

**STATEMENT OF  
COMMISSIONER ROBERT M. MCDOWELL**

*Re: In the Matter of Violent Television Programming and Its Impact on Children,  
Report to Congress*

As the father of three young children, I am deeply concerned about the coarsening of television content and the effects of television violence on children. As a society, we should do all that the law allows to help shield our children from harmful television content. Today's Report is a response to Congress' 2004 request that the FCC provide a comprehensive summary and analysis of the factual and legal landscape surrounding this issue. Although I would have preferred a more thorough study, I support this Report as a well-intentioned, if not complete, first step toward launching a new national dialogue on this important matter. The Report provides a helpful summary of the social science research regarding the effects of exposure to violence in the media on the behavior of children. It provides a preliminary discussion of the effectiveness of the TV ratings system and blocking technologies and of the issues regarding how government may define violence for regulatory purposes.

Congress may wish to build upon what the Commission has started by digging deeper into the issues we raise today. For instance, further discussion should probe into many areas by better researching the answers to many important questions, including:

- What additional actions can parents take to protect their children?
- How can industry and government help educate parents regarding their options?
- How effective are screening and content selection technologies that are currently available to families? and
- What constitutional challenges lie ahead should Congress and the Commission decide to enact and implement a new anti-violence regime?

In my view, the next step should be to review fully the screening and content selection tools parents currently have and find ways that industry and government can help educate parents regarding those options. Parents should be the first and last line of defense in protecting their children from excessively violent content, or any other content that may cause harm to children. Unfortunately, today's Report does not sufficiently brief Congress on the full range of tools available or what can be done to mobilize parents in this pursuit. I hope that our Report does not lull some into thinking that government action alone is the answer to the television violence pandemic. By itself, government action would be an insufficient cure. Even if Congress were able to enact flawlessly worded legislation that enjoyed perfect enforcement, parents play the most important role in deciding what is appropriate for their families. While government can and should do all that it can to protect children, parents should not shirk their primary responsibility to be actively engaged in their upbringing.

Fortunately, today's parents have at their disposal more choices in parental controls and blocking technologies than ever before. Never have parents been more empowered to choose what their children should and should not watch. Since January 2000, as required by Congress, all TV sets with screens 13 inches or larger come equipped with the V-chip, which allows parents to block programs based on the TV rating assigned to those programs. Cable operators provide parental controls in both their analog and digital set-top boxes, with more advanced controls in the digital boxes. DBS subscribers have access to parental controls that allow blocking by channel, by program, by time and/or by TV rating. Tivo offers KidsZone, a tool that combines editorial recommendations from experts with technology for parents to select the shows they want their children to watch. Moreover, all consumers have an unprecedented amount of control over what they watch and when they watch it through DVDs, programs that are downloadable from websites and through time-shifting technologies such as digital video recorders.

As discussed in the Report, however, research has shown that while the vast majority of parents are concerned about violent content on TV, very few of them use most parental controls. It seems that many parents do not have sufficient knowledge about these technologies, and about the TV ratings system, to use parental controls effectively. Industry and government should encourage additional consumer education so that parents can learn about the tools available to them. Campaigns aimed at educating parents, such as [thetvboss.org](http://thetvboss.org) and [pauseparentplay.org](http://pauseparentplay.org), are a great start. Their websites provide detailed practical information about the V-chip, cable and satellite controls and TV ratings, among other things. Also, groups like Common Sense Media and the Parents Television Council offer reviews of TV shows and movies to help provide guidance to parents. More needs to be done, however, to make a connection between parental concerns about content inappropriate for their children and parental use of tools that will help them make and enforce their programming choices. I strongly encourage the private sector and public interest groups to continue their work in this pursuit.

Meanwhile, even though the market is developing and promoting technological solutions that may help parents control the television content that their children view, Congress still may deem it necessary to place statutory restrictions on the broadcast of excessively violent content. The Commission would be remiss if it did not underscore to Congress that such a voyage, although noble in its goal, will lead us through uncharted constitutional waters. I am disappointed that this Report does not provide more than a cursory mention of these important legal issues. It fails to illuminate a path for Congress to follow in order to safely avoid what legal pitfalls may lie ahead. Should Congress pursue the laudable endeavor of protecting America's children from excessive television violence through new statutory mandates, it should first take the step of seeking additional constitutional legal advice. Any action should be conducted in a prudent manner that withstands constitutional muster. The 39 House members who directed us to conduct our inquiry demanded as much when they asked the Commission specifically to address in this Report the "constitutional limitations" in defining "excessively violent programming that is harmful to children" or in "constraining or prohibiting broadcast of

such material during hours when children are likely to be a significant or part of the broadcast viewing audience.” I fear that our Report may fall short of their request.

Additionally, this Report briefly outlines court decisions upholding the Commission’s authority to regulate the broadcast of indecent content by restricting the airing of such content during certain hours. I note that the brief constitutional discussion in the Report focuses solely on the regulation of broadcast television. Other possible mandates mentioned in the Report, such as requiring MVPDs to provide channels on family tiers or on an à la carte basis, would require the regulation of non-broadcast entities, possibly cable operators, DBS providers and other MVPDs. Accordingly, before Congress adopts any of these possible mandates, I suggest that Congress seek analysis of such regulation under the applicable constitutional standard. Potential Congressional action against television violence based upon our Report should only be considered in the limited context of broadcasting because the Commission has not offered sufficient legal analysis to support broader regulation.

In sum, I support this Report and hope that it is helpful to Congress. This is only the first step in what I hope will be a comprehensive study of governmental options to inform the national debate over television violence. The governmental interest at stake – protecting children from excessively violent television programming – is powerful, of course. Nonetheless, historically, courts have balanced similar interests against the First Amendment rights of broadcasters with mixed results. As our experience with the indecency laws has shown, enforcement of such regulations involves the difficult task of defining the inappropriate content and then applying that definition in the context of specific programming. Defining excessive violence in a legally sustainable way and applying that definition will be at least as difficult. As recent tragedies have reminded us, we live in an often violent world. News reports, documentaries and other television programs must address violent topics, almost by necessity, which makes defining excessive violence that much more difficult. While we should encourage Congress’ further examination of this issue, having a new statutory regime regulating television violence overturned by the courts on constitutional grounds only would undermine the very crusade against television violence that any prospective legislation may intend to address. Such a defeat could set back the cause for years. In the meantime, as a society, we should do all that we can to achieve our goal through all available means. Our children deserve no less.