Remarks of Commissioner Robert M. McDowell

National Religious Broadcasters
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Thanks, Robert, for your very kind remarks. It's a pleasure to be back with you to discuss some of the broadcast policy matters that are so important to our country's future. The FCC has more energy these days as we are now back to our full five-member team. The bulk of the Commission's resources these days appear to be devoted to net neutrality and the crafting of the congressionally mandated National Broadband Plan. Congress has given us until February 17, 2010 – what is it about that day in February? – to deliver a document meant to guide policymakers on broadband investment, adoption, and deployment issues for years to come.

Of course, broadcasters should pay attention to the greater broadband debate. Your technology is a major sector within the greater world of wireless, and although no one can forecast the future with perfect assurance, it seems likely that the demand for high-speed wireless audio, video and data services – singly or mixed together in various combinations – will only increase. That plainly poses risks for long-term viability of the traditional broadcast business model, but it also offers opportunities. Religious broadcasters have been among the most lively experimenters and content providers on the web, and I have a hunch that same spirit of innovation in advancing your mission will continue as broadband evolves.

Some media-related concerns are timeless, however, and the Commission soon will venture deeper into one of our most important – and, to be honest, most challenging – policy areas: children's media. At the end of August, we delivered a lengthy report to Congress under

the Child Safe Viewing Act. That law required us to gather information about the existence and usefulness of "advanced blocking technologies" that allow parents to shield their children from inappropriate video and audio content distributed across a wide range of electronic systems and devices. Our 90-page Report provides an overview of filtering technologies that have proliferated across broadcasting, cable, satellite, wireless, and Internet platforms. It does not, however, offer qualitative judgments by the Commission on how well the existing technologies satisfy the demands of parents and needs of children.

That step could be coming next. Some lawmakers and some commenters in the proceeding have asked us to make recommendations for improving upon today's filtering options. I hear that we soon will launch a new inquiry that may ask pointed questions about why some parental-control mechanisms aren't attracting much usage by parents and what, if anything, the government can or should do about that. As the father of three young children, I am personally quite interested in the availability and usefulness of filtering technologies. As a regulator, I want to make sure that whatever we do is faithful to Congress' intent and the Supreme Court's view of our action's constitutionality. In short, it's awfully nice to be upheld on appeal.

The best-known filtering technology for television is the V-chip, which works in conjunction with the "TV Parental Guidelines" developed voluntarily by the broadcasting and cable industries. That's the system associated with those icons that pop up in the corner of your screen – "TV-7," "TV-14," and so on, with a bunch of additional letters meant to warn about sexual or violent content. Commenters such as the Parents Television Council have criticized the implementation of the industry ratings scheme as too lax. Other commenters tell us it is too complicated, confusing and ineffective. To address that problem, some ask us to consider

developing a unified ratings system that could apply across all electronic content, from movies to TV to video games. But that concept seems in tension with another idea that the Commission has tentatively embraced in the past, which is to foster TV filtering technology that allows for the use of multiple, differing rating schemes that might better satisfy the needs and demands of individual parents.

In short, as you can tell, historically this has been a challenging area for regulators. Content regulation generally is. Certainly the Commission's authority to police broadcast indecency has been challenged repeatedly in recent years, and that is likely to continue. In April, the Supreme Court upheld the FCC in the *Fox* case, which involved "fleeting expletives" by celebrities at two awards shows. Although that decision addressed only procedural arguments, I am hopeful that the court has provided us enough certainty to move forward on our massive backlog of more than 1.3 million indecency complaints, many of which are older than some of my children.

But the legal battle in *Fox* is not over yet. The April decision did not resolve the First Amendment issues, which have gone back down to the lower appellate court to consider. Observers expect the dispute to end up back in front of the Supreme Court, probably in about two years' time.

Let me digress for a moment to emphasize, however, that the FCC should not delay adjudicating our mountain of indecency cases because we are facing appeals. We are *always* facing appeals. If we held up every bit of Commission business affected by litigation, we would never decide anything. Whether you are a broadcaster or complaining consumer, I hope that you agree that acting on indecency cases is something we are paid by the American taxpayers to do. It is our job, and we should do it.

During my second week on the job, in June of 2006, I was invited to attend the bill-signing ceremony where President Bush signed into law legislation that had passed Congress with a huge majority – a huge bipartisan majority. [The House of Representatives passed the Broadcast Decency Enforcement Act by a vote of 379-35, and the Senate approved it by unanimous consent.] That bill increased tenfold the fines to be imposed on broadcasters for airing indecent content. It didn't change the standard by which indecent broadcasts should be judged, but it was a clear signal from the directly elected representatives of the American people that the FCC should do its job and make some tough decisions. And we should, as a matter of good government. I welcome all guidance from the courts, but there is no reason for further delay.

If the case does return to the high court, it's possible that the decision could have implications that reach beyond broadcast indecency. As we move forward, all of our broadcast content regulations sit on an increasingly unstable legal foundation. Anyone who doubts this should just read Justice Thomas' concurrence in the *Fox* case. I hope that the Commission bears that in mind in the coming months, when we may face increasing calls – in the context of our next media ownership review – to act on various "localism" proposals, such as mandates requiring community advisory boards and shortened license terms. In the same vein, our "Enhanced Disclosure" form for TV stations remains hung up, thankfully, at the Office of Management and Budget, where broadcasters made the case that the complex form is so overly burdensome that it violates government paperwork laws. Radio licensees should be grateful that the TV folks were in the cross-hairs on the form first, but it is quite possible that all broadcasters eventually will be filling it out and posting it on station websites. Keep in mind that some have estimated that the form would require each broadcaster to hire up to two more employees to do

nothing all day but fill out the form. Back in 2007, it was reported that one advocate of the reporting form retorted, "But that's a good thing. That's job creation." Anyway, I hope that the Commission reconsiders the need for the enhanced disclosure form and sends it to "government-form Heaven" as soon as possible.

Let me close by touching on another issue that I know concerns many NRB members: the possible return of the Fairness Doctrine. Your association for years has provided thoughtful analysis on the legal and policy problems inherent in what some call the "Censorship Doctrine" – but which I just call "the Doctrine," to be fair. The Obama Administration and Chairman Genachowski have on several occasions stated that they are not interested in reviving the Doctrine. That is good to hear, but I will continue to speak out every now and then about my concern that a series of new broadcast regulations, operating in tandem, could achieve the old Doctrine's "viewpoint balancing" objective through a different route. If, for instance, the Commission were to require stations to fill out content-prescriptive disclosure forms that hinted at the government's programming preference, then coupled that action with shorter license terms and mandated community advisory boards empowered to shape programming decisions, wouldn't we be back to where we were before 1987? Political speech control by big government is something I will always fight to prevent.

This is no longer a short speech, for which I apologize. I'd like to stop here and let you guide the rest of our conversation with your questions and comments. I learn at least as much as you do, if not more, from our exchanges.