

**DECENCY IN BROADCASTING, CABLE, AND OTHER  
MEDIA**

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**HEARING**

BEFORE THE

**COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION**

**UNITED STATES SENATE**

**ONE HUNDRED NINTH CONGRESS**

**SECOND SESSION**

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**JANUARY 19, 2006**  
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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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## **DECENCY IN BROADCASTING, CABLE, AND OTHER MEDIA**

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**THURSDAY, JANUARY 19, 2006**

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:04 a.m. in room SD-562, Dirksen Senate Office Building, Hon. Ted Stevens, Chairman of the Committee, presiding.

### **OPENING STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA**

The CHAIRMAN. Thank you all for coming. Senator Inouye and I announced a series of hearings, 15 in total, dealing with issues related to communications. We are going to have a continuation of the forum we started in the past, back in November, and at that time we had family groups, broadcasters, cable, satellite, radio, TV, artists, and videogaming representatives. That forum was for the purpose of exploring what we could do to stimulate some voluntary action, because it is my opinion that we could go for the hard mandates. But if we did opt for the hard mandates, those would be held up in court, and it would take years before changes, which the American public and family demand, take place. So, I am pleased that the industry has responded.

We are going to hear today about some of the solutions in terms of family tier offerings. I will leave it to you gentlemen to announce what those are, but very clearly what we have seen—yesterday I went down and visited the demonstration of some of these new technologies, particularly the V-Chip and the blocking technology.

From my point of view, the industry and Jack Valenti personally are to be commended for their efforts to make it easier for parents to control what their children watch. I think that is the basic objective right now. I understand we are going to hear today about a new initiative to educate parents on how they can really govern what their children watch and that they have the tools to do that if they can learn how to use them. That initiative, also, we will be pleased to hear about today.

There are still people who believe that mandatory legislation may be necessary, and we are here today to hear from different groups about what has happened so far and what further legislation they may be interested in. We are going to have to work with Members of our Committee to develop a bipartisan consensus to get a bill to the floor as soon as we can. These hearings will help us determine the outlines of legislation that will be acceptable and

will advance the concepts that have already been explored, particularly by Senators Brownback, Rockefeller, Wyden, and others.

I think I can speak for my Co-Chairman to say that we feel that, with 85 percent of viewers today watching cable and satellite, we should try to explore this voluntary option first. The First Amendment does impose some restrictions, constraints, on what Congress can mandate. As I said in the beginning, whatever we mandate is going to go to court. Whatever we work out in a consensus basis is going to happen now, and I think we ought to find a way to respond as quickly as possible to the requests of our family friendly audiences to see if we can accomplish what was accomplished before with the movie industry when they worked out the ratings system.

I know the FCC is working on an a la carte study and I think we should proceed to see how these family tiers work and wait for the FCC to act before we review or attempt to discuss a la carte legislation. It is still out there and it will have to be discussed some time, but I do believe these voluntary efforts may result in the kinds of choice and kind of controls that parents have requested and that family groups have demanded.

Senator Inouye, do you have an opening comment?

**STATEMENT OF HON. DANIEL K. INOUE,  
U.S. SENATOR FROM HAWAII**

Senator INOUE. I thank you very much. As noted by you, we continue this discussion we began in the past November. At this juncture, I would like to thank Jack Valenti and Mr. McSlarrow for the efforts they have undertaken to resolve this matter before us. But, obviously, we have much more to do.

I would also like to commend Senator Rockefeller and Senator Hutchison for the efforts they have made in drafting legislation.

Mr. Chairman, I have a much lengthier statement. May I have that put in the record?

[The prepared statement of Senator Inouye follows:]

PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII

Today, we continue the discussion on broadcast decency. We have seen some important developments since our November 29th forum, but we still have work to do. We all appreciate the efforts that Jack Valenti and Kyle McSlarrow have undertaken to address how best to protect our families from viewing indecent and violent materials on TV.

We have a difficult task ahead of us, but one that must succeed in many areas—indecent, violent content and sanctions.

The Kaiser Family Foundation's most recent study, released in November, provided further evidence that racy TV programming remains increasingly prolific. The networks have little incentive to reverse this trend, as it continues to attract viewers and market share.

At a minimum, we hope to provide parents with the information and tools to control the flood of materials they can view at home. We also have a number of legislative proposals before the Committee that would raise fines and impose other remedies.

While indecent content continues to receive the lion's share of attention, violent content is an equal concern. Violent content has proven to have a strong, negative, anti-social effect on young viewers, so it is essential that we address TV violence as well. Senator Rockefeller's and Senator Hutchison's legislation wisely emphasizes this issue, and I am an enthusiastic cosponsor of their bill. I hope that the Committee will consider their proposal in the near future.

I thank our witnesses for their continued participation in this effort.

The CHAIRMAN. Yes, sir.  
 Senator Burns, do you have a comment?

**STATEMENT OF HON. CONRAD BURNS,  
 U.S. SENATOR FROM MONTANA**

Senator BURNS. I do. I will wait until the questioning starts, Mr. Chairman. Thanks for this hearing though. We are drifting into an area now where we have to deal with some definitions one of these days, and we all define different words differently. If we can do that, why, we can probably solve some problems. So, I will withhold any kind of statement. I know it is one that we hear every day from our constituents and one that is a great concern of all of us. So, I will just wait until I will sort of make my statement through the questions that I ask.

Thank you, Mr. Chairman.  
 The CHAIRMAN. Thank you.  
 Senator Rockefeller.

**STATEMENT OF HON. JOHN D. ROCKEFELLER IV,  
 U.S. SENATOR FROM WEST VIRGINIA**

Senator ROCKEFELLER. Thank you, Mr. Chairman. My statement is short.

First, I have to not only thank you and the witnesses, but also declare a substantial amount of guilt, because I have been hoping for this hearing for a long time. We are having it, courtesy of you and the Co-Chairman. We had a mine accident in West Virginia where a number of lives were lost, and starting at 10:30 we are having a whole series of briefings to get ready for a trip down there tomorrow. So, I feel silly because this amendment is something I have been pushing for and I cannot stay for it.

Let me just say a couple of things. I think that any programming option that gives consumers more choices is by definition a good thing, and I think the companies that have pledged to offer a family tier should be commended for taking the step. But I do not believe that voluntary actions alone—and it is not just mandatory versus voluntary, there are shades of that description—but that voluntary actions alone are sufficient to address the issue.

I know the Committee has spent a lot of time on this in discussing it, examining the most appropriate manner to address indecency issues, which I expand very much to include the nature of violence. But I think it is time for the Committee to take action, and hence, the legislation which the Co-Chairman indicated.

I along with Senator Hutchison have introduced comprehensive legislation about a year ago and it addresses these issues that our witnesses are going to discuss. Our bill would provide the tools—it is not mandatory in the way that I think the Chairman mentioned it. Our bill would provide parents the tools they need to protect children from indecent and overly violent programming. I still believe that we need to address the root cause of the issue, the ever-increasing level of indecent, really absolutely extraordinarily indecent and violent content that television is presenting, commercial television is presenting to us. Each year it gets worse and worse.

Creating tiers of programming is a good step, but I believe it is not enough and that if we are going to make a substantive change in what programming is actually shown, we have to do a bit more. So, Mr. Chairman, we simply cannot declare victory in addressing this significant problem. As I say, voluntary actions alone will not serve the majority of my constituents, as the cable companies in West Virginia who serve the vast majority of consumers, obviously, have not adopted family programming tiers as of yet.

I still maintain that my legislation, Senator Hutchison's and my legislation, is compatible with the industry's voluntary efforts. That is never the way, however, that it works when one is considering the chemistry and karma of all of this. Our legislation only requires that the FCC, which is not a Federal law but an institution, to determine if existing technologies are in fact effective or ineffective at protecting our children. Is it too complicated? If it is not, is it doable? If they determine that it is, then so be it.

But if they determine that it is not, that it does not protect our children from offensive content, then the content regulation of cable and satellite programming would occur. If the industry's commitment to consumer awareness, technology advancements, and new programming options are commercially successful, the FCC may find that existing efforts to keep children away from violent and indecent programming is working. It will be up to them, not to us, and further regulation, therefore would not be needed.

But let us have the FCC make this determination, not the industry. We have tried decades of self-regulation in many areas, in some to effect, many to little effect. One needs only to look at the current spate of programming, as I have said, to realize that television programming is not on the upswing in terms of nobility.

Now, I recognize that we can get in trouble here because people can always say you can always purchase the family tier and this creates a problem, but it is something that we can discuss today.

Again, I want to thank all of you witnesses for being here. I hope that you will pay especially close attention to Jeff McIntyre from the American Psychological Association. He is going to speak about the effects of television violence—that is my thing—on children. Television violence is a public health hazard. I know people have read lots of things about it, but Jeff speaks with great authority and I think this Committee must absolutely address this issue along with indecency.

Television is such a huge part of our lives, we just cannot pretend that it is just, do you prefer Tootsies or Milky Ways, Tootsie Rolls or Milky Ways or M&Ms or whatever. This is a very, very serious matter and we have to do the right thing for the people who we represent.

So, I thank the Chairman. I apologize once again and I will stay here as long as I possibly can.

The CHAIRMAN. Senator Lautenberg.

**STATEMENT OF HON. FRANK R. LAUTENBERG,  
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. Thanks, Mr. Chairman. Obviously, I come here with grandfatherly credentials, concerned about my grandchildren, what they are seeing, looking at the dilemma that we face



as a society. Where do we cut off the flow of information and where do we try to regulate behavior, adult behavior, and conduct in their lives, when there is a pretty hefty appetite for the material that is salacious, that has violence connected with it?

On the violence side, not infrequently we hear about a youngster, behavior by a youngster, violent behavior, who suggests that he or she was stimulated by something he or she saw on TV. The violence side is, I think, as dangerous to our national health as is the prurient material that comes through.

Now, 3 years ago the FCC levied the largest fine in history, \$1.2 million, against FOX for an outrageous episode of a television program called "Married by America." FOX protested the fine, and even argued that the FCC should not have the right to regulate broadcast programming. A year later, a coalition of groups called on the FCC to investigate FOX for its show "Boston Public," which also featured inappropriate material in prime time.

Last year, the Parents Television Council, headed by one of our witnesses today, filed another complaint about yet another FOX program, "The Inside." I want to point out that FOX is not the only offender, just one that's really highlighted by their choices.

Parents are fighting to protect their children. They need help, and it is not enough to create the technology like the V-Chip because we have to make sure that parents understand how to use these tools to screen out the programs that can harm young children.

The cable and satellite industries' proposal to create packages of programming appropriate for family viewing is a good first step, but there are some troubling aspects because of what is included in the family package. For example, I understand that the initial family packages will not include sports programming; no ESPN if you want the family package. Well, frankly, I do not know why a family has to choose between protecting their children and being able to watch one of the most interesting areas of attention, the sports action that we see. No reason for it. It almost seems like an invitation to an unmarketable package, and I think we have got to be very careful.

Mr. Chairman, we do not have all the answers, but I know that we have got to take steps to help parents stem the tide of filth that threatens our children and our grandchildren. I thank you for calling this hearing and I look forward to hearing from our distinguished witnesses.

The CHAIRMAN. Senator Allen.

**STATEMENT OF HON. GEORGE ALLEN,  
U.S. SENATOR FROM VIRGINIA**

Senator ALLEN. Thank you, Mr. Chairman, for holding this hearing, and I appreciate these outstanding gentlemen and leaders who have shown great concern for this area in the past and are trying to devise some appropriate measures for us as parents. I speak not as a grandparent, but as a parent, and trying to make sure on our cable and broadcast TVs that our children are watching the right shows, they are not watching shows that have inappropriate things for their eyes and ears.

I do think some of the voluntary approaches in the past have helped parents make decisions, particularly in DVDs. When you are looking at these DVDs, you see what they say about them. The same with videogames, which I think is another area that needs to be looked at, so far as violence and inappropriate behavior, and how that might affect or stimulate the minds of young people.

Regardless, the First Amendment is very important. It protects our freedom, freedom of religion, freedom of—

The CHAIRMAN. Senator, allow me to interrupt.

Would you please turn off your cell phones. Thank you very much.

Senator ALLEN. There are reasonable restraints on your First Amendment rights of communications.

[Laughter.]

Senator ALLEN. This is reasonable and it is an appropriate protocol. You do have a First Amendment right to express yourself and petition your government, but you should not be having interference with it.

We do have standards and there are some of us who feel like the standards have been violated. When standards are violated, you need appropriate penalties to deter such behavior.

I do think the responsibility first is on the part of the parents as an individual. There also is a responsibility, and I think all these gentlemen and others who are on this panel recognize, there is a responsibility on, whether it is the transmission of content or the creative content providers, to empower or make sure that parents have these options and, for that matter, all consumers have options to know what they are purchasing or viewing.

I do think that the labeling and the parental control technology has been an improvement, and it is voluntary and I think there is a good demand for it. I do applaud what cable and satellite providers have come up with. Mr. Chairman, it is from that hearing when Kyle McSlarrow came in here and said: All right, we are going to have this family tier. I rarely agree with the Senator from New Jersey, the senior Senator from New Jersey. To have a family tier and not have sports on it, in our family it would not be proper family programming. So, you are going to have to come up with a family tier plus sports.

As you put together these different packages, I think you are going to find that the marketplace is going to want to have that. If your kids are coming to visit Grandfather Frank, whatever they call you—

Senator LAUTENBERG. That is what they call me.

Senator ALLEN. Do they?

Senator LAUTENBERG. Just leave out the “Grandfather.”

Senator ALLEN. All right. Well, just “Grand-Frank.”

They are going to be wanting to watch a basketball game, West Virginia playing someone, or they are going to want to watch a football game, and that should be part of it. But that is something I believe that the marketplace should be determining rather than the government determining it. I think that whether it is EchoStar or whether it is Comcast, whether it is Cox, whether it is Time Warner, they are going to find consumers saying, this is what we

would want, and I would hope they would react as the free market-place normally does to the demands of consumers.

So, Mr. Chairman, I look forward to hearing the insight from these three gentlemen and also those on the second panel as to how we can effectuate these desires, that I think all of us should share, to make sure that parents have the ability to have control over the content that their children see and hear over their television sets.

I thank you, Mr. Chairman.

The CHAIRMAN. Well, thank you very much.

I hope you all go down and see this demonstration at the Hall of States, because when you do, you will find one of the reasons you cannot include sports in those packages is that sports programs are not rated. If you tell the family tier that you want only those things that are rated for families, sports are excluded because they are not rated. The simple thing is that the people who are putting out sports programs are going to have to rate them, and if they do, they are going to have to take the liability if they provide something in a sports program that offends families.

Our first witness is Jack Valenti. Delighted to have you here as an old friend of all of us and the Committee. I again thank you for your leadership in the meetings you have held since we held our forum in November. Jack.

**STATEMENT OF JACK VALENTI, FORMER CHAIRMAN/CEO,  
MOTION PICTURE ASSOCIATION OF AMERICA**

Mr. VALENTI. Mr. Chairman, Senators: There takes place in America the enterprise called surveys, polltaking. Over the past several years a lot of polls have been taken and they ask two significant questions that are much connected to this hearing. One question is: Do you, Mr. and Ms. Parent, find many or some TV programs that you think are unsuitable for viewing by your children? The answer from 70 to 80 percent is yes.

Then they ask a second question: Do you believe that the government ought to step in to fix this problem? The answer with 70 to 80 percent is absolutely no.

So it seems to me that we need to listen to the people that you around this dais today are attempting to help and to aid in how they protect their children from that which they find to be unsuitable. So, what I think the answer is that right now every parent in America, with a few exceptions that does not have television and does not have the problem, has the power, the total power to control all television programming that is dispatched to their home today. We do not have to wait for legislation or any kind of government intervention.

So what I present to you today is something that is unique. For the first time, an assembly of all the ingredients, elements, people, enterprises, entities who make and dispatch visual programming to American people, they have come together for the first time. Their mission is to be able to pass along to parents the easy, understandable ways they can use to control that programming.

Now, here is our plan. First, we are bringing in the Ad Council. The Ad Council, for those of you who do not know, is the most respected element of its kind in this country. For many years they

have brought together the largest, most successful and most effective advertising agencies and public relations agencies in the country to offer to the public information and educational material about issues that affect this country.

They are now going to come in, and with their linkage to all the advertising agencies and PR agencies in the country, devise and create messages, simple and easy to understand, so that parents recognize now that all the power they need to control programming is in their hands and no one else.

Number two, all of the people involved in this assembly, which are the makers of movies and television programs, cable systems, direct broadcast satellite, individual television stations, national networks broadcasting, as well as the makers and sellers of consumer electronics products, for the first time, are brought together. This has never happened before. That makes it unique.

All of these people are going to air these messages over and over and over and over again for a duration of at least 18 months.

Number three, for the first time, we are reaching out to retail stores and makers of television sets, and the Consumer Electronics Association is going to provide them all kinds of materials which will tell people who come into a retail store: this television set has a V-Chip and here is how it works.

Number four, the logo ratings that you see, Senators, on these television programs are going to be shown not only at the beginning of the program, but also after each commercial break, so that parents are constantly informed as to the rating of that particular program.

Finally, for the first time we are going to reach out to churches and parents advocacy groups by sending them this kind of educational material, which they can then duplicate and send to their congregations and to their members.

So, what we have, we believe again for the first time, is a well-coordinated program whose mission solely is to inform and persuade the American people that they have this power in their hands today. I urge you to confirm what the Chairman had just said. If you just walk a couple of blocks, or however you get there, by whatever conveyance, to watch these demonstrations of the blocking mechanisms that are on EchoStar and all the other broadcast satellites, on cable systems and on over-the-air television, it is remarkable. It is simple, and even a technological innocent like myself after a couple of times gets the hang of it pretty easily.

This is what we are going to try to present to the American public. The beauty of us, Mr. Chairman and Senators, is we do not torment and torture the First Amendment. This is voluntary, because you are dealing in extremely sensitive material here. We all know that the best way to deal with this through voluntary means.

I can tell you this. The motion picture industry 37 years ago put in a voluntary film rating system, which today, in the latest polls, as of last September, by the Opinion Research Corporation of Princeton, New Jersey, found that 79 percent of all the parents in this country with children under 13 found these ratings very useful to fairly useful in helping them decide the movie-going of their children.

I will be glad to answer any questions. I see this red light, this Cyclopean eye over there, so I will listen to its admonitions. Thank you very much.

[The prepared statement of Mr. Valenti follows:]

PREPARED STATEMENT OF JACK VALENTI, FORMER CHAIRMAN AND CEO, MOTION PICTURE ASSOCIATION OF AMERICA

A PLAN TO COMMUNICATE TO PARENTS THAT THEY HAVE THE POWER TO CONTROL ALL TV PROGRAMS IN THEIR HOMES

### **Preface**

This is a unique assembly of *all* the elements of creators and distributors of visual programming in the Nation. Never before has such a cooperative venture ever been attempted. Cable systems, national TV networks, TV broadcast stations, makers of movies and TV programming, direct broadcast satellite delivery systems, manufacturers of consumer electronics—and the Ad Council—are all bound together in a tightly coordinated mission. We will conduct research and create informational and educational messages which in turn will be transported to parents throughout the country. All distributors of visual entertainment, news, and sporting events will exhibit these messages to homes in every neighborhood in the land.

The “uniqueness” of this vast, national enterprise is confirmed by a very simple fact. The scale and sweep of this effort, its persistence, frequency, clarity, uniformity of message, are totally new and completely different than any other nationwide mission yet attempted.

Beginning with the “go ahead” to the Ad Council, we plan on one year and a half for the duration of this effort.

*Cost to the cooperating enterprises: Through the Ad Council and through on-air message time, it is estimated the cost to the cooperating enterprises will be between \$250 to \$300 million.*

### **The Essence of the Mission**

**One:** Enlist the Ad Council to create, supervise and monitor Messages to Parents.

The Ad Council has for many years been the most prestigious, respected and effective creators and conveyors of messages to the public on issues that are of high importance to the Nation.

The Ad Council has a long, close, time-tested linkage to the largest and most successful advertising and public relations agencies in the country. From this reservoir of the Nation’s finest creative brains will come the work of devising messages for parents that are clear, easy to understand, and persuasive.

These messages will let parents know without question or doubt that they have total power, in their hands right now, to control every TV program that enters their home by whatever method of delivery they have chosen.

(Attached are some past national “message campaigns” the Ad Council has constructed, to confirmed favorable results.) We must point out that no previous campaign was equipped by the cooperative force that fuels our mission.

**Two:** All the cooperating enterprises will offer air time so these messages will be dispatched to all TV homes in the country.

This aspect of the mission is distinguished by its totality and frequency of coverage, that is, these messages will be carried by every distributor of programs in whatever form it comes into the home. This means that over and over again, parents will be visited by simple, easy-to-grasp instructions for use of the V-Chip as well as cable blocking mechanisms. These instructions will be so simple that even the most technology-innocent parent can, very quickly, get the hang of it, without complications.

**Three:** The campaign will, in cooperation with other industry groups in retailing, initiate a point of sale promotion. The Consumer Electronics Association will distribute V-chip educational materials such as pamphlets, labels and/or tags for TV set manufacturers and retailers use on TV set cartons, on TV sets on display or in or along with instruction manuals. The CEA will support a website on V-chip.

This is the first time any effort has been made to enlist the TV set manufacturers and retail stores in an educational campaign.

We believe this has favorable prospects and we aim to energize this program to the fullest.

**Four:** All the cooperating entities will have readable logos at the start of every show, and coming out of every commercial break in programs aired.

Our goal here is to make sure the logos are large enough to be identified by parents, and their frequency of appearance is sufficient to keep parents informed.

**Five:** We will reach out to religious and parents' advocacy groups with information they can re-distribute to their congregations or members to further inform and educate them about the power that parents have to control TV programming in their homes.

We believe that this extra reach will reap additional benefits in making it clear to parents that they need no longer feel helpless in standing guard over what they want their children to see or not see in the TV set in their home.

The CHAIRMAN. Did the red light come on? All right. Well, thank you very much, Jack.

Our next witness is the Chairman and Chief Executive Officer of EchoStar Communications, Charles Ergen. Mr. Ergen.

**STATEMENT OF HON. CHARLES W. ERGEN, CHAIRMAN/CHIEF EXECUTIVE OFFICER, ECHOSTAR COMMUNICATIONS CORPORATION**

Mr. ERGEN. Chairman Stevens and other distinguished Members of the Committee: I appreciate the opportunity—let me turn this on.

Thank you, Mr. Chairman and other Members of the Committee. I appreciate the opportunity to testify here today. You know, a lot of people ask me how did EchoStar go from being an upstart company to one of the largest pay TV providers today? The simple answer is that we have just given consumers what they want. Every day we hear from DISH Network subscribers and we try to pay close attention. Our customers drive us to develop cutting-edge technology, provide top-rated customer service, and an extensive channel lineup, all for the best value.

Lately, customers have been requesting more and more control over the content that is coming into their homes. They are concerned about television's influence over their kids. I am a parent of five tech-savvy kids and I understand firsthand the issues that parents are grappling with in a world dominated by media and entertainment.

In response to those concerns raised by parents, we have developed easy-to-use parental controls from the very beginning of our service. Our Adult-Guard software allows parents to block access to one or more or entire channels and remove those channels from the electronic program guide. The software also provides consumers with the ability to block access to programs based on the ratings of their content.

We have been pioneers in this technology, offering powerful parental locks, ever since we launched our service in 1996, and we will continue to educate parents about how to protect their children from indecent and violent content.

Even with these parental controls, some of our customers say they want more choice over the package they purchase. They wonder why they pay for channels that they have to block out. At DISH Network, we considered offering a family friendly tier of programming in the past, but programmers have not been willing to allow it. Thanks to the leadership of this Committee, the chairman of the FCC, Chairman Martin, and other Members who have increased awareness of this issue, programmers have finally given us permission to launch a meaningful family package.

I am pleased to announce that beginning February 1st DISH Network will launch the DISHFamily package for the low price of \$19.99. We will provide about 40 family-friendly channels, including many popular kids shows, as well as movies, a few sports channels, religion, and other programming, and for \$5 more customers can get their broadcast networks.

Because the system is 100 percent digital, the DISHFamily Package will be available nationwide, including Alaska and Hawaii, and including traditionally underserved rural areas. And in the EchoStar-DISH Network tradition, the \$19.99 DISHFamily package will be the most robust family tier in America. This is not a promotional price and there is no costly buy-through. It can be purchased on a stand-alone basis. Moreover, there is no fee for the initial digital set-top boxes.

We do not yet have a final lineup of all the channels because we continue to meet some resistance from some programmers who remain unwilling to unbundle some programming or relax penetration requirements in existing contracts. We hope these programmers will eventually work with us to make their channels available on our DISHFamily package so we will have an even more compelling choice for consumers.

While we are confident that our family package will meet the needs of the average American family, we also recognize that some consumers want even more flexibility. Some customers want more sports or news and are unwilling to pay extra to receive those channels.

At this point you may be asking yourself, why do pay television providers not have more control over the way programming is offered? The answer usually comes down to the muscle of the largest programmers, particularly those who own the large four networks. More than a decade ago, Congress granted local broadcast stations the right to demand payment from cable providers and ultimately satellite providers in exchange for carriage. The rules have provided broadcasters, who already benefit from monopoly rights in their local market and the free spectrum from the government, extraordinary leverage over pay television providers, who need to offer the four networks as must-have programming for their customers.

These same broadcasters have accumulated other popular programming. According to the FCC's 2005 report, the media conglomerates—Disney, Viacom, NBC-Universal, and News Corporation—are among the largest owners of local broadcast stations and have approximately 60 percent of the top 20 pay television networks. These large programmers use this leverage to bundle their programming together and tell distributors like DISH Network: If you want one, you have to take them all. Before you know it, we are carrying channels that our customers do not watch and do not want to pay for.

Programmers also force distributors to package family and adult-oriented programming in the same package. Sometimes these media conglomerates offer their local broadcast stations on a stand-alone basis, but more often they do it at an astronomical price that has no basis to the market.

Ironically, we have more success negotiating deals with international programmers than we do on the domestic front. Because we are not faced with the same anticompetitive bundling practices, we are able to offer a la carte foreign programming such as Arirang TV out of Korea or, if our customers prefer, a bundle of Korean channels in a variety pack. We do not require our international customers to purchase other costly domestic packages in order to receive these programs if all they really want is a single channel.

This leads one to wonder why it is that in America, a free market economy, an entrepreneurial company like EchoStar cannot deliver its customers the domestic packages of programming they are asking for. We are willing to do it. Our systems are set up to offer individual channels and specialized packages and we have proven that in the international context it can be done.

It is time for Congress to fix this domestic problem. Congress needs to pass legislation that provides unbundling of the retransmission consent from other programming negotiations. The legislation should include a binding arbitration process to resolve disputes that include broadcast stations. Arbitration would have the practical effect of unbundling the negotiation of broadcast networks from other channels. During arbitration, the programming in dispute would continue to be available, thereby ensuring the consumers have uninterrupted access to the most important channels.

Commercial arbitration is a pro-consumer way of resolving these disputes without government involvement. It would enable the Committee to avoid unnecessary rate or content regulation that could trample First Amendment rights. Admittedly, it does not go as far as legislation that would provide an a la carte solution, as some advocate. But it would offset the leverage that the largest programmers now wield in their retransmission consent negotiations and it would result in more customized program packages for America.

Chairman Stevens, I commend you on holding this important hearing and we look forward to working with you on these matters. At DISH Network we are proud to serve over 12 million subscribers who rely on us every day as their pay television provider and we will continue to promote consumer choice in the pay TV market.

Thank you.

[The prepared statement of Mr. Ergen follows:]

PREPARED STATEMENT OF CHARLES W. ERGEN, CHAIRMAN/CHIEF EXECUTIVE OFFICER, ECHOSTAR COMMUNICATIONS CORPORATION

Chairman Stevens, Senator Inouye, and other distinguished Members of this Committee, I appreciate the opportunity to appear today to discuss this important matter. My name is Charles W. Ergen, and I am Chairman and Chief Executive Officer of EchoStar Communications Corporation and its DISH Network.

A lot of people ask me, "How did EchoStar grow to become the third largest pay-TV company in the Nation?"

The answer is simple: by giving consumers what they want.

Every day, we hear from DISH Network subscribers, and we pay close attention. Consumers drive us to develop cutting-edge technology, provide top-rated customer service, and offer an extensive channel lineup, all for the best value in the industry.

Lately, consumers often say they want more *control* over the television programming coming into their homes. They are concerned about television's influence on their kids.



One way we've addressed these concerns is to provide our customers with a number of easy-to-use tools to control the programming viewed in their homes. All DISH Network set-top boxes come with "Adult Guard" software that allows parents to block entire channels and individual programs based on multiple ratings and content criteria. We were pioneers of this technology, offering powerful parental locks since we launched our service in 1996.

Using the prompts on an onscreen menu, a DISH Network subscriber can block access to one or more entire channels. Our software even allows parents to completely remove the channel numbers from their on-screen program guide. This technology not only prevents young family members from accessing the programs; it also blocks access to the title and descriptions of the program. We also developed a one-click "Hide Adult" feature that automatically removes all adult channels, saving our subscribers the time of selecting each network of adult programming.

The "Adult Guard" feature also provides consumers with the ability to block access to specific programs based on ratings, such as PG, PG-13, R, and NC-17. In addition, the software can alternatively or additionally blockout any programming that contains violence, language, nudity, sexual content or any combination of these factors.

We also recognize that our subscribers must know the "Adult Guard" functionality exists in order for the technology to be useful. For this reason, we include information about the parental controls on promotional channels available to all our customers. We also offer information on Adult Guard on our website, and in our user guides, product brochures, and periodically in our monthly bills. In addition, we use some of the on-air ad time programmers make available to us to promote the "Adult Guard" technology, and consumers can call our customer service representatives for help in setting up the blocking technology.

Even with parental controls, consumers often say they want more choice over the programming they can purchase. They would like the option of purchasing a family-friendly tier. At DISH Network, we've considered offering such a package in the past, but programmers have never allowed it.

Thanks to the leadership of this Committee, Chairman Martin, and other Members who have increased awareness of this issue, I am pleased to inform you that some programmers have finally given us carriage rights to launch a family tier of programming.

On February 1, we will launch the "DISHFamily" programming tier. For the low price of \$19.99, this new package will provide consumers with all-digital, all-family friendly programming—including many popular networks. Unlike family tiers offered by other pay television providers, the "DISHFamily" package will be available to consumers nationwide, including traditionally underserved rural areas. And at \$19.99, with no costly "buy throughs" that other providers require, "DISHFamily" is the lowest-priced family tier in America.

Because we're still working with programmers on the stations that will be included in the package, we cannot disclose the channel lineup at this time. Unbelievably, we continue to meet resistance from some who remain unwilling to unbundle or relax penetration requirements in existing contracts. We hope that these programmers will eventually work with us to make the "DISHFamily" package a compelling choice for the consumer.

While we are confident that our family package will meet the needs of the average American family, we also recognize that some consumers want even more flexibility. There are always consumers who want more sports or more news programming, than is offered in a particular tier. And these consumers are willing to pay extra to receive these channels.

Unfortunately, the largest programmers, particularly those that own a big 4 network, have the muscle to control the way that pay television providers offer programming to consumers.

More than a decade ago, Congress granted local broadcast stations the right to demand payment from cable providers, and then ultimately satellite, in exchange for carriage. These rules have provided broadcasters, who already benefited from monopoly rights in their local market and free spectrum from the government, extraordinary leverage in their negotiations with pay television providers who need to offer big 4 network programming to compete in the market.

In negotiations, the largest programmers use their leverage to bundle their broadcast channels with other channels, forcing distributors to charge customers for channels they do not want, and to package family and adult-oriented programming in the same tier. According to the FCC's 2005 Competition Report, the media conglomerates of Disney, Viacom, NBC Universal, News Corporation, and Hearst-Argyle, who are all among the largest owners of local broadcast stations, have an ownership stake in 60 percent of the top 20 pay television networks. And while these media

conglomerates may offer their local broadcast channels on a stand alone basis, they do so only at an astronomical price that has no basis in the market.

We are not alone in our concerns. Our competitors in the cable industry, such as small cable operators, represented by the American Cable Association, and cable overbuilders, such as RCN, experience similar problems with these programmers.

To get at this problem, Congress should create a binding arbitration process to resolve disputes that involve broadcast stations. It would have the practical effect of unbundling the negotiation of broadcast networks from other channels. During arbitration, the programming in dispute must continue to be available, thereby ensuring that consumers have uninterrupted access to important local content.

This proposal would enable this Committee to avoid unnecessary rate or content regulation that could trample on the First Amendment rights of either programmers or pay television providers. Admittedly, it does not go as far as legislation that would provide an "a la carte" solution as some advocate, but it would immediately offset the leverage the largest programmers now wield in their retransmission consent negotiations and would result in more customized program packages for American consumers.

Chairman Stevens and Senator Inouye, I commend you for holding this important hearing, and we look forward to working with you on these matters. At DISH Network, we are proud that over 12 million subscribers rely on us every day as their pay television provider, and we will continue to promote consumer choice in the pay TV marketplace.

Thank you.

The CHAIRMAN. Thank you very much.

Our next witness is David Cohen, Executive Vice President, Comcast Corporation. Mr. Cohen.

**STATEMENT OF DAVID L. COHEN, EXECUTIVE VICE  
PRESIDENT, COMCAST CORPORATION**

Mr. COHEN. Thank you, Mr. Chairman, Senator Inouye, and Members of the Committee. We appreciate the invitation to testify before the Committee today.

America's cable companies deeply value our relationship with our customers. We want to provide them with the greatest possible choice and control. At the same time, we want to run our businesses in a sound economic manner so that we can deliver the advanced services that our customers want and deserve.

Today, Americans have access to a dizzying array of video and interactive media choices. There is something for every possible taste. But not everything in the marketplace is to everyone's taste. So, as some of our customers have asked for more alternatives to help manage family viewing, we have listened to them. In reviewing our options, we have to deal with some practical constraints. We must make decisions that are economically sensible for us and for the companies that provide content to us. We must honor our contractual agreements with those program providers and we must develop approaches that meet the needs both of our digital cable customers and our customers who are receiving analog television signals.

As part of this effort, Comcast recently announced plans to offer a new family tier. Subscribers will receive 35 to 40 channels, including many of the premier brand names in family programming, such as Disney, Discovery, National Geographic, and PBS Kids Sprout, which features quality programming chiefly for preschoolers and young children. We carefully selected channels on this tier that offer primarily content rated TV-G in all parts of the day and channels with less programming that is live and therefore

more unpredictable than taped programming that can be viewed in advance.

Comcast's Family Tier will retail for an average of about \$31 a month, including all the broadcast channels that are available in local markets. It will soon be widely available on our systems across the Nation. We have been very pleased by the initial response to our family tier. The *San Angelo Standard Times* in Texas called it "a welcome development." The *Carlisle Sentinel* in Pennsylvania said: "This proposed family tier is a good idea that appears to have a groundswell of popular demand behind it." Faith and Family Broadcasting Coalition said that our family tier is "a welcome and important step in the right direction." The Reverend Jerry Falwell called it "a welcome response to the concerns of families."

We believe that the family tier approach provides additional choice in ways that make economic sense to us and for our program providers, and we think it has none of the downsides of the a la carte regime that some have advocated—a regime that in the considered opinion of numerous economic experts, scores of programmers, and hundreds of organizations and opinion leaders, would raise prices and reduce consumer choice.

Of course, we know that our Family Tier will not meet the needs of every home. That is why we will keep working hard to ensure that parents and caregivers know about and know how to use cable's parental control tools. At Comcast, our digital cable customers, and soon our Family Tier customers as well, can press the guide button on their remote, select parental controls, and with a few clicks make the programming choices for their family and have them PIN-code-protected. As anyone who will go to that demonstration that the Chairman has referenced can see, this is really easy, and in my written testimony for the record, I have also submitted just a screen shot of what the parental control screen looks like so that you can actually see how easy it is to set these controls.

Parents will be able to block specific programs or channels or block programs based on their MPAA or TV rating, and they can hide adult titles on the program guide. We are working on other ways to make our parental controls and program guides even more family-friendly, some of which are detailed in the prepared statement that I have submitted for the record.

The cable industry wants every parent in America to know about these tools and know how to use them. Between May and November of 2005, basically a 6-month period, our industry has already aired over \$130 million worth of public service announcements about these tools. Comcast alone in these 6 months has aired over 1.6 million PSAs to inform our customers and your constituents about the availability and the flexibility of parental control technologies.

Our industry has also conducted dozens of media literacy workshops in cities across America, and we are pleased to confirm that we are proud to join in the new pan-industry informational campaign that Mr. Valenti talked about just a few minutes ago.

Mr. Chairman, the cable industry's success depends upon listening to our customers. Every day we compete for their loyalty against Mr. Ergen's company, Rupert Murdoch's satellite company,

and now against the Bell companies. We want to offer every home the widest possible range of video programming, while giving parents the power to decide which programming best meets the needs of their families.

We appreciate this Committee's interest in making sure that our industry is listening. We know it is a longstanding interest that did not just start today or even with the open forum on indecency, but is longstanding and will continue in the future. I want to promise you that we are listening to those customers and to you.

Thank you very much for the opportunity to be here.

[The prepared statement of Mr. Cohen follows:]

PREPARED STATEMENT OF DAVID L. COHEN, EXECUTIVE VICE PRESIDENT, COMCAST CORPORATION

Mr. Chairman, Senator Inouye, and Members of the Committee: Thank you for the invitation to be here today.

It's a particular honor to share this panel with Charlie Ergen, one of the great entrepreneurs of the communications industry, and with Jack Valenti, who has done so much for so many years to help parents make responsible choices for their children.

#### **Cable Companies Are Listening to Their Customers**

America's cable companies deeply value our relationship with our customers. We want to provide them with the greatest possible choice and control. At the same time, we want to run our businesses in a sound economic manner so that we can deliver the advanced services that our customers want and deserve.

Today, Americans have access to a dizzying array of video and interactive media choices. There is something for every possible taste. But not *everything* in the marketplace is to *everyone's* taste.

As the Nation's largest cable company, Comcast is sincerely committed to ensure that our customers have all the choice they want, and all the controls they need. So, as some have asked for more alternatives to help manage family viewing, we have listened to them.

We have to deal with a few practical constraints, including the laws of economics, contracts and physics. We need to make decisions that are economically sensible for us and for the companies that provide content to us. We must honor our contractual agreements. And we need to come up with approaches that meet the needs of both our digital cable customers and of our customers who use analog cable equipment.

#### **A La Carte Violates the Laws of Economics, Contracts and Physics**

While some consumer groups have advocated that cable and satellite companies be required to make all of their channels available on an a la carte basis, this would violate the laws of economics, contracts, and physics.

First, a la carte services cannot be delivered to analog cable set-top boxes. To offer a la carte would require the individual sale of all of our channels, which would mean that 100 percent of television sets in cable homes would have to be equipped with digital set-top boxes. At the current state of technology, this would be prohibitively expensive for us and for our customers.

Second, we have scores of complex programming contracts in which cable networks have negotiated for the right to be carried on specified tiers of cable service. In an a la carte world, all of these contracts would have to be unwound or abrogated by force of law. This would be hugely disruptive to our industries, extremely expensive, and undoubtedly exceedingly litigious.

Third, after imposing all of those unnecessary costs and complications, an a la carte regime would yield no consumer benefits. Every independent analysis that has been conducted—from the Government Accountability Office to the Federal Communications Commission's Media Bureau, from Booz Allen to Bear Stearns, from Paul Kagan to various academic economists—has concluded that an a la carte regime would lead to consumers paying more and getting less.

An a la carte regime would guarantee that there will be fewer programming choices and less diversity. Over 200 consumer and civil rights organizations, elected officials, and others have gone on record objecting to the devastating effects that a mandatory a la carte regime would have on programming diversity. Dozens of creators of niche networks, who know their success depends on their ability to reach

the greatest possible number of women, or African-Americans, or Hispanic-Americans, or other specialized segments, have protested that a la carte would sound their death knell.

Many analogies have been used to explain why a la carte is a bad idea. I think the most compelling analogy is to a public library. All of us pay for the maintenance of our libraries. Each library contains thousands and thousands of volumes. Most people will never open most of those volumes, but someone is likely to look at every volume at some point. If we cared only about the volumes that most people wanted to read most of the time, our libraries would look like The *New York Times* best-seller list. But none of us would want to sacrifice the immense diversity that our libraries contain, and all of us benefit from the opportunity to browse and to find something that we didn't know about before.

Cable and satellite television work much the same way. Everyone pays about the same for basic service, and these fees (plus advertising sales) help to support an incredible diversity of programming. Not everyone who watches cable watches every channel, of course. But this economic model, which puts scores of channels into customers' homes, is a proven success.

If an a la carte regime were pro-consumer, then surely one of the numerous competitors in the marketplace—Comcast, Time Warner, DIRECTV, DISH Network, RCN, Knology, WideOpenWest, and dozens of others—would have adopted that model by now to distinguish themselves from their competitors. The fact that none of these companies has seriously pursued an a la carte model speaks volumes about the lack of viability of this concept in the marketplace.

#### **Our Innovative “Family Tier”**

While we are firmly convinced that an a la carte requirement would not be in the best interest of our consumers, program providers, or our industry, we are nevertheless always exploring new ways to better serve our consumers.

We are absolutely committed to meeting the needs of families. We have shown this by providing flexible parental controls; by working with PBS to create the PBS Kids Sprout Network, the premiere service for young viewers; and by working with the cable and programming industries to constantly improve the information available to parents about how to manage the programming available in their homes.

As another step in that commitment, last month Comcast announced our plans to offer a new “Family Tier” service.

Subscribers to the “Family Tier” will receive 35 to 40 channels, including many of the premiere brand names in family programming, such as Disney, Discovery, National Geographic, and PBS Kids Sprout. Specific channel offerings include: Disney Channel, Toon Disney, Discovery Kids, Nickelodeon or Nick Too, Nickelodeon Games and Sports (GAS), PBS Kids Sprout, DIY (Do It Yourself Network), CNN Headline News, The Weather Channel, C-SPAN, C-SPAN 2, Food Network, National Geographic, Science Channel (Discovery), HGTV, and TBN (Trinity Broadcasting Network).

We carefully selected channels that offer primarily TV-G content in all parts of the day, and channels with less programming that is “live”—and therefore unpredictable. Comcast's Family Tier will retail for an average of about \$31 a month. This includes our basic cable service (which averages about \$12 per month and which must, by Federal law, be made available to all of our customers), 16 family channels (at \$14.95), and a digital cable box, which is required to obtain this service (at an average regulated price of about \$4.25).

We created our Family Tier in a way that is consistent with the laws of economics, contracts and physics. We believe this is an economically viable offering that gives families another affordable choice and does not violate the reasonable expectations of cable programmers. And while this service does require a digital set-top box, we hope that it will encourage more penetration of digital services, a goal shared by this Congress.

We have been pleased by the initial response to our Family Tier.

- The *San Angelo Standard Times* in Texas called it “a welcome development.”
- The *Carlisle Sentinel* in Pennsylvania said, “this proposed ‘Family Tier’ is a good idea that appears to have a groundswell of popular demand behind it.”
- Faith and Family Broadcasting Coalition said it “is a welcome and important step in the right direction.”
- And the Rev. Jerry Falwell called it a “welcome response to the concerns of families.”

This new service will be available to 99 percent of homes across our cable footprint, and we will make sure that families interested in this option know how to take advantage of it.

I would also note that several other cable companies also have announced plans to launch a family tier, including Time Warner, Cox Communications, and, most recently, Insight Communications.

#### **Empowering Parents With Information and Technology**

Of course, we know our Family Tier won't meet the needs of every home. That's why we will still work hard to ensure that parents and caregivers know about, and know how to use, cable's parental control technologies.

At Comcast, our digital cable customers—and soon our Family Tier customers as well—can press the “Menu” button on their remote, select “Ratings Locks,” and with a few clicks make the programming choices for their family and have them PIN-code-protected. They can block specific programs or channels, they can block programs based on their MPAA or TV rating, and they can hide adult titles on the program guide. Attached is a “screen shot” of our parental controls feature.

We will continue to innovate to make our parental controls and program guides even more useful to families. Later this year, we plan to give parents the power to PIN-code-protect access to our On Demand service. During 2007, we expect to roll out additional features including the ability to lock out programming by content label (based on TV ratings for violence, sexual situations, dialog or language), displaying these content labels on our program information screens, and offering family-friendly recommendations in our program guide. Our developers are at work on all of these new capabilities right now.

As we've said many times, we realize that it's not enough to make these features available. We want all of our customers to know about these tools and to know how to use them. That's why Comcast has worked closely with the National Cable & Telecommunications Association in its “Cable Puts You in Control” public information campaign.

Between May and November of 2005, the cable industry aired its “Take Control” public service announcements with an aggregate commercial airtime value of \$130 million—well on the way to the \$250 million in airtime we committed to last spring. Comcast alone has aired these PSAs over 1.6 million times.

In addition, about 30 Members of Congress have recorded public service announcements promoting public awareness of parental controls, and these are airing on cable systems across the Nation. And our industry have held dozens of media literacy workshops across the Nation, working with PTAs and other family organizations, and we plan dozens more in 2006.

Like other cable companies, Comcast also communicates directly with its customers about their options. We offer, on demand, a how-to video to instruct parents on our parental control features. For almost two years, we have provided one-click access to parental controls information from the homepage of our website, [www.comcast.com](http://www.comcast.com). And nearly two years ago, we established a toll-free hotline (866-781-1888) to answer any questions our customers may have about the Family Tier or parental control features.

Finally, we are delighted to join with NCTA and our cable industry colleagues as part of the new pan-industry informational campaign that Jack Valenti announced today, and we are especially pleased to have enlisted the creative talents of the Ad Council for this effort.

#### **Conclusion**

Mr. Chairman, every hour of every day, we compete for our customers' loyalty against Mr. Eergen's company, Rupert Murdoch's satellite company, and now against the Bell companies as they offer competing cable services. To succeed, we must offer our customers choice, control, convenience and good value. We want parents to think of us as their partners. We want to offer every home the widest possible range of video programming, but we also want to give them the power to tailor their selections for the unique needs of each household.

We always remain open to constructive ideas about ways to better serve our customers. We think the competition we all face in the multichannel television marketplace compels all of us to keep our eyes and ears wide open.

We appreciate this Committee's interest in making sure that our industry hears the needs of our customers, and I am glad to be able to tell you, “We are listening very carefully.” Thank you, Mr. Chairman.



The CHAIRMAN. Thank you all very much.

Without objection—I hope there will be no objection—we will limit ourselves to 5 minutes each. We have got another panel later.

So, let me start it off. Mr. Valenti, when you look at this problem—and I think Mr. Ergen has mentioned the problem—about the programming and content, what do you say about, this group of yours, will it include PTA participation, reach out to all of those who deal with children and problems, children's problems, in terms of the use of television?

Mr. VALENTI. Mr. Chairman, as I said, we are going to reach out for the first time to all advocacy groups, including the PTA and others. The uniqueness of this is in the first time this kind of unity, in which Comcast and Mr. Ergen and Mr. Murdoch's groups and all the studios and all the television stations and all the cable systems and all of the national networks, as well as the consumer electronics industry. This is the first time we have come together like this.

I am absolutely convinced that we are going to make a real, real impression on the consciousness of American parents, to give them more zeal and more ease in doing what they have the power to do. By the way, we estimate the cost of this to be somewhere between \$250 to \$300 million, and in my own judgment that is a very conservative estimate. I am talking about the cost of designing these messages and the air time cost of putting them on. Every time that Mr. Ergen puts one of these messages on his DISH company and Comcast, that costs money.

So, we are willing to put up these funds and to spend the money that is requisite to doing this job.

The CHAIRMAN. Thank you very much.

Mr. Ergen, on January 31, we will hold a hearing on video content and we will take up your challenge to discuss with the programmers what they will do to assist in making sure that we meet this demand for American families.

Mr. Cohen, I want you to know that demonstration that you put on last evening for the staff and for me, and it is available to every Member, I think is very good. I have seen some of the things on your Comcast broadcasts, the spots that you are already running. I have got to tell you, being involved in terms of the totality of that presentation yesterday, I know a lot more about it now than I did looking at the spots. Now, I am not criticizing the spots. You can only do so much in a 30- to 45-second spot.

But I do think this total concept now of the public awareness campaign to educate American families on what is there now is very important, extremely important. I did not know that all of that was available on the TV and is available right in my own home.

In answer to my friend from New Jersey, I have got to say I am blessed with some spouses of my children. They are really getting the control, the family control they need. I have told people before how I, as a father, tried to do it. I just said no television in our house. About a month later, the Mayor asked me what the hell were my kids doing in his house all afternoon. We understand the problem and bought a television.

[Laughter.]

The CHAIRMAN. So, it is a problem.

This afternoon's hearing will be on the problems of the Internet and children's viewing. Last week I was told the average child in grade school spends 4 hours a day on a computer. The problems that are coming now, in terms of the streaming of information, particularly pornography, over the computer are overwhelming. So, this problem, I hope we can get it solved voluntarily. That other one is an enormous problem to deal with, and I invite people to be sure to be here this afternoon.

Senator Inouye.

Senator INOUE. I thank you very much.

According to a recent study by the Parents Television Council, this past September in prime time, people were able to see 67 dead bodies. During the same period in 2004, 24 dead bodies.

When I was a child—and I have been told that it still continues—our teachers used to tell me: Read the newspapers, listen to the radio, and, as we got older, watch news on television, inform yourself about what is happening here and abroad. Now, I do not know where these numbers came from, but there are certain programs that I watch that are news, network news. How are they going to cover Katrina without showing dead bodies?

Are we concerned about that type of violence? I always tell my son: Watch the History Channel or Discovery Channel, because you may learn a few things about where you came from. These past couple of days I have been watching the Civil War. Last night it was the French-Indian War. I must say that there must have been at least 500 dead bodies on that movie.



We seem to be concerned about Hollywood or the TV programs. Should we be concerned about news and documentaries? Should we be concerned about Aruba? My God, I have learned where Aruba is now. It comes on every week. It is still coming on. Is that good for our kids? I do not know what the attraction is. Then, ever since they found the body in San Francisco Bay, it is still coming along.

I think we should be looking into something like that. But you do not control that with the V-Chip, do you? Do you knock off news programs? Please, anyone?

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. A couple of comments. I am happy to lead off with a couple of comments.

First of all, in the documentary area, many documentaries are rated. The Chairman made reference to the need for ratings. So, for example, the History Channel offers a program, "Band of Brothers," a documentary based on a World War II book by Steven Ambrose that is rated TV-14. So, if you have used parental controls and blocked out TV-14 programming, then, even though you have the History Channel, that programming would be blocked out.

I think news is complicated because you do not want to not offer news in a family tier or not offer news in a household. My solution to that is a little bit of a different story, and I think it goes to the way in which parents control the use of television and watch television with their children or have their children watch television.

I had the privilege of attending one of the media literacy workshops that I mentioned in my oral testimony. By the way, we co-sponsor those with local PTAs, in response to the Chairman's initial question to Mr. Valenti. In that media literacy workshop we actually teach parents how to watch television with their kids. I remember a line which is so logical and I will say it here, which is that television is not a babysitter. It is not something you just turn on and put your kids or your grandchildren in front of when you do not want to pay attention to them.

I personally do not think we should block news out of American households, but there is so much disturbing news that maybe it is something you should watch with your children so that you can talk them through things that they may see, such as Katrina for example, and make sure they are not upset and that they understand what is happening and why it is important.

Or, if the news is too disturbing for a particular family, you may decide that you do not want your children to watch the news, in which case you should tell them not to watch it and enforce that in your own home.

So, those are a few thoughts in response to those comments.

The CHAIRMAN. Do either of you want to comment?

Mr. VALENTI. Mr. Chairman, I just want to offer one thing. When you live in a free and loving land, a democracy, it gets messy at times. When you have a First Amendment, that means you must allow unto the marketplace a lot of this I personally find vile, profane, and just plain stupid. But that is the price you pay for the freedoms that we enjoy.

I have a 4-year-old grandson, Senator Lautenberg. When he gets to be about 10, I am going to take him, as I did my son, to the Normandy country of France and show him that cemetery there where

70 percent of the 9,387 buried there are between the ages of 18 and 23. Then I am going to want to let him watch Steven Spielberg's "Saving Private Ryan" so he understands that in that cemetery these young men gave him the greatest gift in the world. They gave him the gift of freedom, and I want him to understand where it came from. So, I want him to see what war is really like and why he will never have to, I hope, test his own courage to see how he would react when the dagger is at the Nation's belly and death stares him right in the face.

So, I think there are some things that you want to show your children. But that is the beauty of these blocking mechanisms that both Comcast and Mr. Ergen have. It allows a parent to block out what he or she does not want their children to watch and leave there what their children can watch.

But I promise you this, and I have spent a lifetime, over 40 years, 42 years, in Washington and Hollywood, and I have learned a couple of things. One is that you cannot block out everything for your child. The church, the home and the school is where you build a moral shield for that child. Sooner or later, he is going to have to face the blandishments of his peers in the mean streets. But if he has this kind of moral shield built for him at home and in the church and school, he will be able to navigate his way.

So, I am just saying to you there are some things that can be done and some things that cannot be done. But I believe what we are trying to offer is giving parents the power to do what they think is right.

The CHAIRMAN. Thank you very much, Jack.

Senator Burns.

Senator BURNS. I wish I had the command of the English language like Mr. Valenti, because I think you put it in great words.

You write down all of these things about programming, a la carte, family tiers, all of this. That may work in your home, because every family has a different degree of acceptability. We all differ, what we like to watch, what we permit to watch, because our values change as houses do going down the block.

We have got to understand that for our children, everything that they see is not at home. They have an opportunity to view a lot of things that would be unacceptable to us in other venues, whether it be at school or at a neighbor's house or whatever, the friendships that they have. That is what makes our problem even more difficult. I think the framers of the Constitution understood that, too, and that is why that First Amendment is there, because they did not want government to set the standard for the whole society, and families do it, moms and dads.

I have got to tell you that since the break that I became a grandfather and I have got a new granddaughter. I can say without mental reservation or equivocation whatsoever, she is perfect.

I guess I want to talk mostly to programmers. Mr. Valenti, you probably could answer this more than anything else. Are there ever discussions with anybody that produces programming, discussing what is acceptable and what is not in our society? Does that discussion ever take place and then a corporate decision says, we do not think we want to do this, or yes, it is acceptable? Does that discus-

sion ever go on in corporate America? Or do they just look at bottom line?

I would like to have your view on that, sir.

Mr. VALENTI. The answer is yes, it does. Keep in mind that last year, the major studios put out about 211 movies, but there were over 700 produced in this country. First, we do not have enough gifted creative people to do 700 really first-class movies. That is number 1. Number 2, because it is a free country, you do not have to operate within any system. You can make your own movie and then you can go out and try to sell it to anybody who wants to buy it, or you can put it on the Internet without barriers of any kind.

So, I am saying to you that, as you pointed out about parents are different, all filmmakers are different. Some of them have a very, very strenuous and stringent, I think, honorable way of looking at it, and they make their own revisions of their movie. Some of them do not, but that is part of what I call the neighborhood of America. Everybody is different.

So, you cannot lay down a stern gauge and say everybody must fit this mold. But I am impressed by the kind of, I think, corporate responsibility that goes into many of the companies that I deal with every day.

Senator BURNS. Now, as far as the distribution goes, do you have those kinds of discussions, what you will air and what you will not? Do you have any responsibility to society of what you want to do and what you will push out of that satellite or down that piece of glass?

Mr. ERGEN. You know, Senator, from a DISH Network perspective, we feel our job is to put up content and we put all the—I think the industry you have heard here today has done a great job of putting the controls in front of parents to be able to lock out what they want to. Even if you are going to use the TV as a babysitter, our system will allow you to make sure that what people are watching, even if your kids are there and you are not there, you can control.

Senator BURNS. Sadly enough, though, there are some televisions that are being used as babysitters.

Mr. ERGEN. That is right, that is right. So, we have to build a system that if you want to use it as a babysitter you can feel safe in doing that, and you can do that with our satellite system.

However, what our consumers complain about is the fact that they have got to pay for things that they do not want to watch. As you see on the board over there, the big conglomerates have enough power to have you carry things that you may not want to carry in a particular package. So, that is where our concern is, we feel we do a great job as an industry to give parents the tools to watch on television what they want, certainly better than the Internet or any other form of video distribution today.

But what we do not do a great job at as an industry is to give customers those channels that they want to pay for and not give them those channels that may have objectionable programming that they are forced to pay for. That may be two-thirds of the bill they pay every month is for channels they do not watch. So, that is where we think the Congress can take a further look at it.

The CHAIRMAN. Thank you very much.

Senator Lautenberg.

Senator BURNS. I was going to have Mr. Cohen remark about that, because he offers distribution, but in a different way.

Mr. COHEN. I will take only 30 seconds so the Chairman can stay on schedule.

I basically agree with Mr. Ergen that as a distributor I think we have a different feel to this, but the people who run our companies are parents and grandparents too, and I think we have all the same concerns that have been expressed here today. So are the people who run the content companies and the programmers. Certainly, over the past 12 to 18 months at least there have been a lot of discussions between distributors and programmers about the coarseness of programming and the trend toward coarseness of programming. A lot of those discussions, as Members of this Committee know, have taken place at the NCTA level, where we have programmer members as well as distributor members. I cannot tell you that we have reached any resolutions that are helpful, but I think it is a matter of dialog today, whereas maybe a few years ago it was not something that was being talked about between the distribution and the programming community.

The CHAIRMAN. Thank you very much.

Senator Lautenberg.

Senator LAUTENBERG. Thanks, Mr. Chairman. I am sorry that we do not have more time with these witnesses. There is a lot of information that they bring to the table and it is very interesting and certainly stimulating in terms of where we go from here.

Jack Valenti we have all known a long time and we know that Jack speaks with an authoritative voice and that the polling data that you brought is very interesting. I wonder if it is possible to get a copy of those polls on whether the government involvement is unwelcomed, as it appears to be.

Senator Inouye raised an interesting question, the definition of what stands as violence. When we look at Darfur and we watch the news and you see the abuse that is heaped upon children and women and men, that is disturbing. But, Jack, you said it: in Democratic nations, the high communication capability that we see now, you are going to see some things you do not like. It is going to bring you closer to reality, and reality is these things. No matter how much we want to shield our children, I do not think we can do it.

When we talk about the value of the interest in sports—and I asked the question before whether sports are included in the family tier packages. Is news, Mr. Cohen, included in the family package? Whose news do you produce?

Mr. COHEN. I would like to address both points. Let me answer the question about news first and the answer is yes.

Senator LAUTENBERG. But quickly, because, even though he is out of the room—

Mr. COHEN. Sure, the clock is still running.

The answer is yes. There are two types of news in the Comcast Family Tier packaging. First, we carry all the broadcast networks and therefore all the news that they carry is part of the Family Tier. Second, we include CNN Headline News as one of the channels in our Family Tier package.

On sports, I would like to say both to you and Senator Allen, because we carry the broadcast networks and local television networks, there is a vast amount of sports programming that is on the Family Tier. Our problem with ESPN is some of the non-sports programming, particularly the non-live sports content that ESPN carries, like "Playmakers," which was the controversial TV-MA rated series that ESPN ran, and "Tilt," which is a reality program about gambling in Las Vegas, are not appropriate for children.

Senator LAUTENBERG. How about the sport of wrestling? Would that be considered violent?

Mr. COHEN. Professional wrestling? I think that would be considered theater.

[Laughter.]

Senator LAUTENBERG. Not to the kid who imagines himself to be Mr. Terrible.

But the dilemma that all of you face—Mr. Ergen, you said something that was very significant and I think candid. That is, give customers what they want. You have to understand what people want. Some fellow I know who is an analyst in the hospitality industry brought up some information to me about the films that are requested in hotel rooms and he indicated that, by far, the largest segment of interest is sexually oriented.

Well, that tells you something about the public appetite, and how can you deal with the public appetite? Talk to Blockbusters, talk to any one of them, and I have, to see what the largest portion of interest is in film rental.

So, we have to understand that there is an overriding interest dictated by the popularity of "Sex in the City" and "Desperate Housewives" and things of that nature. The public wants to have it for themselves. They do not want their kids to have it. I do not want my grandchildren to have it.

So, how do you deal with that realistically? How about things like commercial space, seductive ads for lingerie or things? Is that OK or is it not OK? It is OK by me, but I do not want my kids, my grandchildren, to be noticing that particularly. My oldest is only 12, so we are safe for another year.

So all of these things relate to the marketplace and how you deal with it fairly without invading the ability, under the First Amendment, under our freedoms, to communicate what people want. I think that the notion that a rating ahead of a program is going to make the difference is not really going to get you a lot, because that means the parent has to stand by and watch what is coming up and click it off. I think there has to be a better response.

Mr. COHEN. Just really briefly again, not necessarily. If you set up the parental controls in advance to block out TV-14 programming, the parent does not have to be present. When the program comes on the TV, the technology in both of our systems and with the V-Chip would automatically cut it off. Number two, in terms of ads, again the issue here is, will the private market—will the markets work to do this.

I think the attention and the focus that this Committee, your counterparts in the House, the FCC has put on this issue—we have already seen changes. So, for example, just a few weeks ago the NFL stopped a relationship that they had with an advertiser that

raised some of these concerns. I think it was Levitra, but not 100 percent sure. You will see that the dialog around this and the discussion is causing behavior patterns to change in some of these more difficult areas that cannot be controlled with parental controls.

Senator LAUTENBERG. You do not really mean behavior patterns changing. You mean viewing changes?

Mr. COHEN. I mean the people who are responsible for the programming making changes in what it is they are putting on the air.

Senator LAUTENBERG. I want to say, Mr. Chairman, before I am cut out, that Jack Valenti—Jack was always a leader in areas of communications, video, broadcast, etcetera. I think it is a great idea to come up with in terms of advertising parental responsibility, which is what you are essentially saying.

The thing, however, one of the suggestions is that programs be rated as they are ready to come on the air, and I think that is going to be an awfully tough process to buy.

Thanks very much, Mr. Chairman. Thank you all.

The CHAIRMAN. Senator Allen.

Senator ALLEN. Thank you, Mr. Chairman.

Several questions. One of the things that we are all grappling with, you used the word, Mr. Cohen, “coarseness of society,” and those standards have changed throughout the history of our country. It has changed from when we were kids and that was different than when our parents were kids and grandparents, and all the rest.

As a parent, about the only time that you really have any control over what your kids are listening to or hearing is when you are driving in the family vehicle and you change the music. My kids get sick of listening to good music. They are not big country music fans like I am. But sometimes you are listening to talk shows and something is coming up, and it may be conservative talk shows as well, and they will bring up things and you just change the radio station. That is about the only time you really are with your kids.

The rest of the time, you are not necessarily wanting to watch what your kids watch, and the kids will watch MTV or something like that, which I am not sure how that is rated one way or the other, but that is a reflection of a certain coarseness, I suppose, in people’s views.

The questions that we have here affect broadcast, affect cable. Broadcast is different than cable. Cable is a paid matter. That is accorded all those First Amendment rights, just like anything you would buy in magazines and all the rest. Broadcast is different, and when broadcast—and broadcast standards are different than cable standards.

So, whether you are watching a sporting event or you are watching a concert or whether you are watching an awards ceremony, and in the midst of that over-the-air broadcast there is a violation of these standards—and I think we all agree there should be standards for broadcasting—there is a concern that the penalties and the fines for violations are insufficient.

Would you like to comment on whether or not you think that the fines for violation—this is broadcasting—are sufficient? A lot of the

measures that have been introduced in the last several years, it seemed to have all started off with the half-time show at the Superbowl a couple of years ago. Regardless, do you find that increased fines would deter violations of decency standards or do you think that we should just continue the way it is?

Mr. Valenti, since you represent—the same with Mr. Ergen and Cohen—I would like to hear your views on whether we should be increasing fines. This is for broadcast. Cable I look at as a completely different situation.

Mr. VALENTI. I have always been quite nervous about being indicted for a crime whose specifics are vague. It seems to me that if you are going to be charged with violating indecency standards, there ought to be some explicit and precise measure of what is an indecency standard.

I have to say, in the interest of full disclosure, that the idea that you would fine somebody enormous amounts of money for a 1.5 seconds partial exposure of an artificial breast to me is so absurd that I cannot even deal with it. Is that a standard? Does the whole American culture collapse on one and a half seconds on the Superbowl? I find it absurd.

But the idea that you entrust somebody to say what is the standard—the Supreme Court today, Senator Allen, I need not explain to you, cannot define pornography and obscenity. The Miller standard is, well, it is community standards. Well, that is a loophole you can drive seven Hummers through.

So, I find that before we ought to be assigning fines, should we not as a matter of candor and logic and reason define what it is that we are talking about?

Senator ALLEN. Well, when you are watching a half-time show and if somebody disrobes, that will be offensive to those who do not expect to see that. Or if you are watching some show and certain words are used—and I think most will understand what words, you can use the F-word and so forth—that if these words are used this is not what you expect to be watching on family programming.

In the event that people can get away with doing that, saying, oh well, these standards are vague, I think most people in a reasonable jury would say watching a half-time show you do not expect that to happen. I do not think it is the end of western civilization, either, nor maybe if certain words are used or if certain things are demonstrated and so forth.

But there is an expectation on broadcast TV that certain standards of decency—and this is one of the expectations. It is one of the important aspects of why I generally support your philosophy that parents are empowered to know what will be the expectations, and when those expectations are breached that ruins that credibility of us trying to find an approach. So when people do breach what we can consider to be voluntary standards of decency or coarseness, whatever phrase one would want to use, there would be a punishment for it. And that—it is typical of our legal system that if somebody violates a certain standard or a contract or an agreement that there is a penalty for it, and if there is not a penalty there will be no reason, that added reason, for them to try to comply.

Since then, of course, the networks, they have these 5-second delays, whether it is award shows and half-time shows and what-

ever else is going on. There are the technologies to be able to screen that out if one of the actors or actresses violates those standards which are expected for broadcast television.

That is my point from that.

Mr. Ergen—we have gone over time.

The CHAIRMAN. Another minute, Senator.

Senator ALLEN. You each get 30 seconds to answer that. Although you all are not in the broadcast television, you obviously transmit broadcast programming.

Mr. ERGEN. I think all we can do from our perspective since we are in the distribution business is control what we can control. I think the fines would influence behavior. Fines have been larger lately, so we will see how—maybe see some change in behavior in broadcasters. But we put in place for the parent or the family the controls that, if a broadcaster violates your trust and your family, you can lock that channel out even if the channels are not rated, and if the channels are rated we give you different levels that you can lock out. So, our industry has done a really great job under Jack's leadership.

Now, the thing that we have not done as well in the past is to educate people how to use those controls. We have always had those controls, but maybe we have not educated our customers as well as we should. Now we are endeavoring to do that with Jack's leadership, and I think that is going to be a big, big step forward.

Mr. COHEN. Two quick comments. Number one, as the Senator notes, normally I think we would be loathe to comment on a regulatory issue affecting a different industry. We are pretty consistent in not coming to government and say, help us with another industry. We try and focus on the cable industry per se.

But I do think that some of your follow-up comments to Mr. Valenti make the most important point here, which is that it is not necessarily the size of the fines that is changing the behavior that you want to change; it is the spotlight on the problem and in fact the moral suasion of there being fining authority at any level.

As the Senator has pointed out, there has already been a dramatic alteration in the approach of broadcasters to these issues, even without any change in the fines. I think that has been a positive development and I think the broadcasters would agree that it has been positive.

Senator ALLEN. Thank you.

Thank you, gentlemen.

The CHAIRMAN. Thank you very much, gentlemen. Again, I do think that the Committee should congratulate you for these initiatives and for this program you are going to work with the Ad Council—oh, pardon me. We have Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

The CHAIRMAN. We are getting in a hurry here, Senator. My apology.

**STATEMENT OF HON. MARK PRYOR,  
U.S. SENATOR FROM ARKANSAS**

Senator PRYOR. That is OK, I understand. I will try to be brief. But Mr. Chairman, thank you for your leadership on this and con-



tinuing to keep the heat on as only you can. Thank you for doing this very, very much.

Let me, if I can, focus on Comcast just for a few moments. I know that you are trying to do the right thing, so please do not take these questions in the wrong vein, because I know you are trying to get there and trying to meet, not just what the Committee wants, but I think what a lot of Americans want as well.

Let me ask—I know you are in the process of announcing this Family Tier and getting it up and running. Do you know about your competitors? Are they doing the same thing?

Mr. COHEN. The answer is that, as of today, including Mr. Ergen's announcement, there have been announcements from Comcast, DIRECTV, EchoStar, Time Warner Cable, Cox, and Insight to roll out a family tier. The interesting thing, we did a little adding up last night, is that about 70 percent of the multi-channel video customers in America today, with the announcements that have already occurred, have the choice of basically three family tiers: the DIRECTV family tier, the EchoStar family tier, and their local cable company family tier.

Senator PRYOR. Let me ask you, at least from your perspective, what do you like about family tier as opposed to a la carte? Why do you want to go the family tier route as opposed to a la carte?

Mr. COHEN. I think, as I briefly said, and in the amount of time that we have here I am just going to summarize again, the problem with a la carte according to the cable industry, the programming community independent experts, including Bear Stearns, Booz Allen, Paul Kagan, the Government Accountability Office, the FCC Media Bureau study, and what hundreds of organizations and advocacy groups believe is that the net result will be less choice for the consumers, fewer channels, at a greater cost.

In a nutshell, the reason for this is that, as you make channels available a la carte the subscribers and the affiliate fees go down, and the advertising rates go down. That requires you to raise your per unit price, and for ESPN for example, you might have to pay 10 to \$12 a month a la carte to get ESPN. The current bundling package that cable provides we believe is in the best interests of consumers because it provides a cost-efficient way for them to get the diversity of choice and diversity of voices that we think consumers really like out of their multi-channel video providers.

Senator PRYOR. Well, I do not disagree with what you are saying, but also I do think we need to recognize that the way that the programmers, et cetera, bundle their channels has an impact on that as well. If you want ABC, you have got to get—I mean, I do not know how it works, ESPN, ESPN-2, ESPN Classic, whatever, whatever, whatever. There are a lot of folks that do not want all of that. They would like a la carte.

Mr. COHEN. A slightly different issue, which Mr. Ergen talked about in his testimony.

Senator PRYOR. We will save that for another day, because I want to ask about on your service with your family tier. You have to have the basic cable service?

Mr. COHEN. You have to have the basic cable service, as required by Federal law.

Senator PRYOR. I understand that. Then you have to have a digital box?

Mr. COHEN. You do need a digital box to get the family tier because it is a digital product. But the price that we have given you, an average price of about \$31, includes the cost of the digital box. So, it is not an add-on cost to the price that we have announced.

Senator PRYOR. Why do you have to do it in digital? I know that it is only \$5, \$6, \$8. I do not know exactly, but it is not a whole lot of money. But why do you have to do it in digital?

Mr. COHEN. The problem is one of technology. When we deliver signals analog to the house, beyond—after the basic, what we call our broadcast basic tier—the next tier would be called enhanced basic in our terminology, and that is the full 70- to 80-channel package that contains lots of programming that everyone would agree is not family appropriate. There is no technical way to block selective channels on that second stream of enhanced basic carriage.

So, the only way to do this is you have to block the whole stream, all of what is called B-2, and then you bring in digitally through the digital box the channels that you want to include on your digital tier that are then added to your B-1, your basic, broadcast basic tier.

Senator PRYOR. Right. I am out of time. And you have 16 that you are offering in your family tier? Others may have a different lineup?

Mr. COHEN. That is correct, plus the broadcast basic. So we have a total of 35 to 40 channels.

Senator PRYOR. I notice that there is a channel called ABC Family. “ABC Family” would imply that it is family friendly, but it did not make your tier. Is there a reason for that?

Mr. COHEN. ABC Family actually has some TV-PG and a little bit rougher programming at different times of the day. At prime time and during most of the course of the day, it is all family appropriate, but it does have some programming. And we looked at that channel. That was the reason it did not meet our standard, which was at least 70 percent, 70 percent of the total programming being TV-G rated.

Senator PRYOR. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. Again, my apologies.

Again, I thank you all for your help and look forward to working with you further. As was just pointed out, we have a series of hearings now going through the next month, and we hope after those that we can get the Committee to find a time to reach a consensus on many of the issues we are dealing with. So, we may be back in touch with you.

Thank you all very much.

Mr. COHEN. Thank you very much.

The CHAIRMAN. We are now going to change to panel 2. We hope that there will be an orderly transition and those of you who are back there by the door allow these people an opportunity to leave. Take a 5-minute break.

[Brief recess.]

The CHAIRMAN. Thank you very much. Thank you for coming and for being willing to present your views on the subject. We are just going to go right down the list from left to right as you are at the table.

Our first witness is Mr. Bruce Reese, the Joint Board Chairman of the National Association of Broadcasters and the Chief Executive Officer of Bonneville International, Washington, D.C. Mr. Reese.

**STATEMENT OF BRUCE T. REESE, JOINT BOARD CHAIRMAN, NATIONAL ASSOCIATION OF BROADCASTERS; PRESIDENT/ CHIEF EXECUTIVE OFFICER, BONNEVILLE INTERNATIONAL**

Mr. REESE. Thank you very much, Chairman Stevens, Senator Inouye, and Members of the Committee.

The CHAIRMAN. Do you want to push the button on your mike.

Thank you very much, Chairman Stevens, Co-Chairman Inouye, and Senator Pryor. We appreciate the opportunity to be here today. Bonneville International, the company that I head, operates the NBC affiliate in Salt Lake City and 38 radio stations around the country, including WTOP here in Washington. I am also here, as the Chairman said, with my Joint Board Chairman hat, as currently serving as the chairman of the board of the National Association of Broadcasters.

Broadcasters acknowledge the concerns about programming content and in particular how media affects children. At the same time, as several Committee Members acknowledged at the November forum and again today, very real First Amendment issues are at stake when Congress considers venturing into content regulation. Given this delicate balance between the protection of children on the one hand and free speech on the other, we would ask the Committee to consider four key points.

First, we would ask you to remember that the vast majority of broadcasters have never been cited for airing indecent material. In 2002, only 8 of the more than 15,000 stations received a notice of apparent liability from the FCC relating to indecent content. In 2003, that number was only 15. While in 2004, the number was up to 208 stations, 189 of those notices could be attributed to two programs.

Last year in 2005, not a single station was cited for an indecency violation. Overwhelmingly, local broadcasters err on the side of caution when making content decisions. For the vast majority of stations, these decisions are made on a local case-by-case basis, with community tastes and standards in mind. Speaking personally, I know those are hard decisions. I ran our television station for a few years and I made some of those calls and I was criticized in the national media for decisions not to air programming that people thought they ought to be able to see on our stations.

Second, just as the Committee must carefully consider the size of the problem, it should also remember that in today's media marketplace, viewers and listeners draw little distinction between over-the-air free broadcaster's programming and the programming of our satellite and cable competitors. Yet, existing indecency rules and the proposed legislation would not apply to the edgier content of cable and satellite radio and television.

As Chairman Stevens noted at the November forum, the argument that the ubiquitous nature of broadcasting justifies singling out broadcasters as second-class citizens with regards to the First Amendment simply does not make sense any more. In a world in which 80 percent of households receive their television signal via cable or satellite, one would think broadcasters, cable, satellite TV, and satellite radio would all be governed by the same framework.

Our third point, going forward, the Committee should be mindful of any unintended consequences that might result from increasing fines and penalties. For instance, some contemplated changes to the indecency regime could have severe chilling effect on free speech. Proposals requiring license revocation proceedings are especially troublesome. License revocation is the death penalty for a broadcaster and no broadcaster is willing to run that risk.

Already, however, broadcasters have sacrificed compelling programming to avoid even the risk of a violation. Broadcasters have edited language used by soldiers on news reports coming out of Iraq and many stations were reluctant to air the acclaimed World War II film "Saving Private Ryan" on Veteran's Day because of uncertainty about indecency enforcement, concerns that the FCC later decided were unwarranted. Mandating license revocation hearings will exacerbate this problem.

Any changes to the indecency rules should also include important culpability provisions. There are differences between those who have a live slip-up after taking reasonable precautions and those who purposefully push the envelope. In short, most legislative proposals present as many grey areas and complications as they offer solutions.

Our fourth point and one that has already been discussed at length on the first panel is our belief that a key element, perhaps the key element, in content issues is to empower parents to make more informed choices and to facilitate their implementation of those choices. In that vein, NAB has been a proud collaborator in the unprecedented effort that Mr. Valenti described to develop a plan that will educate the public about the V-Chip and other blocking technologies.

Ultimately, Mr. Chairman, broadcasters believe this sort of education, coupled with continued responsibility on the part of broadcasters, is far preferable to targeting one media group, broadcasters, with enhanced fines and greater penalties.

Thank you.

[The prepared statement of Mr. Reese follows:]

PREPARED STATEMENT OF BRUCE T. REESE, JOINT BOARD CHAIRMAN, NATIONAL ASSOCIATION OF BROADCASTERS; PRESIDENT/CHIEF EXECUTIVE OFFICER, BONNEVILLE INTERNATIONAL

Good morning, Chairman Stevens, Co-Chairman Inouye and Members of the Committee. Thank you for this opportunity to appear before you to participate in this Hearing on Decency in Broadcasting, Cable and Other Media.

My name is Bruce Reese. I am the President and CEO of Bonneville International. Bonneville owns and operates the NBC affiliate in Salt Lake City as well as 38 radio stations around the country, including WTOP here in Washington.

I am also the Joint Board Chairman of the National Association of Broadcasters. On behalf of NAB's member stations, I urge this Committee to recognize that continuing to add new, stricter content regulations that apply only to over-the-air broadcasting will not further the government's goal of limiting the potential for chil-

children to be exposed to indecent material. This is because broadcasting is but one of many media available to the American public. As the lines between over-the-air and other forms of content delivered to the home continue to blur (and consumers have increasing difficulty distinguishing between them), it is becoming even clearer that the current approach of applying strict indecency regulation only to over-the-air broadcasting is ineffective and unsustainable. And because the vast majority of broadcasters do not violate the rules that are now applied to them, additional regulation is warranted.

Making rules stricter for broadcasters alone will have little impact on the overall programming delivered to consumers. I urge you to focus on crafting fair and balanced legislation that applies equally to all media and maximizes a parent's ability to use the tools available to them to protect their children from any content they believe is inappropriate.

In this Committee's Forum on Indecency last November, you invited representatives from many different segments of the entertainment business to talk about the issue of indecency. That you did so demonstrates your understanding that children today have ready access not just to broadcast programming, but to cable and satellite programming as well. In such a world, to be effective, efforts to protect children must be applied equally across media.

The ineffectiveness of regulations focused only on broadcasters is even more apparent when one considers that the vast majority of broadcasters have never had the FCC take any action against them for airing indecent material. Consider these numbers: in 2002, only 8 of more than 15,000 stations received a Notice of Apparent Liability (NAL) from the FCC for airing indecent programming. In 2003, the number of stations cited was only 15. While, in 2004, the FCC proposed fines against a total of 208 stations, the proposed fines for 189 of the stations grew out of two programs (20 Viacom-owned stations that aired the Super Bowl and 160 FOX affiliates that aired "Married by America." Petitions for Reconsideration of these proposed fines are still pending at the FCC).

It makes very little sense to pretend that regulating over-the-air broadcasting alone furthers the government's goal of limiting the likelihood that children will be exposed to indecent programming. Given the remarkably rapid growth of cable and satellite television, the Internet and now satellite radio, traditional over-the-air broadcasters represent only a small portion of the content available to consumers. See generally *2002 Biennial Regulatory Review*, Report and Order, 18 FCC Rcd 13620 (2003).

The Committee should also consider that of the many millions of hours of programming aired by radio and television broadcasters, only an infinitesimal amount has been the subject of an indecency complaint, let alone an actual forfeiture. As former FCC Chairman Powell testified in 2004 to the House Committee on Energy and Commerce, of the 240,350 indecency complaints received by the FCC in 2003, 239,837 (or 99.79 percent) pertained to only nine programs. See, Letter from Michael K. Powell, Chairman, FCC, to The Honorable John D. Dingell, Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives at Exhibit 1 (March 2, 2004). In 2004, some 1,405,419 complaints related to only 314 programs out of all the many programs aired that year.

While it is true that the FCC continues to receive complaints of indecency, it is not clear that those complaints demonstrate a widespread problem that warrants legislation, especially if it applies only to over-the-air broadcasting. For instance: *Broadcasting and Cable* magazine reported that of the over 23,000 indecency complaints that were filed at the FCC in July, 2005, all but five of those came from one entity. In the same vein, *MediaWeek* reported in December 2004, that 99.8 percent of all indecency complaints filed at the FCC in 2003 and 99.9 percent of the non-Super Bowl indecency complaints filed with the agency through September 2004 were brought by the same group. Thus, one can legitimately ask, is there a real problem or is there a perception of a problem created by the ease with which complaints can be generated in our modern technological world?

Another fact that came out in this Committee's Forum was that widely available blocking technology offers parents a viable means of screening the programming that comes into their home. Perhaps most notable is the so-called V-chip, which was mandated by Congress as part of the Telecommunications Act of 1996 in order to empower parents to control the video programming available to their children. See, Section 551, Telecommunications Act of 1996. See also, Statement of Senator Burns, 142 Cong. Rec. S702 (daily ed. Feb. 1, 1996) (describing the "V-chip technology as an aid for parents" and as a "tool for parents"). By law, the V-chip is in every television set 13" or larger sold in America today. Coupled with the television ratings system, this tool is a parental control device that spans across all methods of video delivery.

The V-chip and program rating information provide tools that parents can use, if they wish, to supervise their children's viewing choices. According to a Fall 2004 survey by the Kaiser Family Foundation, 50 percent of all parents report using television ratings to "help guide their children's television choices," and "the vast majority" (88 percent) of those parents say that they found the ratings "useful." *Parents, Media and Public Policy: A Kaiser Family Foundation Survey* at 4-5 (Fall 2004). Moreover, there are other blocking tools available to parents such as the "TV Guardian," which automatically filters offensive language from pre-scripted television shows (whether broadcast or subscription) and from VHS and DVD movies. See <http://tvguardian.com/gshell.php> (last visited January 16, 2006). And, as we enter the world of digital radio, blocking technologies are also available for radio programming.

The fact that these tools exist cannot be blithely ignored. That some parents may choose not to use the V-chip or other blocking tools cannot diminish its significance to your deliberations on the issue of indecency. Simply put, promoting the use of blocking technology is a less restrictive means of accomplishing the government's goal of limiting the possibility that children will be exposed to indecent material. See, *Ashcroft v. ACLU*, 542 U.S. 656 (2004). That is very important to all who cherish the First Amendment protections that are so important to our democracy.

As I know this Committee recognizes, draconian fines and other threats against over-the-air broadcasters raise grave concerns about broadcasters' right of free speech. The increased focus on indecent programming has already had a significant chilling effect. Local stations are concerned about broadcasting live from local events where stations cannot completely control what observers and by-standers might say or do. For example, television stations in Phoenix stopped broadcasting the live memorial service for Army Corporal Pat Tilman, who left a pro-football career with the Phoenix Cardinals and was killed in Afghanistan, because of the language used by some of the mourners, including family members. Broadcasters have also edited out language used by soldiers in news reports from Iraq. And, many local broadcasters were reluctant to air the WWII war movie *Saving Private Ryan* because of uncertainty about FCC indecency enforcement.

Increasing fines and creating a greater possibility that alleged indecency could affect station licenses will only exacerbate this problem. Large fines for even inadvertent incidents could drive some broadcasters, particularly those in small and medium markets, out of business. It will also create an atmosphere of government censorship as broadcasters are forced to avoid popular genres such as hip-hop because government regulators find that programming tasteless or offensive.

For this reason, NAB submits that a new paradigm is necessary. It is NAB's position that any indecency legislation must have clear guidelines that are applied in a fair and consistent manner across all media providers. Consumers should have the same expectations as to all programming that comes into the home, and legislation should address the fact that consumers do not readily distinguish between programming that is provided over-the-air and other programming. Legislation should also recognize the importance of technology in solving these issues in a manner more consistent with the First Amendment. See, *Ashcroft v. ACLU*, 542 U.S. 656 (2004).

NAB further submits that, if the Committee alters the indecency regime, it should also build in culpability protections to provide balance and avoid unintended consequences. Clearly a station's ability to review and reject programming on a timely basis should be taken into account. In addition, not all indecency violations are the same. Unintended violations are not the same as flagrant violations of the rules and should not be treated in the same manner. For example, a station that has taken every reasonable precaution but still has a slip-up on live programming should not be treated the same as another that either purposefully or negligently violates the rules. Any regime must build in guidelines to address the issue of culpability.

The challenge for you as lawmakers is to decide what to do in the face of today's media realities.

As public licensees, broadcasters take seriously our obligation to offer responsible programming that serves our local communities. We understand the concerns of our communities and strive every day to create compelling content that will interest, entertain and inform our audiences. We look forward to working with you to help focus your effort to address concerns about indecent programming in a fair and balanced manner that will not chill free speech.

I thank you for this opportunity to appear before you.

The CHAIRMAN. Thank you very much.

Our next witness is Brent Bozell. Welcome back. He is President of the Parents Television Council of Alexandria, Virginia. Mr. Bozell.

**STATEMENT OF L. BRENT BOZELL, III, PRESIDENT/FOUNDER,  
PARENTS TELEVISION COUNCIL**

Mr. BOZELL. Thank you. Good morning, Chairman Stevens and Co-Chairman Inouye and Senator Pryor. My name is Brent Bozell and I am the founder and President of the Parents Television Council, a nonprofit, nonpartisan organization that speaks on behalf of the vast majority of Americans who are sick and tired of the graphic sex, the ultra-violence, and the raunchy language that is now pouring out from many quarters over the public airwaves or on cable programs that the American public is being forced to subsidize.

Mr. Chairman, the industry must abide by community standards of decency while using the public airwaves. This is not a proposal. This is law, well-settled law that was affirmed by the Supreme Court 3 decades ago. Those who violate the public trust are breaking that law and must be held accountable.

Nearly 2 years ago, Congress promised swift action to put an end to this raunch. Twice now, the House has passed legislation to increase decency fines by an overwhelming bipartisan margin, most recently by a vote of 389 to 38. Despite genuine expressions of concern, of deep concern, from so many in the Senate about protecting families from graphic and indecent programming, here we sit again.

The Senate must pass the Broadcast Decency Enforcement Act immediately and should send it to the President for his signature. We do not suggest a change in the indecency law, only a change in the penalties for those who break that law.

You are being told that the TV rating system is enough to protect children, that ultimately it is up to parents to do something about the problem caused by Hollywood. This to me is an amazing dodge. The rating system has been an inconsistent, inaccurate, arbitrary and capricious mess, and now the industry is sitting here before you and is telling you to believe that it is going to be serious, this time it is going to be serious, and responsible about a better rating system. But is that not precisely what they promised you 9 years ago when they launched it? Fool me once—you have heard that jingle, but let me amend it now with respect to this Committee: Fool you twice, shame on you.

Even if it were accurate, so what? It does nothing to stem the raunch pouring out of the public airwaves, nothing at all. Just over a year ago, Viacom agreed to a consent decree with the FCC—and this addresses Senator Allen's point—to resolve all the outstanding indecency complaints for what was a relatively small sum for a company its size. Yet just weeks later Viacom's CBS Network reaired an episode of "Without a Trace" that included a scene of a teenage orgy, the very same episode and the very same scene which was addressed in the consent decree.

Mr. Chairman, the penalties for breaking the law are useless and must be increased and enforced, with revocation hearings mandated for those who repeatedly, willfully break the law. Let us be

very clear about this. The only people affected by this are those who are breaking the law.

Now to cable. Consumers must—I repeat, must—be free to pick and choose and pay for only those cable networks they want. The so-called expanded basic tier networks are airing some of the most graphic and shocking content imaginable. Several weeks ago, the FOX-owned FX Network aired a program wherein a funeral home worker assembled various body parts from cadavers, stitched them together, added his sister’s head to the body, and then had sex with this Frankenstein-like creation. Call it incestuous necrophilia.

That same network also aired a different program featuring a police captain who broke into a house to arrest two gang members, and when the gang members prevailed one of them held a gun to the kneeling police captain and forced him to perform oral sex on him. The scene was revolting, with graphic dialogue and the police captain gagging on the gang member’s penis.

Over on Comedy Central, a Viacom-owned network, animated grade school children masturbate a dog until it ejaculates. They sit in a classroom while a teacher inserts a gerbil into another man’s rectum as part of a science experiment. The children watch a competition called a “whore-off,” won by a female character who inserts an entire pineapple into her vagina.

Two weeks before Christmas, the same show featured a scene with a statue of the Virgin Mary with blood pouring out of her buttocks. When some declared this to be a miracle, they were corrected by the pope-figure on the show, who declared: “A chick bleeding from her vagina’s no miracle; chicks bleed out of their vaginas all the time.”

Mr. Chairman, some may choose to watch and pay for this content, but it is outrageous that 80 million other American families who find this so morally offensive are being forced to subsidize it if they want to watch the Disney Channel, the Golf Channel, the History Channel, or a football game on ESPN. Something can and must be done about this.

My time is up. Mr. Chairman, Mr. Co-Chairman, Senator Pryor, I ask you this question with all due respect. Who are you going to listen to in this debate?

I would like to add one final quick point. We have heard all morning long, as I have heard for years now, everyone used the words “parental rights,” “parental empowerment,” and now “parental responsibility.” Everyone has used it. The ultimate parental responsibility, parental right, parental empowerment, is giving the parent the right and the authority to choose what will be aired on his television set or her television set.

I respectfully add that anyone who will give a speech advocating parental rights, but will not agree to allow to give parents rights, has lost the moral authority to talk about that conversation. Thank you.

[The prepared statement of Mr. Bozell follows:]

PREPARED STATEMENT OF L. BRENT BOZELL, III, PRESIDENT/FOUNDER, PARENTS TELEVISION COUNCIL

Good morning, Chairman Stevens, Co-Chairman Inouye and Members of the Committee. My name is Brent Bozell and I am the founder and president of the Parents



Television Council, a non-profit, non-partisan organization whose mission is to protect families from graphic sex, violence and profanity in entertainment. Thank you for holding this hearing today. Millions of Americans are looking to the Senate to fulfill its promise to increase the financial penalty for those who break the law which prohibits the broadcast of indecent material over the public airwaves. They are also demanding you do something about a system that is forcing them to subsidize cable content they find morally offensive.

Mr. Chairman, there has been an awful lot of talk about this issue over the past two years, with a number of “solutions” offered by the broadcast and cable industries. I put the word “solutions” in quotes because so much of this is feints, dodges and smokescreens that ultimately does nothing—nothing—to correct the problem. There are real solutions. Virtually every person testifying before you today represents a vested special interest and will say, and spend whatever it takes to protect their special interest. We speak on behalf of another special interest altogether: the vast majority of Americans sick and tired of the sewage pouring out of their airwaves, or on cable programs they are being forced to underwrite.

After your “Open Forum” on November 29th, I wrote you and the Co-Chairman a letter in which I proposed a three-point solution. I formally submit this three-point solution to you and to the Committee again today as a reasonable resolution to both the broadcast and cable issues. Simply put, the three points are as follows: There must be real penalties for those who violate broadcast indecency laws, therefore fines must be increased. Second, if aired outside the so-called “safe harbor” period, indecent material should be limited to cable. Third, consumers should be free to pick and choose—and pay for—only those cable networks they want.

Please allow me to explain this solution and elaborate on my comments in that letter.

Mr. Chairman, the broadcast airwaves are public property. They belong to the people. All the people. Broadcasters are given a license—a temporary right—to use this public property in exchange for a promise to serve the public interest. Not long ago, FCC Commissioner Michael Copps testified before this Committee and noted that the term “public interest” appears 112 times in the Communications Act of 1934. Sometimes public interest and corporate interest go hand-in-hand. And sometimes they do not. Some at this hearing confuse Nielsen ratings, advertising revenue or even Emmy Award nominations with public interest. That is an error in premise, Mr. Chairman, and it leads to error in conclusion.

The industry must abide by community standards of decency while using the public airwaves. This is not a proposal; this is law, well-settled law that was affirmed by the Supreme Court three decades ago. The airwaves must remain safe for families. Those who violate the public trust are breaking the law and must be punished accordingly.

Nearly two years ago, the American people were outraged by a striptease act during the Super Bowl’s halftime show—the most-watched television program of the year, beamed, to our shame, around the world, and watched here at home by tens of millions of young children. In the wake of that well-deserved outrage, the Congress promised swift action to prevent a similar occurrence and the Administration promised to sign the new legislation. The House quickly passed a bill to increase the indecency fines by an overwhelming bipartisan margin. The Senate was unable to bring similar legislation to the floor for a vote. At the end of 2004 nothing had been achieved.

Early in 2005, the House again passed the Broadcast Decency Enforcement Act with a huge and bipartisan majority, 389 to 38, to be exact. And, yet, here we are again. All year long we heard how deeply concerned this Committee and the Senate as a whole were about protecting children from those who would use the public airwaves to pollute our family’s living rooms. And nothing was done.

So, the first point of my three-point solution is that the Senate must pass the Broadcast Decency Enforcement Act and immediately send it to the President for his signature. We do not suggest a change in the indecency law, only a change in the fines for those who break that law. The existing fine structure is meaningless. Legislation that increases the fine for violations to \$500,000 per violation, per affiliate, with a “3 strikes” license revocation hearing mandated for repeat offenders, is a solution.

Now let me tell you what is *not* a solution. You are being told that the entertainment industry bears no responsibility when it produces “cutting edge” material; that that the V-Chip, the TV ratings system and parental control devices are enough to protect children; that ultimately it’s up to parents to do something about the problem caused by Hollywood. But these are all dodges. The V-Chip is a dodge. It relies on a reliable ratings system, but as the PTC publicly exposed last year, the ratings system is inconsistent, inaccurate, arbitrary and capricious, not just across the var-

ious networks but even within a network. And understand why this is so: the networks themselves rate their programs, and will not do so accurately because they cannot suffer the consequences. If they rate the program too steeply—that is, ascribing to it the correct adult warnings—many prominent advertisers will not sponsor the program. There is an inherent and unmistakable conflict of interest.

So long as the television rating system is a failure, the V-Chip will continue to be a failure as well. But wait. Now the industry would have you believe it is going to be serious—this time—and responsible about a better ratings system. But isn't that precisely what they promised you nine years ago when they launched it? They have been mocking the public for nine years. "Fool me once . . ." you've heard that jingle, but let me amend it with respect to this Committee: "Fool you twice, shame on you."

Opponents of an indecency fine increase will also tell you that the current fine structure is adequate deterrence to airing indecent material. Do not be fooled by this. In spite of emotion-filled Congressional testimony of network executives preaching zero-tolerance policies for indecency violations, the truth is that the networks have not lived up to the promises they made to you. Instead they waited for the media attention to blow over and they went right back to doing what they had been doing before. Here's just one example. Just over a year ago, Viacom agreed to a Consent Decree with the FCC to resolve all of its outstanding indecency complaints for what was a relatively small sum for a company of its size. In that Decree, Viacom admitted to airing indecent material and agreed to institute a company-wide policy to ensure against the further violation of indecency law. However, just weeks after signing that Consent Decree, Viacom's CBS network re-aired an episode of *Without a Trace* that included a scene of a teen sex orgy. This was the very same episode and the very same scene which was the subject of an indecency complaint addressed in the Consent Decree. Another example: A few short months ago CBS aired an episode of *NCIS*, which began with the scene of a woman performing a striptease for a voyeuristic Internet audience. During the course of her striptease the woman was savagely murdered, graphically depicted as having her throat slit—all before the opening credits even roll. As if a broadcast which depicts Internet pornography and a throat-slitting isn't bad enough by itself, this scene was aired at the top of the 8:00 p.m. hour—7:00 p.m. in the central and mountain time zones—when millions of children were watching television.

It's not just CBS, Mr. Chairman, which is making a mockery of the indecency laws. Although the concert was a noble idea, and despite every assurance from the network, and even despite a several hour tape delay, ABC aired an unedited F-bomb during its broadcast of the *Live 8* concert. And this past summer, the FOX network aired an episode of *The Inside* which highlighted a forced sodomy scene. Sadly there are many, many more examples of the broadcast television networks' utter disregard for the spirit and the letter of law.

Mr. Chairman, the fines for breaking the law must be increased. Unless and until they are increased, the networks with their billions of dollars will continue to break the law and flaunt the public's will. Additionally, the network affiliates must be given the unfettered ability to prescreen programming and, without the risk or fear of any economic retribution by the network, the affiliates should be allowed to preempt or edit programs which they believe may violate their community standards.

I've used this metaphor with you before: Imagine that we are talking about public highways, not public airwaves. If there's a pothole in the middle of the road, do you solve the problem by putting up signs, and arrows, and signal flares warning drivers about the pothole, or do you fix the pothole? What the networks are proposing is adding more signs. What they need to do is fix the pothole.

The second point of my proposed three-point solution is simply this: if indecent material is to be aired outside the so-called "safe harbor" period, then it should be relegated to the cable networks. We hear many broadcasters complain that allowing indecent material on cable, but not broadcast, creates an un-level playing field, putting them at a competitive disadvantage with cable. Do not be fooled by this smoke-screen. Studies show that six companies—AOL Time Warner, Liberty, ABC/Disney, CBS/Viacom, NBC/Universal and FOX/NewsCorp control approximately two-thirds of all viewers on television. In short, they control both sides of the coin. In addition, doesn't it strike you as odd that broadcasters never seem to feel the need to compete with the positive programming on cable? Seven of the top ten most popular shows on cable last week we're all on Nickelodeon. Broadcasters must be reminded that their status as a broadcast licensee puts them in a different position: one of public trust. If they feel the playing field is not level, they have every ability not to use the public airwaves and instead seek distribution via cable or satellite.

My third and final point is that consumers should be free to pick and choose—and pay for—only those cable networks they want. This ensures that indecent cable

programming is indeed an “invited guest” into the home. Some call it “Cable a la Carte,” others call it “Cable Choice.” We don’t suggest that the cable industry be prohibited from selling programming in bundled tiers; we do suggest that they must offer unbundled programming as one choice for their subscribers.

Let me tell you why Cable Choice must—I repeat, must—happen. In recent weeks and months, a number of the so-called expanded basic tier networks have aired some of the most graphic and shocking content imaginable. I’m not talking here about HBO or some sort of pay-per-view channel; I’m talking about advertiser-supported basic and expanded basic cable; what families are given to take when they subscribe to this service.

Several weeks ago the FX network, owned by the News Corporation, aired a program featuring a storyline wherein a funeral home worker preserved his deceased sister’s head. He assembled various body parts from cadavers and stitched them together, adding his dead sister’s head. And then he had sex with his Frankenstein-like creation. Call it incestuous necrophilia.

Not long ago that same network also aired a different program with an episode featuring a police captain who broke into a house to arrest two gang members. There was a struggle for a gun, and when the gang members prevailed, one of the gang members held the gun to the head of the kneeling police captain and forced him to perform oral sex on him. The scene was revolting, with graphic dialogue and the police captain gagging on the gang member’s penis.

Over on Comedy Central, a Viacom-owned network, animated grade school children masturbate a dog until it ejaculates. They sit in a classroom while a teacher inserts a gerbil into another man’s rectum as part of a science experiment. And the children watch a competition called a “whore-off” which is won by a female character who inserts an entire pineapple into her vagina. Two weeks before Christmas this same show featured a scene with a statue of the Virgin Mary, with blood pouring out of her buttocks. When some declare this to be a miracle, they are corrected by the pope-figure, who declares, “A chick bleeding from her vagina is no miracle. Chicks bleed out their vagina all the time.”

Mr. Chairman, it would be one thing if these networks were supported by subscribers who wanted to watch such filth. It is wholly another thing for you, me, and 80 million other American families to be forced to subscribe to these networks—to underwrite the production of this material—in order to watch the Disney Channel, the Golf Channel, the History Channel or a football game on ESPN.

The cable industry will say just about anything to prevent consumers from their right to take and pay for only the programming they want. First, they said that it was technically not feasible to have a consumer-driven a la carte subscription model. That falsity was quickly exposed by virtue of the rapid growth in digital set-top cable boxes. Next, the industry said it would spend \$250 million to educate consumers how to block networks from coming into their homes. But again, this was quickly exposed as a red herring, for customers had to pay for the networks that they chose to block. The industry then claimed program diversity would be ruined with an a la carte model. Niche and targeted networks would go bankrupt, they said. But wait a minute. Hasn’t the industry for years defended its programming, even its offensive programming as necessary to satisfy market demand? It just can’t have it both ways! The industry then struck fear into the hearts of many by arguing that Cable Choice would cause consumer prices to increase, not decrease, and would result in fewer channel opportunities, not more. This is simply outrageous. First, when in the history of commerce has increased competition resulted in *higher* prices? And second, for more than a decade the industry itself has been increasing consumer prices at three or four times the rate of inflation, with all the proceeds going into its own pockets. The industry is more than happy to feather its own nest at the expense of the consumer, so long as they can do it without bringing undue attention on their pricing scheme.

For instance, after NBC completed its recent acquisition of Universal Studios, a quick look into the television program archive vaults led to the creation of a new cable network called *Sleuth*, comprised of police dramas. With its unfair negotiating leverage over the cable distributors, NBC can assure carriage of *Sleuth* in most of the 80 million cable homes in the U.S. Media reports state that NBC is commanding 10 cents per subscriber per month for its newest cable network. This translates into nearly \$100 million in new annual revenue to NBC but at a barely noticeable dime per month for most customers. To paraphrase the old saw, a dime here and a dime there, and soon you’re talking real money.

Last November at the Open Forum, you heard representatives from the American Cable Association, which represents nearly 900 small and independent cable systems, and DISH Networks, the second-largest direct-to-home satellite provider. Those two representatives told you that they wanted to offer their customers Cable

Choice but they were prohibited by the networks from doing so. Clearly there is a “cozy” relationship between the networks which takes the form of an anti-competitive and monopolistic practice. One wonders how much longer this kind of behavior can last without an antitrust investigation.

In the weeks since your Open Forum last November, we have seen the cable industry do something it said it would never do: offer a family tier of programming as a prescription for increasingly raunchy cable content. It sounded good, Mr. Chairman, but don’t be fooled. There is one reason and only one reason why a family tier of programming was offered: it was offered to appease you; to throw you a bone in the hope that it would table any potential action by your Committee. The family tier solution is the last-ditch attempt by the cable industry to prevent Cable Choice—the a la carte pricing system—from becoming reality.

The cable industry’s sudden embrace of the family tier model is quite possibly its most cynical response yet. In fact, they have designed these family tiers to fail, because they would like nothing better than for the family tier concept to fail so they could claim after the fact that no demand exists for a different way of doing business in the cable industry.

The cable industry executives who have concocted this plan will be hard pressed to find many consumers, even their own employees, to whom the proposed family tier would hold any great appeal. After Time Warner released its “family” tier lineup, we documented no less than 27 separate networks that are totally, or mostly family-friendly, that didn’t make the list. According to this company, no family wants to watch sports, or movies, or religious programming; all networks devoted to these themes were omitted. What Cox and Comcast have offered varies slightly, but not much.

Another problem with the family tier approach involves the must-carry “basic” tiers that customers will necessarily subscribe to in order to get access to the family tier of programming. In all cases, the basic tier would include the local broadcast stations, but in many markets this basic tier includes some cable networks. For example, TBS is carried as part of many cable distributors’ most basic tier, and carries the former HBO show *Sex and the City* several nights per week. This show, as you likely already know, includes some of the most shocking sexual and profane content imaginable, including references to group sex, masturbation, sex toys, and fellatio.

Our position is clear: if FCC oversight of cable programming were the only option to address raunchiness on cable, we would take it. But there is a better way, and that is to provide cable channel choice to America’s families. It is the only option available that creates a real free market in the cable industry.

The problem of indecency on television is a serious one. The public is fed up with and appalled at the Senate’s inability to address the issue. Let us be very clear where the American people stand: According to the Pew Research Center, 75 percent of the American public is demanding tighter enforcement of government rules on broadcast content, particularly when children are most likely to be watching. Sixty-nine percent of the American public also are demanding higher fines for media companies that violate the law. Where cable choice is concerned, the numbers are no different. According to a Wirthlin poll conducted for Concerned Women for America, 80 percent of the American people disagree with the way the cable tier pricing system currently functions. Sixty-six percent of cable subscribers—that’s 2 out of 3—say they prefer to choose for themselves the programming included in their cable subscriptions. And here’s another number that should factor into the equation for everyone involved: when non-cable subscribers were asked if they would be more likely to subscribe to cable if they could choose the programming included in their cable package, 66 percent said they would be more likely to subscribe, 39 percent of that number say they would be “much more likely to subscribe.”

That is the market response. That is what the American people want. Everything else you’re hearing is the voices of special interest who are forcing the American public, your constituents, to subsidize, for their profit, what is on cable television, or to put up with an abuse of the public trust by the constant, and often wretched abuse of the public airwaves.

Mr. Chairman, Mr. Co-Chairman, and Members of this Committee, I ask this with all due respect: Who are you listening to? Thank you.

The CHAIRMAN. Thank you.

Our next witness is Martin Franks, the Executive Vice President of CBS from New York City. Mr. Franks, nice to have you back.

**STATEMENT OF MARTIN D. FRANKS, EXECUTIVE VICE  
PRESIDENT, PLANNING, POLICY AND GOVERNMENT  
RELATIONS, CBS CORPORATION**

Mr. FRANKS. Thank you, Senator Stevens, Senator Inouye, Senator Pryor. Thank you for this opportunity to detail the care CBS devotes to a role we take very seriously, that of a guest in America's living rooms. The CBS Standards and Practices Department, which reports to me, reviews each program, each commercial, and each promotional announcement before any one of them ever reaches our air. In the case of prime time programs, that process involves careful scrutiny and revision of at least multiple drafts of scripts, a video rough draft, known as the rough cut, and the final air copy. From that final air copy, standards determines the appropriate V-Chip rating.

We do not assign those ratings on a wholesale basis. Each show is reviewed and rated individually in order to help inform parents as to that program's appropriateness for their household. On any script with even a hint of possibly indecent material, a separate review is performed by the CBS Law Department. That show does not reach air until both the Law and Standards Departments are convinced that it is free of indecent content.

Every live entertainment program on CBS is now subjected to an audio and a video delay system so we can delete offensive language or video images. And while it may now be obvious to you that we would put a live award or reality show on a delay, last November the Macy's Thanksgiving Day Parade on CBS was also on a delay, in case the random stalker or offensive sign-bearer decided to try to take advantage of our air for their own purposes. And while they could walk away without repercussion, CBS and our affiliates would be subject to millions of dollars in fines and potential license revocation.

Permit a word for those who say that more family-friendly programming is the solution. In the mid to late 1990s, as a conscious programming and business strategy, CBS offered wonderful family friendly programming in the 8 o'clock hour: "Touched by an Angel," "Bill Cosby," "Dr. Quinn," "Promised Land." And we got killed in the marketplace. Advertisers and the audiences they covet made other viewing choices in droves. Given a choice, the audience voted with their remote controls for edgier fare.

Let me be clear. CBS would be happy to go back to the three-channel era, when a family viewing hour was not subject to counterprogramming pressure. But in today's world of hundreds of channels, a state of affairs frequently praised in other public policy debates as, "viewer choice and diversity," looking back lovingly at the past that cannot be recreated will not guide us toward a solution for today.

So what can be done? As I told the Committee on November 29th, I am surprised that so many are ready to give up on the V-Chip, a system already in place that can be used to block unwanted programs. It is not perfect, but neither would any new system be. It is a tool already in millions of television sets today, and with the millions of new sets that will be sold as a result of this Committee's proposed hard deadline for the digital transition, many more millions of V-Chip-equipped sets will enter the marketplace annually.

Moreover, in the month since the Committee last met on this subject, under the remarkable leadership of Jack Valenti, the entire television industry—broadcast, cable, satellite, television set manufacturers, and Hollywood—has come together in an unprecedented unified effort and has engaged the Ad Council to guide us through a sustained industry-wide national campaign to educate parents on the ready availability of blocking technology in their sets, its ease of use, and how they can use it to block unwanted programs from ever entering their living rooms.

As strongly as I can, I urge the Committee to give this effort a chance to take hold. In 20 years in the business, I have never seen the industry come together in this fashion. It is far from the norm. Frankly, I believe this campaign is the best chance by far for both a near and a long-term solution to helping parents supervise their children's television viewing. If our mutual primary focus is to help parents, then by comparison stiffer penalties for indecency will not help them much at all.

Thousands of hours of television programming are available each year and only a very few of those hours are even accused of indecency, much less found guilty. But of those thousands of hours, a great many may not be appropriate for children. A fines bill will not help parents with that cascade of otherwise perfectly legal programming coming into their homes. Only helping parents understand that they already have effective blocking technology that is easy to engage will help address the real issue facing American parents.

It is my fervent hope that you will help us advance this effort to help American parents, because this is much more central to their everyday lives than what the penalty will be for a small handful of programs found to be indecent.

Thank you.

[The prepared statement of Mr. Franks follows:]

PREPARED STATEMENT OF MARTIN D. FRANKS, EXECUTIVE VICE PRESIDENT,  
PLANNING, POLICY AND GOVERNMENT RELATIONS, CBS CORPORATION

Good morning Chairman Stevens, Co-Chairman Inouye and Members of the Committee. I am Martin D. Franks, Executive Vice President, Planning, Policy and Government Relations for the CBS Corporation. I appreciate the opportunity to appear before you today on the topic of decency on television.

We at CBS know that we are a guest in viewers' living rooms. Thus, aside from any legal regulatory requirements that govern our content, we strongly believe that we have an obligation to remain attuned to our audience and its needs, tastes, sensibilities and expectations.

One of my responsibilities is overseeing the CBS Television Network's Standards and Practices Department which reviews all scripted and reality programming, movies, commercial messages and promotional announcements before they air. In the case of prime time programs, that process involves careful scrutiny and revision of multiple drafts of scripts, including the video first draft, known as the rough cut, and the final air copy. From that final air copy, the Standards Department determines and applies the appropriate TV ratings. We do not assign those ratings on a wholesale basis. Each episode of each show is reviewed and rated individually.

When any script contains even a hint of possibly indecent material, a separate review is performed by the CBS Law Department, and such a show does not reach air until it has passed muster by both CBS Law and Standards and Practices.

For live entertainment programming, CBS for years has employed delay equipment to make possible the deletion of unanticipated offensive language. But this system is designed to catch only audio. With respect to video, the first line of defense for our network, and for that matter, the entire industry, at live news, enter-

tainment and sporting events, has been to “cut away the camera,” averting the camera’s eye away from inappropriate graphic subjects.

Given the history of broadcast television up until fairly recently, deleting troublesome video has never been a concern, except perhaps for the occasional streaker dashing across a sports field, a circumstance we all have become fairly expert at avoiding.

Unfortunately, we now understand all too well that people in front of a live camera—whether it be a celebrity on an awards show, a fan in the stands of a sporting event, or even a bystander at the Macy’s Thanksgiving Day Parade—can push the limits of appropriateness and yield ineffective the cut-away camera, our first line of video defense. The consequences of serving our viewers by delivering to them in the comfort of their living rooms live events for free that they are unable to attend in person can be severe: We are liable for potentially heavy monetary and licensing penalties for broadcasting video that contains fleeting images of people who take advantage of our air for their own purposes and without any liability on their part.

CBS has responded by implementing for all live entertainment programming, an enhanced delay system for deletion of any inappropriate audio *and/or* video footage, if needed. Developed by CBS engineers, and first put in place for the 2004 Grammy Awards, the system is groundbreaking, costly to operate and maintain, and requires skilled operators able to work under extraordinary pressure. After all, a baseball player who fails six times out of ten at the plate is a cinch for the Hall of Fame, whereas the Standards Editor who bats only .999 is subject to Federal investigation as well as fines and license revocation for his or her employer.

Despite our efforts to do everything technically, mechanically and humanly possible to eliminate inappropriate language and behavior, we do worry that anything more drastic could mean the elimination of live programming in this country. That would not be a good outcome for viewers of broadcast television, who are now able to access for free major live sports and entertainment events.

As broadcasters, we have an obligation to operate in the public interest. The FCC and the courts have consistently interpreted this to require broadcasters to air programming that is responsive to the interests and needs of our communities. Our public interest duty, therefore, mandates that we serve a broad spectrum of America, and not just one narrow group. We must strive to inform and entertain a diverse population that forms the fabric of America. And we do: CBS offers among the best in news, sports, and entertainment, as well as educational and informational programming for children. Our entertainment programming includes scripted comedies and dramas, reality shows, original movies, and awards events. That this programming appeals to a wide cross-section of American tastes is demonstrated on the website of Parents Television Council. While I disagree with them often, I compliment Brent Bozell and the PTC for having the courage and intellectual rigor to be specific in their criticisms and rejecting overbroad generalizations. One way they do so is by singling out shows worthy of their praise, the “best of” list, and those that are not, the “worst of” list. CBS shows seem to end up on both of the PTC lists.

Millions of Americans, however, disagree with PTC’s “worst of” categorization. Week after week, for years now, millions of homes, in every market in the country—from Salt Lake City to New York City—tune in to shows on the “worst of” list. Two of those shows, for example, “CSI: Crime Scene Investigation” and “Without A Trace” are among the top ten most popular shows in America, with some one-quarter of all households watching television making these programs their weekly choices. These shows, we concede, contain some scenes inappropriate for younger children (and they usually carry a V-Chip rating that reflects that fact), but they do so in a way that is integral to the context of an episode.

Context is everything. Catching the bad guys who break the law and bringing them to justice is the theme of the forensic science program “CSI.” The program reportedly is inspiring hundreds of college students to pursue a career in the field, in which at least one expert estimates an additional 10,000 scientists are needed nationwide.<sup>1</sup> “Without A Trace,” a drama about the missing persons unit of the FBI, necessarily recounts stories about the not-so-pretty disappearance of people, and concludes each program with FBI-supplied information about a real-life missing person. Just this past summer, a viewer responding to one of these segments led to the recovery of two missing children.<sup>2</sup>

<sup>1</sup>“The CSI Effect,” Nancy McGuire, [http://www.chemistry.org/portal/a/c/s/1/feature\\_ent.html?id=c373e9026ca0695f8f6a17245d830100](http://www.chemistry.org/portal/a/c/s/1/feature_ent.html?id=c373e9026ca0695f8f6a17245d830100), the website of the American Chemical Society, March 7, 2005.

<sup>2</sup>Federal Bureau of Investigation press release, July 25, 2005, [http://oklahomacity.fbi.gov/pressrel/2005/jul25\\_05.htm](http://oklahomacity.fbi.gov/pressrel/2005/jul25_05.htm).

In a Nation with such diverse tastes and backgrounds, and where only about one-third of the homes have children, policymakers cannot and should not be deciding what Americans watch on television. These are fundamental decisions for those capable of making such decisions—adult viewers and parents of child viewers. And what is appropriate for one viewer may not be for another. That is where the TV ratings and V-Chip tools come in. The TV ratings system gives parents information about the age-appropriateness and content of television programs. And the V-Chip enables parents to automatically block programs by TV ratings. Beginning six years ago this month, Federal regulations mandated the manufacture of a V-Chip in all TV sets 13 inches and larger sold in this country.

I am surprised that so many in Washington seem ready to give up on these tools. It is not perfect, but neither would any new system be, including a “safe harbor” for violent programming, which is contemplated by S. 616, the bill introduced by Senators Rockefeller and Hutchison. Defining violent programming and cordoning it off from children who have not yet been tucked into bed is a near-impossible exercise as evidenced by proposed solutions. For example, there are strong advocates of restricting the airing of violent material during certain hours who argue that league-sanctioned sponsored sports, such as NFL, NBA and NHL games, should be exempt. Yet, these advocates would not exempt professional wrestling, because it contains gratuitous violence.<sup>3</sup> Other advocates of limiting violence to a safe harbor would carve out simulated war activities that are “distant in time,” as well as other combative activities, such as a “shoot-out at the old corral” or a Star Wars-type laser gun confrontation.<sup>4</sup> It is unclear under these definitions whether “Saving Private Ryan” or “Schindler’s List” could ever be shown during prime time. And news—if it is not made exempt from any safe harbor, coverage of stories involving war, crime and other potentially violent material would have to be shunted to certain hours of the day. And perhaps the same is true for traditional “family-friendly” nature programs, some of whose episodes are entirely devoted to bloody shark and hyena attacks. These are line-drawing activities meant for viewers and parents, not for Congress or the FCC.

That brings us back to TV ratings and V-Chip. Broadcast and cable programmers all label their product with the TV ratings, which can be accessed and used by viewers without any additional technology whatsoever. These ratings include descriptors alerting viewers that an episode may contain violent or sexual content. And the V-Chip, as well as cable and satellite blocking technology, found in millions of television sets and set top boxes today, can be programmed to block the receipt of programming carrying designated TV ratings. With the millions of new sets that will be sold as a result of this Committee’s proposed hard deadline for the digital transition to be completed, many more millions of V-Chip-equipped sets will enter the market annually.

Critics of these tools argue that parents have no idea how the V-Chip works or even know that their television set contains one. The V-Chip is worthless, they say. We agree that there is work to be done on educating consumers, and Jack Valenti came before this Committee today to describe an unprecedented cross-industry plan for communicating to parents about the power they have to control television in their homes. We appreciate the role this Committee played late last year in urging us all to act in unison. And we hope that you will all be patient as we roll out this first-of-a-kind campaign about tools that were sanctioned and enacted by Congress. It represents by far the best hope anytime soon to help parents control their children’s television viewing.

But let’s not forget how far we have come already. Even back in July 2001, a mere 18 months after the V-Chip mandate for television sets became effective, The Henry Kaiser Family Foundation issued a study that found that 36 percent of all parents who were aware of the V-Chip used it to regulate their children’s viewing habits.<sup>5</sup> Of those parents who used the V-Chip, the study reported, 86 percent said it was useful for blocking shows.<sup>6</sup> And of those parents who did not use the V-Chip, 51 percent said it was because their children usually watch TV with an adult in the vicinity, and 25 percent said it was because they trust their children to make the right decisions.<sup>7</sup> As for the TV ratings associated with the V-Chip, 56 percent of parents in the 2001 study reported using them to make decisions about what shows

<sup>3</sup>In the Matter of Violent Television Programming and its Impact on Children, FCC’s MB Docket No. 04–261, Comments of Pappas Telecasting Companies, filed October 15, 2004.

<sup>4</sup>*Id.*, Comments of Morality in Media, filed September 7, 2004.

<sup>5</sup>“Parents and the V-Chip 2001: A Kaiser Family Foundation Survey, Toplines,” [www.kff.org/entmedia/vchip.cfm](http://www.kff.org/entmedia/vchip.cfm), page 1.

<sup>6</sup>*Id.* at 13.

<sup>7</sup>*Id.* at 3.



their children watch. This is an impressively significant number for a new system, particularly when compared with use of the movie ratings system, which had been around for 33 years at the time and which 84 percent of parents reported using.<sup>8</sup>

Finally, let me mention “family-friendly programming.” In the 1990s, as a conscious strategy, CBS offered several programs in that genre in the 8 o’clock hour: “Touched by an Angel,” “Cosby,” “Dr. Quinn, Medicine Woman,” and “Promised Land.” And we got killed in the marketplace. More recently, the first half of CBS’s widely acclaimed “Pope John Paul II” miniseries was unable to capture even a third of the viewers compared to “Desperate Housewives” and far less than half that of “Grey’s Anatomy.” And our ratings were only slightly better than those garnered earlier that week by ABC’s movie version of the Pope’s life.<sup>9</sup>

Let me be clear, CBS would be happy to go back to the three-channel era that I and many others recall fondly, but in today’s world of hundreds of channels—a state of affairs frequently praised in other public policy debates as “viewer choice and diversity”—looking back lovingly at the past will not guide us toward a solution for today. Viewers now have the tools to respond to this amazing choice and diversity, and we in the television industry stand ready to educate and encourage them to actively use those tools.

The CHAIRMAN. Thank you.

Our next witness is Mr. Alan Rosenberg, the President of the Screen Actors Guild of Los Angeles. Thank you for coming.

**STATEMENT OF ALAN ROSENBERG, PRESIDENT, SCREEN ACTORS GUILD**

Mr. ROSENBERG. Thank you, Chairman Stevens, Co-Chairman Inouye, Senator Pryor, and Members of the Committee. Thank you for inviting me to participate in this hearing. My name is Alan Rosenberg and I am the President of the Screen Actors Guild. I am honored to be here today representing 120,000 proud members of the Screen Actors Guild, just as former President Ronald Reagan did. Founded over 70 years ago, and we are part of the AFL–CIO. Throughout the world, our members are hired to perform roles in television programs, motion pictures, commercials, and interactive media, bringing countless hours of entertainment and information to the global viewing public. We take great pride in these ongoing creative contributions to America’s rich artistic, cultural, and entertainment landscape.

As professional performers, we want to ensure that the artistic freedoms guaranteed by the First Amendment of the United States Constitution are treated as sacrosanct and not sacrificed because of a couple of extremely isolated incidents. As parents, we want to ensure that children are not exposed to content not intended for them. Finding the proper balance between protecting freedom of artistic expression and protecting children from indecency is a tremendous challenge and an enormous responsibility for Congress to undertake.

However, we believe that Congress can reach an effective yet equitable balance between proceeding in a narrowly tailored manner which deters broadcast indecency without discouraging protected speech or disproportionately punishing individual American citizens. American film and television is an integral component of our popular culture, mirroring our history and our national identity. Our stories must be portrayed sincerely and without censorship. Sometimes angry language that I would never use in my home is

<sup>8</sup>*Id.* at 1.

<sup>9</sup>“Sunday Night Sinners Outshine CBS’s ‘Pope,’” *The Hollywood Reporter*, [www.hollywoodreporter.com](http://www.hollywoodreporter.com), December 6, 2005.

required in order to convey the reality of a situation. Can we risk sugar-coating the artistic recreation of events, news, and our own history in the pursuit of a decency standard narrowly defined about what some people might find objectionable? How will generations to come learn about the hatred of racism or see the great works of William Shakespeare come to life without using words or phrases that a small minority of viewers might find indecent?

Societies often quell dissent through the media. Censorship is a way to limit what facts are heard and to propagandize what the public sees and hears. Is that the kind of media we want to provide in this country?

Some of the most imaginative, thoughtful, and proactive television shows of all time, from “All in the Family” to “NYPD Blue,” pushed age-old boundaries and offered the viewing public something different. The history of free-flowing creativity and dialog over our airwaves has been dependent upon the principle of free expression without fear of government retaliation.

However, the indecency fine increases passed by the House of Representatives could significantly undermine this principle by subjecting American citizens to financial ruin for expressing their constitutionally protected rights. The House legislation increases the fines individual Americans would pay for broadcast decency violations by almost 5,000 percent, from \$11,000 to \$500,000. It would eliminate the existing warning requirement.

SAG members work primarily on scripted projects. We are hired to perform a role. To be threatened with a half a million dollars in fines for doing our jobs is incomprehensible. Any actor on television could become the target of citizens who disagree with the actor’s religious or political beliefs. Well-orchestrated campaigns urging FCC complaints could become the norm if the extreme and disproportionate fine increases for individuals become law.

Existing safeguards already protect the public’s interest and obviate the need for such extreme sanctions against individual Americans. Live broadcasts are becoming increasingly rare and our employers utilize a 7-second delay in such instances. Additionally, nearly every actor’s series contract includes a morals clause prohibiting unbecoming behavior on and off screen. So if an actor appeared on “The Today Show” and unleashed a slew of expletives that somehow made it past the network delay switch, such conduct would likely result in getting fired from a hit TV series, losing lucrative endorsement contracts, and jeopardizing future employment. This is certainly not a risk that anyone I know is willing to take.

In addition, other safeguards exist to protect children from indecent content. These include the new TV rating system that Jack Valenti discussed, the cable industry’s new family tier, channel blocking technologies, the V-Chip, and public service announcement campaigns. This growing web of safeguards should be given an opportunity to work before the Senate enacts an excessive fine regime for individual Americans.

While the fines contained in the House bill are often referred to as performer fines, they are not limited to high-profile stars. In actuality, they would apply to any American citizen who inadvertently runs afoul of the ever-changing FCC standards. Your con-

stituents, whether they call in to a radio station talk show, give a man on the street interview, or, worse, are grief-stricken family members at the scene of a crime or a funeral, could be subject to financial ruin for exercising their constitutionally protected right of free speech.

Even if fines were tempered by an individual's ability to pay, the legal fees associated with defending a complex FCC forfeiture proceeding could bankrupt many of our constituents—your constituents, excuse me.

Unlike broadcast licensees, individual citizens, including the members I represent here today, are not aware of the FCC's vague and changing indecency standards. Should they really be subject to half a million dollar fines without a warning? My wife is an actress in the number one TV show, "CSI." While there is nothing indecent about the show, it is certainly not something young children should watch, nor is it intended for them. Crime scenes and autopsies are not the best choice for kids. But the fact that provocative television shows like CSI are not appropriate for children does not mean that they should not be available for adults to watch. If all America's entertainment output were to be distilled to a level that is appropriate for children, every movie and program would be rated G. While some groups out there might cheer this outcome, it would drastically limit the entertainment industry's ability to explore the full depth and diversity of the human experience.

If you allow the content considerations of a single demographic, be it children or some narrow segment of an adult special interest group, to dictate the standards for what is appropriate for the entire Nation, you suppress one of this country's greatest assets, the diversity and creativity of the American people. That is why the Senate should not only refrain from fining individual citizens, it should also avoid revoking station licenses for indecency violations. Increasing existing broadcaster fine levels, as is proposed in Senator Brownback's bill and the House legislation, will provide a sufficient deterrent to airing indecency. Threatening a broadcaster's license, which are in some cases worth hundreds of millions of dollars, would result in a total clamp-down on all content, even that which is not indecent. The best programs on the airwaves, from local TV productions to hit network shows, enjoyed by tens of millions of viewers, could go by the wayside due to the threat of censorship through a station's license revocation. This would have a devastating effect on our Nation's artistic, cultural, and economic fabric. Bland programming is safe, but it is not necessarily good. We believe the American people deserve remarkable, innovative programming, not bland.

I see my time is up and thank you very much for allowing me to participate today.

[The prepared statement of Mr. Rosenberg follows:]

PREPARED STATEMENT OF ALAN ROSENBERG, PRESIDENT, SCREEN ACTORS GUILD

Mr. Chairman, Co-Chairman Inouye, and Members of the Committee, thank you for inviting me to participate in this hearing. My name is Alan Rosenberg and I am the President of Screen Actors Guild.

I am honored to be here today representing 120,000 proud members of Screen Actors Guild, founded over 70 years ago and part of the AFL-CIO. Throughout the world, our members are hired to perform roles in television programs, motion pic-

tures, commercials, and interactive media, bringing countless hours of entertainment and information to the global viewing public. We take great pride in these ongoing creative contributions to America's rich artistic, cultural, and entertainment landscape.

As professional performers, we want to ensure that the artistic freedoms guaranteed by the First Amendment of the United States Constitution are treated as sacrosanct and not sacrificed because of a couple of extremely isolated incidents. As parents, we want to ensure that children are not exposed to content not intended for them.

Finding the proper balance between protecting freedom of artistic expression and protecting children from indecency is a tremendous challenge and an enormous responsibility for Congress to undertake. However, we believe that Congress can reach an effective yet equitable balance by proceeding in a narrowly tailored manner, which deters broadcast indecency *without* discouraging protected speech or disproportionately punishing individual American citizens.

American film and television is an integral component of our popular culture, mirroring our history and our national identity. Our stories must be portrayed sincerely and without censorship. Sometimes, angry language that I would never use in my home is required in order to convey the reality of a situation. Can we risk sugarcoating the artistic re-creation of events, news, and our own history in the pursuit of a "decent" standard narrowly defined by what some people might find objectionable? How will generations come learn about the hatred of racism, or see the great works of William Shakespeare come to life, without using words or phrases that a small minority of viewers might find indecent?

Societies often quell dissent through the media. Censorship is a way to limit what facts are heard and to propagandize what the public sees and hears. Is that the kind of media we want to provide in this country?

Some of the most imaginative, thoughtful, and proactive television shows of all time—from *All in the Family* to *NYPD Blue*—pushed age-old boundaries and offered the viewing public something different. The history of free-flowing creativity and dialogue over our airwaves has been dependent upon the principle of free expression without fear of government retaliation.

However, the indecency fine increases passed by the House of Representatives could significantly undermine this principle by subjecting American citizens to financial ruin for expressing their constitutionally protected rights. The House legislation increases the fines that individual Americans would pay for broadcast decency violations by almost 5,000 percent (from \$11,000 to \$500,000) and would eliminate the existing warning requirement.

SAG members work primarily on scripted projects—we are hired to perform a role. To be threatened with half a million dollars in fines for doing our jobs is incomprehensible. Any actor on television could become the target of citizens who disagree with the actor's religious or political beliefs. Well-orchestrated campaigns urging FCC complaints could become the norm if the extreme and disproportionate fine increases for individuals become law.

Existing safeguards already protect the public's interest and obviate the need for such extreme sanctions against individual Americans. Live broadcasts are becoming increasingly rare, and our employers utilize a seven-second delay in such instances. Additionally, nearly every actor's series contract includes a morals clause prohibiting unbecoming behavior on and off screen.

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While the fines contained in the House bill are often referred to as "performer fines," they are not limited to high profile stars. In actuality, they would apply to *any* American citizen who inadvertently runs afoul of the ever-changing FCC standards. Your constituents—whether they call in to a radio talk show, give a "man on the street" interview, or worse, are grief stricken family members at the scene of a crime or a funeral—could be subject to financial ruin for exercising their constitutionally protected right of free speech. Even if fines were tempered by an individ-

ual's ability to pay, the legal fees associated with defending a complex FCC forfeiture proceeding could bankrupt many of your constituents.

Unlike broadcast licensees, individual citizens, including the members I represent here today, are not aware of the FCC's vague and changing indecency standards. Should they really be subject to half million dollar fines without a warning?

My wife is an actress on the number one TV show, *CSI*. While there's nothing "indecent" about the show, it's certainly not something young children should watch, nor is it intended for them. Crime scenes and autopsies are not the best choice for kids. But the fact that provocative television shows like *CSI* are not appropriate for children doesn't mean that they shouldn't be available for adults to watch. If all of America's entertainment output were to be distilled to a level that is appropriate for children, every movie and program would be Rated G.

While some groups out there might cheer this outcome, it would drastically limit the entertainment industry's ability to explore the full depth and diversity of the human experience. If you allow the content considerations of a single demographic (be it children or some narrow segment of an adult special interest group) to dictate the standards for what is appropriate for the entire Nation, you suppress one of this country's greatest assets—the diversity and creativity of the American people.

That's why the Senate should not only refrain from fining individual citizens; it should also avoid revoking station licenses for indecency violations. Increasing existing broadcaster fine levels, as is proposed in Senator Brownback's bill and the House legislation, will provide a sufficient deterrent to airing indecency. Threatening a broadcaster's license (which are in some cases worth hundreds of millions of dollars) will result in a total clampdown on all content, even that which is not indecent.

The best programming on the airwaves—from local TV productions to hit network shows enjoyed by tens of millions of viewers—could go by the wayside due to the threat of censorship through a station's license revocation. This would have a devastating effect on our Nation's artistic, cultural, and economic fabric. Bland programming is safe, but it is not necessarily good. We believe the American public deserves remarkable, innovative programming. Not bland.

Mr. Chairman, this sort of national dialogue on the proper balance between freedom of expression and protecting children is both healthy and necessary in any democratic society, particularly one as rapidly evolving as our own, whose entertainment and cultural output are so widely exported around the world. Given the serious implications for First Amendment freedom of speech posed by this debate, the Senate should proceed in a narrowly tailored manner that neither discourages protected speech nor disproportionately punishes individual American citizens. The "baby" of free artistic expression on America's airwaves is simply too important to be thrown out with the "bath water" of indecency.

I applaud your leadership in this regard, and look forward to working with you and Members of the Committee in striking the proper balance.

Thank you again for the opportunity to speak today.

The CHAIRMAN. Thank you.

Our last witness today is Jeff McIntyre, the Legislative and Federal Affairs Officer of the Public Policy Office of the American Psychological Association. Senator Rockefeller mentioned your appearance. We are happy to have you here.

**STATEMENT OF JEFF J. MCINTYRE, LEGISLATIVE AND FEDERAL AFFAIRS OFFICER, PUBLIC POLICY OFFICE, AMERICAN PSYCHOLOGICAL ASSOCIATION**

Mr. MCINTYRE. Thank you, Mr. Chairman. I am honored to be here today. I am honored to be here today on behalf of the American Psychological Association. APA is the largest organization representing psychology and has over 150,000 members and affiliates to advance psychology as a science, as a profession, and as a means of health, education, and human welfare.

My years of policy experience related to children and the media include serving as a negotiator for the development of the current television rating system, as an adviser to the Federal Communications V-Chip Task Force, and as a current member of the Oversight

Monitoring Board for the television rating system. I am also a co-chair of the Children's Media Policy Coalition, a national coalition of public health, child advocacy, and education groups, including the American Academy of Pediatrics, Children Now, and the National PTA.

In the late 1990s, tragic acts of violence in our schools directed our Nation's attention to the serious problem of youth violence. School shootings in Paducah, Kentucky, Jonesboro, Arkansas, Edinboro, Pennsylvania, Springfield, Oregon, and Littleton, Colorado, brought about a national conversation on the roots of youth violence and what we as parents, as psychologists, and public policymakers could do to prevent more incidents of youth violence.

Psychological research on violence prevention and child development informs and continues to address this need. While the foundation of acts of violence are complex and variable, certain risk factors have been established in the psychological literature. Among the factors that place youth at risk for committing an act of violence are exposure to acts of violence, including those in the media.

Foremost of the conclusions drawn on the basis of over 30 years of research contributed by American Psychological Association members, as highlighted in the U.S. Surgeon General's report in 1972, the National Institute of Mental Health's report in 1982, and the 3-year National Television Violence Study in the 1990s, shows that repeated exposure to violence in the mass media places children at risk for increases in aggression, desensitization to acts of violence, and unrealistic increases in fear of becoming a victim of violence, which results in the development of other negative consequences and characteristics, such as a mistrust of others.

This research provided the foundation upon which representatives of the Public Health Community, comprised of the American Psychological Association, the American Academy of Pediatrics, and the American Medical Association, issued a consensus statement in the year 2000 regarding the state of the science on the effects of media violence on children.

Certain psychological facts are well established in this debate. As APA member Dr. Ronald Huesmann of the University of Michigan stated before the Senate Commerce Committee here: "Just as every cigarette you smoke increases the chances that someday you will get cancer, every exposure to violence increases the chances that someday a child will behave more violently than he or she otherwise would."

Now, hundreds of studies have confirmed that exposing our children to a steady diet of violence in the media makes them more violence-prone. The psychological processes here are not mysterious. Children learn by observing others. Mass media and advertising provide a very attractive window for these observations.

Now, excellent pro-social programming for children, such as "Sesame Street," and pro-social marketing such as that around helmets for skateboarding, for instance, is to be commended and supported. Psychological research shows that what is responsible for the effectiveness of good children's programming and pro-social marketing is that children learn from their media environment.

Now, if children can learn positive behaviors via this medium, they can learn harmful ones as well. Our experience with the rat-

ing system merits some attention in this discussion. There continues to be concern arising from the ambiguity in the implementation of the current rating system. The rating systems can be undermined by marketing efforts of the very groups responsible for its implementation and effectiveness, for instance marketing adult-rated programs to children. This displays a significant lack of accountability and should be considered when proposals for industry self-regulation are discussed.

At the very least, the industry fails to actively promote the rating system. I am hopeful that Mr. Valenti's suggestions here may stem that somewhat.

Also undermined here are the interests of parents. As the industry has shown a lack of accountability in the implementation of the existing rating system, parents have struggled to manage their family's media diet in the midst of misleading and contradictory information. More information regarding ratings and program content should be made available. As with nutritional information, content labeling should be available on the product and not hidden on websites or the occasional public education pamphlet. Any move by the industry to fix the current rating system by implementing a system with less content-based information should be seriously questioned. The Federal Trade Commission report on the marketing of violence to children only heightens these concerns.

The Children's Online Privacy Protection Act enacted in 1998 established that parents have a right to protect their children's privacy from unwanted solicitation of personal information. I would argue that, based on the years of psychological research in violence prevention and clinical practice with children, parents also have the right to protect their children from material that puts them at risk of harm. With the considerations in place for children's privacy, the precedent for protecting the safety and welfare of children in a media environment is well established.

This is a la carte in reverse. A detailed content-based rating system is a vital step toward giving parents the information they need to make choices about their children's media habits. Decades of psychological research bear witness to the potential harmful effects for our children and our Nation if these practices continue.

Chairman Stevens and Members of the Committee, thank you for your time. Please regard me and the American Psychological Association as a resource to the Committee in your deliberations on this matter.

[The prepared statement of Mr. McIntyre follows:]

PREPARED STATEMENT OF JEFF J. MCINTYRE, LEGISLATIVE AND FEDERAL AFFAIRS  
OFFICER, PUBLIC POLICY OFFICE, AMERICAN PSYCHOLOGICAL ASSOCIATION

Good morning. I am Jeff McIntyre, and I am honored to be here today to represent the American Psychological Association. The American Psychological Association is the largest organization representing psychology and has over 150,000 members and affiliates working to advance psychology as a science, a profession, and as a means of promoting health, education, and human welfare.

My years of policy experience related to children and the media include serving as a negotiator for the development of a television ratings system, as an advisor to the Federal Communications Commission's V-chip Task Force, and as a current member of the Oversight Monitoring Board for the television ratings system. I also co-chair the Children's Media Policy Coalition, a national coalition of public health,

child advocacy, and education groups, including the American Academy of Pediatrics, Children Now, and the National PTA.

In the late 1990s, tragic acts of violence in our schools directed our Nation's attention to the serious problem of youth violence. School shootings in Paducah, Kentucky; Jonesboro, Arkansas; Edinboro, Pennsylvania; Springfield, Oregon; and Littleton, Colorado, brought about a national conversation on the roots of youth violence and what we—as parents, psychologists, and public policymakers—could do to prevent more incidents of youth violence.

Psychological research on violence prevention and child development informs, and continues to address, this need. While the foundations of acts of violence are complex and variable, certain risk factors have been established in the psychological literature. Among the factors that place youth at risk for committing an act of violence are exposure to acts of violence, including those in the media.

Foremost, the conclusions drawn on the basis of over 30 years of research contributed by American Psychological Association members—as highlighted in the U.S. Surgeon General's report in 1972, the National Institute of Mental Health's report in 1982, and the three-year National Television Violence Study in the 1990s—shows that repeated exposure to violence in the mass media places children at risk for:

- increases in aggression;
- desensitization to acts of violence; and
- unrealistic increases in fear of becoming a victim of violence, which results in the development of other negative characteristics, such as mistrust of others.

This research provided the foundation upon which representatives of the public health community—comprised of the American Psychological Association, the American Academy of Pediatrics, and the American Medical Association—issued a consensus statement in 2000 regarding the state-of-the-science on the effects of media violence on children.

Certain psychological facts are well established in this debate. As APA member Dr. Rowell Huesmann of the University of Michigan stated before the Senate Commerce Committee—just as every cigarette you smoke increases the chances that, someday, you will get cancer, every exposure to violence increases the chances that, some day, a child will behave more violently than he or she otherwise would.

Hundreds of studies have confirmed that exposing our children to a steady diet of violence in the media makes them more violence prone. The psychological processes here are not mysterious. Children learn by observing others. Mass media and the advertising world provide a very attractive window for these observations.

Excellent children's pro-social programming (such as Sesame Street) and pro-social marketing (such as that around helmets for skateboarding) is to be commended and supported. Psychological research shows that what is responsible for the effectiveness of good children's programming and pro-social marketing is that children learn from their media environment. If children can learn positive behaviors via this medium, they can learn harmful ones as well.

Our experience with the ratings system merits attention in this discussion. There continues to be concern arising from the ambiguity in the implementation of the current ratings system. The ratings system can be undermined by the marketing efforts of the very groups responsible for its implementation and effectiveness (e.g., marketing adult-rated programs to children). This displays a significant lack of accountability and should be considered when proposals for industry self-regulation are discussed. At the very least, the industry fails to actively promote its rating system.

Also undermined here are the interests of parents. As the industry has shown a lack of accountability in the implementation of the existing ratings system, parents have struggled to manage their family's media diet in the midst of misleading and contradictory information. More information regarding ratings and program content should be made available. As with nutritional information, content labeling should be available on the product and not hidden on websites or in the occasional public education pamphlet. Any move by the industry to fix the current ratings system by implementing a system with less content-based information should be seriously questioned. A Federal Trade Commission report on "The Marketing of Violence to Children" heightens these concerns.

The "Children's On-Line Privacy Protection Act," enacted in 1998, established that parents have a right to protect their children's privacy from the unwanted solicitation of personal information. I would argue that, based on the years of psychological research on violence prevention and clinical practice with children, parents also have the right to protect their children from material that puts them at risk of harm. With the considerations in place for children's privacy, the precedent for pro-



tecting the safety and welfare of children in a media environment is well established.

This is 'a la carte' in reverse. A detailed, content-based ratings system is a vital step towards giving parents the information they need to make choices about their children's media habits. Decades of psychological research bear witness to the potential harmful effects for our children and our Nation if these practices continue.

Chairman Stevens and Members of the Committee, thank you for your time. Please regard me and the American Psychological Association as a resource to the Committee in your deliberations on this important matter.

The CHAIRMAN. Well, thank you very much, Mr. McIntyre. As I said, I viewed that V-Chip presentation of the industry last night. You are on the advisory board. Are you satisfied with that presentation that it is going to give additional tools to the American family?

Mr. MCINTYRE. I am hopeful. As I look back over my notes here for what the presentation was, with the exception of Mr. Valenti's proposal that the ratings will be shown coming out of commercial breaks, it was my understanding that most of this stuff was supposed to be happening 10 years ago when the ratings agreement was originally made.

The CHAIRMAN. It has been in the systems. It has been on the television, but it has not been explained how to use it. Last night I saw a detailed explanation of how to use it, how effective it is. You say you are on the advisory board for that group, for the V-Chip?

Mr. MCINTYRE. I am on the Oversight Monitoring Board, yes, sir.

The CHAIRMAN. Monitoring board. Well, what do you think? Have you seen the presentation they gave us last night?

Mr. MCINTYRE. We have not. The monitoring board meets roughly about twice a year, and mostly to my experience, speaks really only to addressing the individual promotional campaigns of a given network. It really has not done much.

The CHAIRMAN. Jack, can we invite him down to look at that this afternoon?

Mr. VALENTI. Absolutely. I will escort him over there.

Mr. FRANKS. Senator Stevens, may I—

The CHAIRMAN. Let me finish if I may.

On the violence, we agree with you. But I am going to go to the Caps game tonight and I have got a hockey puck son and three hockey puck grandchildren, grandsons. They see violence in sports. How does that affect the children?

Mr. MCINTYRE. It really depends on the individual child and on the parents. I would probably guess that you are a pretty good grandparent and your children are good parents. Your children, your grandchildren are not necessarily having problems with bullying or violence-prone necessarily. The way the rating system should be set up is to be able to allow for parents to make the decisions based on what their individual children are going through. So if I have a child and he is prone to bullying, then I would have some second thoughts about taking him into environments where violence may be a part of that regularly.

The CHAIRMAN. Well, one of the things they see is a person who goes too far put in the penalty box, does he not?

Mr. MCINTYRE. According to the NHL, I think that is the rule, yes, sir.

The CHAIRMAN. My grandsons get there quite often, I think.  
[Laughter.]

The CHAIRMAN. Mr. Rosenberg, has anything been done in the industry to discourage actors from putting indecency out in terms of programs that are related to children?

Mr. ROSENBERG. Well, in all of our contracts, if we contract to do a series, there is a morals clause.

The CHAIRMAN. Well, in "Harry Potter" they have all things that scare people, but they do not really show real violence. Right?

Mr. ROSENBERG. Right.

The CHAIRMAN. Now, is there some industry approach—do actors question the impact of what they are doing on children?

Mr. ROSENBERG. You know, I have not done much children's programming. Actors question what they are doing all the time. If something is offensive to me, I do not hesitate to question. I mean, we all have that right.

But we are also hired hands. We do not write the shows and we do not broadcast them. Actors, I suppose if you are given a script that has something that might be objectionable, either if it is violent or if there is scatological language, I guess your job is on the line when you decide whether to say the words that are in that script or not, or do the actions that are in that script or not. It is up to the individual actor, I suppose.

But we do have morals clauses in our contracts which prevent us from engaging in indecent behavior.

The CHAIRMAN. Thank you.

Mr. Reese, we have been wrestling with the problem, it comes from the fact that past Supreme Court decisions appear to give us greater power in terms of over-the-air broadcasters than those who use satellite or cable. Now, you make the point, and I have made it too, that at the time those decisions were made about 10 to 12 percent of the people got their programming over cable. Now satellite and cable is above 80 percent. Even most of the programs that the broadcasters provide are carried through the cable system under our must-carry concept, which currently is under challenge.

Now, what do you tell parents about the role of broadcasters in this argument right now? There is a dichotomy here that a program coming over over-the-air broadcasting, if received through a system that was through cable, would not be subject to regulation, but if it was out there and received in rural America where there is no cable, it would be subject to this regulation.

Now, what does industry think about this situation right now?

Mr. REESE. Well, I felt I had a good source when I quoted you, Senator, from your November 29th comments.

The CHAIRMAN. That pleased me, but I am not sure it pleased my colleagues up here at all.

Mr. REESE. The underpinning of the Pacifica discussion seems to not really be valid any more. Any sort of pervasiveness argument that could have been made in the 1970s about broadcasting vis a vis cable at that time and at least, at best a fledgling satellite industry, just does not work any more. Americans do not make a distinction about where the product comes from.

The broadcaster who does something that is deemed indecent under the less than perfect regulatory system we have now is the

one that is subject to the fine because it went out over the air, even if only 10 percent of the audience happened to see it through an antenna in their home.

The CHAIRMAN. My last is just a comment to you, all of you. Staff has pointed this out. We had a discussion in my family this weekend about the TV Guide and the programming that is shown on the screen on the television, whether it is cable or satellite or over-the-air. The presentations of programming that are available do not show ratings. I am informed now even as far as the movies the newspapers are not showing ratings.

I think that is missing here somehow. When the public looks at a presentation of what they can look at, why should they not see the ratings? Why should not the ratings be available through these programs that come, like TV Guide? Children look at those and the parents look at those. Why should they not find out how those programs are rated? Mr. Franks?

Mr. FRANKS. Well, two things, Senator. One, Jack can recount these stories better than I, but we have worked for years to try and persuade—the ratings are made available to the newspapers and to all the media several weeks in advance before the program airs. A very few newspapers or other listing services actually carry the ratings for their own economic reasons, having to do with their own space limitations.

I would commend *USA Today*, for example. If you look at that back page where they have what is on tonight, it has extensive V-Chip rating information.

The CHAIRMAN. They are the one exception, yes.

Mr. FRANKS. As for ourselves, in our own promotions, if we are promoting a show that is on tonight or on tomorrow night, we put the rating into the promotion.

The CHAIRMAN. Well, I think that is something we ought to look at. The newspapers certainly are critical of what is going on and yet they are not helping at all to provide the solutions for the American family.

Mr. FRANKS. The same thought has occurred to us, Senator.

May I just refer to one thing Mr. McIntyre raised? He has actually been a very constructive force in this debate and so I do not want to suggest that I am criticizing him in any way. But one of the things he was arguing for is a more detailed rating system to give parents more information, and that is not a bad idea. But one of the things that we also discussed at some length on the 29th of November is that the current rating system is too complex. I think part of what we have tried to do is to strike a balance between giving parents as much information as we can get to them without overwhelming them or it being so complex that they do not understand it or cannot figure it out. It is a difficult balance to strike and it just goes to the struggle we are having to try and get this right. It is not easy.

The CHAIRMAN. Mr. McIntyre, we do not have a lot of time, but you ought to have a right to answer that.

Mr. MCINTYRE. Thank you, Senator. I appreciate that.

We hear this a lot and we have struggled with the rating system being too complicated. In a world where families program their TiVos, where they now download videos on their cell phones, where

individuals are fluent on their Blackberries probably even as we speak, we are told that S, V, and L as attached to the rating system is too complicated. We do not buy that.

We understand that it is more complicated than 1, 2, 3, but we think with the proper promotion and the proper advertising, with the help of the newspapers, as you mentioned, that it can be easily digestible and usable by the majority of the American public.

The CHAIRMAN. Well, I hope you do go with Mr. Valenti and see this. I was surprised at the detail that is there. I was also surprised that if you really are a parent and you block out all rating—unrated programs, what you really block out. You block out emergency notices, you block out sports. You block out a lot of things, which puts a lot more burden on the parent to go back and say—but you have the tools—you can watch this news program, you can watch that sports program. But it is a more difficult thing to do because there are so many programs that are not rated.

But I would urge you to go take a look at it.

Senator Inouye.

Senator INOUE. I thank you.

Mr. Valenti opened his statement by citing a poll. The first question was: Do you believe that the programming on television is getting a bit too violent and indecent? I believe he cited that over 70 percent of the parents said yes. Question two: Should the government do something about that? Over 70 percent said no.

I have been listening to your testimony very carefully. Mr. Bozell speaks of raising the fine and Mr. Rosenberg I believe cited Mr. Brownback, who calls for raising the fine also. But for the rest of you, you seem to be expressing the views of the 70 percent in saying that Congress should not legislatively take action at this moment. Am I correct? Mr. Reese.

Mr. REESE. Senator, I think that, as Mr. Bozell said, we have a system now. We have an indecency regime, as imperfect as it may be. We now have a voluntary effort which Mr. Valenti has headed up, which we believe has a strong potential to give parents—not just tell them that a system exists, but explain to them how to use it, which may for the first time, by the way, give parents the ability to program things. Normally I have to ask my 4-year-old granddaughter to do my programming for me on anything electric at my house.

But we hope that we will not only tell them it is there, but show them how to use it and make it an effective tool. Before we expand fines and before we add some of the other extreme measures, including license revocation hearings, we would urge the Committee to give this system a chance, to see what impact we can have in terms of giving parents additional tools.

Senator INOUE. Mr. Franks.

Mr. FRANKS. Senator Inouye, I just do not think a fines bill is going to help parents very much. We are talking about such a very small subset of programming that would ever be subject to a fine. I think parents in their everyday lives, they are trying to struggle with what is going to be on tonight. MASH might be inappropriate in a number of households, given its dealings with the realities of war. No one ever suggested that MASH was indecent, but there are many parents who might want to shield their children from that

kind of programming. A fines bill I do not think is going to help with that, whereas if we can educate parents that they already have blocking technology they can use I think that will help them enormously.

Mr. ROSENBERG. I would just like to make it clear that I spoke very much against increasing fines on individuals. Mr. Brownback's bill deals with raising fines on broadcasters and licensees. But very much opposed to fining individual American citizens.

Mr. BOZELL. Senator, may I say something, because I think a point needs to be clarified here?

The CHAIRMAN. Sure.

Mr. BOZELL. I do not know where Mr. Valenti's poll came from. I think everyone here would agree that the Pew Research Center is one of the most reputable research organizations in America today. In my written remarks to you I have got these numbers. According to the Pew Research Center, 75 percent of the American public is demanding tighter enforcement of government rules on broadcast content, particularly when children are most likely to be watching. According to the same poll, 69 percent of the American public also are demanding higher fines for media companies that violate the law.

When cable choice is concerned, the numbers are no different. According to a Wirthlin Poll for Concerned Women for America, two out of three subscribers, cable subscribers, say they want cable choice. That is the polling data that I am looking at. That is not my poll; that is the Pew Research Center and the Wirthlin Poll.

Thank you.

Senator INOUE. Any thoughts on what constitutes indecency? I am a lawyer, but I am confused.

Mr. ROSENBERG. Who was it who said: I will know it when I see it? It is a difficult, it is a difficult thing to define. As Mr. Valenti pointed out, the Supreme Court has not really been able to do it. I agree with him, a 1.5 seconds exposure to a naked breast is not indecent in my eyes.

Senator INOUE. When Ms. Jackson deliberately or accidentally exposed herself, that was considered gross indecency and there was an outcry. But watching some of the shows on television, for example the Golden Globe awards, I would suggest that some of the dresses that I saw on the screen were much more suggestive than what Ms. Jackson showed us.

Mr. ROSENBERG. I would agree if you consider that indecent. I enjoyed watching the Golden Globe awards.

But I want to ask, would we put clothing on Michelangelo's David, or clothe some of the fabulous nudes painted by Michelangelo? When you bring a child to a museum is it necessary to put a sign up before you walk into the room where the Modigliani nudes are? Is it necessary to warn them before they walk into that room?

You know, I walk into those museums with my son and I watch television with my son and I talk about everything with him. I think it has been stated many times today, that is the best monitoring we can do, is to continue talking to our children.

Senator INOUE. So, what is the general consensus? We want laws or we do not want laws?

Mr. BOZELL. My consensus is we have laws. The laws are there. I do not think we need new laws. I think we need to enforce existing laws. I think that you need to make—understand, we need to define the difference between offensive and really offensive. There is plenty on television that any one of us in this room today might consider to be offensive, but it does not rise to the level of a complaint with the FCC. That is not what we are talking about.

But when something does rise to that and when someone has broken community standards by doing something, like a Superbowl striptease, that shocked tens of millions of people around the country, then there should be the requisite fines. Now, I would say only if it is an egregious violation and a willful violation.

Senator INOUE. My television just has basic. The programs you cited, are they pay for view, or what are they?

Mr. BOZELL. No, I was talking about cable. I was talking about basic expanded cable television when you order cable. The networks were FX and the shows were “The Shield,” “Nip/Tuck,” and “South Park” on Viacom.

The CHAIRMAN. But the Brownback bill does not cover them.

Mr. BOZELL. I am sorry?

The CHAIRMAN. That bill, the Brownback bill on increasing fines, does not cover those programs.

Mr. BOZELL. No. I think there are two very different—

The CHAIRMAN. So, your statement that there is an existing law that has not been enforced, it only applies to broadcasting.

Mr. BOZELL. Exactly. That is what we have been saying. We are saying where cable is concerned you ought to go the cable choice route because there is not oversight.

Mr. REESE. Mr. Inouye, just in quick response to your question and with respect to Mr. Bozell’s long work on this and his passion in it. I am not sure that the FCC knows what the difference between egregious and really egregious is, and that standard moves and that standard moves regularly. Those who are subject to the indecency regime now really honestly do not know where that line is. Many broadcasters made the decision in good faith not to run “Saving Private Ryan” because of concerns about fines. Afterwards when the issue was finally resolved by the FCC, the FCC said, no, you would not have gotten fined had you run that show. But the FCC is not in the business of pre-censoring every program that might come up for airing on broadcast television.

Senator INOUE. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

If I may, Mr. Bozell. I know that the Parents Television Council evaluates various programming that is on TV and I notice that on your list, maybe at the top of the list, is a TV show, I believe it is aired on FOX, called “War At Home.” Are you familiar with that, “War At Home”?

Mr. BOZELL. I am very, very slightly familiar with that show, not enough to comment on it.

Senator PRYOR. Well, it does concern me that you rate it as the worst or one of the worst. But it also—in order to get a second opinion, it concerns me that other people who looked at it come out with the same type of conclusion. In fact, the *Washington Post* said

“War At Home is unconscionably smutty. Its vulgarity has no integrity. All the characters are vile in spirit and objectionable in essence.”

So, here we have a second opinion that confirms your view of that. The thing that troubles me about it is apparently—I have never seen it, but apparently FOX airs it Sunday at 8:30 Eastern, which means 7:30 Central. So, on all the broadcast stations that are in the Central Time Zone, like Arkansas, all of our broadcast stations are, I assume the FOX affiliates are airing it at 7:30. Given this type of critique, I think you can understand why a parent of two young children would be very concerned that my kids, who would still be up at 7:30, generally are not watching TV at that time, but could be, might be exposed to something like that.

So, I think that we really need to come to terms with this. I really appreciate cable doing their best to come out with a family tier. I think that is a positive step. I would like to talk to them directly more about that and some of the intricacies of it.

But I do think that broadcast has a lot of responsibility here. So, if I may, Mr. Franks, I would like to visit with you about CBS. I know that “War At Home” is not on CBS, so you are in the clear on that particular show. But I will say this. I have a 12-year-old and a 10-year-old at home and my 12-year-old particularly loves to watch football, and of course CBS carries NFL football.

I must tell you that when we watch the NFL on CBS, my wife and I, it is our policy we do not let him watch it alone. We sit there with the remote control, so as soon as the commercials come on we can change the channel. I do not think that is healthy. I do not think that families should have to do that and have to be nervous wrecks to sit down and watch a football game on Sunday afternoon.

The thing about that—and I would like to get your comments on this—but the thing about that is that the advertising on there oftentimes I feel is inappropriate for 12-year-olds. I do not know what your market analysis shows, but I know that NFL has a lot of young viewers. Again, I do not know the breakdown, but I know there are a lot of young viewers there. I know it is a challenge for you to try to have advertising for programming that has that side of an audience. I understand that.

But is there not something you can do about the advertising?

Mr. FRANKS. Well, Senator, I would be happy to engage in this discussion today or another time to discuss specific commercials. We review every commercial and we make a decision as to whether or not it is appropriate for our air at all or whether it is appropriate for a particular time period or the NFL.

The NFL games, the rights fees are extremely expensive, so keeping them on free television—I mean, “Monday Night Football” is going off of free television. Keeping them on is a challenge. The audience is overwhelmingly adult male. But even then, we still—we reject ads all the time for people that want to run them on the NFL. R-rated movies we frequently reject. A whole variety of other product categories we do not even put into the NFL.

So I am easy to reach. The next time you see—in the AFC Championship game this weekend, if you see ads that you find objectionable, it would be enormously helpful to know which ones they are.

Senator PRYOR. Well, that would be helpful, and we will continue that dialogue. But I must say it is not just the paid advertising; it is the promotions for your own programming.

Mr. FRANKS. Again, we have very experienced standards people, whom many people in Alan's part of the business think are prudes, antediluvian. And they screen all the promos before they reach our air. They screen all the commercials. So, you may disagree with our judgments and obviously you do, but we are not just letting them go on willy nilly without anyone ever having looked at them, and judgments are made. You may disagree with our judgments. It sounds as if you do. That is a dialog we are happy to have with you. I take complaint calls from our audience. I am pretty easy to find. It is a discussion we are happy to have.

Senator PRYOR. Well, I do not doubt that the audience for NFL—I am not just picking on you, because FOX does it and ABC and everybody else. I am not just picking on you. ESPN. I am not just picking on you, but I do believe that your audience for professional football is probably predominantly adult male, but I think there is a healthy percentage of children that are watching that programming as well.

The last thing I would say if I may, Mr. Chairman, I would just like to get all of your thoughts—I am going to switch media here with you just for a second. But we all know that there is a certain shock jock who has gone from broadcast radio to satellite radio in the last few weeks. One reason he has gone to satellite radio is because I guess they do not have any regulation or it is a very different regulation regime.

In terms of television, should we have the same regulatory regime for satellite as for cable as for broadcast, or are we just living in a world where we are going to have to differentiate? I will just throw that out to the panel.

Mr. REESE. Senator Pryor, the broadcasters' position is, as we said earlier, we think the same regime ought to apply, but it would, we believe, probably take the action of Congress to do that.

Mr. BOZELL. I believe there is a fundamental distinction between cable and satellite. If you are a subscriber to cable and you do not like a certain program, you cannot block it out without losing cable. You cannot decide not to pay for it without losing the ability to watch cable. If you are a subscriber to satellite radio and do not like the Howard Stern Show and do not want to pay for satellite radio, you can get free radio. You can get an alternative to the satellite, which you do not get for cable. So, I think there is a fundamental distinction.

That said, I think that this is going to be looked at and many other things are going to be looked at, and the chairman of the FCC has already signaled that he is going to be looking at this.

The CHAIRMAN. Well, thank you all very much. We are going to close this hearing now. We have another hearing this afternoon on Protecting Children on the Internet, which will take place at 2:30 this afternoon. Thank you very much.

[Whereupon, at 12:30 p.m., the Committee was adjourned.]



## A P P E N D I X

PREPARED STATEMENT OF LANIER SWANN, DIRECTOR, GOVERNMENT RELATIONS,  
CONCERNED WOMEN FOR AMERICA

Concerned Women for America (CWA) represents over 500,000 active citizens and voters around the United States. Our constituents, as well as many other families throughout our Nation, are frustrated and disgusted by the ever-worsening indecent content on television. On behalf of so many concerned Americans, CWA is calling on Congress to help stem the tide of the remarkably indecent content flooding our airwaves.

Our approach to protecting consumers from the vast amount of questionable material on television is two-pronged. The first and most immediate aspect of the solution is to reach final passage of legislation that delivers stronger penalties to those who violate current Federal Communications Commission (FCC) regulations. Stronger penalties will force broadcasters to face the consequences of violating FCC policies. Current fines, like those doled out to the masterminds behind Janet Jackson's infamous wardrobe malfunction, were just a drop in the bucket for network magnates. Our hope is that in stiffening the fines, broadcasters will think twice before producing, promoting and airing blatantly offensive material. This goal is not beyond our reach; in fact, it sits waiting for action by the United States Senate.

The House of Representatives easily passed Congressman Fred Upton's Broadcast Decency Enforcement Act of 2005 (H.R. 310). In fact, only 38 Members voted in opposition in February of 2005. This comprehensive bill strengthens the FCC's ability to fine violators and would set fines as high as \$500,000. That's a significant increase from the current maximum fine of just \$32,500 per violation. To the great dismay of CWA and concerned American families, a bill that so easily passed the House has been held up in the Senate for nearly a year.

The Senate Committee on Commerce, Science, and Transportation is also holding up a similar bill sponsored by a Senate colleague. Despite holding two open "Forums on Decency," Committee Chairman Senator Ted Stevens has offered only brief comments on the Broadcast Decency Enforcement Act (S. 193), which was proposed by Senator Sam Brownback in January 2005, CWA believes that Americans both expect and deserve action on both bills.

While we support the efforts of Senators like Mr. Brownback who have worked to bring their voices into the indecency debate, CWA urges immediate passage in the Senate of Congressman Upton's legislation. H.R. 310 will provide a key step in the effort to give families more options to keep highly offensive television content out of their living rooms.

Stiffer fines are not the only solution to indecent television content. Cable is a second area where corporate irresponsibility has gone unchallenged for too long. The key to meeting that challenge is cable choice. Consumers should be given a choice of what they want to buy so they are no longer forced to subsidize indecent programming. For this reason, CWA strongly supports the introduction of an a la carte pricing option, or cable choice, within Americans' cable subscriptions. Cable choice would allow consumers to choose the channels they want in their cable packages. Families would have to pay only for the channels they select themselves.

In every part of this country, the cable companies have a virtual lock on our home televisions. The current franchising rules allow one cable company to control nearly every local market in the country without any alternatives. Because of these agreements and outmoded laws, cable television offers only a "take it or leave it" proposition. Either you subsidize every channel included in the offered package, or you simply choose not to have cable at all. With this kind of power lorded over our television viewing, cable companies have no need to be responsive to consumers. We pay, they profit. No questions asked.

What irks most consumers, particularly families, is that cable subscribers have no choice in the channels funneled into their homes. Whether the channels they choose not to watch are offensive, objectionable, or simply uninteresting, there is little consumers can do to avoid it coming through our living-room television set.

While some parental controls may aid in protecting young eyes from questionable content, the channel is still part of the cable package for which we pay each and every month. In other words, no matter how out of touch you may feel a specific cable channel is with your family's values, you are still forced to subsidize the channel and the cable moguls who produce the programming. In a country where we are not asked to pay for food we don't want to eat, clothes we don't want to wear, and books we don't care to read, why is it that cable subscribers are still forced to pay for channels we don't want to watch?

While cable choice seems to make the most sense in light of our free market economy, cable moguls have continued to ignore the call of their consumers to offer a la carte pricing. Even the endorsement of Federal Communications Commission (FCC) Chairman Kevin Martin seems to have fallen on deaf ears. In an open forum on decency sponsored by the Commerce Committee in November 2005, Chairman Martin noted that indecency complaints at the FCC have greatly increased. He urged cable companies to adopt methods to allow consumers to avoid seeing such offensive material. At the conclusion of the second hearing, cable providers announced that they would offer family-friendly tiers to meet the concerns of consumers, Senators and the FCC. Sadly, the so-called "family-friendly" cable option is not the answer. It may be a step forward, but it is not the solution to putting a stop to the cultural pollution permeating our airwaves.

Any typical channel-surfer can easily determine that cable programmers are perhaps the most unfit entity to be tasked with the job of defining "family-friendly." Given the skyrocketing consumer complaints of a tidal wave of indecent television programming, cable companies have not proven themselves adequate judges of appropriate content.

In fact, there are multiple channels currently included in cable lineups deemed "family friendly" by television executives. However, upon closer inspection, viewers will find a great deal of the programming contains subject matter promoting premarital sex, cohabitation, vulgarity and infidelity, topics many parents would consider inappropriate for family viewing. Cable choice is a far better alternative because it allows families to choose their own programming, not the cable moguls.

We are not alone in our support of a la carte pricing. In 2005 CWA was joined by 38 family-friendly organizations in sending letters to Capitol Hill calling for a la carte pricing. Ads were run in *The Washington Times* featuring our coalition as well.

In 2004, CWA commissioned a Wirthlin Poll to investigate what American consumers thought about their current cable choices. The poll found that 80 percent of the American people disagree with the way that the cable tier-pricing system currently functions; 66 percent said that they would rather choose their channels for themselves. In addition, when asked, "Would you be more or less likely to subscribe to cable television if you were able to choose the programming to be included in your basic cable package?" Sixty-six percent replied that they would be more likely to subscribe to cable, and 39 percent said that they would be much more likely to subscribe.

Those polled were also asked, "When cable customers have no control over which channels are included in their basic cable package, the cable providers should voluntarily enforce decency standards in that basic package, which would screen out sexually explicit or graphically violent material." Seventy-three percent of respondents said that they agreed.

Cable choice is a viable, widely supported option that is a good answer to a problem that so-called "family-friendly" tiers will not solve. Consumers are demanding aggressive results to fight an ever-worsening problem of indecency on television. American families need and deserve the best: final passage of the Broadcast Decency Enforcement Act, the option of cable choice, and strongly enforced standards for cable companies who have demonstrated little reservation in their marketing of highly offensive content are needed now.

CWA urges the Committee to take immediate and effective action to finally solve this broadcast and cable crisis. America's parents need your help. Please do not ignore them any longer.

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SKY ANGEL  
*Naples, FL, December 5, 2005*

Hon. TED STEVENS,  
Chairman,  
Senate Committee on Commerce, Science, and Transportation,  
Washington, DC.

RE: NATIONAL FAMILY-FRIENDLY TELEVISION PACKAGE

Dear Mr. Chairman:

Thank you for addressing the issue of media and parental responsibility during the November 29th forum on "Decency in the Media." As the only cable or satellite operator in the Nation to provide a family-friendly programming package, we watched with great interest the testimony of many esteemed leaders in the television industry and would like to submit these comments for the record.

Dominion Video Satellite, Inc., d.b.a. "Sky Angel," is one of the Nation's only three direct broadcast satellite ("DBS") licensees, along with DISH Network and DIRECTV. Dominion was among the first nine companies to apply to the Federal Communications Commission for a high-power DBS license in 1981, today it is the sole surviving DBS pioneer from that first round and currently delivers 36 television and radio channels to the Continental United States and various United States territories through a small 20-inch satellite dish.

Sky Angel is the *only* national multi-channel operator to answer the call for a family-friendly programming service. Recently, we met with many leaders of the Congress, as well as of the Federal Communications Commission, regarding the recent launch of our new family-friendly national television service. The channels Sky Angel carries were selected based on a national survey of our subscribers who indicated the channels they believe are the most "family friendly." Sky Angel has always been a leader in family television and is the only satellite operator to create its own educational children's television channel, *KTV-Kids and Teens Television*. As it proceeds with various telecommunications bills in the upcoming year, we believe that the Committee would benefit from knowing Sky Angel's experience as a multi-channel family program provider.

First, regarding the ratings system and the "V-chip," Sky Angel has learned directly from parents that the way in which the television industry presently uses the ratings system is not working successfully. For example, Sky Angel has a joint technical venture with EchoStar, d.b.a. "DISH Network," by which Sky Angel utilizes DISH-brand receiving equipment for its subscribers to view programming. DISH Network includes very good parental blocking features in its receiving equipment; however, DISH Network does not use the "television ratings system" but instead uses the Motion Picture Association of America ("MPAA") ratings system on its electronic programming guide (this is the descriptive screen that comes up on the television screen when a viewer pushes the "information" button on the remote control to learn more about the program). Many times the "television rating" that is imprinted on the screen by the network (i.e., the "G" or "PG" on the top left hand corner of the television screen) does not match the MPAA ratings that DISH Network shows on the electronic programming guide. Therefore, parents see a "G" rating on the TV screen (the correct rating for a movie edited for television) but may see an "R" rating on the electronic programming guide (the original rating when the movie was in the theater). This obviously causes confusion and renders the parental blocking tools ineffective. We understand from a national supplier of television program guides to cable and satellite companies that, while most multi-channel operators do not use the MPAA ratings, there may be others in addition to DISH Network who use the MPAA ratings; therefore, we respectfully suggest that the ratings, on the television screen and on the electronic program guide, be standardized for all multi-channel providers. Thus, parents would see ratings for the program and the electronic programming guide that are consistent.

Additionally, we suggest that Congress and the television industry agree to adopt a standardized ratings scale that would include greater descriptive content information. For example, a program that is "G-rated" to one network may be "PG-14" to another network because the rating selections are based on each network's judgment of a program; the widespread use of content specific ratings that tell exactly what is in the program (versus just a general rating) would be more helpful to parents. Also, as Parents Television Council President Brent Bozell pointed out during the hearings, it has been our experience as well that many times the programs are not rated at all because there is no requirement for the networks to rate the programs. Therefore, there is no uniformity in this "self-regulatory" system; we believe a government requirement for ratings may resolve the problem.

Sky Angel is not suggesting that the above changes in ratings are the final answer to the present problems with television. We believe the television industry has to take responsibility for the programs on the air, and if they will not accept that responsibility, the government needs to step in and broaden the indecency regulations. Sky Angel believes that children have a constitutional right to stay as innocent as long as possible, and we and other holders of public licenses have a responsibility to help parents protect children from inappropriate content. Sky Angel agrees

with some in the media industry that there is no longer a distinction between cable and broadcast channels since 88 percent of the American public gets their television programming from either cable or satellite. While some think that cable channels should not be regulated for decency because they are not freely available like broadcast stations, Sky Angel believes that there is no longer a real distinction between the services since the majority of Americans now receive their television programming through paid program providers holding franchises and/or public licenses. Therefore, these program providers should be held accountable to the issuing government for how they use their authorizations. Sky Angel believes that the indecency restrictions should equally apply to cable channels as well as broadcast channels.

Regarding Sky Angel's experience in putting together a family-friendly tier of programming, Sky Angel has found there is a desire among consumers for family-friendly programming packages in addition to the normal programming packages already in existence. We have had good support from the programming industry in allowing Sky Angel to pick and choose those program services that would be appropriate for a family-friendly tier. None of the programmers so far has forced Sky Angel to purchase program services that are inappropriate for family viewing in order to acquire those program services that are appropriate. But, we agree with EchoStar's Senior Vice President and General Legal Counsel David Moskowitz that it would be beneficial for multi-channels systems to have the legal freedom to select program services without fear that a programmer may require the purchase of one service in order to have access to another service.

We respectfully offer our personal insight into our experience in providing family-friendly programming to America and are available to provide additional information that you believe could be beneficial to you. Thank you for your time and consideration.

Sincerely,

KATHLEEN JOHNSON,  
*Vice President, Programming.*

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CONSUMERS UNION, CONSUMER FEDERATION OF AMERICA, FREE PRESS  
*January 18, 2006*

Hon. TED STEVENS,  
Hon. DANIEL K. INOUE,  
Co-Chairmen,  
Committee on Commerce, Science, and Transportation,  
Washington, DC.

Dear Co-Chairs Stevens and Inouye:

Thank you for your leadership in tackling the important issue of consumer control over television programming.

As the Committee considers how to ensure consumers are able to protect their families from television content they find objectionable, we urge you to reject voluntary industry proposals that fail to offer consumers adequate control through new "family choice tiers." Further, we urge you to carefully scrutinize whether the companies are designing and promoting the "family choice" tiers in good faith to ensure they have a chance to succeed in the marketplace. Absent commitments to offer meaningful family choice, the Committee should pursue legislative solutions. And finally, we urge the Committee to address the unfair contractual restrictions imposed by video programmers that prevent existing cable distributors and new video market entrants from offering "a la carte" programming that would actually lower consumers' monthly cable bills according to recent analysis announced by Federal Communications Commission Chairman Kevin Martin at the Committee's November 29, 2005 open forum on indecency.

Announcements of new "family choice" tiers by some of the largest cable distributors is a good first step toward greater consumer choice if only because it demonstrates that the cable industry can do what, for years, it claimed it could not—offer consumers smaller, specialized bundles in lieu of the costly expanded basic tier. Unfortunately, because cable distributors, in tandem with powerful broadcast programmers, have decided which channels will be included, the tier offers consumers very little choice. The programming line-up of family choice tiers unveiled to date offer only limited channels and may discourage families who want greater control from subscribing to the tier because it lacks other general interest programming they may desire. Subscribers who want programming choices beyond those offered in the basic cable package, but who do not wish to pay for programming they find

objectionable are left with the Hobson's Choice of the limited "family choice" tier or no popular cable programming whatsoever.

In order for family-targeted tiers to offer a meaningful consumer choice and to serve as a viable solution to objectionable programming, cable distributors must allow subscribers to choose the channels they subscribe to and pay for from the expanded basic line-up. We urge the Committee to seek commitments from cable distributors to offer families that choice and commitments from cable programmers not to block efforts by distributors to do so. In lieu of those commitments, we urge the Committee to seek legislative solutions which ensure that subscribers, not cable companies, select the programming they view as appropriate for their families based on their unique values and preferences.

In addition, we urge the Committee to address the contractual restrictions that dominant video programming companies impose on cable distributors. As you know, both EchoStar and Cablevision Systems have publicly supported policies allowing subscribers to choose the channels they will pay for. In addition, new video market entrant AT&T has likewise supported the option. Each of these distributors, however, is or will be precluded from offering channels individually by their contractual agreements with content providers. Smaller, independent cable distributors, too, have long objected to these contractual restrictions as they seek greater ability to respond to local community needs.

Prohibiting contractual restrictions that prevent distributors from offering subscribers the option to buy channels individually would facilitate a marketplace response to consumer demand for greater choice in channel selection. At least in the limited markets where video competition exists, new competitors offering cable "a la carte" may enjoy a marketplace advantage, driving other distributors to respond with new choices and more diverse programming, and lower prices. And, in addition to other policy options to increase diversity of content offered on cable systems, eliminating the ability of dominant programmers to dictate all-or-nothing bundles of channels opens the door to independent, unaffiliated programmers seeking to offer television channels that respond to and reflect diverse interests and needs not met by the media giants.

Recent statements by FCC Chairman Martin have debunked the much-promoted and counter intuitive myth that cable a la carte will not benefit consumers. And the recent concession by the cable industry to offer family choice tiers likewise contradicts prior claims that smaller programming tiers are not economically viable. There remains no viable reason that cable distributors and programmers should be allowed to force the "all-or-nothing" expanded basic package upon consumers who merely want the ability to pay for those offerings they want—an option they have in every other market.

Cable providers, working hand-in-hand with the dominant broadcast network programmers, should not be allowed to use their absolute control over television packaging to stifle video competition and impede the marketplace from responding to overwhelming consumer demand for cable channel choice. We urge the Committee to ensure that they cannot.

Sincerely,

JEANNINE KENNEY,  
*Consumers Union.*

MARK COOPER,  
*Consumer Federation of America.*

BEN SCOTT,  
*Free Press.*

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
BRUCE T. REESE

*Question.* Although it's important to find ways to block indecent programming that is already on TV or fine licensees when it's on radio, I think we should also examine causes for the indecency. A recent study found that from 2000 to 2003, four of the nation's largest radio companies were responsible for 96 percent of FCC indecency fines, even though their stations only accounted for about half of the country's listening audience. Shouldn't media consolidation be part of our examination of indecency?

*Answer.* Media ownership issues are not related to the indecency debate. As an initial matter, NAB notes that the study referred to in the question, purporting to link media ownership and indecency, admits that it does "not prove a causal link

between ownership concentration and broadcast indecency.”<sup>1</sup> Moreover, this Study contains many serious flaws and inherent contradictions. As just one example, the fact that the Study is based entirely on the number of fines proposed by the FCC in “Notices of Apparent Liability” (“NALs”) against radio broadcasters between 2000 and 2003 creates a number of problems. See Study at 12–13. First, as the Study itself recognizes, NALs are issued prior to any FCC final judgment that indecent material was actually broadcast. For this reason, the authors assert that radio stations should not take any action against their on-air employees on the basis of a Commission NAL because that “is analogous to imposing punishment on an accused criminal on the basis of a prosecutor’s indictment.” Study at 7. Nonetheless, the authors use NALs as the basis for their unfounded allegations against radio broadcasters.<sup>2</sup> The Committee should not rely upon such blatantly contradictory analysis.

The Committee should also recognize that the reason the Study gives for looking only at a highly limited data set directly contradicts the assumed link between ownership concentration and indecency. The authors selected 2003 as its “end point” for the Study because “events” after that date “caused ‘indecency’ on radio to come to a screeching halt.” Study at 12. Unless the “events” were a significant change in ownership patterns (which did not happen), logic would suggest the opposite of the author’s conclusion—that despite their wish to find a link, there is no connection between ownership patterns and indecency. Indeed, comparing the number of NALs the FCC issued per year prior to and following passage of the 1996 Telecommunication Act, which permitted more radio group ownership, shows no trend supporting any casual link.

NAB further notes that most large radio groups that were the subject of the Study have not been the targets of FCC indecency actions. As the Study itself showed (at 17), seven of the ten largest radio groups (determined by the number of stations) had no indecency actions against them from 2000–2003—a fact that casts considerable doubt on any alleged link between media ownership and indecency.

Finally, NAB submits that, far from creating problems that this Committee needs to address, the ownership changes authorized by the 1996 Telecommunications Act have enabled the radio industry to regain its economic viability, just as Congress intended. As the FCC has explained, the radio industry experienced severe financial difficulties in the early 1990s. More than half of all commercial radio stations were losing money, and hundreds of stations had ceased broadcasting. The outlook for small stations was “particularly bleak.”<sup>3</sup> In fact, the FCC concluded in 1992 that economic stress “substantially threatened” the industry’s ability to serve the public interest, and determined that relaxing the strict radio ownership restrictions would help improve radio stations’ “competitive standing” and “ability to function in the public interest.” *FCC Radio Report*, 7 FCC Rcd at 2760–61. In light of this distress in the industry, Congress in 1996 correctly reformed the strict limits on radio ownership to allow more station combinations.<sup>4</sup> Because of this congressional action, free, over-the-air local radio broadcasters are again economically viable in an increasingly competitive multimedia marketplace. Spurious attempts by critics of “big media” to link concerns about indecency to media consolidation should not obscure the very real benefits derived from allowing radio station combinations.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
JEFF J. MCINTYRE

*Question.* Although it’s important to find ways to block indecent programming that is already on TV or fine licensees when it’s on radio, I think we should also examine causes for the indecency. A recent study found that from 2000 to 2003, four of the Nation’s largest radio companies were responsible for 96 percent of FCC indecency fines, even though their stations only accounted for about half of the country’s listening audience. Shouldn’t media consolidation be part of our examination of indecency?

<sup>1</sup>J. Rintels and P. Napoli, *Ownership Concentration and Indecency in Broadcasting: Is There a Link?* at 5 (Sept. 2005) (“Study”).

<sup>2</sup>It is worth noting that the Communications Act prevents the FCC from using the mere issuance of a NAL to the “prejudice of the person to whom such notice was issued,” until the proposed fine has either been paid or a court has ordered payment of the fine and that order has become final. 47 U.S.C. § 504(c).

<sup>3</sup>*Report and Order* in MM Docket No. 91–140, 7 FCC Rcd 2755, 2760–61 (1992) (“*FCC Radio Report*”).

<sup>4</sup>See H.R. Rep. No. 204, 104th Cong., 2d Sess. at 48 (1995) (Telecommunications Act sought “to preserve and to promote the competitiveness of over-the-air broadcast stations”).

Answer. Absolutely. As media programming becomes more nationalized, it's much more difficult to enforce the requirement of 'community standards,' as required by the current indecency statutes. How does a local community exert control when the nationalized media is broadcasting the same product in Los Angeles as it is in the Ozarks? Previously, the community standard worked for issues of indecency because the local media was able to represent and adapt the national programming to fit the local standards. Now, as control of the media has moved away from local owners and more into the hands of a few multi-national owners, local communities continue to struggle with the media product that is given to them. This is consistent throughout most forms of media. The more the power of the media is in the control of a few owners, the less power the local communities have over it. Issues, such as concerns over indecent or violent programming, will continue to arise. For indecency/violence concerns, a nationalized media trying to appeal to local, community standards is designed to fail.

Psychological research demonstrates that one way individual families can exert local control over their media diet is with a detailed, effective content based ratings system. By giving parents and families accurate, detailed information about what programming is coming into their house—they can make healthy, educated decisions about what media their children are consuming. When there is a loss of community control of the media due to consolidation, tools must be put into the hands of the local consumer (e.g., parents, families, educators) to individually control the media.

Please consider me and the American Psychological Association a resource as you continue in your deliberations of this important matter.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
MARTIN D. FRANKS

*Question.* Although it's important to find ways to block indecent programming that is already on TV or fine licensees when it's on radio, I think we should also examine causes for the indecency. A recent study found that from 2000 to 2003, four of the nation's largest radio companies were responsible for 96 percent of FCC indecency fines, even though their stations only accounted for about half of the country's listening audience. Shouldn't media consolidation be part of our examination of indecency?

Answer. In posing the question, you note that "[a] recent study found that from 2000 to 2003, four of the Nation's largest radio companies wereresponsible for 96 percent of FCC indecency fines, even though their stations only accounted for about half of the country's listening audience."

In short, I see no link between media ownership and indecency. The study to which you refer, conducted by the Center for Creative Voices in Media, agrees. The executive summary to that study itself disclaims the very link the authors attempt to establish in the study: "*These results do not prove a causal link between ownership concentration and broadcast indecency. Additional research, accounting for the broad array of factors that may influence the likelihood of a station receiving an indecency violation, is necessary.*"<sup>1</sup>

Even a quick look at the FCC's history of indecency fines<sup>2</sup> demonstrates that in the "good old days" preceding the moment in history the study considers the defining moment for media consolidation—the Telecommunications Act of 1996—the FCC fined radio even more than it did in the 2000–2003 period cited by the study. In fact, in the three years prior to 1996, we saw nearly twice the amount of monetary fines levied against radio (\$1.34 million) as in the four years in the 2000–2003 period (\$678,400).

Let me suggest that another problem with linking media consolidation and indecency is that it relies on an incorrect premise. The state of media ownership in this country has never been as competitively robust as it is today. As I said in my testimony before the Committee on January 19, CBS would be happy to go back to the three-channel television era that I and many others recall fondly. But those days are gone forever, and you and your colleagues should be proud that telecommunications law over the past decade has fostered explosive competition. Today consumers in this country can choose among hundreds of linear channels of video programming on television delivered 24/7 by digital broadcasters, cable operators, DBS providers and telephone companies. There is even more on-demand programming of-

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<sup>1</sup>"Ownership Concentration and Indecency in Broadcasting: Is There a Link?" September 2005, Center for Creative Voices in Media, Fordham, freepress, at Executive Summary, page 5 (emphasis added).

<sup>2</sup>Indecency Complaints and NALs: 1993–2005, [www.fcc.gov/eb/oip/ComplStatChart.pdf](http://www.fcc.gov/eb/oip/ComplStatChart.pdf).

ferred by many of these same providers, as well as thousands of Internet sites, iPods, cellphones, DVDs and more.

To reiterate my testimony, looking back lovingly at the past and the good old days of broadcasting will not guide us toward a solution for parents today. Viewers now have the tools to respond to the amazing choice and diversity—the V-chip and cable and DBS parental controls—and we in the industry stand ready to educate and encourage them to actively use those tools.

Please do not hesitate to contact me if you have any additional questions.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
L. BRENT BOZELL, III

*Question.* Although it's important to find ways to block indecent programming that is already on TV or fine licensees when it's on radio, I think we should also examine causes for the indecency. A recent study found that from 2000 to 2003, four of the Nation's largest radio companies were responsible for 96 percent of FCC indecency fines, even though their stations only accounted for about half of the country's listening audience. Shouldn't media consolidation be part of our examination of indecency?

Media ownership and consolidation is closely linked to the problem of indecency. The FCC and Congress bear the burden to establish equitable media ownership rules that preserve localism, diversity of ownership and the community standards upon which indecency law is built. We urge Congress to focus solely on the public interest and deny the stranglehold on local broadcasting sought by national media conglomerates as a result of the FCC's most recent media ownership rules.

The study you cite correctly draws attention to the fact that increased media consolidation yields a lack of local ownership and therefore programming decisions often rest with executives thousands of miles away from the market in question. How can we expect the community standards of the citizens of Nebraska, Oregon or Alabama to be preserved and upheld by people who may have never even been to the community?

The truth is that we can't, and while ownership rules must not be so draconian as to unnecessarily inhibit commerce, it is important to remember that the phrase "public interest" is mentioned more than 100 times in the Communication Act of 1934 which regulates the broadcast medium. Clearly, owners with ties to a community are in a much better position to determine the public interest of those they serve and whose airwaves they are allowed to broadcast upon.

Around the time of the FCC's most recent rulemaking on media ownership, a local PTC Grassroots Chapter Director wrote his local Fox-owned and operated affiliate to complain about the television program *Keen Eddie*, which featured a scene where a prostitute was hired to perform sex with a horse in order to extract its semen. In response to that complaint, the Vice President and General Manager of the station, Cheryl McDonald, said in her letter, "The network, not WDAF-TV4, decides what shows go on the air for the Fox owned and operated television stations." Local sensibilities and community standards are no longer applicable when mega media corporations place restraints on local programming. The ability of local stations to respond to the needs of their own community is shattered.

The PTC's research strongly supports the assertion that local broadcasters, when owned and operated by networks of affiliated stations across the country, literally are forced to air program material that may be deemed indecent by local community standards. In a 2003 survey of 97 television stations owned and operated by television networks, only one station had ever preempted a network television program based on community decency standards, and that one station did so only one time—one single broadcast—and that was nearly a decade ago.

Moreover, the consolidation of media outlets is problematic when discussing issues related to indecency on cable networks. Since the vast majority of cable programming is owned by a mere six media conglomerates and all of these corporations force cable and satellite providers to carry all of their network offerings if any are carried, consumer choice in cable programming has remained impossible—despite an FCC report just last week that demonstrated that consumers could save as much as 13% if allowed to pick and choose channel lineups. In this respect, media consolidation has directly led to millions of families paying billions of dollars for channels they don't want, don't watch and all too often find offensive.

We call on the Congress to end this extortion, and allow families to choose which cable networks they receive and pay for.

As I'm sure you are aware, a federal appeals court overturned the FCC's 2003 changes to media ownership rules, and the Commission must now revisit the meth-



odology used to create those rules. Although it is likely that the FCC will announce new rules for horizontal and vertical media ownership sometime this year, as the representatives of the people, I urge the Congress to take a proactive leadership role in ensuring that media ownership rules fully protect the public airwaves and community standards of decency. In the past the FCC ignored the call for local community control. It undermined this control and determined that a handful of media giants can buy more and more stations, more newspapers and more radio stations. This runs directly in opposition of the public interest, which Congress has the ultimate responsibility to uphold.

## ATTACHMENTS

Tim Maupin,  
Chapter Director, Kansas City Metro Chapter,  
Parents Television Council,  
Kansas City, MO.

Dear Mr. Maupin,

We received your letter dated June 30, 2003 regarding the content of the Keen Eddie show that aired on June 10, 2003 at 8pm.

We forwarded your letter to the FOX Network. The Network, not WDAF TV4, decides what shows go on the air for the FOX Owned and Operated Television Stations.

Sincerely,

CHERYL McDONALD,

*Vice President / General Manager WDAF-TV/FOX 4.*

Charlotte Observer, October 19, 2003,

## KEEP CONTROL OF TV LOCAL

By Richard Burr and Jesse Helms

When a Kansas City resident wanted to complain about the sexually explicit language contained in the Fox television program "Keen Eddie," he did what most Americans would do. He wrote to his local television station.

Unfortunately, despite the good intentions of management, the local station—owned by the Fox television network—couldn't do anything about it. In a letter to the viewer, the station's general manager confessed that the Fox network in New York controlled what programs aired on the Fox-owned station in Kansas City.

That's the problem with the Federal Communication Commission's misguided decision to increase the national television ownership cap from 35 percent to 45 percent. Community standards get lost when networks are allowed to nationalize broadcast television programming.

Of the more than 18,000 pages of comments filed during the FCC's media ownership proceeding, the networks did not cite a single instance—not one—where one of its owned-and-operated stations rejected a program that failed to meet local community standards.

Fortunately, the FCC's record showed that non-network-owned stations can, and often do, reject certain network programs (including sexually explicit shows like "Maxim's Hot 100" or the "Victoria's Secret Fashion Show") that conflict with the essential character of the local communities they serve. By fulfilling their legal duty to reflect—not dictate—the standards of their communities, non-network-owned stations promote the essence of "localism," a principle FCC Chairman Michael Powell recently hailed as a "core value" of our Nation's broadcast system.

Supporters of the FCC's decision to raise the ownership cap from 35 percent to 45 percent argue that it promotes the benefits of deregulation. Yet the whole point of deregulation, especially among conservatives, is to place more power in the hands of local decision-makers. Deregulation is worthless when it leads to the nationalization of a single product, policy or point of view that can't be adjusted to reflect the diverse needs of our local communities.

Congress rejected the idea of a highly-centralized BBC-like broadcast system back in 1934. Instead, it chose a decentralized system of local stations charged to reflect the diverse needs of each local market. It made no sense then—and makes less now—to think viewers in California would have the same response to sexually explicit programming as viewers in North Carolina.

We are gratified that the House of Representatives recently rejected the proposed 45 percent cap. By doing so, it cast an important vote for decentralization. Just as our education system allows families to influence public school curricula through their local school board, our broadcast system allows viewers to influence television

programming through their local stations. By giving the networks the ability to purchase more local stations and control more local programming decisions, we would invite them to build the same centrally-controlled broadcast system that Congress said “no” to almost 70 years ago.

Conservatives recognize the danger of nationalizing broadcast television content and taking away the freedom of local stations to respond to concerns:

- The Christian Coalition of America doesn’t want to force “vacuous trash on local television stations whose communities do not want to see such radical programming.”
- The Parents Television Council notes that the “losers” of network ownership “are the local communities whose standards of decency are being ignored.”
- The National Religious Broadcasters rightfully fear that the prospect of losing more religious stations to the networks will be a “tsunami of sizable proportions.”

Chairman Powell worries that supporters of the 35 percent cap are motivated by “a desire to affect content.” But Congress has no desire to dictate the content or morality of television shows. It is simply protecting the right of local viewers to affect the content of the programs beamed into their living rooms. To do this, local stations must be empowered to make programming decisions based on community concerns, not forced to march in lockstep with network mandates from New York or Beverly Hills.

The right of local viewers to influence programming works both ways. Stations, of course, must pay equal attention to the interests of communities who want to watch programs that viewers in other markets may find objectionable (so as long as the program does not violate federal laws). While citizens in North Carolina cheered when a local station replaced an off-color comedy show with vintage episodes of “The Andy Griffith Show,” we concede that the switch might not have been so warmly received in markets where viewers fail to appreciate the subtlety and warmth of Mayberry’s homespun humor.

Our Constitution is steeped in the principle that local governments are best suited to tend to the daily issues that confront local citizens. Our Nation’s broadcast system has wisely followed this deregulatory principle for more than 70 years. We are not willing to silence the voices of local viewers in favor of a single voice from New York or Los Angeles.

Are you?

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
JACK VALENTI

Your question to the panelists following the hearing before the Senate Commerce Committee on January 19 was, in paraphrase:

“(1) Since the public is not now using available technology to block programs, what efforts are you making to speak directly to individual parents about television ratings and blocking mechanisms? (2) Will you consider visually showing parents how to work their remote controls to utilize the blocking technology? (3) Will you inform parents and consumers at either the point of sale or in literature to customers?”

To all three queries: The public is not making use of their blocking power in the home because there has not been to date a unified effort, unprecedented in its scope, scale and frequency of message presentations, to inform and explain to parents they have in their possession power to control all TV programming in their home. The messages which are being designed will, in simple, easy to understand language, instruct parents in the use of these blocking technologies.

The overall reach of the project we presented to the Committee is massive. On board, in a seamless web of unity, are every TV station, all the national broadcast networks ABC, CBS, NBC, FOX, CW, movie studios, TV programmers, cable systems, direct broadcast satellite providers DIRECTV and EchoStar’s DISH Network, TimeWarner, Comcast, Viacom, the Consumer Electronics Association, the National Association of Broadcasters, the National Cable and Telecommunications Association, the Motion Picture Association of America. This is an effort never attempted before.

This group has enlisted the Ad Council and its prestige and achievements, with links to the best brains in creative advertising, to design the messages that will be dispatched by the hundreds of thousands, over and over and over again—dispatched to cable systems, national broadcast networks, individual TV stations, direct-broad-

cast satellite companies—to American TV homes. This avalanche of messages will begin sometime in May of this year.

Additionally, with the cooperation of the Consumer Electronics Association, we will reach out to retail stores and TV set manufacturers to inform parents of the presence of a V-chip in the new TV set they buy. Further, we will distribute the Ad Council material to churches and advocacy groups so they can pass onto their congregations and members the messages conveyed to parents.

Finally, the Luntz-Hart poll and the Russell Research poll reveal that while a majority of parents find some TV programming unsuitable for their children, by margins of 91 percent to 89 percent, they don't want the government to step in legislatively. They're rather it be done on a voluntary basis.

The total cost of this unprecedented project, privately funded, will be some \$300 million.

To summarize this never-before-attempted-project which satisfies parents' desires that a voluntary program is far better and more effective than Congressional legislation:

1. Enlist the Ad Council to create, supervise and monitor messages to parents.
2. Ensure that all the cooperating enterprises offer air time so these messages are dispatched to all TV homes in the country.
3. Distribute educational and instructional materials to be made available to parents at retail stores, in information included with TV sets, and during installation of pay television services.
4. Ensure that all cooperating entities have readable logos at the start of every TV show, and coming out of every commercial break in programs aired.
5. Reach out to religious and parents' advocacy groups with information they can distribute to congregations or members to further inform and educate them about the power that parents have to control TV programming in their homes.

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ECHOSTAR SATELLITE L.L.C.  
*Washington DC, February 13, 2006*

Hon. FRANK R. LAUTENBERG,  
Senate Committee on Commerce, Science, and Transportation,  
Washington, DC.

Dear Senator Lautenberg,

Thank you for your leadership on this issue, and for participating in the Senate Commerce Committee hearing on decency in broadcasting, cable and other media. EchoStar Communications Corporation has been a pioneer in providing consumers with control over the programming coming into their homes, and choice over the channels they purchase. We believe that educating consumers about our blocking technology is necessary to give parents the control they want, but Congress must address the bundling practices of large programmers in order to give consumers the choice they desire.

Since we launched our service in 1996, we have provided consumers with parental controls. All DISH Network set-top boxes come with blocking software that allows parents to block entire channels and individual programs based on multiple ratings and content criteria. The software can also remove the channel information from our service's electronic program guide. We recognize that our subscribers must know about the parental controls in order for the technology to be useful, and the following is a list of the ways that we inform consumers of these blocking tools.

- We provide information about our parental control features in the welcome kits we mail to all new subscribers;
- We include information about using our parental control features, in easy to understand language, in the user guides that accompany all of our receivers;
- Since January 2004, DISH Network has devoted over 200 hours of cross channel advertising on popular subscription channels to teach our subscribers about our parental control technology;
- The DISH Network Adult Guard Support Network on channel 490, and the For Your Information Network on channel 101, provides information about our parental controls, among other topics, and explains how to enable it;
- Our customer service representatives are available twenty-four hours per day, seven days per week at 1-800-333-DISH to help subscribers set-up the parental controls for their service;

- With two simple clicks from our home page, consumers and customers can find information on setting up the parental control features [http://www.dishnetwork.com/content/programming/parental\\_control/index2.shtml](http://www.dishnetwork.com/content/programming/parental_control/index2.shtml);
- All DISH Network product brochures reference the parental control features of our receivers; and
- Finally, DISH Network provides a monthly newsletter called DISH Takes that appears in our customers' monthly bills that periodically provides information about Adult Guard and how it works. The information is also available from time to time in our monthly magazine called DISH Entertainment Magazine available by subscription,

With respect to the newly-announced education campaign, we will consider creating ads that visually show parents how to work their remote controls to utilize the blocking technology. In the past, we've produced these kinds of ads on our service.

In addition to blocking programming coming into consumers' homes, Congress can take steps to give consumers more choices over the programming they buy from their pay television provider. More than a decade ago, Congress granted local broadcast stations the right to demand payment from cable providers, and ultimately satellite providers, in exchange for carriage. These *retransmission consent* rules have provided network broadcasters extraordinary leverage over pay television providers who must offer ABC, NBC, CBS, and FOX programming to compete in the market. Today, these network broadcasters use their market power to bundle their local stations with other pay television programming and tell distributors like DISH Network, if you want one, you have to take them all.

In order to give consumers more choice in the programming they purchase, Congress must pass legislation that would separate retransmission consent from other programming negotiations. One way to address this problem is to provide pay TV providers the opportunity to resolve disputes involving broadcast stations with binding arbitration. This would offset the broadcasters' leverage, and provide pay television providers the flexibility to offer programming on specialized themed tiers or *a la carte* in order to respond to consumer demand. During the arbitration proceeding, the programming in dispute should continue to be available, thereby ensuring that consumers have uninterrupted access to important local content.

Thanks again for the opportunity to add this important information to the record.  
Sincerely,

CHARLES W. ERGEN,  
*Chairman and Chief Executive Officer.*

COMCAST  
*Philadelphia, PA, February 13, 2006*

Hon. FRANK R. LAUTENBERG,  
Committee on Commerce, Science, and Transportation,  
Washington, DC.

Dear Senator Lautenberg:

I was glad to have the opportunity to appear before the Senate Committee on Commerce, Science, and Transportation at the January 19th hearing on decency in broadcasting, cable and other media. I welcome the opportunity to respond to the follow-up questions that you asked of my fellow panelists and me regarding our efforts to educate parents about parental control technologies. As discussed in detail below, we are making extraordinary efforts to ensure that all of our customers are aware of the tools that we make available to control the programming that comes into their homes, and are fully informed about how to use these tools.

You asked the following questions: *"I know each of you has tried to educate the public at large about ways to block unwanted programming. But the fact is, the public is not using the available technology and many remain uninformed. What efforts are you making to speak directly to individual parents and consumers about television ratings and blocking technology, either at the point of sale or in literature to customers? In your newly-announced education campaign, will you consider visually showing parents in the ads themselves how to work their remote controls to utilize the blocking technology?"*

As you will see, our efforts are multi-faceted.

On the first day that a household initiates service with Comcast, we provide them with a *Welcome Kit* that includes written materials that explain the availability and use of parental control technologies. Customers are also informed about the avail-

ability and capabilities of parental controls in *billing inserts* and through *public service announcements* (“PSAs”). Clear explanations of how to use parental controls are provided through *Internet links* offered on the homepage of *Comcast.com*. *Tutorials* that demonstrate precisely how to use the blocking and “favorites” features of parental controls are also aired on one of our digital channels that highlights the features of our digital services and can be called up, virtually instantaneously, via Comcast On Demand. We also staff a dedicated *toll-free number* with Comcast personnel who are trained to answer questions about parental control technology. In addition, Comcast has partnered with others in the cable industry to conduct *media literacy workshops* throughout the United States, and we work with retail stores to provide consumers with parental control information in in-store displays. Comcast is also proud to join in the sweeping new pan-industry *consumer education campaign* that was announced by Jack Valenti at the Committee’s hearing.

Below are additional details on each of the methods we use to inform and educate customers about parental controls.

#### **Welcome Kit**

Technicians who install Comcast cable service at a new customer’s home provide the customer with a Welcome Kit containing instructional material describing Comcast’s features and services. The kit includes several brochures, pamphlets, and one-page informational fliers, and four of those pieces include information on parental controls. Our “Welcome to Comcast” brochure includes a chapter called “Using Your On-Screen Program Guide/Parental Controls” (see Attachment A). That chapter offers a full-color, step-by-step “how-to” with views of the screens that a parent will encounter in the process. The pamphlet entitled “How to Use Your New On-Screen Program Guide” includes a similar guide with views of parental control screens and a detailed explanation of how to block selected programming (see Attachment B). The “Guide to Using Your Built-In Digital Video Recorder,” provided with our DVR boxes, also offers a parental controls section including instructions and views of the parental control screens (see Attachment C). Finally, the Welcome Kit also includes an 8½ by 11 inch flier entitled “Using Parental Controls,” with similar step-by-step instructions and snapshots of screens (see Attachment D).

In addition to the literature provided, the Comcast technicians who visit customer homes and conduct installations and repairs are equipped to answer questions about, and to help set up, parental controls.

#### **Billing Inserts**

Comcast also provides inserts in customer billing statements to remind parents that parental control technologies exist. These billing inserts direct parents to additional resources, including the parental controls section of *Comcast.com* (see Attachment E).

#### **PSAs**

In May 2005, the cable industry launched its \$250 million “Cable Puts You In Control” public service campaign to better acquaint parents with TV and MPA ratings, the V-chip, and the blocking and “favorites” features of cable set-top boxes (see Attachment F). Between May and November of 2005, the cable industry aired over \$130 million worth of these public service announcements. In those six months, Comcast alone aired over 1.6 million PSAs to inform our customers—and your constituents—about the availability and the flexibility of parental control technologies. One of the campaign’s PSAs offers the step-by-step instructions for using a remote control to program parental controls, and a print version of that PSA also appeared in local newspapers (see Attachment G). In addition, about 30 Members of Congress have recorded PSAs promoting public awareness of parental controls, and these are airing on cable systems around the Nation.

#### **Website**

The front page of *www.comcast.com* includes a prominent “Quick Links” section with six featured links, one of which (“Parental Controls”) bring the user to a section of our website dedicated to parental controls features (see Attachment H, *Comcast.com* homepage). As of February 2, 2006, the website has registered over 277,485 visits to this parental control content. The parental controls section includes a variety of Frequently Asked Questions (“FAQs”) tailored to customers with different types of set-top boxes (see Attachment I). It also includes several downloadable PDF pages that provide step-by-step parental control set-up instructions for different types of cable boxes.

The front page of the Parental Control section of the website links to other valuable sources of information on parental control technology, including the FCC’s Guide for Parents, the cable industry’s resource page on family-friendly programs,

parental controls, the TV ratings system, the TV Ratings Guide and the Movie Ratings Guide (see Attachment J, *Comcast.com* Main Parental Control Page).

#### **Video Tutorials**

“How-to” parental control tutorials are shown regularly on a digital channel that highlights features of Comcast’s digital video services. Those same tutorials can readily be accessed via Comcast On Demand. They can also be accessed under the “Help & Service” menu in Comcast’s digital cable services or in the Kids On Demand menu, via a Parental Control button that leads to a sub-menu of parental control tutorials on digital cable, On Demand and DVR boxes. Parental control video tutorials are also available online at <http://www.controlyourtv.org/>, a website sponsored by the National Cable and Telecommunications Association, the cable industry’s trade association. A link to this website can be found on *Comcast.com*.

#### **Toll-Free Number**

In April 2004, Comcast launched a new dedicated toll-free phone line where customers can get questions answered about parental controls by trained representatives. Comcast customers can call 1-866-781-1888 to speak to Comcast personnel live daily from 9 a.m. to 11 p.m. Eastern time.

#### **Workshops**

Comcast, in partnership with other cable operators, committed to conduct 100 local “Control Your TV” events in communities throughout the United States. These events provide information about using cable’s parental control tools, the TV ratings system, the V-chip and media literacy. The events were developed in partnership with the National PTA and are being coordinated with local PTA chapters where available. Parents are provided with simple guidelines for developing a safe media environment in the home. Comcast distributes handouts including two one-page fliers detailing the step-by-step parental control procedures for the two models of cable boxes supplied to Comcast customers (see Attachment K). Sixty (60) events were held in 2005, with more planned for 2006.

#### **Pan-Industry Campaign**

The cable industry is now participating in a new pan-industry public awareness campaign, led by Jack Valenti, former President and Chief Executive Officer of the Motion Picture Association of America, which includes a broad group of entertainment, programming and consumer electronics participants. This campaign’s current plans include wide dissemination of a PSA developed by the Ad Council, which emphasizes the tools parents have to manage TV programming and how easy they are to use. Discussions with the Ad Council are underway to develop additional messages.

The campaign will also build on existing relationships with Best Buy and Circuit City to create consumer-friendly materials that are now included in in-store displays. As part of this public awareness campaign, the Consumer Electronics Association will also distribute V-chip educational materials to be made available to parents at retail stores and in information included with TV sets.

#### **Planned Initiatives**

In addition to what is currently available to parents, Comcast is working to develop more easy-to-use technologies to enable parents to protect their children. For example, later this year, we plan to give parents the power to PIN-code-protect access to the On Demand service. During 2007, we expect to roll out additional features including the ability to lock out programming by content label (based on TV ratings for violence, sexual situations, dialog or language), displaying these content labels on our program guide information screens, and offering family-friendly recommendations in our program guide.

Consistent with Comcast’s ongoing commitment to provide family friendly programming, Comcast will offer a Family Tier this year. Subscribers of Comcast’s Family Tier will receive 35 to 40 channels, including many of the premier brand names in family programming, such as Disney, Discovery, National Geographic, and PBS KIDS Sprout, which features quality programming chiefly for preschoolers and young children.

In short, Comcast is making every effort possible to ensure that parents are aware of the tools we offer and know how easy it is to use them. While we believe that American consumers benefit enormously from the abundance and diversity of the programming that we offer, we are fully committed to enabling each family to make its own decisions about what programming should be available to particular members of the household. We look forward to continued work with you and the

other members of the Senate to ensure that American consumers enjoy this powerful combination of choice and control in their viewing experience.

Please feel free to contact me if you have further comments or questions.

Sincerely,

DAVID L. COHEN,  
*Executive Vice President*

**The Attachments referred to in this letter have been retained in Committee files.**

