

**TESTIMONY BEFORE THE U.S. SENATE COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION**

**on
INDECENCY**

**by
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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 various 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 pm hour –

7:00 pm 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 smokescreen. 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 dialog 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 US. 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.