

Findings



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Preservation of the Family.

Indecent Exposure

Protecting Families From Offensive Programming

By Alysse M. ElHage



On Super Bowl Sunday, 2004, millions of fans gathered in front of their television sets to watch what was supposed to be a “family friendly” game of football on CBS.

Instead, the estimated 90 million adults and children in the viewing audience were exposed to 30 minutes of sexually provocative dancing, offensive lyrics and ultimately nudity during the Super Bowl halftime show.¹ In the days following, the Federal Communications Commission (FCC) received over 200,000 complaints about the show from outraged viewers.² Janet Jackson’s “indecent exposure” on network television has brought long-overdue national attention to the broader problem of offensive content that permeates the broadcast airwaves on a daily basis.

According to the Parent’s Television Council (PTC), a media watchdog group, references to sexual activity on television have become more explicit in recent years, with more programs featuring dialogue about pornography, homosexuality, adultery, and prostitution.³ Another PTC report found that the use of profanity increased by nearly 95 percent between 1998 and 2002 on nearly all the major television networks.⁴ In addition, one national study found that nearly two out of three television programs contain some violence, with an average of about six violent acts per hour.⁵ At the same time, a growing number of radio stations targeted at young people play songs with sexually explicit and violent lyrics, and feature shows hosted by “shock” jocks who use sex and profanity to appeal to the worst parts of human nature.

Parents are understandably concerned about the content of television and radio

today. According to one recent survey, about nine out of 10 parents said they believed today’s media contribute to children using more profanity, becoming sexually active at younger ages, and behaving in violent ways.⁶

The increasing amount of offensive programming on television and radio has left many parents feeling frustrated, and wondering what—if anything—can be done. As broadcasters continue to push the limits of decency, citizens need to understand the role of the FCC, the applicable laws, and the impact of media ownership, as well as the public’s critical responsibility to help protect the airwaves from obscene and indecent content.

The FCC and the Law

After the Super Bowl incident, FCC Chairman Michael Powell promised a “thorough and swift” investigation into Janet Jackson’s performance to determine whether it violated the indecency law.⁷ For most Americans, there is no question that nudity during a nationally televised football game is indecent, especially when children are watching. In order to understand the FCC’s response to any such act, it is helpful to examine the agency’s role in regulating the broadcast airwaves, and the definitions it uses to define obscene and indecent programming.

The FCC was created by Congress under the Communications Act of 1934 and has the authority to regulate “all interstate and international communication” in the United States and U.S. territories, including television and radio.⁸ Part of the FCC’s job is to license commercial and noncommercial broadcast stations. It is important to point out that the FCC does not license national broadcasters, such as ABC, NBC or CBS, “except as individual owners of particular stations.”⁹

Because the FCC is prohibited from censoring broadcast information, the agency is limited in its regulatory ability. Television and radio stations are in charge of determining what information they broadcast. But the FCC does have the authority to “fine a station or revoke its license if it has, among other things, aired obscene language, [and] broadcast indecent language when children are likely to be in the audience....”¹⁰ The definitions for obscenity and indecency play an important role in how the commission regulates broadcast content.

Obscenity. As the FCC makes clear in its publications, obscene speech is not protected under the First Amendment, and the broadcast of obscene programming at any time is a “violation of federal law.”¹¹ The obscenity law applies to both broadcast and cable stations. To be considered “obscene,” the material in question has to meet three characteristics: 1) “An average person, applying contemporary community standards, must find the material, as a whole, appeals to the prurient interest (Prurient is defined as “having or intending to arouse sexual interest in unwholesome matters”); 2) the material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law; and 3) the material, taken as a whole, must lack serious literary, artistic, political or scientific value.”¹²

Indecent Material. While the broadcast of obscenity is against the law, indecent material is protected under the First Amendment but can be restricted during certain hours. Broadcast indecency is defined as “language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory organs or activities.”¹³

The courts have ruled that the FCC can restrict the broadcast of indecent material during the times of day when children are most likely to be exposed to it. Because of this, broadcast radio and television stations are restricted from airing indecent programming between the hours of 6:00 a.m. and 10:00 p.m. each day.¹⁴ This time period does not apply to cable networks, which are under a different set of FCC regulations.¹⁵ Additionally, profanity that does not fall under the definitions of “obscenity” or “indecent” is not regulated.¹⁶

The “contemporary community standards” condition included in the definitions of indecency and obscenity is overly broad and subjective. Standards can vary from community to community, and from person to person within each community. What one person finds obscene or indecent, someone else may consider appropriate. This can make enforcement of obscenity and indecency laws difficult.

Enforcement. Since the FCC is charged with regulating the broadcast airwaves, many people mistakenly assume that the agency actively monitors television and radio programming for obscenity and/or indecency violations. But the FCC relies entirely upon documented complaints about offensive programming from the general public.¹⁷ In addition, the FCC does not “generally” require broadcasters to keep recordings or transcripts of the programs they air.¹⁸ This means that the primary burden for holding broadcasters accountable and providing evidence of any violations falls upon the public’s shoulders.

To consider a complaint, the FCC requires basic information about the station (date, time, call letters) and documented evidence about the offensive broadcast, including a detailed written statement of the problem, along with partial or full transcripts or recordings of the program, if possible.¹⁹ According to the FCC, it is not enough to only include subject matter, isolated words or general descriptions about the alleged indecent broadcast. The complaint must have enough information about the broadcast for the FCC to determine the context in which the language or material was used. Complaints that do not contain this information are dismissed.²⁰

The current FCC complaint process is unrealistic and overly burdensome on the public. Most Americans do not have the time or foresight to record every program they listen to on the radio or watch on television, just in case a violation occurs.

This allows many broadcasters who violate the law to slip through the cracks undeterred.

A station that airs obscene material at any time or indecent programming during the restrictive time period may receive a warning from the FCC, be fined, or even lose its broadcast license.²¹ Currently, the maximum fine for broadcast indecency is \$27,500 per broadcast. FCC Chairman Powell has admitted that the fine “constitutes peanuts to multi-million dollar operations” and has urged Congress to increase the amount.²²

When it comes to aggressively enforcing the law against violators, the FCC has a poor record. For example, although the commission received over 240,000 complaints about indecent programming in 2003, it only issued three notices of liability and one forfeiture order.²³ The FCC declined to fine NBC and its affiliates for rock star Bono’s use of the “f” word on the 2003 Golden Globe Awards, despite the fact that the agency received more than 18,500 complaints about it. The FCC’s Enforcement Bureau said that because Bono used the word as an adjective instead of a verb, the profanity did not violate federal law. The decision is currently being reviewed by the full commission.²⁴

In its entire history, the FCC has only fined two television stations for indecency violations.²⁵ The latest fine was announced one day before the U.S. House was scheduled to begin hearings about indecent programming in January 2004. The commission proposed the maximum indecency fine against KRON-TV in San Francisco for the broadcast of a performer who exposed himself during a local morning news show.²⁶

Additionally, the FCC recently proposed a \$755,000 fine against four Florida radio affiliates owned by Clear Channel Communications for 26 indecency violations that the commission said were “designed to pander to, titillate and shock listeners,” and for failing to maintain public inspection files. The indecency violations occurred during the “Bubba the Love Sponge” radio show, which included a segment where the voices of cartoon characters discussed various sexual activities in explicit and graphic detail. The fine represents the largest ever issued by the FCC for indecency.²⁷

Even before the Super Bowl incident, Congress raised its own concerns about the FCC. In 2003, the Senate passed a resolution calling upon the commission to do more to protect children from indecent

programming. A similar measure was introduced in the House this year.²⁸ Members in both chambers have introduced legislation intended to help the FCC do a better job, including bills that: increase the maximum fine for broadcast indecency to \$275,000, direct the FCC to count each indecent or obscene “utterance” as individual violations, and make eight profanity words and phrases indecent, no matter how they are used.²⁹

Media Ownership

Because the FCC licenses individual broadcasters, local radio and television stations are one of the first lines of defense in the battle to protect the airwaves from indecency. Local stations are subject to FCC regulations and stand to lose the most from indecency and obscenity violations. This is why the issue of media ownership is so important. What ends up on television and the radio is influenced by who owns the stations in each community. Stations may be locally owned, or owned by the major broadcast networks (such as ABC or CBS) or by large communications companies (such as Clear Channel).

Stations that are owned by the national networks or large media conglomerates tend to be less sensitive to local community concerns and values. They may be based hundreds or even thousands of miles away from their audience and are under less pressure to respond when complaints arise. On the other hand, local ownership means local accountability. The owner of a radio or television station who lives in the same community as his audience is more likely to understand local community values and to respond to their concerns.

Local stations have the right and the responsibility to make programming decisions based on the standards of their communities, which includes preempting, or not airing, objectionable programs. This is more likely to happen with stations that are locally owned. In recent years, locally owned television stations across the nation have refused to run several programs that did not meet the standards of their communities, including the *Victoria’s Secret Fashion Show* and *NYPD Blue*, while there are no examples of network owned stations preempting network programming because of content.³⁰

Capitol Broadcasting, which is owned by Jim Goodman and based in Raleigh, is a prime example of how local ownership helps protect the public interest here in North Carolina. The company’s corporate philosophy states: “We do not believe that a company can meet its busi-

ness responsibilities without meeting its community responsibilities as well.³¹ This philosophy explains why Goodmon has refused to air several programs on his stations that he says demean marriage. In 2003, WRAL, Goodmon's CBS affiliate in Raleigh, pulled the reality-dating show, *Cupid*, and aired episodes of *The Andy Griffith Show* in its place. Another one of Goodmon's stations, WRAZ, a Fox affiliate in Durham, preempted several network programs, including *Married By America*, *Who Wants to Marry a Multimillionaire*, and *Temptation Island*.³² "Marriage and the family are the most important institutions we have; they're the core element of our country," Goodmon told *Citizen* magazine in October 2003. "And I don't think we should mock or play games, or make light of that."³³

Because media ownership has a powerful impact on the variety, quality and content of broadcasting, there are caps (or limits) on the percentage of a radio and television market that can be owned by one company.³⁴ In 2003, over the objections of many groups, including the North Carolina Family Policy Council (NCFPC), the FCC raised the national broadcast television ownership cap from 35 percent to 45 percent, which allowed media conglomerates to buy up more stations in their market areas.³⁵ During FCC field hearings on the issue prior to this decision, NCFPC president, Bill Brooks, testified that "consolidation of ownership and management of media outlets in a community, whether they are television or radio stations...will decrease consumer choices and ultimately consumer satisfaction."³⁶ Congress responded to extensive public concerns about the FCC's decision to increase the national television ownership cap by including a provision in the 2004 Appropriations bill that decreased the newly enacted cap from 45 percent to 39 percent.³⁷

While local ownership makes it easier for stations to respond to community concerns, just because a station is owned by a national network does not mean citizen complaints will be ignored. After the Super Bowl incident, for example, pressure from the local affiliates to tone down the content of programming led CBS to institute a five-second delay for the live *Grammy* awards show. NBC deleted a scene from *ER* that revealed an elderly woman's breast, and ABC decided to institute a time delay for its presentation of the *Oscars*.³⁸ In addition, CBS and Fox recently announced steps that they are taking to address concerns about indecent

broadcasts, including clarifying to network affiliates that they have the right to preempt network programming.³⁹

The Public and Accountability

In the battle to protect the broadcast airwaves from offensive programming, the public must lead the charge. For too long, citizens have allowed the national networks, local stations and advertisers to control the airwaves as though they own them. In fact, the general public owns the airwaves, while broadcasters enjoy the privilege, not the right, of using them to provide educational and entertaining programs. The government, through the FCC, is responsible for regulating the airwaves to ensure that broadcasters do not abuse their privilege, but the burden is on the public to hold broadcasters accountable for what they choose to air.

Take Action: Citizen action is key to protecting the broadcast airwaves from indecent or offensive content. Viewers and listeners help set community standards about what is appropriate and what crosses the line. When something offensive airs on television or the radio, there are several important actions that citizens can take:

- 1) Always contact the station manager at the local television or radio station that aired the offensive material first. Local broadcasters are directly accountable to the public and to the FCC, and will be the most responsive to community concerns.
- 2) Find out who owns the station and express your concerns to the station's owner. Whether the station is locally or network-owned, the station's management and ownership need to hear from the public about offensive programming.
- 3) Contact the major broadcast network, such as ABC, NBC, or FOX (in the case of a television broadcast). The national networks produce most of the programming that is broadcast into hundreds of millions of American homes each day. *The Parents Television Council has contact information for the major networks on their web site at www.parentstv.org/PTC/networks/main.html.*
- 4) If you believe that an offensive broadcast meets the definition of obscenity or indecency, also file a complaint with the FCC. *See box on page 4.*
- 5) In addition to filing a complaint with the FCC, you also have the right to petition the FCC to deny a radio or television station's application to have

their broadcast license renewed.⁴⁰ *For information on how to protest a station's license renewal application, go to www.fcc.gov.*

- 6) Contact the advertisers, who also play an important part in programming decisions. Commercial stations use local and national advertising to pay for airtime, which means advertisers have the power to directly impact a station's pocket-book. *For a list of the major advertisers and their contact information, go to www.parentstv.org/PTC/advertisers/main.html.*
- 7) For offensive programming on cable television, contact your local cable provider, national cable company, and the cable network in question to complain. In addition, ask your local cable provider to block any objectionable channels included in your cable package.

Suggested Reforms

In addition to citizen action, changes are necessary at the federal level to help purge the airwaves of indecent and offensive content. At a FCC hearing on localism held in Charlotte in October 2003, NCFPC director of government relations, John Rustin urged the FCC to more vigorously enforce indecency and obscenity laws, impose higher fines and initiate license revocation hearings against stations that violate the law, especially repeat offenders. He also advised the FCC to require broadcasters to maintain transcripts and tapes of programming, and to make these available to the public for filing formal complaints. "Providing a system of local programming that is respectful of community standards, as well as a realistic and responsive enforcement mechanism...will encourage citizens to become more involved in local broadcasting and help to ensure the quality programming we all desire," Rustin said.⁴¹ In addition, the FCC should issue clear guidelines for broadcasters about what constitutes indecency, and Congress should continue to protect the independence of local broadcasters by limiting the amount of stations that big media conglomerates can own.

Conclusion

Because the FCC is limited in its ability to control programming, the public has a key role to play in protecting the airwaves. Programs do not have to rise to the level of indecency or obscenity (as defined by the FCC) to warrant public action. Many television and radio programs today include sexually explicit, violent and profane material that most parents

find inappropriate for their children but are legal under current FCC rules. In addition to complaining to the FCC about indecent broadcasts, citizens need to speak out about programs that promote homosexuality or promiscuity as acceptable lifestyles, demean marriage and the family, include profanity, or show graphic violence. Remaining silent allows Hollywood and the mainstream music industry to define the standards of decency for everyone else. It is time for the public to take back the broadcast airwaves by letting local stations, the major networks, and advertisers know that enough is enough.

Alysse M. ElHage is a communications consultant with the North Carolina Family Policy Council.

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Report an Indecent or Obscene Broadcast to the FCC

Write to the FCC at:
Federal Communications
Commission
Enforcement Bureau
Investigations and
Hearings Division
445 12th St., SW,
Room 3-B443
Washington, DC 20554

Fax: (202) 418-1124
Phone: (202) 418-1420
E-mail: complaints-enf@fcc.gov
Web: www.fcc.gov

Complaints must include:

- 1) Detailed information regarding the offensive broadcast. This can include a written statement of the problem, along with a full or partial transcript or recording of the broadcast, if possible. Be specific.
- 2) Name, date and time of broadcast.
- 3) Call letters of the station involved, and the city and state where the station is located.

Endnotes

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