation and judgment. The law is filled with both types. We don't write strict liability rules for everything that goes on in the American society that we find actionable in the law.

The antitrust statutes are a sentence or two long. They don't spell out in excessive detail what constitutes an antitrust violation. That's done through precedent and the interpretive process of a government institution.

And I would go further and say, I think that's what you want in indecency, contrary to the argument. You do not want the government to write a red book of what you can say and not say. The very breadth that is being criticized now as constituting a vague chilling effect is also the breadth that allows the Commission to be cautious and conservative in the evaluation of context, meaning, tone, and other mitigating factors that provide a range of judgment.

I think about this like the federal sentencing guidelines. We could write a whole elaborate regime like we have with the judicial system and tell judges, no matter what the circumstances, when this happens these will be the consequences. It's a lot clearer, but it also completely removes the ability for a decision maker to be a judge and to weigh unique factors and make changes. And that's just the nature of the beast.

MR. DONALDSON: Well, it sounds to me like you're saying to everyone here, "You're on your own. Good luck. We'll take a look at what you do. If there are public complaints, then you may get fined for it or not, depending on our judgment at that time."

CHAIRMAN POWELL: All I can say is the indecency provision that's being administered today is the same one that has been around for decades. It has been interpreted and sanctioned by the judicial system on a number of occasions. But I'm not going to pretend that it doesn't have a subjective quality as compared to an objective quality.

No, I cannot tell someone, "Here are the five things. And as long as you don't do these things, you're okay. And as long -- and if you do these things, you're not." But I think that we can

also exaggerate, you know, the breadth of what the subjectivity is.

You know, to be perfectly honest, I could bring out of my pocket the transcript of the cases that we have brought in the last year, and if I read them I would ask, "Which part of this audience would stand up to defend this?" And I dare say very few of you would rise.

It's a very different question when you talk about this stuff in the abstract, and then when you talk about it on the facts. The Commission owes the First Amendment --- and it owes you all -- - care and caution in that application.

But we do this based on the substance of what we're given and the facts, and I have seen stuff that I cannot in good conscience stand up before the American public, the United States Congress, or my children, for that matter, and say, "Yes, this is okay on television, even though the law says there are limits on indecency."

MR. DONALDSON: All right. You brought up the First Amendment. We all know that broadcasting falls under a different standard, because of the Communications Act of 1934 as amended. But let's turn it around. You used to preach free market. You used to preach the marketplace, let the marketplace really decide these things when it comes to community standards, when it comes to what's acceptable.

And Howard Stern, whom you've come down on, says, "Listen, what you're doing is against free speech, against public discourse, and, in fact, you're turning it into a tyrannical state."

CHAIRMAN POWELL: I disagree. You know, I have a lot of respect for Howard Stern, and I have a respect for his view, if it's his principles, as suggested, which is if you happen to be of the view that the First Amendment should sanction unbounded speech on the public airwaves, there are no limits, you should be able to say anything you want, do anything you want, and show anything you want. Well, that's an argument. It's a fair enough argument. It just doesn't happen to be the law.

If you believe there are limits and there are lines that must be drawn, and, by the way, you must accept that the Supreme Court of the United States has said there are exceptions to the general protections of speech, and two of those narrow exceptions are obscenity, which is not protected at all, and indecency, which is protected speech but can be restricted between certain hours, and Congress has so chosen, and those cases have been tested on constitutionality.

So I would actually be in dereliction of my duty if I took the position at the Commission, even though a court of the United States has said the statute complies with the First Amendment, and the American people through 535 representatives have passed statutes to enforce, that I, on my own, because I have a different view of the First Amendment and the Supreme Court, won't administer this. That would be an abdication of my responsibility, dereliction of duty. And no matter how uncomfortable -- and trust me, in my view these cases are uncomfortable to make as a decision maker --- that's nonetheless our responsibility.

MR. DONALDSON: One more question on this. It's not just Howard Stern. Rush Limbaugh has worried on the air that, "What's next?" A different Commission perhaps, a different political climate. And people like him would find themselves under great scrutiny, because it would be said that they are preaching only one side of an issue.

And other people who are talk show hosts say such things as, "Kill all the Muslims." I actually heard that on the air the other day, and that's inciting to riot.

Is there a danger there that a future Commission, yours or someone else, will try to find some way to curtail that kind of free-flowing political discussion?

CHAIRMAN POWELL: My view is that kind of restriction of free-flowing political discussion would be unconstitutional. That's my view. But one would see. But I think that it's important to remember that indecency is not just anything that offends you. It's a term of art. It's a legal term of art. It has specific reference to sexual and excretory functions.

You know, no matter how offensive a statement like you just said might be, it certainly doesn't flow into the indecency definition as the Commission has interpreted it and administered it and the court has sanctioned it.

Remember that the only reason we find ourselves in this position is that the court has created a very narrow realm in which the government can act, and, by the way, says that it does so out of the government's substantial or compelling interest in the protection of children over the airways.

I also would note, as you point out, that the Supreme Court of the United States says the First Amendment range is different for broadcasting.

Now, by the way, I've spoken quite aggressively about that. I don't agree with that. I don't believe the First Amendment should change channels when it goes from seven to 107. But the point of fact is it does.

I don't want to be the one to defend that distinction, because I don't actually believe in it. I don't believe that I understand the arbitrariness of saying something that might be on a cable channel is just a First Amendment different animal at a given moment in time than something that is on broadcasting. Nonetheless, that is not -- I'm not free to disavow that distinction.

And until the Supreme Court of the United States changes it, you are going to have this disconnect which is, I can understand from this community's perspective, quite offensive.

MR. DONALDSON: Let's now go into localism, what's called localism, and a revisiting of the old idea that stations -- television and radio -- within a community should serve the broad range of the community, should have things for everyone. There are now proposals that you look again at this and require this from the standpoint of a license renewal when it comes up normally. What do you think?

CHAIRMAN POWELL: Well, I think that it's actually healthy every now and then for there to be sort of a rediscussion about localism and the government's role in promotion of it. I think there have been a lot of questions about what, if any, public interest obligations should flow in the digital era.

There are new possibilities in the digital era. There are new concerns as well. And so I am not adverse at all to the Commission considering in a proceeding additional public interest

obligations. But I am far from prepared to say that any particular one I would necessarily sanction as a matter of law as opposed to allow -- as opposed to a sort of broadcaster's commitment to its public trust.

Nonetheless, again, you go back to this First Amendment distinction, which is "broadcasting is different." One of the things I think we've got to tackle in public policy is it can't just be different for the purposes of benefits, but we want to be the same for the purposes of burdens.

It's either one or the other. Either you're different and the difference justifies government support in ways that we don't support other industries in the economy, or you're not.

MR. DONALDSON: Well, what do you believe in? You said a moment ago you didn't believe in something, but you would enforce it because it was the law. In this case, what do you believe in?

CHAIRMAN POWELL: In terms of the different --

MR. DONALDSON: Yes, the difference.

CHAIRMAN POWELL: I think there is a cherished place in America for free over-the-air television and radio. I do think it is different in the nature of the medium it provides. I think it provides a unique public service in that regard. And, therefore, the government does have some interest in its continued promotion and its continued survival.

Now, we could probably debate on an issue-by-issue basis whether I think they're that different on that issue to justify this different treatment, and I often do. I often do disagree. But it cuts both ways.

It's interesting, Sam, you know some of the same people who are angry about our indecency enforcement because it's content regulation stand up at press conferences with no problem whatsoever of trying to demand that the government enforce programming that they find to be positively good.

The First Amendment makes no distinction between what you don't like and what you do like. And if you're asking your government or inviting them to be a promoter of positive content, it's a similar problem then when it comes to negative content. Don't be surprised that the same arguments can be made in an area you find more offensive.

MR. DONALDSON: Should you be able to regulate cable - - - -

CHAIRMAN POWELL: We do regulate cable. Should we be able to regulate - - -

MR. DONALDSON: - - - to the extent that you as we've been talking about are able to regulate to some extent content on free broadcasting?

CHAIRMAN POWELL: Well, I'd like to make an important distinction, because I have to, which is I administer the laws as they are. My personal view is I think the government should be exceedingly conservative, reluctant, tense about any regulation of content for anybody --

broadcasters or cable -- because -- for the reasons that you suggested.

I think that the founding fathers of the Constitution understood something. And while it understood Citizen Kane could be a threat, it was most concerned about King George. And it was most concerned about a government that would impose its values or attempt to use its instruments of power to promote particular perspectives or viewpoints.

I tend to be more comfortable about that if Congress has first created an organic statute for us to administer as opposed to an unelected institution like ours, which would only require three of five people to impose its views unbounded about content. And that would apply equally to cable.

MR. DONALDSON: So if Congress should come in with the bill which it is now considering to require a hearing on licenses on the third finding of indecency, you'd be for that? Against that?

CHAIRMAN POWELL: Well, I'll do whatever it is they want.

MR. DONALDSON: What do you think?

CHAIRMAN POWELL: But I wouldn't -- I have concerns about things like that, three strikes and you're out, for the same reason I do about broadcasters calling for a "red book," which is I don't think that you can reduce something as facile and vague as indecency to sort of clear cause-and-effect consequences.

And I think that the only way that this thing works is you allow the breathability, and hopefully have responsible decision makers to weigh those things on the facts and the specifics of the case to make a decision.

I don't like the idea that I could trip into the potential of a license revocation, just because some numerical -- you know, somehow we've reached some numerical line.

MR. DONALDSON: It sounds to me like you're saying you're against it.

CHAIRMAN POWELL: Well, I'll administer it, but it -- no, if I was doing it, I wouldn't -- I wouldn't be the one to propose it.

MR. DONALDSON: Let me go back to cable. I noticed in this morning's NAB sheet on the convention so far what Eddie Fritts said. "I call on the FCC to break down the cable industry's digital dam and let the free broadcasting signals flow." Why are you laughing? Eddie, where are you? It's nothing personal, I'm certain.

CHAIRMAN POWELL: Eddie does his job very well.

MR. DONALDSON: He does. We'll add to the --

CHAIRMAN POWELL: The good thing is Eddie's job and mine are not the same.

MR. DONALDSON: Is that a no?

CHAIRMAN POWELL: Well, how does one argue with the grand vision of "free-

flowing” --- and that means what?

MR. DONALDSON: You, a free market guy who has just made it clear that government regulation should be minimal, you'll administer the laws, but you're not really for all of them that you're required to administer --

CHAIRMAN POWELL: Well, let's be -- I mean, the irony of what you say is let's let it freely flow by increased regulations to make sure.

MR. DONALDSON: That's a no, Eddie.

All right. The Ferree plan versus the Powell plan for reclamation of, or for moving into, the digital age. What about the Ferree plan? It's being floated out there. Do you like that?

CHAIRMAN POWELL: Let me say this. We made a commitment -- and I think all of you know this -- that two years ago this country had made a commitment to advance this transition and complete it. And we did something which I think was pretty bold for a government institution. We created a task force. The charge of that task force for me was go forth, be bold, creative, and aggressive, in seeing how we can advance the transition.

That process has created what you call the Powell plan, which I think has helped stimulate a substantial, if not exponential, increase in content. It helped pressure and cajole the cable industry to be a participant in that as well, as well as the networks. It is a group that led to the push for mandatory tuners in televisions, which this group supported quite aggressively. It led to “plug and play” for cable digital sets in order to promote that policy, which many people supported. It led to broadcast flag, which some people don't support, but most of this industry did. Everything that they think about isn't going to necessarily be something that this industry loves. I can assure you when I was at CEA doing the mandatory tuner, I was on the carpet answering for that, too, to that industry group.

So all that has happened here, and I do believe it's sort of being over dramatized, is that this same group of talented and creative people was given the charge to think about how we determine when the triggers are met to return the spectrum. They have my blessing to think about that and work on it, and that's what they've done.

MR. DONALDSON: But they would change the trigger?

CHAIRMAN POWELL: You've heard about the -- well, they wouldn't change the trigger. Their idea is you'd be interpreting the trigger for the first time. The Commission has never done that.

MR. DONALDSON: But differently from what the Powell plan envisioned?

CHAIRMAN POWELL: No, I don't think so. I mean, I'd be happy to debate anyone who thinks so. I don't know anything about the Powell plan that determines what constitutes reaching the 85 percent.

CHAIRMAN POWELL: This isn't about -- I mean, we're professionals -- this isn't about being pro broadcast or anti-broadcast. What we are is pro the public. And from where I sit as a

policymaker, there are two driving concerns that justify the Commission and this industry and Congress and everybody else talking about this question.

One of them is the law is extremely muddy about what constitutes the end. I mean, we say as soon as a consumer is capable of receiving over-the-air signals. Well, by the way, how am I supposed to know that? How am I supposed to know when every household has a digital TV? How are we, the government, supposed to go from house to house and figure out who bought them and who didn't?

I don't know the answer to that question. The point is: I don't know that the government at all has any idea of what it means when it says that the number has been met. So I think it's ripe for the Bureau, under Ken's leadership, and this industry to be talking about that.

Mr. DONALDSON: Yes. But they want to know what's going to happen in 2006.

CHAIRMAN POWELL: Well, don't we all. Isn't that what we're working on?

MR. DONALDSON: But you're in charge.

CHAIRMAN POWELL: Well, when I'm in charge and doing what you don't like, you don't want me in charge.

MR. DONALDSON: No. But, seriously, Mr. Chairman, I mean, are they going to have to give up one of the channels they've been using?

CHAIRMAN POWELL: Well, the bottom line is they're going to have to give up one of the channels they're using at some point. The debate that's going on is what constitutes the arrival of that point.

MR. DONALDSON: 2006 is --

CHAIRMAN POWELL: There is -- no, no -- the statute is 2006 or --

MR. DONALDSON: If 85 percent --

CHAIRMAN POWELL: -- until 85 percent penetration.

MR. DONALDSON: Right.

CHAIRMAN POWELL: So forget 2006.

MR. DONALDSON: You heard it here first.

CHAIRMAN POWELL: We know that. I'm not saying there's anything remarkable to saying 2006 is surplusage, because all that really matters in counting is when you get to 85 percent. I think there's a big ambiguity in the law about when that gets counted. And I think struggling to try to bring clarity to that is a good thing for the Commission to be doing, and it's a good thing for this industry to be engaging the Commission in figuring out. And, you know, we've not moving an order tomorrow, but we will not stop doing what we're charged to do, which is looking for ways to

continue to move the transition forward.

MR. DONALDSON: So you're telling me the Ferree plan is just something on the table to examine and maybe change. That's not the final word.

CHAIRMAN POWELL: Oh, it's certainly not the final word. You know, I haven't even stated that, knowing what I know about it, that I'd fully endorse it myself. But I fully endorse the dialogue, and I fully endorse the vision and the boldness of the Bureau to try to keep that dialogue going, because I think it's an important one that shouldn't be left on the back burner.

Everyone in this room knows the truth that if all we're doing is waiting until every household -- and by the way, all three and four TVs -- reach the 85%, we're talking about 30, 40, or 50 years from now.

And that's just the truth, and that is generally unacceptable to the government. You know, we can debate when or what would be an appropriate amount of time, but I don't think we should be kidding ourselves about what would be the adoption rate at 85 percent of all American households, particularly if you counted individual televisions.

And, oh, by the way, nobody knows about what to do about the remaining 15 percent, even when you get to the 85 percent. This idea that Ken has discussed is no different than the problem you have with the statute. If Congress tomorrow issued over-the-air digital analog converters to every American household, we'd immediately meet the transition, but nobody would have any idea of what we'd do about the 15 percent remaining of our citizens.

So that's another thing we're trying to think about -- can we think of creative ways about how to solve the last 15 percent? We've heard ideas like, could Congress subsidize boxes? Could you give tax credits for them? Could we find a way to subsidize the prices or something? All of that to me should be in play.

MR. DONALDSON: But network affiliates, as you know, wants the Commission to step in, because they complain that the big networks have the kind of power to force them to carry programs that they don't want to carry, and they'd like you to do something about it -- the rule to reject, for instance.

CHAIRMAN POWELL: Yes. This has been a long and difficult issue, and we've been criticized for taking so long with it. I will tell you that the Commission is starting to move quite quickly on it, and I think that there is going to be an effort to resolve this fairly soon.

But let's be --

MR. DONALDSON: Can you tell us how soon?

CHAIRMAN POWELL: No.

MR. DONALDSON: Well, a year ago, you said within a year you thought you'd resolve it.

CHAIRMAN POWELL: Well, what a difference a year makes.

MR. DONALDSON: Yes, indeed.

CHAIRMAN POWELL: No. I can tell you that this is going to get done, but let's be clear

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MR. DONALDSON: How? How will it get done?

CHAIRMAN POWELL: Let's be clear about a couple things about the law. The right to reject is the law. You don't need any clarification from the Commission that that is the law. That is not what's at issue. I don't think there's any doubt that as a matter of statutory and regulatory law the local broadcaster has all of those rights, not even rights, has all of those legal duties and obligations to reject to protect the interest that the statute says they should.

What's being asked for here is somewhat more difficult, which is to look at specific contracts between local broadcasters and networks and declare that they have somehow been made to do something that it's illegal for them to do.

Now, we'll look at that as best we can, but that's a delicate question, and I will only leave it at that. I think it is a delicate thing to ask the government to come in and look at your contract that you have signed and say, you know, be careful, help us because we have -- we have not been able to exercise our legal duties, and we have, nonetheless, signed the contract.

So we have to be careful. We think there is a concern here, but there is a delicate balance. The government -- and I feel very strongly about this -- I do not like to be pulled into using the arm of the government as a leverage in contract negotiation. I think that about telephone companies. I think it about everybody. So we have to have the balance that protects the legal interest but isn't going further than it should about the right to contract as you see fit.

MR. DONALDSON: But if we're here one year from today, it'll be done?

CHAIRMAN POWELL: Yes.

MR. DONALDSON: Okay. There are lots of other issues, but, Mr. Chairman, I think we can spend -- time is going -- the next few minutes just looking ahead. I mean, forget the individual issues. Ten years, 20 years, as far as you want to look, what is our general industry going to look like? How will we be serving the public? What will the pipes be? How will the public use them?

CHAIRMAN POWELL: Well, you know, it's difficult and hazardous to look. But there's something I'm very intrigued by, because I think it's the trend of technology, and I think broadcasting won't be exempt from it, which is this era of what I would call the rise of personal communication.

You know, in many ways broadcasting is sort of the original mass medium. It's sort of "one-to-many." And when we talk about broadcasting as a technology and as a business, we talk about it as the community. We talk about it as talking to many. We talk about the benefits that accrue from having a society that shares in something.

On the other end of that, look at the Internet just as the extreme example of that. You're

seeing the rise certainly among your children of the digital generation of highly personalized, individualized, customized news information and entertainment experiences. Just try to yank your 15-year-old son out of the tunnel vision of Xbox.

They have become -- there is a cultural change going on and a technological change going on that I think is really moving toward a highly personalized individualized experience, for better or for worse. And I say that because I think there could be aspects of both.

But just look at people and their cell phones, which I think is the most mass market example. You know, kids are -- kids won't pay 99 cents for full featured music, but they're paying \$1.99 for a ring tone.

I will never understand why my child has no problem going on "Get It Now" and buying a bad version of a song for two bucks but won't pay for the quality version at all. And part of what's going on is this is my personalized device. It has the wallpaper I want, it has the ring tones I want, it has the addresses I want, it's the shape I want, the color I want, I want it to be uniquely mine.

There was an article on the front page of USA Today not long ago that said Starbucks has 19,000 different forms of coffee. Right? You know, that you can have it your way. Burger King is trying to save itself by returning to the "Have It Your Way" ad campaign. It's an interesting phenomenon, and so you ask yourself, for an industry whose premise is almost community, one to many, where does it fit if this trend continues?

So you could say individual content is ultimate diversity, right? The medium gives me exactly what I want, the way I want, exactly what I want. So, hooray, the diversity problem is over. We've solved it. Everybody has exactly what they want. But isn't something lost?

So there is this tension I think between individuals and the community, and I think it's going to be particularly profound for broadcasting because the nature of its medium is the one to the many.

MR. DONALDSON: What about the valuable licenses now held by people who have television and radio licenses if in the future the Internet, satellite transmission, supplants that from the standpoint of using your cell phone, you download anything you want, and you don't have to depend on broadcasters? Where does broadcasting go as a business?

CHAIRMAN POWELL: Yes. It's tough. I'm sure everyone is asking this. The first thing I would say is the rule of the jungle is adapt, evolve, or die. And I think that that's the imperative of Silicon Valley. I think that's the -- Intel's CEO said, you know, that only the paranoid will survive.

There is this unquestionable heated innovation engine going on that's going to be very painful, and I do think the broadcast industry is no more exempt than any of the others. And by the way, I give this speech to every industry in our portfolio. You will have to be involved in massive adaptation and change or you will be left behind by a consumer preference that's moving radically into this space.

You know, the first thing I think about when I look at my kids in technology is they're looking -- they look for mobility and interactivity. They want the thing to go with them, and they want the thing to allow them to participate with the thing.

It's very interesting. Even some of the Nielsen data has showed it. Where are the little boys? Look for them on your television ratings. They're vanishing, and I think they are vanishing because I have some of them. They have vanished into the video gaming world.

And, you know, my kids may be geeky --because they're my kids -- but, you know, we'll go somewhere and those devices are -- do you have this experience? -- unplugged from the wall, put in backpacks, schlepped up, the controls are rolled up, the iPods are packed, and the stuff goes into the car. It's actually connected up in the car. We play on the way to the event, it's packed up and brought into the room, you know, and we have our own special memory cards that we switch out from my experience over your experience.

I think that whatever broadcasting becomes -- and to me, I'd rather think about it as a group of talented, creative community of thoughtful entrepreneurs who have a long history of being able to find what's relevant to local communities. -- whatever that becomes will still be here. Whether it will be broadcasting in the form we know today I don't know. But I do think there will be a role for an industry that is locally focused, that has its finger on the pulse of the people, and that tries to use technology and its licenses to distribute that.

MR. DONALDSON: And still possesses valuable, exclusive licenses? I mean, anyone can have a website now. There are millions.

CHAIRMAN POWELL: Yes, potentially. But the proposition for the government will be -- because I think at the end of the day the government is going to decide if they remain free and exclusive -- is going to be whether the value proposition for the American people rises concomitant with the change.

We're going to -- you're going to have a problem if a Wi-Fi network is matching the quality and experience from the eyes and ears of a consumer with an expensive exclusive over-the-air license. You're going to have a problem in the market.

You're going to have a problem in public policy as well, because I'm going to be forced -- and I already am -- to repeatedly justify why certain bands of the spectrum are held off or exclusively in one service or the other when there is this rapid font of innovation going on other spectrum.

Trust me, there are a lot of people who want your stuff, and a lot of people who want to do very creative and interesting things for consumers. Nothing wrong with that. But they're becoming even stronger and more creative and more -- and a more serious force to deal with.

So if you're a spectrum manager who has to try to maximize utility for the public of the spectrum, you start trying to figure out how much is sort of appropriately allocated here versus appropriately allocated over there, which is why I think this DTV is a serious issue.

I'm okay with you wanting to push back on the Commission and talk about this, but let me give you kind of a warning. I've seen every budget come out of each President of the United States for seven years that calls for a date certain and fees for the DTV transition. By the way, I've seen that from both a Democratic President and a Republic President.

I have seen the rise of the Wi-Fi network. I've seen the rise of spectrum industry that is very hungry to have its hands on enormous swaths of this spectrum, as you might understand. I see the dynamic changing. What you have to be careful about is there has to be a plan.

There has to be greater clarity and a greater vision to the end, because I get worried that the other thing will happen to you, which is the government force will combine at some point to precipitously yank it back or demand fees, which will raise your costs substantially.

So I think that the Ferree idea, you know, is fine, but you should see it in light of even more dangerous things that I think could be afoot if this industry and the Commission don't begin to be seen as earnestly working toward a conclusion.

MR. DONALDSON: I think we have time for a couple of questions. Eddie, I think we do.

If someone wants to come up to these microphones and ask them, we'll be glad to take them. And while people are either coming up or not, I saw one of your other Commissioners here -- I think they're all here as a matter of fact -- Kevin Martin -- and was reminded that he has proposed a family hour, going back to the community service that we talked about. Do you like that idea?

CHAIRMAN POWELL: Let me say this about it, because I've said this to the broadcast community. It's your station. You're the one who exercises editorial control. You're the one who the First Amendment wants to exercise editorial control. The wisdom of how that editorial control is exercised has a lot to do with how far you invite the government into your world.

I would be more than supportive of a family hour if it was something done voluntarily by the industry. I have not worked through whether I would want to impose this as a matter of law. But you own your destiny more than you think.

You know, I watched -- I read -- yes, I have to say this -- I read the press release of a number of broadcasters filing petitions for reconsideration in some of our indecency cases, and I thought it was great because it was creative.

But one of the things I thought to myself is, "Look, nobody has told you to take off half the stuff that's being recited in this statute." But part of the reason for this uproar is because of the decisions of some to run things that push the line -- -- and you know it, right?

I didn't do the Janet Jackson thing in prime-time television when one in five American children are watching. I didn't do that. A broadcaster made a decision somewhere to do that.

Some of the stuff that we have fined in the last few years on radio or television I didn't make the decision to play. Someone in that studio or that artist made that decision to play.

So you can't, on one hand, say we own the right to be edgy, push the envelope, admit that there is an envelope, and then expect that you can't ever cross it, or that you can cross it with impunity and there will be no consequence.

So similarly -- I hate to be preachy -- you own the demonstration that the content and the editorial choices you make also are value-enhancing to the American public, are positive for

children, are advancing of the political process.

You know, I would love to see the broadcasters dramatically increase political coverage for the next year. This is an important election and an important year to be covering it. Many of them voluntarily did so last time. I'd ask them to do the same thing.

MR. DONALDSON: Yes. But talking about creativity, I mean, being able to find an adjective okay, but a verb not -- now that's creativity. That's been reversed, I understand.

All right. A question over here, right here.

AUDIENCE MEMBER: Sam asked this, but -- Sam already asked this, but I was looking for a --

MR. DONALDSON: To do it in a better way, a more informed way --

AUDIENCE MEMBER: I was looking for a more definitive answer. Would you support the extending of content rules to cable and satellite radio?

CHAIRMAN POWELL: The reason I'm not -- I won't answer that when put that way -- is I don't generally support the extension of content rules unless Congress first adapts a statute that specifically empowers the Commission to do so.

Why do I say that? I actually -- this is very important to me -- Congress is a different kind of institution. It has a representative from every district in the United States. It arguably represents the diverse views of a nation of 300 million people with a variety of races, cultures and interests, and different standards of values. And I think that that has to go into the mixing pot of an institution that has all of those views represented and churn out a baseline before you ask a regulatory authority, which is elected by no one, is not directly accountable to the public, to do that without any guidance from the American public through their representatives.

And so the short answer to your question is I rarely support content extensions unless the people's representatives have created a base for doing so. If they created a base for doing so, and it's my duty and obligation, then I will enforce it.

MR. DONALDSON: Okay. Yes, question, sir.

AUDIENCE MEMBER: Good morning. Chairman Powell, Mr. Donaldson, thank you very much for being here this morning.

Chairman Powell, will you please make the distinction between the number of complaints and the number of complainers? The 500,000 complaints -- how many of those were sent from individuals? Is it just one person sending 500,000 letters, or 500,000 individuals?

Also, is there a system in place for balancing those number of complaints, say, 500,000, with the millions or maybe even tens of millions of supporters or, let's say, fans of the programs or the broadcasts that you actually regulate? If there is a system in place, how do you use it? If there is not, do you think that one should be instituted?

CHAIRMAN POWELL: Well, that is actually a great question, because I think you really put your finger on a truth, which is, you know, in our democracy we have -- and, by the way, technology and communications is making this more complicated --- you can e-mail me quite rapidly. You can spam me with a complaint. You can run up the numbers, if you are so motivated, on any issue. And by the way, there are professionals who for a fee will be happy to do that for you.

I find it a very difficult and increasing challenge as a policymaker to try to understand where does the public mind truly lie aside from just the numbers? Because, yes, I cited you a whole bunch of statistics. I don't know right now, could I break them down as to whether there are one or many?

But there are also complexities, like you'll get an advocacy group that purports to speak for a huge audience -- I don't know how many members they have -- and they will have their members write you, and their members have heard what that association tells them is the problem, and you'll get a lot of postcards or you'll get a lot of e-mails.

I can be animated about this, because the same thing happened in the media ownership debate. Now, I hear all the time about how we heard from two million people. You don't hear anything about how three-quarters of them were NRA postcards.

So, you know, the use of numbers and the thing is a difficult thing. I can't break those down for you, but you're right to ask about them, and we have to do the same.

What was the other part of the question?

AUDIENCE MEMBER: How do you balance those numbers of complaints -- say, they're in the thousands -- with the millions of so-called supporters or fans of the programs that you actually regulate or sanction? Is there a method in place of balancing those two numbers for those two opinions? And if there is one, how is it used? And if there isn't, do you think that one should be instituted?

CHAIRMAN POWELL: Yes. You raise a very good point, because I think people who have the other view tend to be somewhat less motivated to wake up, write a letter, and go complain or hold a protest in front of the FCC. And, so you know, its democracy, the squeaky wheel gets the oil. There is that tendency in our system to be focused on the part making all of the noise. And so sometimes I think it is very healthy for the rest of the public to hear that and find a way of expressing that view.

Now, I will say, you know, because they don't get into the complaint process or we publish them, the good thing is we also hear from a lot of people on the other side, and we do take that into account, at least I do as the decision maker instead of weighing the balance here.

You know, whether it's the Janet Jackson incident or complaints about radio, I will tell you, I also get a lot of e-mail from people who say, "Give me a break. What are you doing? This is stupid. Let -- you know, there's no problem here." And I take those seriously, too, because you have a whole range of what to do, right? You can throw the book at somebody, or you can say they're liable but not fine them, like we did in Bono. But that's why I don't like a red book or, you know, "this happens, you have to do this," because then that doesn't allow the breathing space to take into account those two views.

But you always have a problem in the body politic with - - what about the people who are just content and aren't going to get off the couch and tell you about it? In the media ownership data I used to make the same kind of complaint. You know, what about all those frat brothers of mine who are out there laying around watching TV and are perfectly happy with what they're getting? Right? You know they're not going to get up and speak to anybody. They're not going to be in the New York Times or any article. So there's no great answer for that, but it's an important consideration.

MR. DONALDSON: Well, our time is up, and I regret it, because the Chairman is always interesting. I never lay a glove on him.

Thank you, Chairman Powell.

Thank you, ladies and gentlemen.

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