

Testimony of Bruce Reese
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On Behalf of the National Association of Broadcasters
Senate Commerce Committee Hearing
January 19, 2006

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 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

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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%) 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 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% of all indecency complaints filed at the FCC in 2003 and 99.9% 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% of all parents report using television ratings to “help guide their children’s television choices,” and “the vast majority” (88%) 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.