

**Oral Statement
of
Kevin J. Martin**

Chairman, Federal Communications Commission

**Before the
Committee on Commerce, Science and Transportation
United States Senate**

“Open Forum on Decency”

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Thank you for this invitation to be here with you this morning and thank you for holding this forum on this important topic. I look forward to listening to your comments and to answering any questions you may have.

At the outset, you asked us to discuss the proper role of parents, industry and government. I should note that there are many parties involved in protecting children from objectionable programming, but doing so is our joint responsibility. Parents, of course, are the first line of defense. Parents have a responsibility to pay attention to what their children listen to and watch. Industry also has a responsibility to empower parents by offering them more and more effective tools with which to supervise their children's TV watching. Government is the last resort and steps in when these other lines of defense fail.

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 programming ever aired. Indeed, the networks appear to be increasing the amount of programs designed to "push the envelope" – and too often the bounds of decency. For instance, the use of profanity during the "Family Hour" increased 95% from 1998 to 2002.¹ Another recent study found that 70 percent of television shows in the 2004-2005 season had some sexual content, and the number of sexual scenes had nearly doubled since 1998.²

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 concerned and increasingly frustrated. Time Magazine conducted a survey in March of this year that documented this trend. Sixty-six percent of people believe there is too much violence on television; 58% believe there is too much cursing and sexual language; and 50% believe there is too much explicit sexual content.³ Similarly, another recent poll found that 75% of people favored tighter enforcement of government rules on television content during hours when children are most likely to be watching.⁴

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 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.

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 TV 4," at 20, 22 (Nov. 2005).

³ James Poniewozik, "The Decency Police," *Time*, March 28, 2005, at 24.

⁴ The Pew Research Center For The People & The Press, "New Concerns About Internet and Reality Shows: Support for Tougher Indecency Measures, But Worries About Government Intrusiveness," at 1 (April 19, 2005).

Parents need better and more tools to help them navigate the entertainment waters, particularly on cable and satellite TV. Congressional statutes already prohibit indecency and profanity on broadcast radio and television, and by enforcing these provisions we can help deter media companies from putting indecent programming on broadcast. But this will not help address the growing problem of the increasing amount of coarse programming on cable and satellite, and the lack of tools parents have to avoid supporting the programming they do not want to let into their homes.

As I stated earlier, parents need to be more involved in supervising what their children are watching. For the last three years, I also have been urging the cable and satellite industry to take steps to give parents more of the tools they need. Thus far, there has been too little response. There has been an aggressive marketing campaign to increase awareness of blocking capabilities led by my good friend Jim Dyke, but these capabilities are available only to those parents who pay for digital cable. Today, only about 25% of households subscriber to digital cable and, even in these households, digital cable is not available on every TV in the home.

While I always support providing parents with additional information, I think the industry needs to do more to address parents' legitimate concerns. I continue to believe something needs to be done to address this issue, and the industry's lack of action is notable. I have urged the industry to voluntarily offer one of several solutions.

First, 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 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. Indeed, some cable and DBS operators are already providing tiers such as digital sports tiers and Spanish-language tiers.

Alternatively, the programming that cable and DBS operators offer in the expanded basic package could be subject to the same indecency regulations that currently apply only to broadcast. This standard would apply only to channels that consumers are required to purchase as part of the expanded basic package, not premium channels.

This solution would respond to the many people calling for the same rules to apply to everyone—for a level playing field. Indeed, today programming that broadcast networks reject because of concerns about content may end up on competing basic cable networks. 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 should be considered.

Indeed, some programmers are actually supportive of this option, and I appreciate their recognition of the problem and willingness to try to find a solution.

Finally, another alternative is for cable and DBS operators to offer programming in a more a la carte manner, giving consumers more choice over which programs they want to purchase. This option could be implemented in a variety of ways.

For example, it could be limited to digital cable customers and customers could still be required to purchase the broadcast basic package of must carry stations. Parents could then be permitted to “opt out” of cable programming, requesting not to receive certain cable channels and having their package price reduced accordingly. Alternatively, parents could be allowed to “opt in” to particular cable programs beyond the basic package, which still would include broadcast must carry stations. This is how premium channels are offered today.

Another option would be to allow consumers to choose a specific number of channels from a menu of available programming for a fixed price – e.g., 10 channels for \$20, 20 channels for \$30 etc. Parents then would be able to receive – and pay for – only that programming that they are comfortable bringing into their homes.

Last year, former Chairman Powell and previous staffer Ken Ferree submitted a report to Congress concluding that a la carte and tiered pricing models (such as a family tier) were not economically feasible and were not in consumers’ interest. I had many concerns with this report, including the logic and some of the assumptions used. I asked the Media Bureau as well as our Chief Economist to take a more thorough look at the issue. The staff is now finalizing a report that concludes that the earlier report relied on problematic assumptions and presented incorrect and incomplete analysis.

For example, the report relies on a study that assumes that a move to a la carte pricing will cause consumers to watch nearly 25% less television. It seems unrealistic that we would see this kind of decline in viewership simply because consumers could purchase only those channels they found most interesting.

Second, the report relies on a study that makes mistakes in its calculations. For example, the report fails to net out the cost of broadcast stations when calculating the average cost per cable channel under a la carte pricing. As a result of this mistake, the report understates the number of cable channels a consumer could purchase under a la carte pricing without seeing an increase in their bill.

Third, the First Report presents only one side of the economics literature and only presents one side of the Booz-Allen-Hamilton Report. For example, nowhere does the First Report mention that the Booz-Allen Hamilton Report shows that if we ignore additional set top box costs (as would be appropriate if a la carte pricing were only imposed for digital cable systems with appropriate set top boxes in place), then a la carte pricing could result in a 1.97% *decrease* in consumers’ bills. The First Report focuses only on results from the Booz-Allen-Hamilton Report that indicate an increase in consumers’ bills.

Based on a more complete analysis of the costs and benefits of bundling and the potential costs and benefits of a la carte pricing, this further report determines that the First Report incorrectly found that offering of cable programming in a more a la carte manner would be economically infeasible. It also concludes that doing so in fact could be in consumers' best interests. Finally, it explores several alternatives for increasing consumer choice that could provide substantial consumer benefits if their provision were mandated.

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In conclusion, I share your concern about the increase in coarse programming on television and radio today. I also share your belief that the best solution would be for the industry to voluntarily take action to address the issue. But I do believe that something needs to be done.

Thank you.