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OPEN FORUM ON DECENCY

OPEN FORUM

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

NOVEMBER 29, 2005

Printed for the use of the Committee on Commerce, Science, and Transportation

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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OPEN FORUM ON DECENCY

TUESDAY, NOVEMBER 29, 2005

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

The Committee met, pursuant to notice, at 9:35 a.m. in room SD–50, 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. Our Co-Chairman is on the way, but he has asked that we proceed with the formalities. Before he gets here, let me thank you all for coming. And this is not something new for me, I want you to know. We're going to listen to Jack Valenti here in a minute. But, on two previous occasions, when I was asked to take on an issue for this Committee, we started this process of not having hearings, but listening sessions, and then we got a table like this, both at the time when we enacted the United States Olympic Committee Bill and when we did the Magnuson-Stevens Bill. Those had been preceded by meetings all over the country, but what we did was, we just decided to get some of the principal players, and if you remember, the Olympic problem, NCAA and AAU were at odds with the Olympic athletes, and both or all three of them were at odds with the International Olympic Committee. It was an interesting period of time and we had a series of meetings quite similar to this. Now we have done this sort of thing, you might say, as a last resort, and I hope that what you will recognize that people who have volunteered to come here today have different points of view, but they are decision makers, and committed parents very much involved in the overall subject we want to discuss. But above all, we want to have a chance for Congress to better understand all of the points of view and to see them interact a little bit. Jack Valenti will be along. He said he would come, and I think you'll hear his presentation of his activities at the time the motion picture industry, years ago, finally took action, and it was necessary for Congress to intervene at that time. I think that's sort of a sample of what we would like to achieve in this process. We're not involved in this to bring about censorship. We are here to really give an opportunity, for those who represent the families of America, to listen to those of you who run the media that some currently believe does not fulfill their wishes to have the kind of moral compass that the country should have for our young people. I've told some of you before, when television came to Alaska, it was on a delay

from Seattle, so we got the football games a week late, and we got all the programs a week late. And my first wife, and we had five kids, she thought we ought to get a television. I said, "No, there's not going to be a television in this house. Those kids need to study. They need to come home and really apply themselves because this is going to be a tough world for them, and we want to make sure they study right from the first grade." Everything went on pretty well for about a year, then the mayor, who lived two doors down from me, said to me one day, he said, "Stevens, what the hell are your kids doing in my house all the time?"

[Laughter.]

The CHAIRMAN. And I said, "George, I didn't know they were there." He said, "Well, they're there, sprawled out in the living room, watching that television every time I came in." And, uh oh, that was the day we bought a television. But I still have the same feeling that parents have a right to try to protect their children from some of the things that they can run into, in the media. And with the technology we've got in this country now, it's hard for those of us in government to know really what to do, but let me understand and let me state what I hope will be the case. We're going to ask each speaker to speak for 5 minutes. Each Senator will have 5 minutes. I will have used mine in this opening statement. I intend to ask us to break for lunch about 12:30, and for those who want to stay, we're going to have some Subway sandwiches brought in, and you can walk down to room 106 here in the Dirksen building, and see some of the technology displayed there. For anybody that has questions about some of the technology that's going to be discussed here. We can't do the live cable demonstration here because we can't get cable in, and so we will, hopefully, arrange that later. We hope to finish the opening presentations this morning and then, this afternoon, go into a period of discussion of various points we have been asked to discuss. This is a subject with strong feelings on both sides. I think I've refereed the battle between AAU and NCAA and the Olympic athletes, and so I feel qualified to do some arm wrestling with you, but I hope I don't have to do it. I really think that we can have this discussion as it should be and that is on the record this time because there are a lot of Senators who would like to be here, but they're not able to be here, so we decided this one would be recorded. All previous listening sessions were not. But I'm pleased that Senator Rockefeller is here. We expect Senator Inouye in a minute, and Senator Pryor later in the day, and a couple of other Senators will join us. But it's my hope that we can get to the point, as we close this evening, to agree to come back together sometime like December 12th and start looking at specifics after we've all considered the conversations and presentations that have taken place here today. It's my hope we'll carry this right on into the next year, and we'll find a way to deal with both the House bill and with the bills that have been introduced here and come up with, possibly, a bill that will meet the needs of the total community, but we will see how that develops. Good morning, Jack. I've touted your praises already. Let me yield to Senator Rockefeller for his opening comments. As I said, this little thing here is around the table. It is set at 5-minutes—It doesn't buzz. It just turns on the red light. It flashes at

you. So we hope we can stay within the time limit. If everybody gets 5 minutes this morning, and if we have the opening statements here of Senators, we should be able to finish by a little after noon, and then we will, this afternoon, go into some of the basic questions that we want to explore together.

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

Senator ROCKEFELLER. Thank you, Mr. Chairman, and good morning all. I hope this will be useful. I cannot put myself down as one of those who is an avid fan of, what I would call, non-sports commercial television. I have worked for many years, about a dozen years, starting back with Fritz Hollings, to do a variety of things to be helpful, and I think we have a problem now, not just with indecent programming in some cases. This is sort of a "Married by America." It's kind of a disgusting thing to watch, but people do. My concern this morning, the other Mr. Chairman, is violence, and I don't think the FCC has the power to do things about violence. You do about sexual content, things of that sort, but you don't have it about violence. I'm on the Intelligence Committee, and it's really quite amazing, the effect that American television has on Jihadists or on young people around the world and what a violation of their view of what life is and what a clear vision they seem to get from this of the way American life is. And that is something that should worry us a great deal because I think the creation of Jihadists, who eventually will want us, is a many-layered effort, but I think the television that we make available is certainly one of them as is the case also with some radio. Now, I don't advocate censorship, but I do advocate us working together to clean up our act. I'm impressed by people who come in and talk about the V-Chip. I'm a little less impressed when I read about what the effects, the actual effects of the V-Chip are, and that is usually single digits of families are, in effect, using them because so many of them don't even know they're in the set, but also, they don't know how to use them. And second, their kids are usually more technically able than they are. And I think it's a good idea. There are some ideas that are being tried now by some folks around the table, but I don't think, at this point, it's very effective. I think a lot of kids see a lot of really damaging things, increasingly sexually explicit, but for my purposes, this morning, violent, a violent level of programming. The American Psychological Association did a 15-year study that men and women who watch a lot of violent content as children were more likely to exhibit violent behavior toward their spouses and were three or four times more likely to be convicted of a crime. Casual, you might say, but nevertheless, it lies there for us to think about. The entertainment industry could change what we watch if they wanted to. They—I've never—Mr. Chairman Stevens, in this case, I've never really bought into the argument that we give the people what they want. We have to respond to the needs of our customers. Particularly, with respect to media, I think you give them what you think will make the most money, then they come to like it because Americans are not necessarily all that discriminating when they make their choices. The entertainment broadcasting industry has proven itself essentially unable, in my judgment, or unwilling or

both to police yourselves. As a result, I've introduced, along with Senator Hutchison, the Indecent, Gratuitous and Excessively Violent Control Act. The name I don't like, but the bill I do. It gives parents sets of tools and lays out some ground rules which are not available today. My bill is not intended to limit artistic expression, nor is it my purpose to impose the will of the Congress on decisions that probably belong to parents or to the FCC. But my legislation does require the FCC Commissioner to begin a comprehensive review of existing technologies. This is the so called fair part of this, of the V-Chips and other things that are out there to see how they're doing, what the technology is, to make a study of them, get back to the Commerce Committee, and then they can begin, the FCC can begin a proceeding to find additional methods should they feel it necessary to protect children from this content. That sounds rather mild. I don't intend it to be that way, and I know that Congress has been reluctant to take on the issue of violence because defining decency is difficult, violence the same thing although I don't really agree with that. Maybe I should close, Mr. Chairman, by asking folks around the table three questions, and this is a bit juvenile, but not to me, and that is if you could raise your hands if you agree. If anyone disagrees with the following statements, if you would please raise your hands. One: Science has proven there are serious long-term social consequences for children who watch too much violence on television.

Mr. VALENTI. I disagree with that.

Senator ROCKEFELLER. Mr. Valenti disagrees with that, but is by himself. Children are a shared responsibility. We all play a role in their development, teachers, media and parents and government. And I'm asking for those who disagree with that to put up their hands.

[No response].

Senator ROCKEFELLER. Was the first one clear? OK.

The CHAIRMAN. Can we move along, Senator?

Senator ROCKEFELLER. Yes, I will. The status quo is not working for the majority of parents. If you disagree, raise your hand.

[Show of hands]

Senator ROCKEFELLER. Interesting. Thank you, Mr. Chairman.

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

The CHAIRMAN. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman. I want to thank you for having this forum, and I know scheduling, especially during this time of year, is next to impossible. I know we don't have a great participation because we don't have any votes today, but I want to thank you, Mr. Chairman and Senator Inouye, for doing this, and I want to thank all the participants here today. I know that Senator Rockefeller talked about violence and focused his comments on violence, and I applaud that, and I agree with, I think, everything you said today. I hope to go back and look, but I think everything you said I'm completely in agreement with, and let me just say a couple of other things, Mr Chairman. I not only want to mention violence, I also want to mention pornography and sexually explicit things that people all across this great land can see on tele-

vision, especially children, and that concerns me greatly. One thing that I must confess is that I believe the parental guidelines, the rating system is very confusing. I don't think it is helpful. Quite frankly, I don't think the broadcast industry or the cable industry or anyone else has done a great job to date of promoting that. I've talked to some of the people around this table that maybe were in the process of improving our or your promotion of that and making that a better system, a more understandable system. But I do think that when it comes to pornography and sexually explicit material, the people around this table, they have a responsibility. People around this table have a responsibility, and I think it is a must that you own up to your responsibility, that you take responsibility for what's being shown, not just on airwaves, but on cable. And, of course, the Internet is another factor that has come on board in the last few years. But if I could just focus on cable just for a moment. My impression is that the cable industry is complicit in promoting pornography and sexually explicit material in our homes. And I think if you look back at the track record of the pay per view world, the premium channels, late night cable, I mean you can go through a long list of ways that it happened, but I think the bottom line is for the cable industry and for satellite TV and to a lesser extent, broadcast, but I think the bottom line is that this is a profitable business, that pornography and sexually explicit material is profitable. I think we need to acknowledge that. We need to be open about that. And I think we in Congress want to do something, not about the profitability of it, but about making sure that our children and the people who should not be exposed to this are not exposed to it. And, like Senator Rockefeller, I'm not talking about censorship, but I'm talking about our sitting down in this room, in a forum here in the U.S. Senate and in the Congress as government, working to clean up our act. And, like I say, we all bear responsibility, including Members of Congress. We all bear responsibility with this, and let me say this too. I hear, from some in the industry, whether it be the so-called Hollywood industry or cable or broadcast, whatever it may be, I hear people say that this is legal, and it is. It is legal. But I also am reminded of what the tobacco industry said years ago. They came to this body, came to the U.S. Senate, came to the Congress, and said, What we're doing is legal. Well, what you do as legal is not always the best thing for the country. It's not always right. And I think that all your industries, every one who has a seat at the table here, I hope will sit down in good faith and talk about these issues with members of the Senate, members of the House, members of the Administration, and try to do something about it, try to clean up our act. I have an 10 year-old and eleven year-old at home, and my wife and I are scared to death for them to turn on the television without us in the room. And it's not limited to things that are after, say, eight o'clock in the evening or nine o'clock in the evening or late night. Our kids aren't up late night. But even on the weekends, on some channels that we have on our cable system right here in Arlington, Virginia or right there in Little Rock, Arkansas, or wherever it may be, there are things that I feel are not appropriate for my children to see, even on Saturday mornings. Some of those things are not appropriate, and so we work very hard in our family on being respon-

sible TV viewers. And one of the frustrations I have with cable and/or satellite–I'm not a satellite customer, but I'm sure it's true for satellite as well, is that when I sign up for programming that we want, that we like, something like, for example, in our household, Nickelodeon, which our kids like, and like that programming, and we thing that's good programming, but something like Nickelodeon, more often than not, we're forced to take MTV. And MTV may be great in some households, and I'm not saying that it shouldn't be allowed in some households, but we don't want it in our household because there are so many images on there, especially at certain times of the day and so many messages on there that we just don't want our children exposed to. So I really appreciate you all being here today, and I appreciate the dialogue that we're going to have, and I appreciate the opportunity to learn from you, to hear from you on these very important subjects. And, unfortunately, Mr. Chairman, I have to come and go a little bit today. So, I apologize for having to be in and out, but I do have some other meetings today. But again, Mr. Chairman, thank you for doing this, and I really appreciate your leadership on this.

The CHAIRMAN. Thank you very much, Senator. We've been joined by our Co-Chairman. Just by way of introduction, Lisa Sutherland behind me and Margaret Cummisky, who's behind Dan, are our two staff directors. So, if you have any messages for either one of us, we ask you to get a hold of either Lisa or Margaret. Dan.

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

Senator INOUYE. Thank you very much, Mr. Chairman. I do have a statement, and I would ask that it be made a part of the record. I would like to thank all of you for joining us this morning. Mr. Chairman, I have a letter that Senator Obama would like to have placed in the record. He is unable to attend because of family obligations.

The CHAIRMAN. Without objection, all of the prepared statements will be printed in the record.

[The information referred to follows:]

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

I would like to thank everyone for participating in this Forum to examine indecent and violent programming across media platforms.

Video and audio content can exert a powerful influence on value systems and behavior. American children, on average, spend more time watching television than they do in school.

With the vast array of technologies that are able to provide content from traditional radio, television, cable and satellite service to emerging technologies, such as IP Television offered by telephone companies, satellite radio, video games, video over cell phones and iPods, it is critical for all stakeholders, the Congress, and the Federal Communications Commission (FCC) to determine how we will approach these important issues going forward.

A number of initiatives have been launched by various industries, and I hope to learn more about the effectiveness of these parental controls and ratings systems.

According to a 2001 study by the Kaiser Family Foundation, 40 percent of parents had televisions equipped with V-Chip technology, yet only 7 percent of them used it to block programming. I would be interested to know how effective the use of this and other blocking technologies are today. If usage of these tools has not increased, I would like to know why.

The government has a role to play in educating parents on the tools available to them, ensuring the consistency and objectivity of ratings systems and blocking tech-

nologies across mediums. Where these mechanisms fail, the government should consider imposing regulations in a consistent manner to ensure that children are protected from indecent and violent programming.

I look forward to a productive discussion with all of the esteemed participants, and I hope that we will be able to identify areas of agreement and build upon them as we move forward.

November 28, 2005

Hon. TED STEVENS,
Chairman,

Hon. DANIEL K. INOUYE,
Co-Chairman,

Senate Committee on Commerce, Science, and Transportation,
Washington, DC.

Dear Committee Co-Chairmen and Forum on Indecency Participants:

Because of family obligations and scheduling conflicts. I am not able to attend the Forum on Indecency that the Senate Commerce Committee Co-Chairmen are hosting tomorrow. However, I do have a strong interest in the discussion, and appreciate this opportunity to outline some of my thoughts on this important topic.

I come to this issue as both a parent and a legislator. In a speech I recently delivered at the Kaiser Family Foundation, I urged parents to turn off their television sets and instead spend time talking, reading and exercising with their children. But I also appreciate how busy parents are today. And I know how tempting it is to use the television as a babysitter.

The message I hear from parents is not a call for censorship. What parents want is more information about what is on television, greater control over the programming their kids can access, and more choices in family-friendly programming. What they do not want is inappropriate promotions or commercials accompanying the programming that they watch with their kids. These are reasonable requests, and the market is not responding adequately to them.

I know that the people who work in the media are parents too. The industry can and should apply common-sense standards to increase parental control over access to risque and violent programming. And it should encourage the development and distribution of more family-friendly programming.

As a parent who has had to sit through uncomfortable Cialis commercials while watching television with my 7- and 4-year-old daughters, and as a parent who worries about what the media is teaching our kids about right and wrong and about how to treat others and themselves, I am committed to working with you and my congressional colleagues to ensure that parents have the information and tools they need to protect their children from indecent programming.

I hope the industry comes to the table tomorrow in a cooperative spirit. And I want to suggest some concepts for your consideration.

Put Technology on the Side of Families

Cable, satellite, and telephone companies are building out and upgrading their digital high-speed networks. The Senate recently voted on a final deadline for the transition to digital broadcasting. As these systems are designed and deployed, greater attention should be devoted to how this innovation can benefit all families.

- Give parents the tools and the information necessary to make their own informed choices about what their children are watching.

The new digital televisions and set-top boxes are computers disguised as televisions. If we can have a Net Nanny that keeps our kids away from indecent content on the personal computer at home, why not create a Network Nanny that does the same on the 'computer' called the TV? For example, this technology could make it possible for parents to create their own family tier simply by programming their television to block certain channels, certain genres of programming such as dramas or soap operas, or all programs at certain times of the day. There is no reason the industry cannot allow family-friendly television to be programmed as simply as it is to program a TiVo.

Also, after subscribing to cable or satellite services, parents should be notified that they have the choice to block any channel they wish at no cost to them, and they should be given a list of channels that contain adult programming. Because cable and satellite companies sell programming in tiers of channels, parents are often unaware of what is on those channels and may not want all of them. That

leaves open the question of why parents should have to pay for channels they do not want to receive. I expect that the Forum will address this question.

Develop Ratings for a New Age

Develop uniform. clear, common sense ratings that establish the common platform on which programmers and distributors can build program access choices.

- Create uniform, full-screen ratings.

Right now, our television ratings involve little more than a tiny box containing letters and numbers that flash in the upper left-hand corner of the screen for a few seconds at the beginning of each program. They are hard to understand. and easy to miss. Broadcasters should improve this system to include full-screen, detailed ratings that give parents a more precise understanding of exactly what content will be shown in the program.

- Deliver promos and advertising appropriate to the show they accompany.

Broadcasters should also ensure that promos for horror movies and for provocative shows such as "Las Vegas" are not being shown in the middle of a cartoon or a family sitcom with a more restrictive rating.

Develop and Adhere to Concrete Public Interest Obligations in the Digital Age

Decades ago, when television was still in its infancy, we provided broadcasters free use of the public airwaves, which they were to operate as trustees for the public. And just recently, the Senate voted to set a final date for the transition to digital television.

- Work with legislators and regulators to establish public interest standards for the digital age.

There has been a long debate about what obligations broadcasters will have to the public in this new digital age. Today. we need to make it clear that the free use of the public airwaves continues to come with certain specific obligations. The FCC took a first step in defining these obligations by requiring that broadcasters air children's educational programming on all their digital streams.

As the FCC and Congress continue to evaluate public interest obligations in the digital age, a number of provisions need to be updated. We should make sure that broadcasters have a concrete obligation to provide public service announcements at times when people can actually see them. They should donate the public service time to a third-party like the Ad Council that works with reputable non-profit organizations to reach quantifiable measures of compliance. Broadcasters should stop fighting the requirement to air children's educational programming on all their streams. And they should cover elections and civic affairs more effectively.

Promote More Family Friendly Programming

It will not be enough to give parents control over the programming their children can access if there is not more choice in appropriate content.

- Promote the market for family-friendly programming.

The Forum should consider how industry has promoted niche market programming in the past and what lessons can be applied from those experiences to the promotion of more family-friendly programming and channels.

Promote Digital Ubiquity

Because digital technology allows for much more sophisticated control over programming as well as better and greater access to information over the Internet, we must ensure that the deployment of digital networks does not leave any neighborhood behind.

- Advanced digital networks carrying video, voice, and data must be made available and affordable in every community.

We must remember that broadcast TV was designed as a universal service—it was to be available for everyone to have access to news and information—and that's why broadcasters were given access to the airwaves for free. But today, the new network of information and entertainment—which increasingly combines video, data and text—is over wires.

We will be learning, shopping, watching, playing, debating, organizing, and communicating over these wires. This will be as dramatic a transformation as the advent of television, and access to digital technology will be as vital in the coming years as access to the telephone has been for decades. The government took a step

to make sure all Americans have access to the digital networks through the 'E-rate,' which provides schools and libraries with Internet access. We need to build on this approach to ensure that no one is left out of the digital future.

As a final note, we should also work together to prevent any attempt to gut funding or undermine support for the Public Broadcasting System—positive television with educational messages on which generations of children have been raised. We must also give PBS sufficient funding and instruction to develop educational and enriching content for the digital age.

Thank you for your consideration of these concepts. I look forward to reviewing the proceedings of the Forum. I hope that you will leave that discussion with a joint commitment to elevating the quality of programming on our television sets, and empowering parents to help them raise their kids the way they see fit.

Sincerely,

BARACK OBAMA,
United States Senate

The CHAIRMAN. Chairman Martin, we're delighted you would come here and join us. I'm going to take sort of editorial exception here. People may not agree, but Chairman Martin has a vast responsibility in this area, and I think we should let him speak a little bit longer than 5 minutes if he decides to do so. And I don't think Jack Valenti can tell us the story of the Motion Picture Association in 5 minutes, so we'll give both of them just a little more time. Chairman Martin, thank you very much for coming.

STATEMENT OF KEVIN J. MARTIN, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. MARTIN. Thank you, Mr. Chairman. Thank you for not only inviting me to participate but holding this Forum on this important topic. At the outset, I should note there are many parties involved in protecting children from objectionable programming. It's all of our joint responsibility. Mr. Chairman, in your invitation to participate, you asked us to discuss the proper role of parents, industry and government. Parents are, of course, the first line of defense. Parents have a responsibility to pay attention to what their children listen to and watch, but the industry also has some responsibility to help empower parents to do this by offering them more and effective tools with which to supervise their children's television watching. And the government is a last resort and only steps in when these other lines of defense fail. Now most consumers today can choose among hundreds of television channels, including some of the best programming ever produced, but television today also contains some of the coarsest programming ever aired. Indeed, the networks appear to be increasing the amount of programs designed to push the envelope, and too often, the bounds of decency. For instance, the use of profanity during the family hour has increased 95 percent from 1998 to 2002. Another recent study found that 70 percent of television shows in 2004 and 2005 season had some sexual content, and that the number of sexual scenes had doubled since 1998. At the FCC, we used to receive indecency complaints by the hundreds, and now they come in by the hundreds of thousands. Clearly, consumers and particularly, parents are concerned and increasingly frustrated. TIME magazine conducted a survey in March of this year that documented this trend. Sixty-six percent of people believe there's too much violence on television, 58 percent of parents believe there is too much cursing and sexual language, and 50 percent believe there is too much explicit sexual

content. Similarly, another recent poll found that 75 percent of people favored tighter enforcement of government rules in television content during hours when children are most likely to be watching. Now parents who want to watch television together with their children too often feel that despite the large number of viewing choices, they have too little to watch. As the broadcast networks have become edgier to compete with cable prime time, our broadcast television has become less family friendly. Cable and satellite television offer some great family oriented choices, but parents cannot subscribe to these channels alone. Rather they are forced to buy the channels they do not want their families to view in order to obtain the family friendly channels they desire. One recent Philadelphia Inquirer editorial stated it this way, Cable TV's pricing structure is a bit like being told, If you want Newsweek and Sports Illustrated, fine, but you've gotta pay us fifty dollars a month and also take delivery of Cosmo, Maxim, Easyriders and Guns & Ammo. You can always turn the television off, and of course, block the channels you don't want. You could also throw away those four subscription magazines, but why should you have to? Parents need better and more tools to help them navigate the entertainment waters, particularly on cable and satellite TV. Congressional statutes already prohibit indecency and profanity on broadcast radio and television, and by enforcing these provisions, we can help deter media companies from putting indecent programming on broadcast. But this will not a help address a growing problem of the increasing amount of coarse programming on cable and satellite, and the lack of tools parents have to avoid supporting the programming they do not want to let into their homes. As I stated earlier, parents need to be more involved in supervising what their children are watching, but for the last 3 years, I've also been urging the cable and satellite industry to take steps to give parents more of the tools they need. Thus far, there has been too little response. There has been an aggressive marketing campaign to increase awareness of blocking capabilities led by my good friend Jim Dyke, who is here with us this morning, but this option is only available to those parents who pay for digital cable. Today that is only about 25 percent of households, and even then, it is not available in every TV in the home. While I would support providing parents with additional information, I think the industry needs to do more to address parents' legitimate concerns. I continue to believe something needs to be done to address this issue, and the industry's lack of action is notable. I've urged the industry to voluntarily take one of several solutions. First, cable and satellite operators could offer an exclusively family friendly programming package as an alternative to the expanded basic tier on cable or the initial tier on DBS. This alternative would enable parents to enjoy the increased options in high-quality programming available through cable and satellite without having to purchase programming unsuitable for children. Parents could get Nickelodeon and Discovery without having to buy other programming, as Senator Pryor was talking about this morning, more adult-oriented. A choice of a family friendly package would provide valuable tools to parents wanting to watch television with their families and would help protect our children from violent and indecent programming. Other sub-

scribers, meanwhile, could continue to have the same options they have today. Indeed, some cable operators are already providing such tiers in the context of sports or Spanish-language programming. Alternatively, the programming the cable and DBS operators provide at the basic and expanded basic package could be subject to the same indecency regulations that currently apply to broadcast. Unlike premium channels, this standard would only apply to channels that consumers are required to purchase as a part of the expanded basic package. This solution would respond to many people calling for the same rules to apply to everyone for a level playing field. Indeed today, programming that broadcast networks suggest because of concerns about content may end up on competing basic cable networks. If cable and satellite operators continue to refuse to offer parents more tools such as family-friendly programming packages, basic indecency and profanity restrictions may be a viable alternative that should also be considered. Indeed, some programmers are actually supportive of this option, and I appreciate the recognition of the problem and the willingness to try to find a solution. Finally, another alternative is for cable and DBS operators to offer programming in a more a la carte manner, giving consumers more of a direct choice over which program they want to purchase. This option could be implemented in a variety of ways. For example, it could be limited to digital cable customers, and customers could still be required to purchase the broadcast basic package and must-carry stations. Parents could then be permitted to opt out of programming, requesting not to receive certain channels and having their package price reduced accordingly. Parents could also be allowed to opt into particular cable programs beyond the basic broadcast package, i.e., as we do with premium channels today. Another option would be to allow consumers to choose a specific number of channels from a menu of available programming for a fixed price, i.e., ten channels for twenty dollars or twenty channels for thirty dollars. Parents then would be able to receive and pay for only the programming that they are comfortable bringing into their homes. Last year, former Chairman Powell and previous Staffer Ken Ferree submitted a report to Congress concluding that a la carte and tiered pricing models, such as the family tier, were not economically feasible and were not in the consumer's interest. I had many concerns with this report, including the logic and some of the assumptions used, and I asked the Media Bureau, as well as the new chief economist, to take a more thorough look at this issue. The staff is now finalizing a report that concludes that the earlier report to Congress relied on problematic assumptions and presented incorrect and, at times, biased analysis. For example, the report relies on a study that assumes that a move to a la carte pricing will cause consumers to watch nearly 25 percent less television. And it seems unrealistic that we would see this kind of decline in viewership simply because consumers could purchase only those channels that they found most interesting. Second, the report relies on a study that makes mistakes in its basic calculations. For example, the report fails to net out the cost of broadcast stations when calculating the average cost per cable channel under a la carte pricing. As a result of this basic mistake, the report understates the number of cable channels that a consumer could pur-

chase under a la carte pricing model without seeing an increase in their bill. And third, the first report presents only one side of the economics literature and only presents one side of the cable industries studied both by Booz Allen and Hamilton. For example, nowhere does the first report mention that in the cable industry's report by Booz Allen, it shows that if we ignored the additional set top box cost as would be appropriate if a la carte pricing were only imposed for digital cable systems, then a la carte pricing could actually result in at least a 2 percent decrease in consumer's bills. The first report focuses only on the results of the Booz Allen and Hamilton report that indicates an increase in consumer's prices. Based on a more complete analysis of the cost and benefits of bundling and the potential cost and benefits of a la carte pricing, our new report concludes that purchasing cable programming in a more a la carte manner, in fact, could be economically feasible and in consumer's best interest. It also explores several alternatives for increasing consumer choice that could provide substantial consumer benefits if the provisions were mandated. In conclusion, I share your concern about the increases in coarse programming on television today. I also share your belief that the best solution would be for the industry to voluntarily take action to address this issue, but I believe that something does need to be done. Thank you, and I look forward to everyone's comments and questions as well.

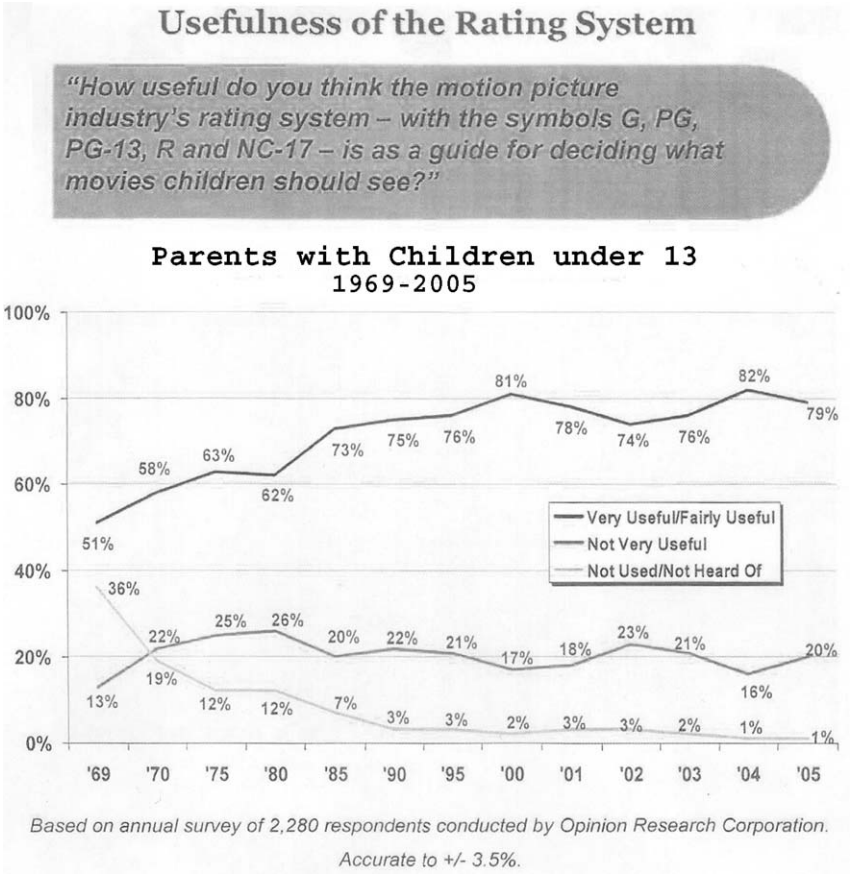
The CHAIRMAN. The next presenter will be Jack Valenti of the Motion Picture Association. I don't think he needs any introduction. Here, Jack.

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

Mr. VALENTI. Thank you, Mr. Chairman. I'm so glad to see both you and Senator Inouye here because you were here when I came to Washington, and there are very few left, and I might say, two great war heroes, you and Senator Inouye. You flew in the most dangerous part of the world. I'm glad I wasn't flying where you were. And Senator Inouye is probably the greatest war hero ever to serve in the Senate. He wears the Medal of Honor, and I salute you for that. And also here, a second generation, I think as Senator Mark Pryor's father was one of the great Senators that I've ever known, and now here he is, following in his father's footsteps. And Senator Rockefeller, I served on the Corporation for Public Broadcasting's first board with your father, and now here you are, carrying on with, what Lyndon Johnson said was, the greatest family in America for caring about America. So, we're glad to see you here. I raised my hand a minute ago, Senator, before I get into talking about a rating system. I didn't do that casually. Over the last 15 years, I found with all of the various scientific studies that have been done, and I wondered about the methodology because we weren't dealing here with Boyle's Law of gases where equations are all so sweetly formed and all come out the same. We were dealing with something that was terribly blurred and without any real precise endings. I retained Professor Jonathan Friedman of the University of Toronto to ask him to examine 105 different surveys, polls, studies done on violence, and he looked at them all and found out that none of them came close to having, what he called, sci-

entific results. They were casual and not precise. They were subjective, not scientific, and I could go into that. I have a whole book compiled of those. And what you see today, Senator, is kind of a vast and almost bizarre contradiction, because so much occurs in the public landscape about how terrible violence is in movies and television. At the same time, for the last 7 to 8 years, violence in America has been going down, and particularly, is that so with youthful violence. It is decreasing, and it has been over several years. I'm not suggesting that movies and television ought to take credit for that decline, but it is happening nonetheless. And finally, Senator Pryor said something that I found to be insightful and true in talking about pornography, which is rampant. Where is it rampant? On the Internet. Most parents in America don't realize that any 9 year-old, 10 year-old experts in computers, you can go riding up to the Internet and bring down these file-swapping sites, as I have done, and there are dozens of them up there. It is crawling with the most sordid, vicious and unwholesome pornography that you will ever see, and it is there for anyone to see. The tragedy is most parents don't know that, and there are no V-Chips, and there are no rating systems. It is there, and it needs to be examined, Senator Pryor, because you've got a 10-year-old and eleven year-old, and they probably know more than you know about computers, as my children do. So having said that as a preamble, in 1966 when I left the White House to become the head of the Motion Picture Association, I was confronted with a transition in American history. We were in a Vietnam War. The streets were in rebellion. The campuses were in insurrection. The flower children were in Haight-Ashbury, and there was all of the creative people were straining to leap beyond the normalities and the then boundaries that had been observed under the rigid Hayes Code, which had been smashed by the Justice Department in 1950. And so, I was presented with a new kind of visual landscape. I would say at the outset, there are some movies, Mr. Chairman, I wouldn't defend if my life and career depended on it. They're just too squalid for me to defend, but the great majority of them are not. Otherwise, I would have gotten out of that business and gone into something more remunerative like oil production or land development in my home state of Texas. I decided that I had to do something. I learned, in politics, that the most frightening sound in the world is the angry buzz of the local multitudes. And if you're a public servant, you listen to what your constituents are saying. And I began to hear that people were a little bit upset, maybe more than a little upset with the kind of movies that came out. For example, "Who's Afraid of Virginia Woolf" starring Richard Burton and Elizabeth Taylor, directed by Mike Nichols from the Edward Albee play. We heard language on the screen which had never been heard before, language like "hump the hostess" and "screw" which makes Who's Afraid of Virginia Woolf fit to be a training film for a nunnery today, but at the time, it was pretty rare. And then there was a film called "Blowup" by Michelangelo Antonioni, for about 10 seconds little teenyboppers were cavorting in the nude. I knew I had to do something. But first, I called together some constitutional lawyers, because I have to say that of all the clauses in the constitution, the one that I admire the most, and venerate the most

are 45 words which compose the First Amendment. I believe that clause is the one clause that guarantees all of the others in the title deeds of freedom that we call our constitution. And therefore, I just believe it has to be. It has to be respected. It has to be treated very sensitively. So I decided upon a plan of a new revolutionary way to deal with this kind of movie, and I called together, I went to Hollywood, and I spent a lot of time with actors, writers and directors and producers, and I said, Look, I want the screen to be free. I believe that you ought to be able to make any movie you choose, and every adult in American ought to be able to see it if they choose to. But the First Amendment says I have the right to say anything I choose, but it has an ancillary right. I have the right not to listen to what you say. So I told them that, for that freedom, they had to pay a price called responsibility, and that is, some of their movies would be restricted from viewing by children. So I thought I had organized the architecture of a balanced freedom under the First Amendment, responsibility under the code of conduct, which I called the moral compact, and I was able, over a period of 9 months, to sell this to the entire Motion Picture Industry, and I also spoke with people who, Brent Bozell's counterparts in those days, advocacy groups, child advocacy groups, I met with Catholic, Protestants and the Jewish organizations at great length to let them understand what I was doing and to enlist their support. And so, on November 1st, 1968, we inaugurated this rating system. Now what does it do? This I think, Chairman Martin, is the template for whatever you do. It has to be self regulatory. Otherwise, you begin to torment and torture the First Amendment, and I know you don't want that, and nobody in the U.S. Congress wants to do that. Self regulation done in a responsible way. So, for the last 37 years, we've had this rating system. I might add, Mr. Chairman, and I'm going to leave this for the record I have here.



These are surveys done by the Opinion Research Corporation from 1969–2005, and what do they show? They say that today, 79 percent of all parents in America with children under thirteen find this rating system to be very useful to fairly useful in helping them guide the movie going of their children, the movies they want their children to see or not to see. Now, with the exception of you four gentlemen here, I don't know of any public servant that has a 79 percent approval rating. I mean, that's pretty good. What it shows is that most parents, not all, because we've got about 20 percent that don't think too much of this rating system, but most parents trust it, and they use it. And by the way, I have time and again urged parents to go on the Internet and look at all of the other rating systems. Go see what Mr. Bozell has. The more information you have, the better qualified you are to make judgments for your children. So the mandate of the rating system was (1) To give advance cautionary warnings to parents so they would know to the best of their ability what some of these movies were all about and then let them make their own judgments, not anybody else, and (2) That they, the creative community, would understand and agree that some of their movies were going to be restricted from viewing by

children. Now that's the simple platform on which this was built. And by the way, Mr. Chairman, I do believe that one of the problems we have with the television ratings is they've gotten too complex. I became chairman along with Eddie Fritts, the president of NAB and Decker Anstrom, then the head of the NCTA, to draw up a new rating system. As a matter of fact, I appeared in the East Room of the White House with President Clinton and Vice President Gore, standing on that platform telling them this is what we were going to do. And we came up with a very simple rating system because if you don't make things simple, Mr. Chairman, people aren't going to use it. I don't have to tell you, gentlemen, you've been elected to office and re-elected to office. You go to the people, and if you give them such a difficult platform to understand, they're not going to follow you. I remember President Johnson used to say that the President should never make economic speeches that are all just reamed through with figures and numbers—you lose people. He used to say that a President making an economic speech is like a fellow tinkling down his leg. It makes him feel warm, but nobody else knows what the hell's going on.

[Laughter.]

Mr. VALENTI. So simplicity is the art of any kind of a system that you have. Unhappily and lamentably, a lot of advocacy groups thought that we weren't going far enough, and so, because I thought, Well, everybody ought to have their say, I invited everybody, and for the next few months, we stewed over this, and we came up with a rating system that not just said PG–13. It said D for dialogue, L for language, S for sex and V for violence, all of which was incorporated into the V-Chip, which now makes you almost have a Ph.D. in computer science before you could work the thing. And one of the reasons, Senator Rockefeller, I think that the use of the V-Chip is down is because it has been a little complicated. And No. 2, I was never able to get retail merchants to put a little sign on every television set they were selling, This television set contains a V-Chip and here's a little booklet, read it, it helps you. I also understand today that most cable systems have a blocking mechanism. So you have a V-Chip, and you have a blocking mechanism that is in there if people will use it. Now I'm about done now because I am kind of fascinated with what I'm saying up here, so I don't want to go on too long, but I think that what we have shown in the movie rating system is that self regulation done responsibly and creditably works. It works, and I say that because of what we're finding from the people. And I believe that the same kind of methodology, the same kind of responsible judgment, the same willingness to work at this with everybody involved in it will work in other ways on cable and television. I might add that this, the greatest legal strength we have, though in the movie rating system, is it is not compulsory. It is voluntary, and that is what allows us to win lawsuit after lawsuit when people come after us saying this is unconstitutional, and the courts have said, well, it's not unconstitutional because it's voluntary. No one is forced to do anything, yet 98 percent of all the movies that are submitted to the marketplace today are rated. So this is something, that in the last 37 years, has proved its durability, its suitability and its responsibility. Thank you, sir.

The CHAIRMAN. How long did it take you to go through that process when you first started?

Mr. VALENTI. Almost a year. I had to meet with everybody. A lot of the studios were a little bit nervous about it. The religious organizations weren't sure about it, and certainly the creative community was grumpy and cranky about it too. But after about a year of constant persuasion, I learned a lot from LBJ.

The CHAIRMAN. So did I. The wrong election though, Jack. Thank you very much, my friend. I appreciate it. We're going to move on now and go through the others here. I don't know how long the two of you can stay. You're going to have to leave us, Mr. Chairman, we understand that. We appreciate that.

Mr. VALENTI. I'm here for the duration.

The CHAIRMAN. Thank you, Jack. Now we're just going to go around the table. And if you notice what we've done, we've had a person from the industry and then from parents and other organizations. So we're just going to go around the table, if you will. And it is my thought that if we go all the way around, we'll still have a little time, before lunch, to have a dialogue about what we've heard and let people ask each other questions and let the Senators ask questions, but we'll see how it goes along. Our first presenter, then, will be Brent Bozell from the Parents Television Council. And you have to share these microphones, unfortunately. We got as many as we could. So thank you very much. Brent.

STATEMENT OF BRENT BOZELL, PRESIDENT, PARENTS TELEVISION COUNCIL

Mr. BOZELL. Thank you, Mr. Chairman, Senators. Thank you for putting together this meeting, which is important. I want to recognize that Mr. Valenti used up all of my time and 2 minutes of Mr. Reese's time.

[Laughter.]

Mr. BOZELL. I do thank you for putting this meeting together, but I have to confess a sense of frustration in the sense that here we go again. The same organizations are around the table discussing the same subject which we've now been discussing for years. I participated in these forums that the FCC has put on in Washington and around the country. There have been House hearings. There have been Senate hearings. And, invariably, something happens. Invariably, at the end of this, everyone will recognize there's a problem, and something needs to be done about it. And, the consensus will be, something will get done. But then we all return home, and everything continues exactly the way it was before. Now there's a suggestion out there that there really isn't a problem here at all. I would submit, Senators, if you walk through the streets in Alaska, in Hawaii, in West Virginia, in Arkansas, anywhere in America, and knock on a door and ask them what they think, across the board you will hear from Republicans, Democrats, liberals, conservatives, independents. There is a sense of outrage that (a) The airwaves have become so polluted, and (b) Nothing is being done about it. Now the House came together at the beginning of 2004, and said that they would do something to make stricter indecency violations a reality. The Senate said it would follow. Two thousand four came and went. The House passed a bill. The Senate

did not. And we're at the end of 2005, and the same thing has happened once again. The administration had said it would sign, but there's been a significant silence from the White House as well as far as I'm concerned on this issue. And so I scratch my head and ask myself, What is the problem? What is it that since the vast overwhelming majority of the public is outraged by this, why can't we get something done? And I listen to the counter arguments that are put forward. There is the counter argument that we have the V-Chip, and now that we have the V-Chip, the problem is solved. Never mind the fact that every study in the world shows most people don't know how to use the V-Chip. Even if they did know how to use the V-Chip, the V-Chip relies on the ratings, and if the ratings aren't accurate, the V-Chip isn't accurate. Study after study has been done documenting that the rating system isn't accurate. I throw out these numbers from a study we did in May. On one network, 52 percent of its programming was lacking content descriptors. On another network, 81 percent of shows rated TV for teen that had sexual dialogue, did not carry the D for sexual dialogue. On a third network, 76 percent of the shows with sexual behavior didn't carry an S. And on the fourth network, up until May of this year, they refused to carry any content descriptors whatsoever. The V-Chip simply cannot work with that kind of irresponsible adherence to a rating system. Second, we hear well, on the broadcast side, we hear well, we have to compete with cable, and cable is just dragging us into this. We have to stay competitive with cable. Well, we all know a fact of life here. Six companies own two-thirds of everything on television. In the L.A. market alone, broadcast owns 83 percent of everything on cable. So, it's the pot calling the kettle black when broadcasting blames cable for its woes. The third argument, freedom of speech. We hear a lot about freedom of speech, and that is a sacred thing except we know what the Supreme Court has said about this, and we know what we're talking about here. We're talking about the hours of six in the morning till ten o'clock at night. We're talking about a safe haven for families. We're talking about providing a freedom that parents have and that families have as well, and the Supreme Court has upheld it. And then we hear, what I think, is a shibboleth—market demand. The market wants this. In so many cases, garbage. Well, let's just look at the market for a second. Look at the number one show on television last year, it was watched by less than 10 percent of America, the No. 1 show. So where is that grand market demand for this kind of programming? If the industry cared about the market demand, if you look at cable, the two most popular forms of programming are sports and cartoons. There doesn't seem to be any rush to do more sports and cartoons. Instead they're saying, We've got to be raunchier. I don't understand that one. There is the situation where they say that the market has to give what the market wants. Well, every single market study shows, overwhelmingly, the market wants less raunch, less violence, less filth. So, why not give the market what it wants? I don't understand. A third one, cable choice. If the market wants this, then shouldn't we all be in favor of cable choice and let the market choose what it wants to watch and what it wants to pay for? I do recognize, and this is important, I do recognize that context is important. This is

not a black and white situation. There will always be some kind of debate. We have to recognize that. There is no perfect solution. I think the industry has done incredible things. Mr Valenti speaks about the wonderful movies. There have been wonderful movies. There have been wonderful television shows. Some of the things television has offered are things are things we should all be extraordinarily grateful for. However, to say that because there is this murky middle ground and because there is no perfect solution, therefore we ought to go for no solution, I think, Mr. Chairman, is irresponsible, and I pray that finally, finally, finally something will be done. Thank you.

The CHAIRMAN. Our next presenter will be Bruce Reese of the National Association of Broadcasters.

STATEMENT OF BRUCE REESE, JOINT BOARD CHAIRMAN, NATIONAL ASSOCIATION OF BROADCASTERS

Mr. REESE. Thank you Mr. Chairman, Co-Chairman Inouye. I'm the President and CEO of Bonneville International, which operates the NBC affiliate in Salt Lake City and 38 radio stations around the country, including WTOP here in Washington. I have the pleasure to serve now as to Joint Board Chairman of the National Association of Broadcasters. NAB has long been active in content issues. As Mr. Valenti noted, we plan to keep on implementing the V-Chip technology and the voluntary rating system. Debate on this issue is often polarizing and steeped in emotion, and many of us find ourselves on both sides of the issue from time to time. On one side are those who have reservations about programming content, and in particular, how media affects children. As a parent and a grandparent, I certainly see that side. On the other side are those with legitimate and deeply held First Amendment concerns. As a broadcaster and as a lawyer or as I joke, a recovering lawyer, I've argued that side of the debate as well. Given how emotionally charged this debate often becomes, I'm hopeful we can be informed by facts about what's going on in our media and what's happening in the marketplace, and I would just like to mention a couple of those facts. To begin with, it is useful to remember that the vast majority of broadcasters have never had the FCC take any action against them based on indecency. It is also worth noting that many of the complaints that have been filed originate with one or two well-organized interest groups. For instance, Broadcasting and Cable magazine reported that over 23,000 indecency complaints were filed at the FCC in July. All but five of those came from one entity. Now, anybody has the right to lodge a complaint. We should not mistake mass Internet-generated complaints for an organic outpouring of citizen outrage. Another fact to consider, the FCC is well-equipped to mete out fines as it demonstrated in 2004, issuing $7.7 million in indecency fines compared with just $48,000 in the year 2000. So, I hope these facts can play a role as the Committee examines this issue. All that said, local broadcasters recognize that we have an obligation to provide programming that meets our community's local standards. And local standards should indeed be local. What may be acceptable in New York City may be inappropriate in Salt Lake City, my hometown. That's why, a few years ago, Bonneville, our company, preempted a network program called

"Couplings." We didn't think the show was right for our Salt Lake City viewers, so we preempted it. But, just as our industry observes local community standards, we also operate in an increasingly competitive media marketplace, and our competitors have no parallel constraints. Cable programmers target appealing demographics with uncut Hollywood movies and sexually explicit and violence-laden shows like "Rome" and "Deadwood." Satellite radio has also become a willing haven for edgy audio content. Howard Stern attributes his move to Sirius to the indecency crackdown. As he put it, I guarantee I will reinvent myself because I can go further than I've ever gone. Sirius is prepared for Mr. Stern's arrival, in January, by outfitting his studio with a stripper pole. The shock jocks, Opie & Anthony, who were fired from over the air radio, are on XM, where they provide even raunchier programming. Opie, recalling a negotiation with XM executives, said to the New York Times, We were trying to convince them that we're reformed now. We've learned our lesson. And we heard over and over again, Guys, just go crazy. Do whatever you want in there. Opie & Anthony and Howard Stern are not on a special tier. They are available to any XM or Sirius listener. And now with XM partnering with DIRECTV and Sirius with EchoStar, this programming can be piped into 25 million satellite TV homes. So, the Committee would be well advised to consider the uneven playing field that broadcasters have with our satellite and cable competitors. The Committee should also balance any changes to the indecency issue and the First Amendment concerns. Provisions and some reasonably circulated legislation could have a severe, chilling effect on free speech. Any indecency legislation must have clear guidelines that are applied in a consistent manner. And if the Committee alters the indecency regime, certain coping ability protection should be included to provide balance and avoid unintended consequences. Mr. Chairman, local broadcasters are well acquainted with the critical importance of the First Amendment to our society. Our business depends on it, and as public licensees, we take seriously our obligation to offer responsible programming that serves our local communities. These two values are not in competition. For local broadcasters, responsibility and freedom of expression are opposite sides of the same coin. Thank you for having us here today.

The CHAIRMAN. Thank you very much. The next presenter is Kyle McSlarrow of the National Cable Television Association. Kyle.

STATEMENT OF KYLE MCSLARROW, PRESIDENT/CEO, NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

Mr. MCSLARROW. Mr. Chairman, Thank you. Several times this morning, people have made the point about a shared responsibility, and that is something the cable industry agrees with wholeheartedly. In 1989, the cable industry launched Cable in the Classroom which has, over the period of years, been responsible for wiring up to 80,000 schools and libraries to help download the right kind of media content to help with education. In 1994, the cable industry launched a national media literacy campaign and partnership with the National PTA and other organizations to help families understand better and cope better with the new media environment. In 1997, as Jack talked about a few moments ago, we joined

together with our sister organizations in coming up with a TV ratings system for television. And, when I started in my job 7 months ago, it seems like 2 years, and after today, it may seem like 3 years. I sat down with you and Senator Rockefeller and Senator Inouye and Senator Pryor later on, and others of your colleagues to try work through these issues, and I think again, as Mr. Valenti has described, this is not a process that is going to happen overnight. It takes a lot of discussions. I've probably talked to half the people that are sitting around this table in terms of what other things we might do. Basically, this divides into two categories. We've talked about self regulation and voluntary tools, and we've talked about mandatory, some kind of government mandate. One of the things that the industry, the cable industry in particular, did over the last year was to really pinpoint the importance of technology, as a potential solution, to the challenges of some viewing, some programming not being suitable for viewing by children. We've talked about the V-Chip, and certainly any TV that's been produced since 2000 that is more than 13 inches large has a V-Chip in it. But, in addition, if you have an analog set top box, you have the ability to block by channel. And now we have 26 million digital subscribers, and you're working a legislation right now that is going to move all of us into the digital age. And with digital set top boxes, you can block by show, by channel, by time and whatever we can do today, which is great. It's going to be even better, I'm sure, tomorrow, so technology and there are lots of ideas that I'm happy to go into later when we have a discussion, but lots of ideas out there. I think this is a vanishing problem in the sense of providing people tools in order to protect the home environment and to protect children. So, the question for us was, OK, what if people don't know about it? What if they think it's too complicated? And we've decided to confront it head on. So, shortly after I joined, we announced a campaign, spent 250 million dollars worth of public service announcements including public service announcements that Members of Congress, including some of you, have actually helped do to get the word out about the parental blocking technologies that are available today. There have been ads. You may have seen them in the Washington Post over the last couple of months, full-page ads about parental blocking technology, all designed to bring to the attention of parents, if they don't know about it, the fact that they have available these tools, and the fact that they are very easy. I mean, I've done it at home. Like everybody else in this room, I've got kids. I've got a thirteen year-old boy and two other younger ones, and it's four clicks and a scroll on a remote. This is not a heavy lift. And so we all have a responsibility, including the parents, to actually step up and use the tools that are available. Contrast that with some of the ideas that have been talked about in terms of government mandates, and I think Chairman Martin laid out sort of the three archetypes pretty well, and I don't want to put words in his mouth. He never actually used the word mandatory. It could be voluntary or mandatory. But basically, you have an indecency standard, you have some kind of tiering option, and you have a la carte. I would say this, any government mandate and certainly for any one of those options in our view, is very clearly under Supreme Court precedent a violation of the First

Amendment. Cable industry, like many of the people sitting around this room, has been treated by the Supreme Court, and I think probably so, as a First Amendment speaker. That doesn't mean we're absolved of responsibilities, but it means we should take very seriously the notion that we should be careful before having government intrude into our ability to use our discretion in the marketplace between us and our customers about what we deliver and how. Indecency standards, I think, have been talked about enough over the years, and they're pretty obvious. I just want to take a last moment to focus a little bit more on a la carte because that has come up today. In a la carte, I think this is, if you're talking about mandatory a la carte, I think this is a very dangerous idea. It would be very strange and, I would think, unthinkable if somebody went to the newspapers and said, You know what, I like the sports section, I don't really read the business section that much, so I'm going to tell you that you need to sell sports sections and business sections separately. That is no different than what we're talking about with a la carte if it is mandatory in terms of the cable industry. We have 390 cable networks with programming for every taste, and we've talked a lot about the bad taste this morning, but the truth is, there's another side to this equation. The reason we have all these cartoon networks, the reason we have the family networks is because the cable industry invented diversity of programming. And the reason those networks survive is because they are bundled together allowing them an opportunity to be offered to gain new subscribers and new viewership so they can survive and thrive. And if you take that away with an a la carte system, you will end up, in our view, not just violating the First Amendment but hurting the very customers we're trying to help. So at the end of the day, Mr. Chairman, we stand ready to continue working with you. We want to thank you for pulling this Forum together, but we would urge everybody to take the idea of government mandates off the table. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Our next presenter is Roberta Combs of the Christian Coalition. Roberta.

STATEMENT OF ROBERTA COMBS, PRESIDENT, CHRISTIAN COALITION OF AMERICA

Ms. COMBS. Thank you Mr. Chairman, and you Mr. Co-Chairman, for allowing us to be here today. And I would like to say to the Co-Chairman, I am honored to be sitting in the room with him, being a Medal of Honor recipient. I've had the opportunity to work with a Medal of Honor association before in the past, and it is such a wonderful wonderful honor to be in the presence of all of these men for what they did to save our country, and I thank you for what you've done. And I thank you for allowing the Christian Coalition of America to voice our concerns over the problem of indecency, not only on the broadcast networks, but also on the cable networks. I grew up in the 1950s, Ozzie and Harriet, Howdy Doody and Mickey Mouse club entertained us on TV. Television promoted good family values, and television made us laugh. It took our minds, temporarily, away from the stresses of the day. I'm now a proud grandmother of a 5-year-old grandson, Logan. I'm very disappointed that the television I grew up with can no longer be seen

by my grandchild. His mother, my daughter, has to constantly watch and approve all the shows that Logan wants to watch, even on the so-called children's networks. Our children and grandchildren watch over 4–6 hours of television daily. Our future leaders are being programmed by what they watch on television. This is one of the reasons that I got involved in an organization where I can let my voice be heard, and I can take action and try to make a difference. The Christian Coalition of America is the largest and most active conservative grassroots organization in America. We offer people of faith opportunities to contact their state and Federal representatives regarding issues that are important to pro-family Americans. We work together with people of all faiths to ensure that the pro-family community is equipped to make a difference at all levels of government and promote issues that are important to families across the nation. Christian Coalition of America believes that the offer by the cable television industry to accept legislation that would subject cable and satellite television's basic and enhanced basic tiers to the same indecency prohibitions by the Federal Communications Commission that broadcasters currently face is only a beginning. The new rules to apply to cable television should not be delayed while they appeal the constitutionality of the cable rules to the courts. Christian Coalition strongly supports the efforts that you, Mr. Chairman, and you Mr. Co-Chairman, are making with regard to increasing fines for indecency. We thank you. And we thank you, Senator Rockefeller, for your bill. The Christian Coalition of America also supports the bipartisan legislation sponsored by Republican Senator Sam Brownback and Democrat Senator Joe Lieberman, S. 193, the Broadcast Decency Enforcement Act of 2005. This will enable the Federal Communications Commission to increase ten-fold the current fines on television and radio broadcasters who violate the FCC decency rules regarding over-the-air public broadcasts. The Brownback-Lieberman legislation will increase the maximum fine for each violation to $325,000 with a penalty cap of $3 million under any single act. Senator Lieberman said, regarding his legislation, in a media culture that increasingly pushes the envelope on sex and violence, the role of the FCC is to ensure that broadcasters do not cross that line of decency. The current law caps penalties of $32,500 per offense. We would prefer the maximum fines in Congressman Fred Upton's bill that overwhelmingly passed by the U.S. House of Representatives by a margin of 389 to 38 in February this year, which increased fines from the current level to $500,000 per violation. Senator Brownback, in introducing the Brownback-Lieberman, he said that they will only increase—the FCC needs better tools to enforce broadcast decency laws. The original decency bill passed 99 to 1 last year. There's another issue which is tied into the indecency issue. I'm also requesting, on behalf of the Christian Coalition of America, that the Senate Commerce Committee take into consideration an issue of great importance to religious broadcasters across America, that is multicast must-carry in digital television. The current state of media consolidation is weakening the voice of small, independent and religious broadcasters that make it their mission to serve our local communities. These stations offer valuable entertainment and spiritual programming that is family

friendly and free from violence or indecent material. The Christian Coalition supports these broadcasters and encourages Congress to take steps that will ensure their survival in the digital television environment. We are particularly interested in showing that an abundance of family friendly programming, which is absent in many mainstream media outlets, is maintained. Following the digital transition, we believe multicast must-carry in digital television and will ensure small, independent and religious broadcasters maintain a voice in our communities. Therefore, we would encourage you to support the inclusion of a multicast must-carry provision in any digital television bill, and indeed, in any indecency bill introduced in the 109th Congress. Thank you, Mr. Chairman and Mr. Co-Chairman, for the opportunity to speak today.

The CHAIRMAN. Thank you very much. Our next presenter is Steve Largent of the Cellular Telecommunications and Information Association (CTIA). Steve.

STATEMENT OF STEVE LARGENT, PRESIDENT/CEO, CELLULAR TELECOMMUNICATIONS AND INFORMATION ASSOCIATION (CTIA)

Mr. LARGENT. Thank you Mr. Chairman, Mr. Co-Chairman, members of the community. Thank you for inviting me to participate in today's Forum. This is a very important topic, and it's one that we, in the wireless industry, take quite seriously. I would like to spend just a few minutes this morning discussing the proactive and voluntary steps our industry has recently taken on this issue. Earlier this month, we unveiled the wireless content guidelines. What our guidelines do is provide parents, employers, and really all wireless consumers with the ability to manage and control the content that today's wireless devices can and will access. Why did we do this? Well, we recognized the personal wireless communication is nearly ubiquitous in our country. What we also know is that the capabilities and functions of a desktop computer are increasingly being transferred to the palm of our hands. Today wireless consumers are provided with incredible opportunities, and will more and more be able to access a wide variety of content, including video clips of movies and television shows, weather and news reports, music, games and ring tones. Our guidelines were developed to help consumers and most importantly, parents better understand these opportunities while at the same time equipping them with the tools they need to make informed decisions about what they believe is appropriate for themselves and those they care most about. What do our guidelines accomplish? Our guidelines accomplish two important goals. First, they defined carrier-provided content into two categories, generally accessible and restricted. All carrier-provided content will be categorized using criteria based on the movie, television, music and games rating systems that are already familiar with consumers. Our guidelines are intended to ensure that restricted carrier-provided content is made available only to subscribers who are 18 years of age or older or have the permission of a parent or guardian to access the material. Every major carrier and many other regional and area providers have signed onto the guidelines and have pledged not to offer any restricted content until they have provided consumers with access controls.

Second, the guidelines address the development and implementation of Internet access controls. This tool will allow wireless subscribers to block access to the Internet entirely or provide tools to block access to specific web sites that they may consider inappropriate. Although carriers have no control over content that is available on the Internet, this important step is intended to give consumers, particularly parents, the ability to limit what Internet content can be accessed through their family's wireless devices. Because wireless is an enormously competitive service, consumers will continue to have many options in the marketplace including the option of purchasing wireless service that does not offer video content or Internet access. I think it is fair to say that if we, as an industry, want to be providers and distributors of content, then we have to step up to the plate and give consumers the tools to control it. Parents must ultimately decide what materials are most suitable for their children, but we can certainly provide the tools to help them do their job, and we're fully committed to doing just that. I'm very proud of the responsible job the industry has done in this area, and as technology advances, we are committed to staying ahead of this issue, and I know it will continue to be a priority of ours as we move forward. Thank you, and I look forward to answering any questions you may have. Mr. Chairman.

The CHAIRMAN. Thank you, Steve. The next presenter is Dr. Frank Wright, from the National Religious Broadcasters Association. Dr. Wright.

STATEMENT OF DR. FRANK WRIGHT, PRESIDENT, NATIONAL RELIGIOUS BROADCASTERS ASSOCIATION

Dr. WRIGHT. Thank you, Mr. Chairman. Senators, thank you for being willing to listen to all of our viewpoints on this important issue, and I believe almost every speaker thus far, and I trust those that will follow, have touched on First Amendment concerns. Most of the Senators did in their opening remarks as well. As the head of an association of Christian radio, television and Internet broadcasters programmers, the First Amendment is a great concern to us as well. The first clause of the First Amendment, I don't need to remind the Senators, is that Congress shall make no law respecting an establishment of religion nor prohibiting the free exercise thereof. So, when we trounce upon the First Amendment, we as religious broadcasters have the most to lose, in my judgment. However, I think it is worth pointing out, based upon what's been said thus far, that the First Amendment has never been a unrestricted right to free speech. The Supreme Court has held, the Congress has agreed down through the years that, for example, someone cannot stand up and shout fire in a crowded theater for the threat to the health and safety of the people in the theater that that would cause. You cannot commit treason and speak state secrets to another nation, and then afterwards claim First Amendment protections. You can't commit libel or slander or trademark infringement and then claim you have the First Amendment freedom to say or do anything you want to do. The court has also held that a matter of obscenity. Obscenity is everywhere and always unprotected by the First Amendment. Indecency, of course, is different. And our concern, as I trust most of the concerns around this

table, is when indecency is exposed to our children who are less sophisticated consumers of media, and as Brent pointed out earlier, we're really talking about restrictions on indecency between the hours of 6 a.m. and 10 p.m. Howard Stern could have done anything he wanted to do on television after 10 p.m. and would not have been subject to the indecency restrictions that broadcasters face. One of the constants people will often say is change, and in the multimedia, world change is all over us. One of the changes that has happened in the last 20 years is that, I couldn't put an exact date on this, but let's say 20 years ago the broadcast industry, free over-the-air broadcasters had about 85 percent of the program distribution. Everyone else was the remaining 15 percent. Today that has been exactly flip flopped. Today cable and satellite has 85 percent market penetration. Free over-the-air broadcasters only command 15 percent. The indecency standards that apply, and the argument for applying indecency to broadcast television, in my judgment, applies to cable television as well, The court, when it ruled on those indecency standards, said that broadcast television was a uniquely pervasive medium. And, for that reason, we needed to protect our children. Today it is cable and satellite television that represents that uniquely and pervasive medium, and I believe we ought to take a hard look at applying indecency standards to cable and satellite. I commend Steve and the wireless industry for the steps that they're taking in restricting access to the Internet. For the next generation of broadband wireless devices, I think there's a great concern there that we need to, perhaps, discuss more fully here. Thank you, Senators, for being willing to listen to our viewpoint.

The CHAIRMAN. Thank you, Doctor. Our next witness is Ed Merlis from the United States Telephone Association. Ed.

STATEMENT OF ED MERLIS, SENIOR VICE PRESIDENT, GOVERNMENT AND REGULATORY, UNITED STATES TELECOM ASSOCIATION

Mr. MERLIS. Thank you, Mr. Chairman and Members of the Committee. I'm Edward Merlis, Senior Vice President, Government and Regulatory Affairs of the United States Telecom Association. We're not telephones only. On behalf of our more than 1,200 companies representing some of the smallest rural companies to some of the largest innovative companies in the U.S. economy, I want to thank you for this opportunity to join this Forum to discuss decency in video and audio entertainment. This Committee has a long history of engagement in important communications policy issues, that bear on the development of our children and society's well being, whether it be the Committee's leadership on the issue of televised cigarette advertising in the sixties or television violence hearings in the seventies. Now you're grappling with another set of important issues, decency of audio and video that comes into our homes. Today's Forum comes at an interesting juncture in our industry, as you know. We're entering an exciting new era in American innovation and competitiveness in the ways that communications technology can enhance so many aspects of our lives in expanding the information and entertainment choices of the American consumer. With your leadership, U.S. consumers and busi-

nesses will receive exciting new technologies, new services, more choices more rapidly than they do under today's outdated regulatory framework. Our member companies are eager to deliver these innovative services, and yet we've seen a growing array of wireless cable, satellite, and Internet-based competitors stepping into the fray. As you know, President Bush has established a goal of universal affordable access for broadband technology by 2007. Video will play a significant role in the rapid and widespread deployment of broadband technology. The video services that our members deploy over their new broadband networks will drive subscriber growth and thus fuel continued network deployment as customer demand grows. We're here today because a number of our members, larger companies like Verizon and AT&T, and Bellsouth as well as smaller companies, such as Guadalupe Valley Co-op, Consolidated Telecom and Century are planning interactive services that extend far beyond what we think of as television service today. Unlike today's cable offerings, these services are designed to permit customers to tailor much of their own content and viewing experience as well as engaging in commercial transactions. Ultimately, the aim is to allow, for example, customers to connect to the Internet, access stored files and route communications from their phone or computer, essentially using their television to aggregate content in a manner that best suits their individual wants and needs. As I remember, companies make this leap into the video market. We take very seriously our commitment to proceed in a responsible fashion and to provide parents with the most robust, innovative and easy-to-use technology so that they can better control the video content and audio content that enters their living rooms. That is not only the right thing to do, but it makes good business sense. As an industry, we're the new entrant in the video and audio market, and therefore, we must differentiate our services from the incumbents. Aside from offering more compelling packages of services at competitive prices, we must also provide more robust functionality and parental controls in areas where companies intend to be market leaders. We view the Committee's invitation to be here today and the recently announced hearing schedule, as your commitment to providing consumers with additional choices. So today's Forum is an important opportunity for our members to listen, learn and educate ourselves on these important issues surrounding these fora. We want to thank you for the opportunity to be here, and we look forward to working constructively with you and Members of the Committee to develop sound policies that advance U.S. information economy and the innovative communications and entertainment choices that the American people and businesses have available to them. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Ed. Our next witness is Jessica Marventano of Clear Channel.

STATEMENT OF JESSICA MARVENTANO, SENIOR VICE PRESIDENT, CLEAR CHANNEL COMMUNICATIONS

Ms. MARVENTANO. Thank you, Mr. Chairman, Senators. My name is Jessica Marventano, and I'm Senior Vice President of Government Affairs for Clear Channel. Thank you for allowing Clear Channel to participate today. Indecency is not just a radio, a TV,

a cable or a satellite problem. It is an industry-wide challenge, and we all must take responsibility to make sure it is addressed in a fair and consistent basis. Otherwise, two bad things happen. One, is children are insufficiently protected. To a 9-year-old whether indecent programming is on broadcast, cable or satellite is really a distinction without a difference. Second is that edgier, more popular programming migrates to cable and satellite and our free over-the-air broadcasting system becomes less accessed by its audience and more endangered. Neither outcome is good public policy. There are three main points I would like to make today. The first is that the broadcasting industry, in general, and Clear Channel specifically, have responded to concerns about indecency. As you know, Clear Channel has been part of the indecency debate, and while we can't take back the words that were aired on our stations, we have taken a number of concrete affirmative steps to ensure we comply with the law. Clear Channel has paid our fines, and we have ended our contractual relationships with a number of on-air personalities who crossed the line. These actions have been costly and contentious, but they were the right thing to do. Clear Channel has implemented its responsible broadcasting initiative. It consists of company-wide training and strengthens internal procedures for addressing broadcast across the line. Where our training has failed, when we receive a notice of apparent liability from the FCC, our RBI provides that we will automatically suspend the employees accused of airing or materially participating in the decision to air indecent programming. Those suspended employees are required to undergo remedial training and to satisfy to their local management that they understand what is appropriate before going back on air. If the program does go back on air, preventative measures will be implemented such as time delays or additional staffing. However, if a notice of apparent liability issued by the FCC is adjudicated and Clear Channel has found it aired indecent programming, the offending employees will be terminated without delay. There are no appeals or no intermediate steps. In addition, while announcing our RBI, every Clear Channel contract for on-air talent includes a provision to make sure that these performers share a financial responsibility if they utter indecent material. This isn't—in no way absolves us of our legal responsibilities as a licensee, but we believe that it will act as a deterrent to airing material that crosses the line. Second, is that we know more must be done, and that is why Clear Channel urges Congress to direct the FCC to convene an industry-wide local task force to develop indecency guidelines that would apply fairly and evenly across all media platforms that distribute content into people's homes and automobiles. In our view, industry-developed guidelines will be as effective as government-imposed regulations without running afoul of First Amendment protections that we all respect. Our third point is that to the extent the Senate decides to move an indecency bill, we ask that it not push a bill that makes the already difficult job of free over-the-air broadcasting that much more difficult. Specifically, we urge the Senate not to adopt the draconian sections, 7, 8 and 9, that are currently in the House bill. Simply stated, these over the top provisions impose disproportionate punishment for the transgression committed and bestow unchecked power to the FCC. To add some

perspective, I would like to point out that our stations broadcast tens of thousands of hours of local live programming each week that is entertaining, informative and completely in line with standards of our local communities. Yet the House provisions empower the FCC, because of one indecent program, to block license applications for transfers of stations that are not even subject to the notice of the apparent liability in the first place, to block a renewal of the station's license and to trigger a license revocation proceeding if the FCC continues its per utterance analysis. Clear Channel urges policy makers, to the extent they believe legislation is necessary, to craft it in a way that ensures that the punishment fits the crime. Rejecting sections 7, 8 and 9 of the House bill is a good start. Indeed, Clear Channel has always supported legislation, such as Senator Brownback's bill, that dramatically increases fines for indecency violations, and recommends that the Senate embrace that simple, yet effective, approach. I can assure you that, as far as Clear Channel is concerned, a ten-fold fine increase does not and will not constitute just simply doing business. In closing, let's remember why we're here today. We're here to protect children. Our efforts must keep that goal squarely in mind. Indeed, the worst thing that Congress could do would be to impose draconian station-shutting penalties on free over-the-air broadcasters while at the same time, placing a flashing neon sign above their cable and satellite competitors proclaiming that indecency on these platforms is permissible. Not only would such a course put at risk the only media outlets that are truly focused on and responsive to local communities. Ultimately, it would actually put children at greater risk of exposure to indecent content. Thank you for your courtesy, and I'd be happy to answer any questions.

The CHAIRMAN. Thank you. Our next witness is Matt Polka, American Cable Association.

STATEMENT OF MATT POLKA, PRESIDENT/CEO, AMERICAN CABLE ASSOCIATION

Mr. POLKA. Thank you, Mr. Chairman. My name is Matt Polka, and I'm the president and CEO of the American Cable Association. ACA represents 1100 smaller and medium-sized cable companies that do not own programming. We solely provide advanced video, high speed Internet access and telephone service to our customers in smaller markets and rural areas in every state. As the representative of the independent cable sector, ACA brings a unique perspective to this proceeding. You called this Forum because you and your constituents are concerned about the increasingly indecent content on television, the language, the heavy sexual content, the graphic violence. Many of you have identified this as a serious problem. On behalf of our 1100 members, I want you to know, we agree. The big difference between ACA members and the media conglomerates is that ACA members work and live in the communities they serve. Unlike the major programming executives in New York and Hollywood, ACA members directly communicate with our customers. In many communities, especially smaller and rural markets, cable customers say they do not like the programming on some basic and expanded basic channels. They do not like having to receive and pay for channels that contain foul language, nudity,

and sexually suggestive content, channels that are carried on the basic and expanded basic tiers, such as MTV, LOGO, SoapNet, F/X and SpikeTV, among others. For ACA members and our customers, the root of the problem is this: the owners of those channels mandate that we carry those channels on basic or expanded basic. Those owners are the familiar handful of media conglomerates. It is their quest for revenue and profits that has created this problem. In many cases, they tie carriage of indecent channels to carriage of family-oriented programming. You can't have one channel without the other. And they require distribution of both on the basic or expanded basic tier, such as Viacom tying LOGO, a gay and lesbian channel, with children's cartoons on NICKToons and with local CBS broadcast carriage. In other cases, they price channels so that the only way to get a reasonable price for the desired channel is to also distribute the undesired channels. This also happens through retransmission consent as permission to carry a local broadcast signal is tied to carriage of affiliated programming. Some program owners here today will say that consumers can simply block offensive programming. ACA recognizes the benefit of blocking technology. However, blocking creates no incentive for the program owners to change their indecent content, and it does not make them accountable for their behavior. So to address concerns about content on cable, we encourage you, as we have encouraged the FCC, to scrutinize wholesale programming practices. Therein lies the problem, and the seeds of a solution. The concerns about indecent content on television are essentially local concerns. In some communities, there is widespread concern about the proliferation of foul language, sex and violence on basic and expanded basic tiers. In other communities, there is less concern. One answer then is to allow local cable operators more flexibility in how they package programming. I'll give you one example and this is not new. We described this solution in an FCC proceeding last year. There are ACA members today, right now, that would move several channels from expanded basic tier, to a separate tier called a contemporary adult tier.

In some communities, channels like MTV, VH1, Spike, FX and others, are prime candidates for this tier. In communities, where the content of these channels is a pervasive concern, moving these channels off of expanded basic and on to a separate tier would have at least two beneficial effects.

First, families would not have to receive this content on expanded basic. Those that wanted it could order it separately. Those that didn't want it, wouldn't have to. Second, this could lower the cost of the expanded basic tier. More choice and lower cost. That's the way a market should work.

There are ACA members, right now, that would move channels with indecent programming to a separate tier. The problem is, they can't. The wholesale practices of the media conglomerates prevent it. To them, revenue and profits are more important than the concerns of family, especially, in the smaller markets in rural areas served by ACA members.

In closing, at ACA, we believe that many of the concerns about content can be resolved by more local flexibility on how programming is packaged. A simple concept, like the contemporary adult

tier, would go a long way to making the expanded basic tier more conducive to family viewing. We would prefer that the media conglomerates stepped up and agreed to more flexibility, without mandates from Congress or the FCC. But if legislation is required, we will work with you to see that media conglomerates are finally held accountable for their indecent programming, behavior and wholesale programming practices. Thank you, very much.

The CHAIRMAN. Our next presenter is Joey Pantoliano of the Creative Coalition. Joey?

STATEMENT OF JOEY PANTOLIANO, CO–PRESIDENT, CREATIVE COALITION

Mr. PANTOLIANO. Thank you. I, along with Tony Goldwyn, serve as co–President of the Creative Coalition. We are the leading nonprofit, non-partisan advocacy arm of the arts and entertainment community. We advocate for First Amendment protection—our education in schools and combining runaway television and movie production we combated. And on this last issue, the Creative Coalition has been a leading voice in successfully passing state, local and Federal tax incentives. That has brought back film and television jobs to the United States. We would like to bring this same inventive leadership to the issues of broadcast decency. As leaders in the entertainment industry, we hope to offer meaningful approaches to addressing parental concerns about broadcast content, while preserving creative expression on the air waves.

Now, I'm honored to be here today to talk about the issues that are important to the Creative Coalition. But more importantly, as to me as a father. Now throughout my career, I have performed in a diverse array of movie roles. Ranging from live action, animation, children's movies like, "Racing Stripes" to the R-rated, sci-fi thriller "The Matrix." I also played a role on "The Sopranos," a show that I was proud to be a part of, and one that critics hailed as one of the most innovative shows on the small screen. A show that contains graphic language and violence.

Now, I am always flabbergasted on the many occasions, when parents approach me with their young children and encourage their children to tell me, how much they love "The Sopranos." On these occasions, I can't help but think, why would they let their children watch a show like this? It is simply not appropriate for anyone under the age of 18.

But the fact remains, that adults should have the flexibility and opportunity to watch shows like the Sopranos or South Park or Desperate Housewives. If people stop watching these shows, then they will be off the air. Instead, presently some of these shows have the highest ratings of all programs on television. One on premium cable, one on basic cable, and one on network television.

However, these shows are clearly not intended for children. Parents need to know what shows are and aren't appropriate for kids. That's why my family loves the MPAA rating system. My youngest daughter, who's 13, can go to the movie section and instantly tell from the ratings what she's allowed to see. And my wife and I can monitor that, because, we're the ones who take them to the theater.

Monitoring what they watch at home however, has become increasingly difficult. Given the array of media options out there, this

generation of families needs to be media literate. Parents need as many tools as they can find. From clearer rating guides to TV channel blocks, in order to monitor what their children watch.

The Creative Coalition is playing a prominent role in educating families about available tools. We are using our public platform to encourage parents to make educated and appropriate choices. Because parents and care givers, not the government, are the proper parties to make these choices. The government, should help educate, not regulate. Empowering parents is always preferable to government intervention.

Creative expression is the core of the Bill of Rights. It is the fuel that propels the economic engine of the United States entertainment industry. This industry represents 20 percent of our gross domestic product, and 40 percent of our exports.

Government censorship or fines, will have a negative impact on creative programming that many of us enjoy. We've seen the World War II classic "Saving Private Ryan", pulled off air in one-third of the country on Veterans Day. Local TV stations around the country deleted entire sections from the PBS documentary about the Iraq War, due to soldiers' language.

The history of innovative broadcast programming, from Edward R. Murrow, to "All in the Family," to "NYPD Blue," to "Talk Radio," has relied on free expression, without fear of government retaliation.

The indecency fines, which passed the House of Representatives, could undermine free expression by threatening all American citizens with a $500,000 fine for exercising their First Amendment rights on the air. These fines are often referred to as performer fines. But, that's a misnomer. This is not a Hollywood issue. It is an every man issue.

These fines would not be limited to high profile celebrities such as Janet Jackson or Howard Stern. They would apply to every American citizen, who the FCC deems in violation. Thus, the man on the street, interviewees, athletes, elected officials, call-in show listeners could face financial ruin, if they say the wrong thing even if it's an accident. The legal fees alone, could bring hiring the FCC lawyer, could drive the average American citizen into the poor house.

Chairman Stevens, and Members of the Committee, I implore you to reject these fine increases that are an affront to our most basic liberty. Please, don't sell away artistic freedoms for a half million dollars.

In conclusion, I think that President George W. Bush had it right. He said that, as a free speech advocate, I'm often told parents, who are complaining about content, you're the first line of responsibility. They put an off button on the TV for a reason. Turn it off.

Mr. Chairman, I applaud your leadership in this regard and we at the Creative Coalition look forward to working with you and the Members of the Committee on this very important issue. Thank you.

The CHAIRMAN. Thank you, Joey. Our next presenter is Dan Fawcett of DIRECTV.

STATEMENT OF DAN FAWCETT, EXECUTIVE VICE PRESIDENT, BUSINESS AND LEGAL AFFAIRS, DIRECTV

Mr. FAWCETT. Thank you. Mr. Chairman, Co–Chairman Inouye, Senator Rockefeller, Senator Pryor. My name is Dan Fawcett, and I am the Executive Vice President of Business and Legal Affairs, as well as Programming Acquisition at DIRECTV. Thank you, for the opportunity to participate in today's Forum, examining media decency and to share with you, DIRECTV's perspective on this issue.

We believe that it is critically important to enhance awareness about the tools and information that are available today, to help parents navigate their way through an increasingly complex and confusing media environment. Today's Forum is an important part of that ongoing process.

As the nation's leading digital television service, DIRECTV offers its customers a wide array of diverse entertainment, sports, news, and educational programming services. Among these many networks offer compelling programming created and designed specifically for families and children, including the National Geographic Channel, PBS Kids Sprout, Nickelodeon, and Discovery, just to name a few.

DIRECTV provides hundreds of diverse channels to over 15 million American households in a highly competitive marketplace. Our customers have many different tastes and preferences when it comes to television programming. Often, these differences occur in the same households. We recognize that not all of the programming we provide or that our competitors provide, is suitable for children. That is why we are committed to providing parents with the information and tools they need to make appropriate viewing decisions for their families.

Since we launched our fully digital service more that a decade ago, we have provided each and every DIRECTV subscriber, free of charge, with locks and limits—a parental control feature, that enables parents to restrict access to programming they consider inappropriate, for all family members. We, along with our friends at EchoStar, have been a clear leader in this area. Unlike the parental controls that our cable competitors offer, DIRECTV's locks and limits feature is available on every single television set in every single home we serve. So, unlike the statement of Mr. McSlarrow, for us, this is not a vanishing problem. But, it is nice to see that our cable competitors are following our leadership role.

Specifically, our locks and limits feature gives parents the ability to block programming based on its TV rating or its MPAA rating or, to lock out entire channels all together. Additionally, a standard feature on all DIRECTV's new set top boxes, allows parents to allow to restrict the hours when their children can watch television. Our locks and limits feature is easily accessible, using DIRECTV's remote control and a four-digit access code. There are easy-to-follow, step by step instructions during the set up process and an instructional video, that runs every half hour on the DIRECTV channel.

Mr. Chairman, the DIRECTV subscriber base is as diverse as the programming services we provide. We believe the best and most appropriate way to serve all of our customers, is to empower par-

ents with the information and technology they need to guide their children to appropriate programming. At DIRECTV, we will continue to be at the forefront of developing technologies that enhance our customers' viewing experience, while giving them greater personal control over the television content that comes into their homes.

Thank you, again, for inviting DIRECTV to participate in this important Forum and I'd be happy to answer any questions you have.

The CHAIRMAN. Thank you, Dan. Our next presenter is David Moskowitz of EchoStar. David?

STATEMENT OF DAVID MOSKOWITZ, EXECUTIVE VICE PRESIDENT/GENERAL COUNSEL, ECHOSTAR

Mr. MOSKOWITZ. Good morning, Mr. Chairman, Senator Inouye, Senator Rockefeller, Senator Pryor. My name is David Moskowitz and I'm the Executive Vice President of EchoStar and the Dish Network. Thank you, for the opportunity to participate in this Forum and discuss this very important issue.

Unlike many of the parties participating today, EchoStar does not produce programming. Our business is distribution. We simply sell programming channels produced by others. EchoStar provides programming to more than 11 million subscribers throughout the United States. Our success is based on the choice that we have offered to consumers.

Now, we're aware that consumers are concerned about the amount of violence, language, nudity, and sexual content on television and have asked for greater control over the programming viewed in their homes. At Dish Network, we've addressed these concerns by offering family friendly programming and parental controls.

We've also considered offering a family friendly tier, but are currently prevented from doing so by our existing contracts with programmers. Dish Network offers a wide variety of family friendly programming today. We also provide our customers with a number of easy-to-use tools, to control the programming viewed in their homes. And, we've set up a few blow ups, behind you, to show you.

For example, all Dish Network set top boxes come with adult guard software that allows parents to block entire channels of programming, 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.

With an onscreen menu, a Dish subscriber can block access to one or more entire channels. Our software even allows parents to completely remove the channel numbers from their onscreen programming guide, if they so desire. This technology not only prevents young family members from accessing the programs, it also blocks access to the title and description of the programs.

We also developed a one-click, hide adult feature, that allows you to automatically lock out all adult channels, rather than having to go through each one individually. The adult guard feature also provides consumers the ability to block access to specific programs, based on ratings, including PG, PG–13 and so on. The software can additionally or alternatively, black out any programming based on

violence, language, nudity, sexual content or any combination of these factors. And it's very simple to use, as you can see from the blow up of the guide there. It's one-step.

We also recognize that the subscribers must know that our adult guard functionality exists, in order for the technology to be useful. We offer information on adult guard on our programming promotional channels, on our website, in our user guides, our product brochures, and periodically in our monthly bills. We also use on-air ad time, programmers make available to us, to promote the adult guard technology.

While our parental controls give our subscribers the tools necessary to prevent unwanted programming, we've also, as I've said, looked into offering subscribers family friendly tiers. I would echo Mr. Polka's comments, with respect to the availability and the ability to offer such tiers. One of the most problematic obstacles to the creation of a family friendly tier, is the bundling of retransmission consent, for local broadcast stations, with the carriage of programming that may be considered inappropriate for family viewing. Thus, where an entity owns both local broadcast stations and subscription TV channels content companies can condition retrans consent, for the entities must have local channels on the inclusion in the basic tier of other subscription channels that some people consider unsuitable for family viewing.

While sometimes, a content provider will offer retrans for its local stations, on an ostensibly standalone basis, that standalone price is much higher than the typical rate paid for comparable stations. In these circumstances, accepting the bundle is the only economically feasible alternative for the distributor.

Similarly, large content providers require the bundling of multiple core popular programming networks, only some of which, would be considered family friendly. Again, in these circumstances, the programming vendors will not sell the family friendly channel or will only offer it at an uneconomic price, unless we agree to accept several of the vendors' other channels and place these other networks in the same programming tier.

Finally, many programming vendors have material per subscriber discounts, which are only available if their channel is made available to a large percentage of our total customers. Such demands effectively impede our ability to create a family friendly tier.

Congress can preserve consumer choice and drive the creation of family friendly choice packages, by prohibiting the tying by video programming vendors. You should give distributors the tools to offer family friendly tiers if they desire to do so. Only then, can the free market provide the choice consumers desire.

Let each channel stand on its own merits. The bundling of must-have networks with other channels, should not be permitted. Backdoor bundling through penetration requirements should also be prohibited.

Finally, the loophole in the Robinson–Patman Act should be closed so that programmers offer volume discounts only where clear cost savings exist. Mr. Chairman, I commend you for putting this Forum together and we'll continue to make every effort to ensure the consumers have control over the programming that is viewed in their homes.

The CHAIRMAN. Some new things there that I've never heard before. I appreciate it. Doug Lowenstein at Entertainment Software Association, is the next presenter.

STATEMENT OF DOUG LOWENSTEIN, PRESIDENT, ENTERTAINMENT SOFTWARE ASSOCIATION

Mr. LOWENSTEIN. Thank you, Mr. Chairman. It says on my sign I'm with the gaming industry. I have enough challenges representing the video game industry, without taking on the challenges of the gambling industry. So, I'm going to limit my comments to the video game industry.

I am grateful to be here and certainly appreciate your leadership and that of Senator Inouye, and Senator Rockefeller in this area.

A little background on video games because, it's something that we haven't discussed at all here, this morning. The focus has been on broadcast, and cable, and satellite. So, let me just give you a little preview about what our industry's all about right now because it's often misunderstood. The average age of a video game player today, is 30 years old. The core market is 18 to 35 years old, and about a third to three-fifths of the players are women.

This is a much more diverse market than many people think that it is, and the perception that video games are all about adolescent boys, is simply not an accurate reflection of the markets we serve. In fact, it's somewhat logical when you think of it. If you were 15 years old or 10 years old when the first Nintendo console came out in 1985, you're now 30 years old. And all the data tells us, that those people, are often continuing to play video games and intend to continue to play video games, for years to come. So, we look at that and suggest that perhaps, we're having a continual graying of the video game audience.

As befits a diverse market, we have a wide range of content available for all of our consumers. Fifty-three percent of all the games sold in 2004, were rated as everyone or E for ages six and up. Thirty percent were rated teen for 13 and over. And 16 percent were rated mature, as 17 and over, which were the, obviously, the more controversial titles that tend to have significantly greater levels of violence and potentially sexual content.

It is also worth noting, that even the top selling games, tend to be primarily E rated games. In 2004, 13 of the top 20 best selling games were rated E, five were rated mature and two were rated teen. So clearly, consumers are buying a wide variety of games, rather than simply being attracted to the entertainment on the margins.

We also know, that parents agree with the ratings that are issued. Peter Hart Research, one of the most respected research firms in this country, has found that parents agree with the ratings more than 80 percent of the time. And they tend, when they disagree with the ratings, to regard the ratings as too strict, not too lenient. So we think, we are pretty well, comfortably in the mainstream of American opinion when it comes to content.

You asked us to address the issue of decency as it relates to industry, to parents, and to government. Let me briefly touch on each one of those. Industry first. Clearly, as everyone from industry has said here, there is an enormous responsibility on industry. And in

our view, that responsibility is best defined by saying, we have a responsibility to provide the tools and the technology required to empower parents to make the right choices for their families. We think we do that in our industry through a comprehensive, self regulatory regime that was set up in 1995.

First, we have a rating system, Entertainment Software Board ratings, which are issued for virtually, well which are issued for every game on the market. In fact, retailers will not carry a game unless it has an ESRB rating. These ratings have both age information, as well as content information, to help guide the parent in making those choices. We have—ratings are backed up by an advertising code, that restricts how games can be marketed. And the ratings and the ad code are backed up further by sanctions which, can include financial penalties and even requirements that products be withdrawn from the market if the rating has been obtained without providing full information to the Ratings Board.

In addition, industry has a responsibility in addition to provide the ratings, to make efforts to educate consumers about what's in those ratings. And we do that through PSA's with people like Tiger Woods, a national campaign called, OK To Play, that the ESRB has run, in which they have placed advertisements in print media. Particularly media targeted at parents. I would say, one thing that would be enormously helpful, at least to us, would be better access to broadcast and cable networks, to run PSA's that are educational in nature. It is enormously difficult to get those kinds of things on the air. And when you do get them on the air, they tend to be on at two or three in the morning.

In fact, ESRB just last week, reached 32 million listeners with a radio feed, talking to them about the ESRB ratings. We also support volunteer retail enforcement of the mature and adult only ratings, and I'm pleased that over 90 percent of retailers now have policies that say, they will card consumers, minors if they seek to buy games that are rated M or adults only.

Finally and just yesterday, the industry announced that all the new video game consoles being released, starting this week with the Microsoft X–Box 360 and next year, with the Play Station 3 by Sony, and the Nintendo Revolution will have password-protected, parental control technology built into the hardware. So we think, those steps, I think, are enormously important.

Let me quickly touch on government. Because I think, education here is the most appropriate role government. We've seen government pour tens of millions of dollars into awareness campaigns on seatbelts, and drug use, and the like. And to the extent, that there is a genuine concern about media content, I think, it's an appropriate place where government can fulfill a role of helping to get information out and further empowering parents.

What government shouldn't do, is legislate taste. Content is subjective. Ratings are subjective, and values and morals vary throughout the society, which we know, is very pluralistic.

Finally and very quickly, I know my time is up. I don't think we can give parents a free pass here. Too often, these discussions focus on industry alone and government and look at regulation and self regulation. Parents are the ultimate gate keepers, as people have said, And we can enact laws, we can conduct education, we can

raise awareness. But in the end, they must step up and exercise responsibility. And in fact, all the research I've seen most recently, Pew in April, found that 86 percent of parents say, they are most responsible for screening the sex and the violence and other content from their kids.

Thank you, again. We look forward to being part of this dialogue.

The CHAIRMAN. Thank you, very much. Our next presenter is Martin Franks of CBS.

STATEMENT OF MARTIN FRANKS, EXECUTIVE VICE PRESIDENT, CBS

Mr. FRANKS. Senator Stevens, Senator Inouye, Senator Rockefeller thank you for inviting me to join you this morning. In the interest of getting to the discussion more quickly, let me make several brief points.

CBS Standards Department, which reports to me, reviews each program, each commercial and each promotional announcement before any of them reaches our air. In the case of prime time programs, that process involves careful scrutiny and revision of multiple drafts of scripts and the video first draft, known as the rough cut, and the final air copy. From that final air copy, standards determine the appropriate V-Chip rating. We do not assign those ratings on a wholesale basis. Each show is reviewed and rated independently. The ratings are then released to the newspaper and magazine listing services and are widely available via our website.

On any script, with even a hint of indecent material, a separate review is performed by the CBS Law Department. That show does not reach air until it has passed muster by both the CBS Law and the CBS Standards Departments.

Every live entertainment program on CBS is now subjected to an audio and video delay system. So we can delete offensive language or video images. And while it may now be obvious to you, that we would say, put a live award or reality show on a delay, last Thursday's Macy's Thanksgiving Day Parade on CBS, was also on a delay. In case the random streaker, or flasher, or offensive sign bearer, decided to try to take advantage of our air for their own purposes. And while they could walk away scot free, we would be subject to millions of dollars in fines.

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 market annually.

The television industry, broadcast cable, satellite, and now telephone alike continue to support the V-Chip. Perhaps we missed the memo that some in government who helped enact it, have now consigned it to the historical dust bin. I believe, a concrete and constructive step we could take, is to figure how to make V-Chip usage more attractive for parents.

Permit a word about family friendly programming in the marketplace, today's marketplace. In the late 1990s, as a conscious pro-

gramming strategy, CBS offered family friendly programming in the eight o'clock hour. Shows like, "Touched by an Angel," "Bill Cosby," "Dr. Quinn," "Promised Land" and we got killed in the marketplace.

Let me be clear. CBS would be happy to go back to the three-network era, that Ms. Combs and I recall fondly. But, in a world of hundreds of channels, frequently praised in other public policy debates, as a wonder of viewer choice and diversity. That era is for sure, bygone. And looking back at it fondly, will get us nowhere.

Let me close by perhaps, surprising you and certainly him, by complimenting Brent Bozell. While he and I disagree on almost every one of his indecency assertions, he and the Parents Television Council have the courage and the intellectual rigor to be specific in their criticisms, while rejecting over-broad generalizations. They also, single out shows worthy of praise.

In the rest of our discussion today, specificity will be very useful, while indeterminate and unfair characterizations will be less so. Thank you and I look forward to the discussion.

The CHAIRMAN. Thank you, very much. The next presenter is Preston Padden from ABC.

STATEMENT OF PRESTON PADDEN, EXECUTIVE VICE PRESIDENT, WORLDWIDE GOVERNMENT AFFAIRS, THE WALT DISNEY COMPANY

Mr. PADDEN. Thank you, Mr. Chairman and Mr. Co–Chairman, Senator Rockefeller. Thank you for sitting through all of this. I think this is useful exercise and at the very least, you've brought together a lot of friends as we approach the holiday season, and that's a good thing.

I want to begin by assuring you, that ABC understands that program standards is a serious responsibility. Not everybody will agree with every subjective judgment that we make. You heard an earlier reference to disagreements with our decision to run "Saving Private Ryan" in its entirety on Veteran's Day. But, I want to begin by assuring you, that we take our responsibilities very seriously.

At ABC we employ over 30 professionals in our Programs Standards and Practices Department. Including, a Ph.D. in child psychology, educators with advanced degrees, nine lawyers, and even a registered pharmacist. Our editors apply the parental rating system to all entertainment programming and work closely with producers, to assure compliance with our standards. And I've heard a reference here, earlier today, to the complexity of the TV ratings, as compared to the movie ratings. And both Marty and I worked with Jack and others in putting together the television ratings, and we began with the goal of simply using the more simple television ratings. It was others in the process, who wanted more granularity, more detail. And certainly one thing that the industry would be happy to do, is work with you on trying to simplify the television ratings, which was our initial thought.

In any event, I want to assure you, that at ABC, we try very hard everyday to do the right thing, and we put a lot of resources behind that effort.

The second point I want to make, is that there is no longer in our view, a constitutionally sustainable basis to distinguish be-

tween broadcast and expanded basic cable and satellite TV, with regard to indecency.

If you go to the Playboy case, I'd like to read a single sentence from this Supreme Court decision. The Court said "a key difference between cable television and the broadcasting media, which is the point on which this case turns, is that cable systems have the capacity to block unwanted channels on a household by household basis."

Well, as you've heard over and over this morning, today V-Chip technology and set top boxes provide parents with the opportunity to block unwanted programs, whether they originated on broadcast, cable, satellite or Mr. Merlis's new telephone systems. V-Chips, by law, are included in all TV's 13 inches and larger since 1999 and we believe, that more than two-thirds of all TV's in use today, have the V-Chips. And the parental controls in the cable and satellites set top boxes, work just the same for all the channels coming through those boxes, including the broadcast channels.

So, the same reason that the Court invalidated the regulation of cable, in the Playboy case, is now equally applicable to broadcast. Namely, technology now provides a less restrictive means for parents to protect children. None of the other alleged distinctions between broadcast and basic cable and satellite justify continuing to regulate indecency on only broadcast TV.

A kid with a remote control and 50 channels to click through, has absolutely no idea where any of those channels originated. And regulation of only a handful of those channels, only the broadcast channels, is not only constitutionally suspect, but also plainly, ineffective.

The last point I want to make, relates to a la carte and tiering. An independent study by the GAO, that was requested by the former Chairman of this Committee, concluded that a la carte and tiering could lead to anti-consumer results. The problem is pretty simple to explain. If you move to a la carte or tiering, you simultaneously increase all of the costs in the television system, and reduce the revenues that are available from something other than the customer's pocket.

For example, only about half of the cable homes today, have set top boxes. To move to a la carte or tiering, you would have to spend billions of dollars to put new set top boxes in the homes that do not have them. Somebody would have to bear that cost. At the same time, because of the reduced circulation of many of the channels, there would be a drop in advertising revenues. And every dollar that comes into the system in ad revenue, is a dollar the customer doesn't have to reach in their pocket to pay for.

So, we heard from Chairman Martin today, that he may have changed his mind about a la carte. But, the GAO, the NFL, the NHL, Major League Baseball, the Big 10 conference, and 10 prominent economists are all on record at the FCC, as opining, that a la carte and tiering could well lead to anti-consumer results.

Thank you, very much, Mr. Chairman.

The CHAIRMAN. Thank you, very much. Our next presenter is Lee Bartlett of FOX.

STATEMENT OF LEE BARTLETT, EXECUTIVE VICE PRESIDENT, FOX BROADCASTING COMPANY

Mr. BARTLETT. Mr. Chairman, Co–Chairman Inouye, Senator Rockefeller, thank you for conducting this Open Forum.

The CHAIRMAN. Pull your mike up a little bit more, please?

Mr. BARTLETT. Is this better? OK, you're welcome. FOX welcomes the opportunity to discuss the role of industry, parents, and the government in protecting children from television content that may be inappropriate for them. At FOX, we believe the industry's responsibility is twofold. To educate parents about the tools available to control their children's television viewing, and to provide parents with information about the content of programs on our network, so they can effectively use these tools to decide what their children should and should not watch.

Fulfilling these responsibilities must start with an awareness of the parents' concern over the content of television programming. In response to this concern, FOX has taken multiple steps to strengthen our standards and practices review of live, scripted, and unscripted or reality programming.

These steps include adding additional personnel and enhanced technical capabilities to provide multiple layers of review of live programs. Ensuring a Standards and Practices Executive is onsite for the production of each and every unscripted reality program, and advising creative executives and producers of all FOX programs, that broadcast standards is the single greatest priority for the network.

To ensure our personnel understand this priority, FOX Entertainment Group, conducted an unprecedented half day seminar in February of 2004 for virtually every creative executive in our television and cable divisions, to discuss issues surrounding controversial content on television. This seminar featured panelists representing every side of the issue, from children and their parents, to advocacy groups, government officials, and the creative community.

In addition, FOX has developed an ongoing relationship with the Kaiser Family Foundation, which regularly briefs top creative executives at FOX on the results of ongoing research by Kaiser and how FOX programs can best incorporate health-related messages into storylines in a responsible and accurate manner.

To fulfill our responsibility for providing parents with information about FOX programs, FOX provides rating information before a show begins, as well as additional advisories—parental advisories where warranted. We have redesigned the ratings depictor, that appears at the start of every show, to make it more prominent to viewers. And a year ago, we began airing the ratings depictor a second time during our shows, so that parents who may have missed the earlier ratings, will see it a second time coming out of a commercial break. Ratings are also prominently displayed on the FOX.com website.

As to educating parents, since August of 2003, FOX has aggressively aired public service announcements to provide parents with detailed information about the V-Chip and rating system. These PSA's have been airing during prime time on the FOX broadcast network, during local time on our 35 owned and operated tele-

visions stations, and on our cable channels. Based on viewing averages, these PSA's are reaching millions of viewers every week.

In addition, this year FOX became one of the founding members of TV Watch. A grassroots organization, whose goals include, educating parents about the V-Chip and rating system. A representative from TV Watch, will provide more detailed information about the educational campaign they have conducted so far and are planning for the future.

I would like to comment briefly, on the role of parents and government. As a parent of a 20-something daughter, I believe strongly, that the responsibility for ensuring that my child watched television that was appropriate for her, began and ended with me. Was it a tough job? Absolutely. Especially, without the tools that are available today. But then again, every aspect of parenting is difficult. Moreover, the decision about what is and is not appropriate television, varies from parent to parent. Depending on the values of the family, the maturity level of the children, and whether the child is watching alone or with a parent.

The role of government, on the other hand, is similar to that of industry. To provide parents tools and to ensure that industry supplies useful information about their programs, so that parents can effectively utilize these tools. However, for government to make decisions about what should or should not appear on television, instead of parents, constitutes a significant threat to creative freedom and could result in the demise of our most popular, critically acclaimed and award winning shows. Like "The Simpsons," "Family Guy," and "Arrested Development."

Millions of Americans, who watch and enjoy these shows every week, would be outraged if they were taken off the air due to government regulation. Which is exactly why individuals and not the government, should make these decisions for themselves and for their children.

Thank you and I look forward to discussing this important issue.

The CHAIRMAN. Thank you, very much. Our next presenter is Al Wurtzel of NBC.

STATEMENT OF ALAN WURTZEL, PRESIDENT, RESEARCH AND MEDIA DEVELOPMENT, NBC NETWORKS

Mr. WURTZEL. Thank you. Thank you, Mr. Chairman. I'm the President of Research and Media Development for NBC Universal, and I'm the Executive responsible for NBC's Department of Broadcast Standards and Practices. And it's in that capacity that I am here today.

I spend every day, working with members of the Broadcast Standards Department, to determine what is, and what is not acceptable for broadcast on NBC. Now, your invitation asked us to address three issues. So, I'll go through them.

First, our general perspective on decency. Plainly stated, NBC is committed to broadcasting the highest quality program. And I think it's important to note, that our internal standards are actually higher than prevailing government regulations. Now my colleagues at CBS and ABC and FOX, I think, did a great job of explaining the broadcast standards process. So, I won't go into it in

more detail. Because, I think they pretty much covered what I would have said.

Just a couple of points, that you might be interested in, because the enormity of the task, I mean, this department which views all entertainment programs, reviews over 1,300 programs annually. There's an editor that looks at every one of those scripts, as you heard, at the rough cuts and makes appropriate changes. And each program, every show, is individually classified with respect to its age and its content descriptors.

So, we do take self regulation seriously. We do understand that we broadcast to 215 very diverse communities throughout the United States, with very, very different standards. And we understand the responsibility we have to affiliates, to advertisers, and most importantly, to viewers.

Some of the recent initiatives that we've undertaken in this regard, beyond the broadcast standards process, we've adopted the program content descriptors and increased the size and the frequency of rating icons on all of our broadcast and cable programs. The icons appear at the beginning of the show and after every commercial break. So, if somebody comes in, in the middle of a program, they'll know exactly how it was classified.

We have promoted, I think, pretty aggressively, the education of the V-Chip through NBC's The More You Know campaign. Our primary spokesperson there is Katie Couric, who is a obviously very well known and a very, very credible person to discuss the V-Chip, being a parent herself.

We've aired over 125 of these spots since April. That's about one every other day. And we've posted information on the V-Chip, how to use it, how to get more information about individual sets and so forth, on nbc.com, our website, which averages about six million viewers every month. And finally, we employ a delay for all audio and video for live programming to ensure compliance.

The second issue you asked us to discuss, is what's the proper role of industry, parents and government? And to be perfectly honest, we do have serious concern about the appropriate role of government in any content decisions and we believe, that our self regulation procedures are extremely effective. As far as the role of parents, I think I agree with every person at this table. That first and foremost, parents have the most important role to play in protecting their children from inappropriate content and to help parents fulfill that responsibility, we want to give them the tools to make an intelligent decision, as to whether or not the programming is or is not appropriate for themselves and their families.

Our cardinal rule to broadcast standards, is just don't violate audience expectations. Audiences need to understand what a program is. So, they know in advance, whether or not the program is acceptable and then, never violate that expectation or embarrass them in front of their family.

Second, we endorse the use of the V-Chip and various blocking techniques. We provide disclaimers and advertising before programs and we label every show with prominent age and program content ratings.

And finally, you asked me to comment on legislation. We'd like to just offer one point about the broadcast indecency bill that was

recently passed by the House. That Bill contains several provisions that would put station licenses at risk. For a few seconds of indecent broadcast programming, indeed, even one indecency violation may be used by the FCC to preclude an application for a license, a license transfer or renewal. Three violations trigger a license revocation proceeding. Now, we believe that these penalties are completely out of proportion to the offense. Especially, where the First Amendment is so clearly and directly implicated. Enactment of any such provision would not only have an enormous chilling effect on broadcast programming, but would also have a depressing effect on the entire broadcast industry.

Well, thank you for affording me the opportunity to participate in the Forum today and I will look forward to answering any questions that you might have.

The CHAIRMAN. The next presenter is John Casoria, who is standing in for Dr. Paul Crouch, who has been delayed. John?

STATEMENT OF JOHN B. CASORIA, GENERAL COUNSEL, TRINITY BROADCASTING NETWORK

Mr. CASORIA. Thank you, sir. Dr. Crouch regrets that he is not here today. He's been under the weather for several days and actually flew across the country last night, in the hope that his health would improve. It has not, but he places such a great importance on this particular Forum today, that he has asked me to step into his rather large shoes, to express to you his thoughts and positions regarding this matter, as well as to participate in this discussion.

Mr. Chairman and Ranking Member Inouye and Senator Rockefeller, Dr. Crouch wants to thank you for the opportunity to participate in this Open Forum on Decency. The Trinity Broadcasting Network is the largest Christian broadcasting company in the country, as well as in the world. As a Christian Ministry, it supports effective parental involvement with children. Between children and parents and children and as a religious broadcaster, it fully understands the need to preserve First Amendment free speech rights.

Trinity is dedicated to providing programming suitable for the entire family. Particularly, programming which provides hope, inspiration, and the foundation for strong family values. In this increasingly complex world, there is no doubt, that mothers and fathers need as much assistance as the broadcast and cable industry, and Congress can provide in helping them raise happy, healthy, and morally strong children.

Regrettably, there are too many programs being offered by broadcasting cable companies today, that simply do more harm than good. This is why evaluating the potential application of the broadcast indecency standards to cable, we believe, is very necessary.

Federal law already provides that no licensee of a radio or a television station may broadcast any material which is indecent between the hours of 6 a.m. and 10 p.m. Since this regulation was enacted in 1989 and revised in 1995, cable television has tremendously expanded its viewership. Likewise, it has also liberally expanded its interpretation of its notion of what content is appropriate to provide during those times, when children are likely to be

watching. This is why Trinity is willing to support the extension and expansion of the indecency regulations, to the cable industry.

Such regulations would serve the government's compelling and overwhelming interest in protecting the children of this country and helping parents to do so, as well, while imposing no burden of constitutional significance on cable providers. Applying indecency regulations to cable, would also serve to eliminate the competitive imbalance between cable and broadcasting. It would do this by granting parents effective control over the content of the cable industry, which liberally exposes their children to some of this questionable programming.

Trinity believes, that is possible however, short of implementing indecency standards to the cable industry, to ensure that children are protected and viewers have a wider variety of program options, which already comply with this indecency standard. The compromise answer to us, is very simple, digital, multi-cast, must carry.

This can be accomplished either on a voluntary basis or cable companies agree to carry all of the free, to the home programs streams broadcast or by congressional mandate. I recognize that this suggestion may be just as controversial to some as the application of the broadcast indecency regulations are to the cable industry in general. But, digital, multi-cast, must carry must nevertheless ensure a broader variety of appropriate programming for America's families.

Trinity is willing to work closely with the cable industry in the hope of developing a compromise in this area, which meaningfully, advances the interests of both broadcast and the cable industry, as well as parents and children. Which we believe, together, will serve the greater public interest.

We look forward to this discussion today. We thank you.

The CHAIRMAN. Well, thank you for the offer. The next presenter is Jim Steyer, who is with Common Sense Media.

STATEMENT OF JIM STEYER, CHIEF EXECUTIVE OFFICER, COMMON SENSE MEDIA

Mr. STEYER. Thank you, Mr. Chairman, Senator Inouye and Senator Rockefeller. I'm Jim Steyer. I'm the CEO of Common Sense Media, the leading non-partisan/non-profit organization that's dedicated to improving media and entertainment choices for kids and families. I also, teach civil rights and civil liberties at Stanford, so I am very familiar with the First Amendment case law, that we are all talking about here today. And like many of you, I'm a dad. I have four kids, ages 12 and a half to 18 months. So, this is a big deal in the Steyer household. But, it's really a major issue for America's kids and families and that's why I am glad that you brought us all here today.

At Common Sense, we're a not for profit organization. We have one constituency, kids and families. And as many of us have touched on today, the reality of media in our kids' lives, is fundamentally different than anything we all grew up with. And it's actually quite unbelievable when you step back and think about it. The average American kid today, spends 45 hours a week, nearly 7 hours a day consuming media. Far more time than they do with

their parents, in school, or with anything else in their lives. So, the impact of media on kids' lives is enormous. It's simply the other parent in our kids' lives, whether we like it or not. So, the issue is, what do we do about that?

From Common Sense's perspective, there's a lot of great stuff out there in the media world, whether it's on broadcast or cable television, whether it's on the Internet, whether it's in music. So, there's a lot of great stuff out there. And in many cases, what we have to do with parents, is help them get to the good stuff. Help them find good stuff. It's not just about blocking all of the bad stuff, it's actually recommending great stuff out there and then, giving them the information they need to make the choices that they want for their own families. Because as we all know, what's right for my kids, are not right for the Largent kids necessarily or for the McSlarrow kids, or anybody else's kids. You really have to make your own choice as a parent.

But, to do that, you need information and you need independent trustworthy information. In the context—the one comment I want to make about the decency issue, is that I think, certainly from a public policy standpoint, the impact of media on kids should be viewed through a public health lens. I really do think, that when you talk about sexuality, and violence, and ADHD some of the other things that are associated with media consumption, that it's a public health issue. So I think as we go forward, looking at it through that lens, is actually very helpful.

So, solutions. Obviously, there are three major institutions that we've all talked about today, that are critically accountable in this area. First and foremost, parents. Chairman Martin mentioned that right from the beginning and everyone else has echoed that. We absolutely agree. I think—but it's clear that parents need better tools, better information, easier ways to use the devices and the content that you all create and distribute.

Second, the industry clearly needs to take much greater leadership on these issues and to take greater initiative and to do more on behalf—for kids and families. And finally, as I think we see here today, there really is a leadership role for government to play as a balancing hand and to motivate parties to move forward. But again, it is a sanity, not censorship approach and I think that, that's a critically important motto to Common Sense. And it's one that I think, we need to be watchful of as we move forward.

So, here's Common Sense in a nut shell. We provide information, ratings, reviews on movies, TV, video games, music, websites, many of the people that are on the table, will know our stuff. We hired 45–50 professional viewers to do that and work with the leading child development and media experts in the country, to develop criteria.

In a sense and our focus is age appropriateness, so you can decide what's right for your family. We have great respect for the rating system that Mr. Valenti and the MPAA has built and we are very familiar with the V-Chip, the ESRB ratings. We just think Common Sense, is a major important complement to that. We are an add on, we think we've really created this state-of-the-art product, that parents can use to look for age appropriateness, what to

talk with their kids about. Basically, how to be more informed media consumers.

We have about three million regular users, right now. Plus, millions of more people now, use Common Sense on AOL, Netflix, babycenter.com/parentscenter.com, and possibly, in the future, MSN. So the key for us, we really approach it through a market base solution, is distribution. It's how to put this information at point of decision for parents.

Because, most parents really want to know, when they are clicking the channel, what's in this? And they want to know sometimes, more than just PG–13 or TBY. Mom's in particular, really want to know what's in this programming. So, there's a tremendous opportunity, I think, for folks like us to partner with distribution partners. Whether it's in the wireless industry or obviously, the cable, satellite and broadcast industry to put that information in parents hands.

Because, at the end of the day and by the way, I think our being a non-profit is critical because we are funded by only foundations and consumers, thousands of consumers. We do not take advertising and that ensures to us, the independence of our information. And at the end of the day, we also do media literacy and education across the country. And I think, that is an area that the industry and government could play a greater role in.

How do you educate people beyond just the information about a particular program? But, about media literacy and their kids' media diet? So, at the end of the day, we're all accountable. We all really are accountable to kids in this area. I think, having heard the discussion this morning, there's a lot of areas in which we could work together. There is a lot of common ground around this table and at the end of the day, we should all use Common Sense.

Thank you, very much.

The CHAIRMAN. Thank you. Our next presenter is Bill Bailey from XM Radio, and former staff member.

STATEMENT OF BILL BAILEY, SENIOR VICE PRESIDENT, REGULATORY AND GOVERNMENT AFFAIRS, XM RADIO, INC.

Mr. BAILEY. Thank you, Mr. Chairman. Yes, sir. Thank you, Mr. Chairman, I appreciate it, Senators. A bit of housecleaning, I am former staff. I am 9 days away from my 1-year cooling-off period being over. My understanding of the Senate Ethics Rules, allow me to appear today.

The CHAIRMAN. That's right.

Mr. BAILEY. Because it is testimony. So, thank you, very much for allowing me to participate and XM to participate. We are, I believe, the youngest of the companies at the table. We launched service in late 2001. By the end of this year, we expect to have about six million subscribers, a little over six million subscribers.

We have invested nearly $3 billion in the company, including the licenses that we purchased at auction, the satellites that we've launched, the radios that we've developed and the content that we put on the air. We have literally built a business in that time.

XM's subscription service includes 160 channels of digital content. I'd like to go through a little bit of it with you. We really have a little bit of something for everybody. So for example, we have 67

channels of commercial free music and that includes, one channel for each of the decades from the 40's, the 50's, the 60's, the 70's, the 80's, the 90's. We offer three channels of Christian music, we offer three channels of classical music. So no matter where you are in the country, you can hear opera 24 hours a day. We also have a pop station and a traditional classical music. We offer many, many channels carrying country, pop, rock, jazz, blues, bluegrass, Latin and dance music.

Memphis, Tennessee, home of the blues, doesn't have a 24 hour a day blues channel. Anywhere in the country, if you have XM, you can hear the blues. New York City does not have a country music station. We have many, many channels of country music on XM.

We also have two channels dedicated to the kids. Including our own, XM Kids channel, which is the recipient of the Parents' Choice Foundations, Parents' Choice Recommended seal. So, the list goes on and on. We've got 12 channels of news. We've got many channels of talk, including conservative talk, progressive talk, African-American talk, Christian talk.

We do offer some comedy channels and the comedy channels range from undoubtedly and there's no other way to describe it, but a very blue material. You're in a comedy club at modern day, ranging from that to a channel dedicated to family comedy. We also have, as someone alluded earlier, former radio hosts Opie and Anthony, who have a very, very edgy, sharp nature of content. We carry every Major League Baseball game, most NHL games and we carry 22 channels of traffic, weather and emergency alerts for various areas of the country.

So, as you look through the panoply of all of the content we have, clearly, there is going to be some content that some parents are going to find inappropriate for their kids. We want our subscribers to feel comfortable with our service. We don't want them to be afraid to purchase satellite radio, because there may be some content that their children may listen to. So we try to do what we can to make it as easy as possible for parents to control all the content that may come into their house or in their car. And really I think, what we've done is learn the lessons from the companies that went before us and I think, a lot of the things that I mention now, will be a lot of the same things. But I think, personally, better than all of those things. Because, we have the most recent technology and we've got the lessons learned from what has worked and what has not worked.

Mr. Valenti mentioned earlier, the need for an easy rating system. We have a rating system on XM, we call it XL. XL stands for extreme language programming. There are eight channels of extreme language programming on our 160 channels across the dial.

We try to do three main things. We try to provide as much notice as we can, about when the extreme language program is going to come off the radio. We try to give as user-friendly blocking as we can and we try to make sure consumers are aware of that blocking.

Now again, that's some of the things we've heard earlier, but let me just talk about why I think, we do it a little bit better. Robust notice of the content. Mr. Chairman, earlier this year, you mentioned that you were clicking around the television and you stumbled upon a channel that you didn't realize that you got from

broadcast of the cable and on that channel, I believe, there was lots of explicit language that kind of caught you by surprise. That would never happen on XM.

On every channel that does have extreme language content, we actually label on the screen of the radio, we put an XL. So, as the parents are scrolling around the radio in the car and seeing what's possibly available, if they come upon Opie and Anthony, there will be an XL on their screen and they will be warned, don't even turn to this channel. And this is 24-hour notice, so when great programming, like "Saving Private Ryan" was on earlier, Preston Padden mentioned, that may not be for all kids. The best you can do on television or at least to date, has been you're going into a commercial.

Maybe at the beginning of the program you say, parental discretion advised. We have that 24 hours a day. At all times, it's on the screen. We don't have to wait to go in and out of a commercial, it's there for you at all times. So, no one will stumble upon on our extreme language.

We also, as I mentioned, have user-friendly blocking. Lots of different talk about the remote and four clicks and this sort of thing and that sort of thing. Ours is as easy as picking up a telephone. You pick up a telephone, you dial our 1–800 number and you say, you know what? I don't want this particular channel or that particular channel. And you can do that with any channel. It doesn't have to be the extreme language. It can be, you know what? I'm conservative and I really don't like Air America. I want to block that channel. Or I'm very progressive, I really don't like America Right, I want to block that channel. You can block any channel you want and it's blocked in about a couple of hours.

And to try make that even easier for our customers, beginning next week, we will have on our website, a parental control link on the homepage. Now, you click on the parental control homepage, it will take you to a new page and basically, with one click of the mouse you can block all of our XL channels at one time.

So again, we feel like we want to empower parents and we don't want them to be afraid. As a business matter, we don't want them to be afraid of having satellite radio. We want them to enjoy all of the great baseball content and classical music and bluegrass. And there's going to be some people who actually, really do want some of this edgier stuff and we want to give that to them, too.

The last thing that we do and has been mentioned, is the publication of the availability of blocking. And so, we do that in many ways. In every channel guide available anywhere, that shows XM's channels, you will find instructions on how to block channels. On our print ads, we identify how you block channels. On every mailing that we provide to consumers, we instruct them on how to block channels and we run PSA's on how to block channels. Since Labor Day, we've run almost 6,000 PSA's, simply about how to block content that the parents may not want.

So, I appreciate the opportunity to be here and I look forward to talking about some of the issues that came up this morning. But again, we try to empower parents. Sort of falling on what Chairman Martin mentioned earlier, you know, we see it as responsibility, we see it as good business. Thank you.

The CHAIRMAN. Thank you, Bill.

Senator WYDEN. Mr. Chairman?

The CHAIRMAN. Senator Wyden?

Senator WYDEN. You've had a long, long morning and I've got constituents waiting for me in my office. I know it's bad manners, but if you could allow me to have 3 minutes, I would just capsulize what I was going to talk about.

The CHAIRMAN. Well every Senator is entitled to be recognized when he comes, so we will recognize you.

STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Senator WYDEN. Thank you, for your thoughtfulness. Mr. Chairman, I'm going to be very brief. Mr. Chairman, I came to talk about the idea of setting up a family friendly tier of programming. It's legislation I've introduced. I got the idea because cable companies already do it. This is something that is already in place for movies and for folks who watch sports. It seems to me, that the question is, why should sports fans and movie fans be treated differently than parents and families? I don't see any reason why cable companies that can address the special interest of folks who want movies and folks who want sports, can't do the same thing for parents, who want to make sure that their kids can see television free of obscene, indecent and profane content.

A kids tier of programming is a group of 15 or more television stations blocked off on a separate channel area, with both programming and commercials that are purely kid friendly. Parents would be able to subscribe to this block of stations, separate from their regular programming, knowing that the tier doesn't carry material inappropriate for children. It seems to me government then puts the focus where it ought to be. It wouldn't impose a one size fits all government mandate on the content. It focuses on giving parents an effective way to supervise their kids exposure to inappropriate content. It empowers parents to make responsible choices for their children. There's no regulation of content, no prescribing specific choices. Simply, it allows parents to have what others already have today in a variety of lucrative areas, such as movies and sports.

The final point I would like to make, Mr. Chairman and again, I thank you for indulging me briefly, is that FCC Chairman Kevin Martin has talked extensively to me about this idea. I understand, he announced earlier, his support for a la carte pricing of programming. That's something that I have always thought made a lot of sense.

The consumers are likely to be better off by subscribing to a child friendly tier for a single price, rather than buying kid friendly programming channel by channel. So, it seems to me, that we can make these two concepts compatible—the question of a la carte pricing and a kid friendly tier.

And in closing, Mr. Chairman, I think parents and families deserve in the same choices that other groups, like sports fans or movie fans have, when it comes to a special tier of programming. Cable folks have consistently said, that if you have this child friendly tier of programming, we would just have a parade of

horribles. They would suffer financially and they practically said, that western civilization would end. The fact is, they have been able to come up with tiers of programming in other areas. I think, parents and families deserve it as well and I thank you, Mr. Chairman. I also, want to thank our ranking minority member. Both of you have talked to me about this at some length and I look forward to working with all of you in a bipartisan way.

The CHAIRMAN. Thank you, very much. Our next presenter is Jim Dyke of TV Watch.

STATEMENT OF JIM DYKE, EXECUTIVE DIRECTOR, TV WATCH

Mr. DYKE. Thank you, Mr. Chairman and thank you, Senators for inviting TV Watch to participate today, in this important Forum. TV Watch is a coalition of over 27 individuals and organizations representing over 4 million Americans. We believe, that Americans have the information to make informed decisions about what is appropriate television viewing and the tools to enforce those decisions.

TV Watch was formed to educate parents about the television tools they have to control viewing, represent the views of the majority of Americans who oppose government intervention and provide balance to a debate, monopolized by activists hoping to mobilize government intervention.

Mr. Chairman, look at almost any survey of public opinion and you will find at least 80 percent of Americans who see something on television that they don't like. It is the statistic most often cited in a call to government action. Mr. Chairman, I am here to tell you, that I am one of those Americans. But, I am not calling for government action.

Because, I am also, one of the 92 percent of Americans who want to make content decisions, rather than the government making those decisions. Anybody with children, can tell you the challenges of a world advanced from four channels with rabbit ears to today's interactive media colossus.

But, these same advances have empowered parents in the 35 million households with kids. 119 million television sets have been sold for 109 million television households since 2000, when the V-Chip became mandatory. 85 percent of Americans have cable or satellite, providing additional parental controls.

Every show on television now, follows and displays the uniformed rating providing information to the viewer, prior to viewing. These same ratings are the basis for activating the blocking technologies. It is no longer necessary, to change the channel or turn off the television to control viewing. You can stop unwanted programming on the front porch. Mr. Chairman, parental controls, the ratings and blocking technologies are ubiquitous and easy to use.

A Kaiser Family Foundation survey said, the vast majority of parents who have used the TV ratings say, they find them useful. Including, more than a third, who say they are very useful. We found, in a recent TV Watch survey, that 96 percent of parents take some steps to manage what their children see on television.

But, the decisions parents make about controlling their children, vary. 34 percent of Americans, use some form of blocking technology. While 63 percent of parents watch TV with their children.

61 percent of parents limit TV watching to certain shows and 55 percent of parents limit TV watching to certain times. Some parents choose not to use blocking technology. But, all parents should be aware of the additional tool.

Toward that end, TV Watch launched a Smart Summer TV campaign in June and more recently, "1-2-3, safe TV," to provide parents more information about existing television tools and how to use them. Our website is ongoing and updated and contains easy to use programs, like Easy As Toast. Which takes you through setting of parental controls and compares it to cooking a piece of toast.

I don't always agree with my wife, when it comes to what we watch on television. Many of us don't. And I certainly don't agree with my neighbor. He's a soccer fan. The decisions Americans make about television viewing are subjective and are as diverse as America itself.

What is certain, is a majority of Americans want to make those decisions. They have the information to make informed decisions and the tools to enforce those decisions.

Mr. Chairman, thank you for the opportunity to participate in this summit and I look forward to further discussion.

The CHAIRMAN. Thank you, very much. Our next presenter is David G. Kinney of PSVratings.

STATEMENT OF DAVID G. KINNEY, CHIEF EXECUTIVE OFFICER, PSVRATINGS

Mr. KINNEY. Senator Stevens, Senator Inouye, Senator Rockefeller, thank you for having me here today. My name is David G. Kinney, I'm the founder and CEO of PSVratings.

Before I tell you about PSVratings, I just want to say, as I listened to a lot of the comments, you know, Mr. Bozell is saying, that he's been here and we talk and talk and talk and then, nothing actually happens. And I can say, I've only been visiting Capitol Hill now, for 4 years.

But I think, part of the problem is that we keep on looking at this problem and thinking we can apply some old solution or the regular way of doing it, to it. And quite frankly, as I sit here and I couldn't think of a good analogy. So, I'll just try to make one up. But I kind of feel like, you know, maybe Henry Ford. Trying to introduce the automobile and then, everybody keeps talking about, what are you going to do about the horse droppings?

You know, we are talking about antiquated solutions here and I'm here to tell you, that the solution exists. That the means of providing consumers with the information they need, to make informed entertainment purchase and rental decisions, based upon their own personal standards of suitability, exists.

It is my belief, that if those solutions are implemented, that rather than curtailing the profitability of the profit ability of the entertainment industry, profits will increase. It just seems to me, to be common sense that says, that if you give people more of what they want, they will buy more of it. And I think, that the entertainment solution—I mean, the entertainment industry, continues today, to think to a certain extent, that obfuscation is the way to profitability. That by forcing people to consume things that they don't

necessarily want, they'll just keep buying it and buying it and buying it. And I just think that is wrong.

So, anyway. Let me explain how I believe this could work and who I am and what we represent. PSVratings, is a content-based rating system. That means, that we provide facts, not opinions. With all due respect to the other solutions that have been presented, whether it be the industry rating system, some of the nonprofit organizations and so forth. It's still an opinion.

It really wouldn't matter if you convened, if the people who for instance, did the MPAA system in Encino, were all priests and nuns or whatever. It would still be, their opinion as to the age appropriateness of a given movie. And we all know, that every single child is different, every family chooses to raise their children differently.

So really, the solution is to give the parent or any consumer the information they need to make an informed decision, based upon their own personal standards of suitability. And we are a rating system that does that. It's content based rating system.

We are much more than a rating system, however. We are actually known as PSVratings. That's how we started years ago. Actually, I was motivated by Mr. Valenti in his 1996 Senate Telecommunications Reform Act hearing testimony. Wherein he said, that you can't quantify profanity, sex and violence. And, you really can't create a content-based rating system. And I, naively thought, well I can help you there. So, I created one and thank God, we were ignored when we offered it back then, for free.

So now, we have created a for-profit company that does all of this work and makes this information available to industry. We are working with the mobile industry, the cable industry, the satellite industry, to provide them with the information that cannot only, allow them to allow their consumers to purchase exactly what they want but also, with our data, because it is so comprehensive, we can also power blocking technologies and filtering technologies.

We have the information today, to allow each one of you, to broadcast information and then, allow the consumer to block-out the entire program or just filter out the content that they find offensive. And we're working on the technology, to enable again, the cable industry, the satellite industry, the mobile industry, to offer this ability to your consumers and so forth.

In fact, for that reason we are re-branding ourselves as Media Data Corporation. Because, we ourselves, believe that the whole concept of ratings will become obsolete because of our capabilities. If for instance, you can sit and watch an R-rated movie with your 6 year old, knowing that you can filter out that content, which you deem inappropriate, do you really care if it was rated R or not?

So again, it's all about information. We live in the age of information. I set out 5 years ago, to catalog all of the profanity, sex and violence in media. We literally can provide you with information, that anything—anything you can construe as profane, sexual or violent, from a kid calling another kid a jerk, to the most graphically explicit sex scene or violent scene. We can tell you exactly when it happened, to the 100th of a second in the media and we can provide you, we can work in cooperation with you, to provide

the technology to allow you to enable your platforms to give this to your consumers.

So again, the solution exists. And I believe again, that it will allow the entertainment industry to freely expand the content that they offer to consumers. Without fear of government sanction and the only thing that is required, and I'll just finish up here, the role of government and industry. We believe, that the government's role should be minimal.

The CHAIRMAN. We're going to have to move along my friend.

Mr. KINNEY. OK. Well, the government should provide a level playing field and allow independent rating systems to have prior access and then, we can do the job for you.

The CHAIRMAN. Thank you, very much. Our next presenter is Tom Carpenter of the American Federation of Television and Radio Artists.

STATEMENT OF TOM CARPENTER, DIRECTOR OF LEGISLATIVE AFFAIRS/GENERAL COUNSEL, AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

Mr. CARPENTER. Thank you. It's a privilege and an honor to be here and I'd like to thank you all, for inviting me to attend. I'm Thomas Carpenter. I'm General Counsel and Director of Legislative Affairs for AFTRA, which is the American Federation of Television and Radio Artists. We are a labor organization, representing nearly 70,000 members, working in the media industry. Including, actors in entertainment programs and commercials, recording artists, broadcast journalists and radio announcers.

On a very basic level, the air waves belong to the American people. The government holds those air waves in trust for the people. It's a valuable public resource and the government grants private corporations the licenses, so that they can exploit those air waves for profit.

The quid pro quo for that, is that those license holders should be required to further the public interest. To uphold the public interest and to uphold standards of decency. But, there is an important distinction. Licensees get access to a public resource and should be expected to serve the public interest.

But individuals, individual citizens are not licensed. They are employees, who are hired by licensees, to be the faces and the voices on the air. So, it's also worth noting, that individuals who work for media companies, are employed pursuant to employment contracts. These employment contracts provide that employers can hold individuals to FCC standards. That employees can be disciplined or fired for failing to comply with FCC regulations. Or, for failing to comply with employer policies.

The root of all of this, is the fundamental principle, that licensees, not individuals, are responsible for programming decisions. Which is why, AFTRA is incredibly concerned about portions of the House bill that would provide for fines of up to $500,000, with no warning mechanism, against individuals. Fines of up to half a million dollars for individuals, who aren't making the decision about what goes out over the air.

Half a million dollars, for a radio traffic reporter, who makes $15 thousand dollars a year and who, has no control over the button that determines whether or not, her voice goes out over the air.

There are a few highly compensated stars, that may earn significant salaries, but the vast majority of broadcast industry on air employees, do not earn six figure salaries. And, some of them barely earn five figure salaries, and in the small market radio, for example. Individuals who do not bear the public service obligations of an FCC license, should not be held liable for the programming decisions that their employers make.

It's one thing for the government to fine a licensee for failing their obligations to meet the public interest standards and obligations. But, it's a very different matter, than one that raises serious First Amendment concerns, for a government entity to fine an individual, for the content of their speech merely because, someone else chose to broadcast it.

Thank you.

The CHAIRMAN. And our last presenter is Lisa Fager of Industry Ears.

STATEMENT OF LISA FAGER, PRESIDENT/CO–FOUNDER, INDUSTRY EARS

Ms. FAGER. Hi, my name is Lisa Fager and thank you, Mr. Chairman, for giving me the opportunity to speak today. I come to you to voice the concerns about indecency from Industry Ears and the many grass roots organizations across the country.

To start, I just want to tell you a little bit about Industry Ears. We were a group of or we are a group of industry insiders, current informers, who have worked at a number of companies, including: Clear Channel, Radio One, Amiss Communications, Infinity Broadcasting and Capitol Records, Virgin Records, BET, Discovery Channel and that just includes me and my co-founder, Paul Porter.

It has always been my understanding, that indecency standards were established to protect children. I was very disturbed when we all pointed fingers at Howard Stern. He targets adult males and I'm not here to defend Howard Stern, but I want to know why no one has asked the question, what about the radio stations that actually target children?

These are the stations that call themselves—the formats are contemporary hit radio or CHR, Rhythmic, or Rhythmic Urban or Rhythmic CHR, Top 40, Urban. These typically play many of the same songs. Some with identical play lists. The format name only, represents the only diversity that most of these stations offer.

When I was growing up, I was a latch key kid and so, my parents relied on the clock radio to wake me up every morning. I would not allow my child to wake up with a clock radio now.

What these stations are playing, is adult themed entertainment or audio porn. I have to tip my hat to Mr. Bozell. Because, I took from his template, the Parents Television Council and also, offer a electronic FCC complaint form.

One of the things I think is interesting, how everybody says, oh, there's this one organization where all the complaints are coming from. But, nobody has asked the question, why? Well why? Because, the FCC doesn't do a very good job in educating the commu-

nity about complaining. Most communities of color, don't even know there's a third party complaint system. Most people, would call the radio station directly.

The reason they would use a Parents Television Council, is because there is an electronic form, which the FCC does not provide consumers. And the website, is not very user friendly, either.

As a connoisseur of hip-hop music, this is the genre of music I listen to the most. Indecency is rampant. I can read a quote from Mr. Rick Cummings, who's the Vice President at Emmis Communications, who runs the No. 1 station in both the No. 1 and No. 2 market in the country. And he said on Fox News, on Hannity & Colmes, "I mean, there are a lot of things about hip-hop culture that I cringe about and look, I'm a 50-year-old white guy. I don't understand it. I mean, do you understand everything you promote? Or that you're about? I don't think so."

Well, I think so. If I am promoting something, I'm going to understand it. If you don't understand the words, then you shouldn't play it.

Here is what is happening. When we talk about freedom of speech and censorship and indecency laws again, to protect children. However, there have been no fines issued for sexually explicit lyrical content, which clearly, targets the 12 plus demographic.

There is an example. There was a nation wide, top 10 rap song, broadcasted across the formats I've mentioned previously, that is called the Whisper song or the Hook, wait till you see my—it rhymes with the word trick. This song has been played on stations, all the big major stations, in triple digits. I'm talking 114 spins a week. That's every hour.

Broadcasters allow the N word, the B word terms, the slang word for whore, to be used to describe people of color, but have censored words such as George Bush, in the rap song Jadakiss Why, Free Mommia, for the Public Enemy song, Give Peeps What They Need and the word "white man" from Kanye West, All Fall Down.

This rap song actually, was also censored on MTV and when I asked MTV Communications Department, why they censored the word "white man"? They said, they didn't want to offend anyone.

Hip-hop is often, touted as a very effective and successful marketing tool, is also very successful in selling sex. African-American children represent almost 60 percent of all pediatric AIDS cases and African–American women represent 70 percent of all new HIV–AIDS cases.

If you think about the images that you see and you hear, of these women, they are always of a sexual Jezebel, hypersexually active, woman. You know, the studies need to come out to talk about how these images are internalized. And African–American teens, 12 to 17, listen to more than 18 hours of radio per week, on average. Compared to 13.5 hours of all other teens. And I would urge you to not fine broadcasters, but to get, you know, we're talking about new technologies and new ways. But, what we need to do, is revoke licenses.

As someone who's worked in the industry, I am very aware of the illegal and deceptive practices that are used. Such as, going to stores to buy my own product, CD's to boost sound scan. Paying

children to call radio stations to increase BDS spins. I observe payola practices, the new ones and the old ones.

When you make a fine, when you are fining these companies, they make billions of dollars. This is no impact. We typically, used to budget and market these things into our record industry budget, such as sniping. Which is basically, vandalism with current—you know, if you see the side of a building with the current CD, new CD coming out, that's something that record companies actually pay for, which is illegal.

And again, I support what Mr. Carpenter said, why would you fine artists? I mean, they don't even have the power to put their content on the radio.

And I want to thank you again and I look forward to any questions.

The CHAIRMAN. We've come to the end to the start of the first round. I want to invite all the presenters to have lunch with us. Unfortunately, my bank account doesn't cover the guests and the public here and press. So, we'd like to turn off the lights now and we'll set up the lunch in the back of the room for our presenters and the Senators.

We'll be back in session here, at 1:45 p.m.. Are you not coming back this afternoon, Senator? Well, we will make a presentation of your bill. We plan to start the afternoon at 1:45 p.m., with a staff presentation of the four bills that are before us now and then, go into some questions back and forth between Senator Inouye and myself and some of you, asking others questions and see if we can find some way, to find some common ground here, before we are through. These demonstrations are available in room 106 of this building and will be there until 1:45 p.m., when we return here.

I hope you all can stay for lunch. We look forward to sort of turning off these lights. It's getting a little warm in here. I think, they ought to be turned off now. Thank you all very much.

[Lunch recess 12:35 p.m.].

The CHAIRMAN. Thank you very much. That reminds me one time I went out went out on the floor and said I have enough scotch in me to object. And Mo Udall said that I knew the Senator from Alaska was going to admit he drank on the floor. I'm sorry we didn't invite more people to have lunch, because we were over supplied with sandwiches and whatnot. But let me just start off with one comment. A remark was made this morning, by several people about the House bill. The Senate reported a bill that was involved in this area of decency. Congressman Upton, and Chairman Barton and 67 House co-sponsors introduced the bill that largely mirrored what we had done, and passed that overwhelmingly by the House and the Senate over here, to the Senate, we—as co-chairmen held that at the desk to act on it. But it was immediately showered with holds. We had no way to really call it up, because we would have to have 60 votes right smack off to do that and we didn't think we'd get it because there were objections from both sides. One side is saying it is too strong and the other side is saying it isn't strong enough.

So we decided to go into this long process we're involved in now. And I do think it's important, you should know the bills are out there right now. We have the House bill. We have Senator Wyden's

bill, which is basically a children's tier bill, is what I would call it and it requires a child-friendly programming tier of at least 15 channels. There is also the Brownback bill that has been mentioned, it increases the maximum fine for obscene, indecent and profane material to $325,000 dollars per instance, not to exceed $3 million dollars in any 24 hour period.

The way it's written it would mean that, if in one sentence you used three profane words, that would be three instances. So it has not been taken up yet. I'm sure were going to hear about that when we do start marking up the bill. The Rockefeller/Hutchison bill which is basically to address violence on television and we're glad to talk about that if you wish to do so. We have four bills that are currently before the Senate. Let me ask if Dan if you have anything to say before we start. Daniel.

Senator INOUYE. I've got some questions.

The CHAIRMAN. You've got some questions? Well that's what I think we ought to start now on, is to see who has questions and see who wants to try to answer them. I have some questions too. We hope you all have some questions. What we'd like to do, is to sort of limit everyone to not more than 5 minutes on an issue, as we come up. I don't think that everybody needs to be necessarily involved in each of the questions. But one former Senator used to say that everything's been said but not everybody has said it and we don't have to be repetitive unless it's absolutely necessary.

Let me turn to Dan and ask Dan to start off the questions and then we'll proceed. Dan, the idea would be, if you're going to ask a question and maybe someone will volunteer to take it on, then probably someone from another view point would like to take it on, and we'll try to keep things bouncing a little bit to see if we can get some general understanding about how the everybody stands on a particular question and we'll go from there.

Senator INOUYE. I sat through this morning for about 3 hours and I listened very carefully and I'll note that there is the general consensus and we all agree there is some degree of violence and indecency and something has to be done about it. One of the earlier speakers said about 4 years ago he came to a meeting and we had discussions of this nature and nothing happened and he'll be watching to see what happens this time. There are many reasons why we have not acted with expedition. First of all, it is a very complex issue that involves the Constitution. Second, we all speak of being parent friendly and that there is no one type of parent. There's a large number of parents who see their kids not too often. They start off early in the morning to work, they have second jobs and some are not as blessed as we are with multiple degrees, good families, a good home and lots of money. So we have to come up with something that's family friendly because were all convinced that parents are the first line of defense. If that's the case should we set a universal standard as far as legal standards are concerned on decency that would apply equally on broadcast TV, cable and satellite? I don't expect you to answer me right now. The other question is whether ratings of video games and video programming should be made more consistent. I was told I have to watch a certain video game because it is the most popular and it sells for $50.00 and it's in great demand for Christmas. There's a waiting

line. And speaking of violence, I've seen violence throughout my life but this game specializes in violence. And then when you look at the so-called ratings or content description there's no correlation between video games and video programming. So my question is, should ratings be uniform and universal? Should we have the same system for video games, video programming, satellites, cable, and broadcasting?

And my final statement is one and brother Jack would like to say and I know my leader would like to say. We are convinced that something has to be done. At this moment we're not quite certain how to proceed, but we are hoping that you will come up with a solution, you are the experts. Because sadly if you don't come up with the answer, we will. And all too often when we act it may not be the correct answer. So this is not only an invitation to all of you to help us this is just a statement of fact that we are going to do something this time.

The CHAIRMAN. Now let's see if anyone wants to have a response to that and we will go from sort of one of the family organizations to one of the media folk, go back and forth. Does anyone want to comment on the Senator's questions? Yes, sir. Question?

Mr. PADDEN. On your question whether we ought to have an equal standard for broadcast and basic cable and satellite, our company would say yes. Whatever the standard is we think should be the same. In terms of a uniform rating for different media for games and for movies and for TV, our new CEO testified before this Committee I think 2 years ago supporting a uniform standard.

As I explained, when we began with Jack to develop a rating system for television we began with the idea that it would be the same as the movie ratings, and there were a lot of people who wanted more detail and more complication, and we accommodated them. But it may be, with the benefit of experience, that a simpler rating system such as Jack has for the film industry would work better for parents in television and games. We think there's a lot of value in moving toward a uniform rating standard.

Senator INOUYE. I have one more question. Who should make the arrangements——

The CHAIRMAN. Daniel, they don't hear you.

Senator INOUYE. Oh. Who should make the arrangements——

The CHAIRMAN. That's not on.

Senator INOUYE. Can you hear me now?

Who should determine what the rates should be, the ratings should be?

Mr. PADDEN. I think, as Jack said, the key to the system he developed is that it's a self-regulatory system, and if you had simple, clear ratings such as the movie industry has then it would be up to the TV producer and the game producer to apply those ratings.

The CHAIRMAN. Do you think those should be voluntary or made mandatory by the government?

Mr. PADDEN. We think they should be voluntary.

The CHAIRMAN. Yes, sir, Jim?

Mr. STEYER. I would agree actually, Senator Stevens and Senator Inouye, that a universal rating system would be ideal. I think, as somebody who works in that field, that the MPAA rating system really is the only rating system that parents are most familiar

with. Since Common Sense has its own universal rating system, I look at that as a supplement to something that would be industry's own self-regulating mechanism. I don't believe, wearing my Con Law hat, that you could actually legislate that from the government level. I think it would have to be done voluntarily by the industry and then it could be supplemented by Common Sense.

Just to speak to two of the other issues you raised because I thought they were very important. One is on latchkey kids and the kids who are home. I think that one of the things we haven't talked about too much, but that I think that certainly the industry is well-equipped to address and work with folks like us on is the issue of media literacy and media education and really making parents more aware of the simple basic rules, like get the TV set out of your kid's bedroom. You know, two out of three kids over the age of 8 in the United States have their own TV set in their own bedroom.

There are a lot of very simple issues that could be explained to parents that would do a great service to parents across the country. And I do believe that a concerted media literacy, media education campaign along the kinds of the Partnership for a Drug-Free America or some of the other public service campaigns that have really changed individual behavior could work, and I think that would do something.

I also think, on the video game piece, there has been legislation at the State level that restricts the sale of the ultra-violent video games to people under the age of 17, and I expect that there will be Federal legislation, bipartisan legislation, that's introduced in this session of Congress as well, that doesn't go to the creative process, but that goes to the issue of, if you take those ultra-violent video games that you're referring to, Senator Inouye, that you could then say you can't sell this to anybody under the age of 17. You can even use—Doug's not here, but you can even use the industry's own rating system and say basically you have to card somebody when they come in to buy that video game.

So I actually think you can address some of those latchkey kids issues, and ultimately me, as a parent but as a person who works in the field, if you could have a universal rating system it would make it a lot easier on parents, as opposed to the current hodgepodge.

The CHAIRMAN. What are the people—oh, sorry about that. Bill?

Mr. BAILEY. Just on the issue of whether there should be an equal standard applying to all media—

The CHAIRMAN. Turn on your mike.

Mr. BAILEY. Oh, sorry.

On the issue of whether there should be an equal standard applying to all media, I just want to make sure folks separate out television, that there's been a lot of discussion of today, and Preston did a great job of comparing broadcast television today to expanded basic cable television today. They are equally pervasive, he argues, and they have equal blocking ability, and so therefore the argument goes you should treat them differently. I don't want to address that myself, but on the radio side, if you apply those same two standards, the question of is satellite radio pervasive, we have

9 million subscribers between two companies, that represents about 3 percent of all radio listeners—hardly pervasive.

The second question of is there equal blocking capability between satellite radio and terrestrial radio. On the television side, there's a V-chip. There is no equal blocking capability on the radio side.

So we urge you that when you're considering whether there should be an equal standard, just think differently between television and radio because they really are different worlds.

Ms. MARVENTANO. Mr. Chairman.

The CHAIRMAN. Yes, Jessica.

Ms. MARVENTANO. This is Jessica from Clear Channel. I just wanted to respond to Bill's comments. He is right, they do have a lower subscribership right now. He fails to point out the fact that they're signing deals with the DBS companies that pipe this content into the home. So even though they might only have some individual subscribers, they have the potential platform to access all of DBS customers inside the home.

We think content, indecent content, whether it comes over broadcast cable or satellite radio, is really a distinction without a difference to children. 9-year-olds, they don't appreciate the difference in the technological platforms, but the impact on indecent programming is the same for them.

The CHAIRMAN. Yes, David.

Mr. KINNEY. Thank you, Senator.

First, with regard to having one standard. If you don't have one standard and you don't describe what is indecent, it's unfair to the broadcasters and to the retailers. They get fined after the fact, after somebody already says something. There's no clearly defined standard of decency to begin with.

As far as the universal rating system, obviously it's very difficult for parents to navigate through the alphabet soup of the various industry rating systems. Besides that, they're all age-based, which means by definition they're subjective. They say this is good for this age group and it's not good for that age group. Well, every single child is different. You can have—I may choose to raise my children——

[Electronic ringing sound.]

The CHAIRMAN. I'm told one of the problems is we've got too many mikes on at the same time. So if you're not speaking would you please turn off your mike.

Mr. KINNEY. Just to finish up, I might choose to raise my 13-year-old differently than you raise your 13-year-old, and I may have two twins that have different sensitivities to sex and violence. So again, a rating system that imposes an age limitation is subjective by nature, and you really need a content-based rating system that allows each individual to choose what's appropriate to themselves and their family based upon their own personal standards of suitability.

The CHAIRMAN. Is there agreement here that we should legislatively define decency or indecency? That's the suggestion here. Should we have a Federal legislative definition of indecency?

Mr. VALENTI. Mr. Chairman—excuse me.

The CHAIRMAN. Let's hear from someone else.

Mr. VALENTI. I just want to say first, I think the government should not legislate anything. It's not for government to do this. I think we find that in the past when you're dealing with protected speech you're on boggy ground. This has to be self-regulatory. I just believe any other way is wrong.

But I do believe that there is a responsible task for everybody around this table, that for the price of not having government intervention, which I think the courts would find insufficient, that we have to do it ourselves. There's plenty of precedent for this.

I do not believe that you can have a universal rating system because of the difficulty. For example, we rate 700 movies a year in movies. That's about 1,400 hours a year. There is 2,400 hours a week on broadcast television. I don't know how many would be on records, recordings, or on video games. There must be hundreds of those. So you have different kinds of structures, different kinds of creative structures.

Number two, I think Preston made this point, that the V-chip is irreversible. The people who make television sets, when they put that format in in 1999, you can't change it. There must be I guess two-thirds of all the sets in America now have the V-chip. It can't be changed.

Finally, there is no adult-only category in television, so that you can't deal with it as we have in the movies, NC–17, or as the video games have.

So what I think needs to be done, and I think some of the people around this table have said this, Preston again said this, I think we ought to simplify all these ratings so that people understand them. I just viewed with you, Mr. Chairman, what I think cable is doing in their rating system, which is pretty good and you can follow it fairly well. Simplicity is the answer in my judgment, and that's why I think that we need to—we can simplify the broadcast. You can simplify it by making it easier than it is now.

Finally, I think there's one area where the Congress could be unbelievably productive, and that is to use its persuasion with retail stores who sell television sets and the manufacturers of television sets to put a little yellow tag, as I said earlier in my remarks, on every television set: There is a V-chip in this television set. And on the other side of the tag, how easy it is to use it.

If you did some of those simple things, with everybody around this table cooperating, I think that you would make seven-league strides forward.

The CHAIRMAN. Let me ask you one question if I may, and that is the suggestion has been made that we ought to have a Federal education program such as we've had about safety in the highways, etcetera. Do you think there is a role for government to be involved in education of the types of controls that are available to parents?

Mr. VALENTI. Absolutely, Mr. Chairman, without any question. I think that the more people know, the better informed they are, the more likely they are to take advantage of these things. As everybody said, it's the parent. If the parent doesn't care, no rating system, no government intervention, is going salvage that child's future, and we have to understand that. So I think that government education would be terrific.

I think the more people know the better informed they are the more likely they are to take advantage of these things. As everybody said it's the parent. If the parent doesn't care, no rating system, no government intervention is going salvage that child's future and we have to understand that. So I think the government education end would be terrific.

The CHAIRMAN. Mr. Bozell, did you have a comment?

Mr. BOZELL. In answer to the previous question I think we're discussing the wrong issue here. We're having a grandiose debate about—and the analogy that I've drawn before is the analogy of a pothole on 14th Street. And were all discussing ways of putting warning signs to alert motorists to a pothole on 14th Street. What size V-Chip, what size warning labels, content descriptors, everything else. But no one is addressing the pothole that is still on 14th Street. If we are to say that we shouldn't address that pothole then what we're saying is that there is a need, a demand, a call, a protection, a something for indecency on television. And we're not talking about little indecencies here. We're talking about big big indecencies. And I want to ask people around this room, and my friends in the networks to tell me, where there is a market demand for the things we're now talking about protecting.

Because we're saying V-Chips and everything else—Protect the right to watch what? To watch pedophilia, to watch bestiality, that's on television now. To watch incest, to watch necrophilia that's on at prime time now. Are we really so impassioned about defending some kind of a market right to watch this, or will we just be doing ourselves a big big favor if we were to simply say it doesn't matter what the law says—it's a simple function of decent civilized behavior. One does not put this on television when youngsters should be watching. And not to mention by the way adults too, you know I don't know why adults would be wanting to watch this. But children for goodness sakes. Do we have to have V-Chips or can we just say we're not going to do that and then we wouldn't be having these Forums.

Mr. MCSLARROW. We're talking about two things at the moment, in terms of both the ratings and legislating on indecency standards. The point's been made before. I agree with it. I think simplicity is the key. And I think when we think about ratings, certainly this point has already been made. The industry went into the ratings system with a view of making it simple and perhaps almost exactly the same as the movie ratings. It was outside stakeholders that actually said give us more information. So there was an effort to accommodate that. And as Jack just said it's all hard wired into V-Chips, that are in 100 million TV sets at the moment. But nonetheless conceptually, I think it's the right approach to think about whether or not there's a way to make this simpler and perhaps supplemented with PSV, or Common Sense Media or other—you know PTC, whoever else has additional information they want to give on ratings. In terms of the indecency standard, you know as I said in my opening statement we're not for legislating indecency standards. Of course we all trot out our parade of horribles and Brent immediately goes to subjects that not one person in this room is going to raise their hand and say yes I'm for watching that.

The truth is what I think about what I worry about on TV it's actually news with my little kids. We're in the middle of a war, but that's the price we pay for free speech and communication of important policy issues. It's my job to keep them out of the TV area when the news is on and some of it is horrific, and I know people are trying to convey important public policies without being too graphic but they sometimes fail, so it is a case of the eye of the beholder and every family is different. Maybe other people think the news isn't a problem. But that's exactly why I think it's so hard to legislate standards. There is room for self regulation. I think every industry here has agreed to that. We should concentrate on that side of the ledger, rather than on the mandated side.

Ms. COMBS. And as one to address at the fact the you're talking about decency act, legislating the decency bill, As I said earlier Congressman Fred Upton his bill passed on February the 16th by a margin of 389 to 38.

The CHAIRMAN. That's a bill I said was a copy really of the Senate bill that was passed. We kept it at the desk but we can't get it off the desk. There have been too many people on both sides who object to it. From one side it's too harsh, the other side it's too soft. We just don't have 60 votes to move that bill.

Ms. COMBS. Are you talking about Senator Brownback's bill?

The CHAIRMAN. I'm talking about the Upton bill, it came over and it is still at the desk at the Senate ready to be acted on, if we could get it called up.

Ms. COMBS. Well we'll help you. You know also Senator Brownback's bill and Senator Lieberman's bill are also in the Senate.

The CHAIRMAN. That's why we're having this Forum to see what we're going to do with all those—I mentioned those four bills are before this Committee. One of them is at the desk, but the other three are before this Committee, trying to figure out what to do with them. There is not an agreement on the Committee about what to do with any one of them.

Ms. COMBS. Well that's a shame.

The CHAIRMAN. Let me answer that Roberta. Some people say it doesn't go far enough. And other people want other things put in it, and that's why we're around this table to find out what should we try to put in a bill if we can get a consensus so it will pass the Senate.

Ms. COMBS. I understand that when you say it does not go far enough what do they mean by that?

The CHAIRMAN. Well Senator Wyden has a bill he wants a children's tier, Senator Rockefeller has a different type of bill, the Brownback bill is really a fine bill, and the Upton bill is really the same, almost the same, as already was reported out of this Committee. But we can't bring it up because there are too many Senators on both sides, not politically, but on the issue I understand some people around this table don't like those bills. Maybe you ought to speak up and say why you don't like these bills. Because I think some Senators are reflecting points of view of people right around the table. You cannot get them up if there's a hold on them unless you can get 60 votes out there for a particular bill.

And what we'd like to get is a comprehensive bill to deal with the consensus of what could be done if we had an agreement here and I hope we can reach one.

Dr. WRIGHT. Mr. Chairman with permission I would like to revert to the previous two questions. One you asked and one Senator Inouye asked. You asked whether Congress should establish an indecency standard and there is in the Communications Act of 1934 a specification of indecency being contrary to Federal law there is also a judicial standard that was established based on the FCC's specification of indecency litigated all the way to the U.S. Supreme Court, and upheld. So there is an indecency standard functioning, now that was the radio standard.

The CHAIRMAN. Respectfully they want a definition, there's a standard as you said, and you can read sort of a semi-definition by reading the Supreme Court opinions, But there is no legislative definition of indecency that I know of.

Dr. WRIGHT. So your question was expanding the existing specification to make it more clear. Regarding Senator Inouye's comment about who makes the ratings, and I don't mean any disrespect to anybody, our industry friends were quick to say it should be self-regulated the producers should make the ratings. And again I don't mean any disrespect, but there have been academic studies on those people who are the movers and shakers and creative forces in Hollywood which very clearly portray that community as not representative of mainstream America. And the study itself is the Lichter–Rothman Study of the early 1980s updated just recently, the findings did not change. The study looked at the political views, it looked at the religious persuasions, it looked at all kinds of things that suggest that TV program producers as much as we would like them to voluntarily self regulate, they may not be the ones to set the standard for what is acceptable to families in America.

Mr. WURTZEL. I just want to make a correction—it's not the producers.

The CHAIRMAN. I will recognize you, but let's try to let him finish his point.

Dr. WRIGHT. I think I finished the point. And I may have misspoke technically about how it's done. But let's make it more generic, if Hollywood is responsible for setting the standard there are substantive academic studies that suggest that Hollywood is not representative of the average family in America. And maybe ought not and I'm not suggesting who should be making decisions at this point just to point out that that's a problem that would have to be addressed.

Mr. WURTZEL. I just wanted to clarify the way it works with respect to the parental guidelines as well as the age based ratings, and then the content descriptors, is that it's the broadcast standards entities. That's certainly at NBC and I believe is the case at all the other networks, that independently makes this judgment, The producers have absolutely nothing to do with that, and clearly our audiences will let us know whether or not we have misclassified the program.

In other words, and I'm a social scientist, and I am an academic, I'm trained as that. And I understand exactly how these content

and analytical which is what this is, methodologies need to work. And one of the issues I think as Mr. Valenti indicated, I think he is right, is that it is very very hard to have a consistent and accurate rating within one media, whether it's film or video games or television. And to attempt to lump these apples and oranges together and then apply a rating is just technically extraordinarily difficult.

But I think the MPAA has proven successful for all these years because there is an understanding and a recognition among the public that when they see a PG they kind of know what it means, and when they see an R they understand what it means. And I think that that is something that can only be achieved with each medium doing it by themselves, and again I think the consumer will make a judgment as to whether not these are accurate or misleading guides.

The CHAIRMAN. That's Allen Wurtzel of NBC, now Joey sought recognition, and Jack. But you know Alaskans are first name people, once your over 80 you only want to remember one name per face. So we're first name people here.

Mr. PANTOLIANO. What I learned so far this afternoon and this morning is some of the issues that have been dealt with quite successfully by network television and putting these delays on sporting events since the Janet Jackson malfunction so now there's a 15 second delay with entertainment shows, live shows, award shows. So therefore that is taken off the table right there. Somebody wants to act like a moron to self promote themselves and say the wrong thing you've got 15 seconds and you're going to wipe them off the face of television and it's not going to be seen.

As far as Hollywood dictating to the general public across the country, they can't. They answer to the American people and it if the American people, with all of the advertising dollars, that they would tell us to watch episode X at 9 o'clock on network W, if we don't turn it on it's off the air. And it's all about ratings and it's all about dollars. So I think that a lot of our concerns were answered. I'm really excited by the initiative that is taken by the individuals here today that are already putting in place, we're already starting to self police ourselves. As you know just like if you turn on NBC, there's a little NBC local in the corner or VH1 logo in the corner are CBS logo, I mean maybe there's a way of saying that what this content is if you watch CNN or MSNBC, you've got a little ticker tape. It took me a year to figure that one out, that I'm watching content and I'm reading content at the same time where you can warn the parent right now that walks in the room that what's about to happen in the next 4 minutes may not be appropriate for someone under the age of 12 or 13. Those are some of the things that come to my mind.

The CHAIRMAN. I agree. Pardon me Roberta, but I've got to come back to you if I may, I hope you don't mind. But that bill out there covers only radio, only over the air broadcasting, and we want it to go further. There's a group of people who want to go further than that, they want to include cable, others want to include satellites, they want to do other things. There are people who have said there's not enough in that bill, other people say there's too much in the bill. It's very difficult to handle that bill in the Senate

right now, but we're going to get there. In January, we're going to have a bill in January dealing with this, the outcome of this series of meetings I hope. Jack?

Mr. VALENTI. I just wanted to—I don't know who on this side of the table, because I can't see, was talking about Hollywood dictating the ratings. You must understand technically how this works, the rating board consists of 13 people, they're on for two, to three, to 4 years, and then replenished with new people. They are all parents. All parents. They cannot be part of the movie industry. These are just regular folks. They are housewives who want to do this, somebody that's retired, somebody who is a professor on sabbatical, And they do this for two, to three, to 4 years. They try to—well you should also know that the heaviest critics of the movie rating system are directors, and writers and producers who don't like some of the ratings that they get and they protest.

So there's a good example that if Hollywood was foisting its so-called morality on the general public that they would love this rating system.

And finally the question that these raters ask themselves, these parents who think like a parent is this, is this rating I'm about to vote for this movie one that most parents in America would judge to be accurate. That's what they do. Now are they right, we have rated over 20,127 movies in 37 years, obviously there are going to be some disagreements. I sometimes—I keep it within the privacy of my own breast, I disagree with the rating every now and then, I may think it is too liberal or too conservative but the point is when you do that in a subjective way, Mr. Chairman, Mr. Co-Chairman, there are going to be errors of judgment that are being made that other people will find to be unsuitable. That's part of any kind of subjective assay of anything that is a painting, a poem, a novel, a broadcast program, a video game, or a movie.

And finally I urge you again Mr. Chairman, I think that the people around this table have the answers to this not fully the answers but some. But you cannot legislate something that we call protected speech. The First Amendment will not allow that and we ought to keep that in mind very very carefully.

The CHAIRMAN. Can we legislate a ratings system for media?

Mr. VALENTI. The answer is in the judgment of constitutional lawyers whose fees could support a developing country I might add. The answer is no. You cannot do it, That is why——

The CHAIRMAN. You cannot mandate a ratings system, if you're going to have a rating system it will be this system. I'm not saying you have to mandate the follow-up, but it should be put into law what is an acceptable rating system for American families.

Mr. VALENTI. The U.S. Government by virtue of the First Amendment cannot impose a rating system compulsory on this country. It cannot do it.

The CHAIRMAN. Bruce?

Mr. REESE. I just wanted to make one—just advisory comment just with my radio broadcaster hat on, and that is if we're going to talk about some sort of rating system it needs to think about the oral only products that are offered by radio stations and by the satellite radio folks. And Bill's company at this point probably could put some sort of standardized rating system on every record that

they play now. Whether Jim would actually have a rating for every cut, on every disk that is out there. There's a lot more product that comes out of the music industry than that. And over time I think the terrestrial broadcasters as we get to a digital radio system there, with display systems where we could send the information down about particular pieces of music that would play. We could get there but it would take us a little bit of time before we got to a solution to be able to sort of rate what people are listening to on the radio. I mean generally you could say this type of music is that, but I'm not sure those kind of generalities help a whole lot.

The CHAIRMAN. Lisa?

Ms. FAGER. Yes, I would like to address, I mean people have mentioned before about this rating and how the kid in New York City would be different than the kid in Iowa, and I don't think Mr. Valenti takes into account when he does his rating system that the kids in New York City will be OK with this smut but we sure don't want to give it to the kids in Iowa.

So how do we keep talking about self regulation when the indecency laws that are now on the books are not being enforced, and broadcasters are not being held accountable. I would say at least XM has their rating system there but other conglomerates don't have any enforcement. What we do know about indecency is that it's supposed to cover sexually explicit content and that it goes into execratory substances, or whatever. There's a hiphop song out there with the lyric called "skeet, skeet, skeet" which specifically means to ejaculate in a woman's face. But that was the No. 3 most played song with MTV and every radio broadcaster onboard. So why wasn't that enforced when we were complaining in our communities? And so now we're going to ask these people to self regulate, how will that work?

The CHAIRMAN. I better not get into that right now.

[Laughter.]

The CHAIRMAN. We can get into that but not right now. I had David next.

Mr. KINNEY. Thank you Senator. Let me just make this real simple. You take—if you could just imagine take everything you could possibly construe as being profane, sexual, or violent and create a data base. And whether it's words, actions, activities, the details, how much blood you see, how much nudity you see, and create a data base. Then you watch the movie, or you play the game, or you listen to music or watch television or whatever have you. And then you say OK, that is one of the rules in that data base. That's what is part of that indecency standard and so you mark that. And then you go through every single piece of media and therefore you have a relational data base of every single thing that could be possibly construed as profane, sexual or violent. Then you take, and it doesn't matter whose it is, Whether it's the MPAA and, or the ESRB's or the religious groups, or whomever and you say listen when a kid—when someone uses the F word let's just give it a scale of one to ten. That's going to count as a nine. But if the F word is used in the presence of a child or toward a child, or a child to an adult, we're going to give that a ten. So you can create a standard that everybody agrees to by ascribing a numerical value to every single rule in the data base. And that's what Media Data

Corporation did. We have over 4,000 rules in our data base, that, trust me, cover everything. I'm just trying to explain, there is a way to do all of this.

The CHAIRMAN. I know you have a good service to sell.

Mr. KINNEY. But not trying to sell it I don't care if you just take—I'm giving you a concept, somebody else do it. We are private sector solution, compete with us. It's just that there's a solution and it's just——

The CHAIRMAN. I appreciate what you're saying. But we're trying to get the providers of the media together and trying to balance that with the people here who are involved in the family sector. I understand your system is a good system. But I really think we ought to concentrate on problems we're trying to solve right here right now, with due respect. Now the next one was Martin.

Mr. FRANKS. I am far from a constitutional expert, I certainly am not a lawyer, although I am sometimes accused of trying to practice without a license. But I do know a little bit about broadcast television, I really do think that between the broadcast networks, and local broadcasters and cable and satellite, and telephone, I think we could make the V-Chip work. I think we have a system in place. It is imperfect by the way. Any system is going to be imperfect. I'm a little bit worried about that perfect scientific system that's going to screen out "Saving Private Ryan". You have to build in a little bit of subjectivity, this is after all a human exercise. Within months of the enactment of V-Chip, people started talking about tinkering with it. And when Jack led as all through the desert of trying to figure out the rating system, and we got attacked from every side when we actually tried to modify it. I think due to a request from people on this Committee and public interest groups around the country, and now we're told that the changes we've made have made it too complicated.

The CHAIRMAN. I don't want to interrupt people, but let me ask Trinity and let me ask Roberta, is the V-Chip an acceptable device as far as you're concerned?

Ms. COMBS. I would like to learn more about it I was talking to Martin earlier about it.

The CHAIRMAN. Doug. Do you want to go into that a little bit more? About how it should work, I'm sorry Martin. I'm looking at the wrong name.

Dr. FRANKS. Again Mr. Chairman I think part of what happened is that there's been so much uncertainty about whether it's going to be changed or repealed or whether we were going to get to universal system that there have been some fits and starts if you will. But the cable folks really did a terrific job in their campaign about the V-Chip but for a variety of reasons we didn't join them. We did, the four networks did a terrific job working with the ad Council on a campaign but what we need is one coordinated—we need to drop back a little, see what we can do to improve it. Then the collective minds with the help of people who were not here today, I think we could figure out a way to sell it to parents. It is not that complicated, Mr. Chairman, and it exists today. If you invent a new system it's going to take years before that one takes hold.

The CHAIRMAN. We just saw a very good system, I appreciated that Jack saw it too, this cable system puts you in control. Again

I want to know of the people who are seeking greater parental control, is the V-Chip a system that you're willing to work with and if it is——

Mr. FRANKS. I would include in that, Mr. Chairman, the cable, I mean blocking technology within the home, within the set, I think if we all figured out, and sat down we could make it work for parents, and it could take effect immediately.

The CHAIRMAN. You're right the more new sets come out the more V-Chips—Jack has suggested we require a tag on each new set that tells people what the V-Chip is and how it works. That's interesting does anybody have any comment on that I'd be interested in what you think John, for Trinity, about the V-Chip.

Mr. CASORIA. The V-Chip does not work appropriately in our opinion. We believe that the V-Chip actually does what Mr. Bozell says, which is, it's a band-aid. It skirts the issue, the real issue before this Committee is one of content and not on band-aids and warning signs. I think the best way to protect the First Amendment, is to have as many voices out there as possible talking to the general public. And I think multi-task, must-carry, solves that problem.

The CHAIRMAN. That's another subject too. Jim you shook your head do you want to be involved in this? Brent?

Mr. BOZELL. There's another issue with the V-Chip. It's unquestionable in my mind that there are some, perhaps many in the television industry who are serious and are well intentioned about finding some type of solution. But as we predicted would happen when the V-Chip debate began about 8 years ago or whenever was, 15. Well it feels like 15 too. Beware of the law of unintended consequences. As soon as we got the V-Chip what we also got was almost immediately some of the most offensive programming and indecent programming on television, Why? Because you now can do it. We had a V-Chip and we had a rating system and now we could just put TVMA and drop that and because——

Mr. FRANKS. That's just not fair. How many TVMAs have been on CBS?

Mr. BOZELL. I'm giving the example of South Park with TVMA that's exactly what you got out of it. I'm just giving an example you could do it now and if it wasn't for the uproar, you know as well as I know that this would have gone much farther than Janet Jackson and her striptease. You know that the currents were going in that direction. Now they're being pushed back. All I'm saying is that the V-Chip has allowed some who have wanted to push the envelope some. Not you, Martin. You are a good man. Some who want to push the envelope, it's allowed them to push it with the protection of the V-Chip. And we come back 2 years later all the more upset.

The CHAIRMAN. I interrupted you Martin.

Mr. MCSLARROW. You've heard from me enough on multi-channel must-carry. But it's come up four times and I feel compelled to respond.

The CHAIRMAN. Can we get off the multicast for a moment? I think other people what talk about V-Chips. Jack you hit your mike do you want in this?

Mr. VALENTI. Mr. Chairman, I yield to no man, and my respect for Brent, we've been on—I know that I've ruined his reputation by saying something nice about him.

[Laughter.]

Mr. VALENTI. But the fact is that he is highly exaggerating this. There is a South Park and how many others. There's 2,400 hours of television on the air today. 2,400 hours a day. How much of that is this, this is an imperfect world we live in. What has made America great is it is a free country and when you are a First Amendment person you must allow into the marketplace that which you find to be meretricious, untidy, unwholesome, and sometimes just plain stupid. But that's the price you pay for a democracy, a democracy is quite messy. If you want to have a pristine television show you go to Burma or you go to north Korea and you will find to self in a pristine world, where nothing that the government does not want on the air is on the air. That is the price you pay, Brent, for a democracy.

The CHAIRMAN. Jack what about the 6 to 10 p.m., can we do that again for all media?

Mr. VALENTI. Mr. Chairman I think you'll find that it's very fine to say you can have standards. But now when you begin to fine people, when you begin to force people, then you must be precise. You cannot indict a man for crime without defining what the crime is anymore than you can, and when you apply that same standard it seems to me—what is the standard, what is too much violence, what is—where do you draw this line? The idea that the whole country or all of us get upset about a 3-second version of an artificial breast to me is the most absurd thing in the world, this Janet Jackson thing, it made no sense. As is, you can go in any museum, you can go any place and nude women, my God. Venus de Milo, is known around the world. The point is that this thing got out of hand, it seems to me, to have a three or 4 seconds of a silicone breast and the country became ecstatic about it. I mean this doesn't make any sense. All I'm saying to you, Mr. Chairman, let's be realistic, we ought to back off. What is going to be the precision of the charge? What is it? One of the reasons why this rating system works and with all due respect to Mr. Kinney, and his Euclidean geometry that he has put forward, the fact is that everything is subjective. When you look at say "Saving Private Ryan" as a classic example, is that too much violence or is it not? Because men are being killed? You saw the brute realisms of a war. And yet I think every boy in this country particularly young boys, and young women under the age of 12 ought to see that movie because it has to do with war, and every now and then we go to war. What is it like? So this is very delicate ground we are on. I'm saying to you there's no way that we can do what Brent wants and that is to scour the airways of everything that offends his sense of decency which might be different from somebody else's. But again and I say this to you and then I'm stopping—if you're going to indict somebody you must be precise in what it is they are violating.

The CHAIRMAN. Roberta?

Ms. COMBS. I just wanted to—with all due respect to Jack since we're talking about first names. I think indecency is a crime. And I don't think "Saving Private Ryan" is a crime, I mean war is not

a crime, that is different than showing your breast or the indecency or what you watch on TV. I mean you can hardly watch a good program on TV anymore that doesn't have sex or some type of just terrible language. I mean I think that is a crime, I think that is sending a bad message to our children, that they can't sit down and watch a decent program on television. And I understand that I'm in a room full of broadcasters, networks, this is their livelihood, and this is what they do every day of their lives. But I still think you have to start somewhere and this Decency Act in these bills are now in place. I mean they are being fined. I know maybe $300,000 to a large network is not a lot of money, but at least it's sending a message that we are starting somewhere. We do care about our kids. We do care about what they watch and if you don't stop this mess you're going to be fined. I just think we've got to start somewhere. I mean we can talk about all different things. This is just my opinion because I care about kids and I care about the family and I'm sure that every one sitting in this room feels the same way but you have to start somewhere. You know the V-Chip that Martin was talking about I am more than willing to listen to that, and learn more about that. I'm open for ideas. But you can't say that indecency is not wrong, it is wrong. There is a difference between right and wrong and moral standards in the life that we live. I know it is not during the 1950s when I was raised, Martin, but we do live in a different world now, in a totally different world but you know we should live in a world where morals still count. I mean that is what—who we are, that is our very soul is our morals and our character.

Mr. CARPENTER. I just want to say I like "South Park." I think it's funny. But if we're talking about standards, there's a difference between a standard and a rating system. And a standard for indecency that is going to result in a fine. And I think it's really important to clarify those things, a rating system is clearly more sophisticated but when you're talking about, in Roberta's case, you're talking about putting people in jail because it's a crime or if you're talking about imposing a fine against a company, a license holder, or an individual who if, the version goes through of a bill that imposes a fine against an individual. The question is what are those standards, and I think there's a real problem in the standard that currently exists, because it is not well defined, it's been shifting over the past couple of years and it certainly went upward, spiked after the Janet Jackson performance at the Superbowl, there was a lot of movement on what the standard is.

I think some of the companies who are here now could show you their training materials that they provide to their employees about how do you adhere to a standard of decency, and it's a pretty thick, it's a pretty sophisticated, it's a pretty complicated document.

So I think I would just say that ratings systems are much more sophisticated in general, and in terms of developing standards really consider the difference between a standard in a rating system and a standard for a punishable violation of an FCC rule.

The CHAIRMAN. Preston.

Ms. COMBS. Excuse me. I want to correct that. I was talking about that's a moral crime.

The CHAIRMAN. Thank you. Preston?

Mr. PADDEN. Roberta said she didn't think Saving Private Ryan was about indecency, and you indicated some people have a problem with the House bill that has come over here. Our problem is one-third of our affiliates, based on the advice of their lawyers, based on the somewhat confusing precedents out of the FCC, one-third of our affiliates decided to not broadcast "Saving Private Ryan" because they were afraid of multi-million dollar fines.

The bill that has come over from the House would simply increase even higher the fines for those broadcasters, in complete isolation from the rest of the television industry, and we don't think that is either the constitutional way to go nor an effective way to address the needs of all children for all the television channels they have access to.

The CHAIRMAN. Mr. Co-Chairman.

Senator INOUYE. If I may just add to Private Ryan. I watched that movie with much discomfort because it was real, and I don't consider that violent because it was real. I don't consider that indecent because it was real. I would hate to have a little child watching that. In fact, I told my wife: Don't watch it because you'll know what I had to go through.

I have one more question, and I'm reading from the letter that we put in the record by Senator Obama. He speaks of this: "I've had the experience of sitting through an uncomfortable Cialis commercial while watching television with my 7 and 4-year-old daughters." What about these commercials? I've sat through some and I don't have any 7 or 4-year-old daughter with me. My son is 40 now. But it must be uncomfortable, and they're not rated. Should we do something about that?

The CHAIRMAN. Brent?

Mr. BOZELL. I can tell you that we hear all over the country, from our members all over the country, and they bring up those Cialis type of ads more than anything else. I thought that—when I first started hearing it, to be quite honest, I didn't think that there was that much to it. But then I got a lesson from the uproar, and it continues to this day. And it's not just those ads now. There are beer ads and others, and they're pushing the envelope as well.

Should we talk about more government regulation? I don't know, but there needs to be some kind of controls on the advertisers. They're doing the same thing the programmers are. They're trying to get a message across.

I'd like to say one more thing to my friend Jack Valenti. You knew Venus de Milo. You were probably a friend of hers. She was a friend. Janet Jackson is no Venus de Milo.

[Laughter.]

The CHAIRMAN. You know, when we talk about commercials and we talk about these other situations that raise the same question of decency or indecency, I've got to ask, put this out on the table: You heard Chairman Martin. I'm told in one series they got about a million complaints. He's just talked about hundreds of thousands of complaints. Now, we're all adult. People ought to make a judgment of just how much can the FCC survive? They can't answer that many complaints, let alone adjudicate them.

One of my problems about the legislation is how can this become semi-self-enforceable or somehow or other get it to the point where

only the causes celebres come to the FCC for really substantial fines and substantial publicity to say this is not what America is all about.

Now, am I wrong? Isn't there some way we can deal with this on a basis of self-policing or self-regulation and not have so many, have the FCC inundated with these complaints, all based on the same concept and all valid in terms of the people who are making them. They're complaining, but there is not the possibility of them getting an answer. I'm sure there's no possibility at all that they'll all get a hearing. We don't have enough investigators to go out and talk to them. If they're nationwide complaints, the FCC basically, they have some officers.

So just let me ask the question: Should the FCC be the place that adjudicates these complaints?

Mr. POLKA. Mr. Chairman, I think it is a place to start. I think it's very important that we heard from Chairman Martin this morning to say—where he said that there are structural impediments in the programming business today that is causing this content to come into the home that need to be reviewed. We need to look at ultimately what we're talking about here, is how does that content come into the home, how is it structured, how is it brought into the home by way of contract, by way of demands by those that own the content.

I think that's the place where we need to look. We're talking about here V-chip and we're talking about ratings and things like that, but we're not talking about changing the content. We're not talking about changing the content that our customers when they come into the office every month saying, I don't like that, I wish I didn't have to buy that, I wish you could do something about that so that I didn't have to buy that channel, so that that channel wasn't part of my basic or expanded basic package.

What Chairman Martin was here to say is we're going to go back and take a look—I think this is what he was saying: We're going to go back and take a look at the impediments, that things that take place in the business today between cable operators, satellite providers, between the programming owners, etcetera, and we're going to find out how does this stuff come into the home and what can we do about it.

I think that's an important place to talk, to start, because we haven't talked, as we're talking about ratings and V-chips, etcetera, we haven't talked about how some of those programs are actually on television today by laws and regulations that were created by Congress and by the FCC relating to retransmission consent, the right of a broadcaster to negotiate its right for carriage and to condition that carriage on the carriage of affiliated programming, much of which we're talking about here today, whether we're talking about a program that has been carried, affiliated programming, by any one of the major networks.

I think that's what we have to get to, because rules, FCC rules, regulations, as well as Congressional laws, going back to 1992 are what has put us in this place today.

I commend the chairman for—I commend you first for literally bringing us here under the hot lights and bringing this content under the hot lights, because it's about time, I think, that account-

ability is focused where it needs to be, on the content owners; and second, that Chairman Martin would say we're going to go back and look at the structural impediments that exist in the marketplace today that is causing that content to come into the home.

The CHAIRMAN. I'm worried a little bit about we mentioned today about the Robinson-Patman loophole that's tied into that retransmission consent. We've been asked to look at that, too. I think everybody at the table ought to realize that if we don't reach an agreement somehow here during this period before January we're going to see a bill that I don't think many of you would really like to live under and we'll be involved in litigation for years to come.

I hope that you really realize why we're all here. We could have gone out there and taken up that bill, Roberta, and dealt with 15 percent of the problem, but we'd have been back here in February trying to again figure out what to do about the 85 percent. I hope we can find some way to reach an accommodation here and get some idea about what the legislation we should really try to pursue and set down some guidelines and have a response from the industry as a whole that will meet the demands of the American family, at least substantially meet them.

I've got to tell you, I still think the Supreme Court—Kyle's right. He said: Pass the bill, we'll help you pass the bill, because it'll be declared unconstitutional. That doesn't get us anywhere. As a matter of fact, that'll be a great disappointment for the American family, I think, if we took a step and then we're immediately knocked back.

So we've got to find some middle ground here and I hope we'll all come around to that concept here before we're through.

Ms. MARVENTANO. Mr. Chairman.

The CHAIRMAN. Yes, who?

Ms. MARVENTANO. That was me.

The CHAIRMAN. Yes, Jessica, and then Jim.

Ms. MARVENTANO. Thank you. I did want to follow up on Roberta's comments about the Brownback bill, H.R. 193—I mean, excuse me, S. 193. Clear Channel has always been supportive of a fines-only approach. We think it's simple and effective and it does send a clear message that the policymakers on the Hill, policymakers at the FCC, are going to have vigilant oversight on the issue of indecency. I think that, coupled with self-policing, will do a lot to help curb indecency.

I think everyone around this table has been talking about the excitement with blocking technology and empowering parents, and I think that that is really where the progress can be found in terms of dealing with indecency. I did want to underscore the problems that we have, Clear Channel has, with sections 7, 8, and 9 of the House bill. Those provisions send a clear message to the FCC and the FCC will feel pressure to act accordingly. Those provisions deal with license revocations, license nonrenewals, pulling licenses, going through revocation hearings, all for possibly one indecency violation. And a couple of seconds of programming really should not result in the possible risking of your licenses.

The CHAIRMAN. It only applies to over-the-air broadcasting.

Ms. MARVENTANO. Currently the bill does, yes.

The CHAIRMAN. Yes. Again, where's the solution? The complaints are basically about the television, about cable, or about what's on in the American home. Eighty percent of the homes today are served by cable of some kind.

Ms. MARVENTANO. I think that policymakers need to incentivize industry to keep developing and investing in robust blocking technology and help in the education for parents. Parents are busy. Some are working two jobs just trying to keep their feet on the ground, and they need to really have their hands held and to explain how the blocking technology works, what's out there for them.

Not every parent is going to take us up on the offer to show them what the tools are that are available out there, but unfortunately we need to weigh First Amendment—fortunately, we need to weigh First Amendment concerns. This content is sometimes inappropriate, is tasteless, it's not for everybody, but it is protected by the First Amendment.

So I think blocking technology is the least restrictive, yet effective, means by which we can withstand the constitutional questions on this.

The CHAIRMAN. Next is Kyle and then it's Tom. No - someone else over here? Jim. Pardon me. I forgot you, Jim. Jim, then Kyle and Tom.

Mr. STEYER. I defer. I'll follow you, Kyle.

The CHAIRMAN. He's yielded to you, Kyle.

Mr. MCSLARROW. Okay. Two points. I want to go back to the must-carry issue. First, let me just say at the outset multicasting has absolutely nothing to do with this debate. I realize lots of people have axes to grind and they want to drag it into this forum, but let's just step back. We act almost as if broadcasting and cable are somehow viewed separately. There is only one group in America, NAB members, Frank Wright's members of the National Religious Broadcasters, Trinity Broadcast, who can actually claim by law that they have to be carried on a cable system. That's the broadcasters.

All the cable networks have to compete on the basis of whether or not their content is compelling to viewers and whether or not they're going to get carriage. The other rule is there's only one tier mandated by law, that is the broadcast basic tier, which is essentially all of the networks, all the must-carry stations, and maybe C–SPAN and a few other public access channels.

It's interesting to me when I hear people talking about multicasting and layering on more government regulations and simultaneously talking about moving the opposite direction in terms of indecency. The logic suggests, but I'll bet they won't go for this, the logic of that argument suggests that you ought to get rid of must-carry status. I'm not arguing for that. We live under the law we have today.

But the idea that we're going to take must-carry and expand it now and give broadcasters six more stations, that has nothing to do with the content, just simply their status as broadcasters, has nothing to do with the indecency issue.

The second point, I just want to follow up on what Jessica just said about technology. I think that in terms of the campaign the

cable industry has done, and obviously we've been joined by others, and the satellite industry does a great job with this, too, we have tools today that work pretty well. In my view, for a digital subscriber they work great. But I know that tomorrow and the next day and in the years ahead it's going to get even better as we go forward.

There are all kinds—and, Mr. Chairman, you and I have talked about this. There are all kinds of ideas being discussed today about how we can get more information through the electronic program guides, how do we make this easier, how do we make it one button instead of several clicks. All of these things are happening, and at the end of the day, I think Jessica got it right, if we're put in a position where we're forced to choose between the First Amendment and protection of children, why not go for an option that allows us to avoid that horrible choice? Why not do something that protects the First Amendment and gives parents the tools—and yes, they have to be effective, and let's work on making them better—that gives them the tools to essentially create their own family-friendly tier?

The CHAIRMAN. You yielded to him. Do you want it back now? Go ahead.

Mr. STEYER. Mr. Chairman, I just wanted to refer back to a question that Senator Inouye read from Senator Obama. I think the ad promotion issue is a very big issue to be included in this discussion, and I think that—I imagine that most of my colleagues in the industry would agree on that. But as a parent, it's not just the programming that concerns people; it really is the ads and the promos that are run that seem inappropriate at times.

Whatever the solution that the industry and our colleagues come up with, that has to be part of that. As a parent, to sit there at 10 o'clock on the West Coast and watch a football game, 10 o'clock in the morning on the West Coast, with your 5-year-old and to have to watch certain of the ads and the promos, which are clearly for an adult-only audience, it's really an issue that everyone here should take seriously as part of the broader discussion around what we really need in terms of this issue.

I also, I would echo, though, what Kyle said and what Jessica said about the opportunities that technology presents for common ground in some of this area. I really think that is true in terms of the ratings and the parental information area, and that people around this table can work together to make a significant, significant improvement from a parent's standpoint in terms of giving them the tools they need to decide what is a family-friendly offering for their kids.

I do think that technology can be everyone in this room's friend over time. But that technology does not address the issue of some of the poor decision-making that's done in the advertising and promotions area, and I'm sure Brent hears it all the time from his members as we hear it all the time. It's just common sense that there have to be thoughtful standard.

Marty, I'm sure you'll want to respond.

The CHAIRMAN. Tom and then Alan.

Mr. CARPENTER. I want to go back to the issue of a fines-only approach, a fine-based approach. It's somewhat telling that the sug-

gestion comes from Clear Channel, which earlier in this presentation trumpeted the fact that it's rewritten its employment contracts so that its employees will have to pay the fines that the FCC levies against it for programming at the stations in violation of FCC's indecency regulations. I think that's a huge problem.

I'd like to suggest that it highlights the problem that exists, that in a competitive media landscape where employers are hiring people for the express purpose of being provocative and pushing the envelope and being controversial for a company to then turn around and expose that employee to financial ruin because they have to pay their fine is no better than if a bill were to be passed that would have the government levying those fines against individuals.

The CHAIRMAN. Alan.

Mr. WURTZEL. Mr. Chairman, I'd just like to make two points. One is to clarify the Cialis issue that Senator Inouye mentioned. At NBC, and I know it's the same at the other three large networks, we review about 50,000 commercials a year and we make a determination, just as we do on programming, whether the content of the commercial is appropriate. I can assure you that many of the commercials that come in don't go out the way they came in. They are modified and changed. And then we make a determination as to what an appropriate time period is.

In the case of, say, something like Cialis, at least on NBC, and I think I could speak for the other networks as well, it generally is assigned to those programs where we think it is appropriate with respect to the composition of the audience.

The thing that's a little frustrating in a forum like this is the lack of specificity with respect to anybody who sort of remembers a particular commercial somewhere on television at a particular time. So I can't say that it hasn't happened, but I just want to assure you that the same self-regulation that we have for programming does apply to commercials.

I'd like to bring up a second point, though. The other part of my job is research and what I do is we talk to the consumer all the time, and what we really find—there's no question in my mind that there are a number of people who are in the audience who feel very strongly, as does Brent and a number of other people, with respect to the content of the programming. But the vast majority of viewers, of consumers—and it's been confirmed by many, many studies—are really searching for information. What they're looking for is the ability to make a judgment and to have that judgment apply for their own particular family and their own particular situation.

I think that, to Marty's point, the biggest failure of the V-chip has been our inability to effectively inform people about its existence. I think there's no question that, as Jack indicated earlier, simple things like putting tags on TV's, letting people be aware of this—what you find from consumer research is that people respond when there's, first of all, a solution to a question or a problem and, secondly, that solution is made clear to them.

I think it's true that the V-chip is not that technologically difficult for people to do, but they don't really know how to find it. I think that one thing that can be done right away, without having to deal with things like the First Amendment or things like what's

appropriate and inappropriate, is just to begin to give people the ability to make informed reasonable judgments for their own family. If we—if basically legislation were to attempt to help people understand about the V-chip, to publicize it—I mean, we've been doing it yourselves and each of us have done these things. But I think that there's a critical mass that can come if everybody's working in the same direction at the same time.

I think that we would see very quickly that a large proportion of the population that would probably use the V-chip—and that is families with kids sort of 6 to 14 or 15—I could pretty much guarantee you that after a year of a concerted effort you would find a significant increase in the use of it, because it's exactly what the consumer is looking for.

Senator INOUYE. Mr. Franks.

Mr. FRANKS. I just wanted to follow up on Jim's point, and Alan already touched on it a little bit. I'm very easy to find, disgustingly easy. Witness that a lot of people here know how to find me. The next time you see one on CBS or contact Alan or Preston or Lee, where you think there's a promo—we look at every promo that goes on our air and we make a decision about what is the appropriate time period, and we do that every day, 365 days a year. We look at every ad. We reject many. And by the way, many of them end up in other places.

But to my point this morning about specificity, that to me was an overbroad generalization. It used to drive me crazy when Senator Simon talked about seeing "The Texas Chainsaw Massacre" on television. It certainly wasn't on one of the four networks.

I make this as an invitation to the room: If there's something that you see on CBS where you think it was the wrong time—Brent knows how to find me, I assure you. But if it's a promo or a commercial or something that you think ended up in the wrong place, I'd love to hear from you, because if we made a mistake—and by the way, we do make mistakes—we'd like to correct it.

The CHAIRMAN. Well said.

Ms. MARVENTANO. Mr. Chairman.

The CHAIRMAN. Jessica.

Ms. MARVENTANO. I just wanted to follow up on a comment that Tom made about Clear Channel and our support of a fines-only bill. I wanted to clarify that that fine-only bill doesn't absolve us of our responsibility simply because we have contracts that hold our employees accountable to complying with existing law today. Clear Channel fully supports its employees, but we ask them, in partnership with us as licensees, that we all comply with the law as it is today.

We're at risk of losing licenses here. These are huge assets for us and we take this very seriously.

The CHAIRMAN. Could we get—yes, go ahead.

Mr. CASORIA. I would like to respond to the——

The CHAIRMAN. Pardon me. You have to say for the record who you are, so we'll know.

Mr. CASORIA. John Casoria.

The CHAIRMAN. Yes, sir. Thank you.

Mr. CASORIA. What Mr. McSlarrow talked about regarding multicast must-carry, I think we should not leave that out as a pos-

sible remedy with all these different things we're talking about. The issue here if we're talking about free speech is the more who speaks the better. So if we give the American public more choices out there, the better it is for them to choose.

What the cable industry wants to do is they want to take off family-based programming because they don't think that it's economically beneficial to them. The reality is that family-based programming helped initially drive audience to cable. That is especially true with Trinity. Trinity partnered with all the cable companies when they were just starting up many, many years ago and we drove our audience to them so they could pick up Trinity.

Now what they want to do is they want to leave off—put on MTV and leave that on, but they want to take off the faith-based or the family-oriented alternatives that companies such as, broadcasters such as Trinity, provide. What's going on is, especially with a la carte, is that they want to narrow the field. Narrowing the field will stifle the free marketplace. We need to open the field up to allow faith-based, to allow family-oriented programming to compete with some of the more, in all honesty, raunchier networks that are out there, such as the stuff that goes on MTV, etcetera.

To prevent the American public from having those types of choices I think is the worst kind of violation of the First Amendment.

The CHAIRMAN. First is Jim and then Jessica, then Lisa, then Matt, and then David, and then Joey. You're up, Jim.

Mr. DYKE. Mr. Chairman, I'm new to this debate and that can maybe either provide some fresh perspective or maybe it's just annoying. But a couple of things that catch my attention. What I have learned since I have become involved with this is, one, that people do want more information. They want to have the tools to enforce the decisions that they make from the information that they have. What I've found is those exist and they are widespread.

I have also found that, through research, that the American people don't want government making decisions about what they see on television. They want to maintain those decisions. So blocking technologies; there seems to be discussion around this table as to whether they work or don't work, have we given them enough time. When I first became involved, I saw Mr. Bozell on television say that they're too hard and they don't work. And I thought, well, he knows; he's the head of the Parents Television Council.

So I got my remote and I tried to do it myself. I'm not going to tell you my grades in college, but I didn't do real well. And I did it and it wasn't hard, and I set it to TV–14; it blocks everything above TV–14. I set it to TBY, it blocks everything above TBY.

If there needs to be a debate, an agreement on the appropriate ratings or whatever, that's a good debate to have. But let's not suggest that it doesn't work. Family groups that are interested in helping parents control—the Christian Coalition, how many members do you have today? I mean, if a group that is concerned about families and parents like the Christian Coalition, that does great work, isn't involved in telling people about these blocking technologies, then they haven't had a real chance to work.

The uproar, the complaints, the overwhelming feeling that America is outraged and wants action. Brent's group does an excellent

job at providing people the opportunity to send in a complaint to the FCC, and that's where the majority of complaints come from. Maybe there is an overwhelming uproar out there of millions and millions and millions of people that want government to step in and take action. But we don't have the evidence of it. We have a well-organized campaign to submit complaints to the FCC, and when we talk about smut, sewage, and pornography on television, the river of it, then we see complaints against shows like "CSI," "Friends," "The Simpsons," some of the most popular shows on television.

So I say that to maybe provide some, again, balance to a debate that a lot of people have been engaged in for a long time. But it's worth sort of thinking about the realities, and that's some of the things that I see from my fresh perspective. The pothole that exists that maybe we're not talking about, maybe some people don't agree that it's a pothole.

The CHAIRMAN. Tom, weren't you next? David? You're next. I didn't write them down. Bad.

Ms. FAGER. Yes. Everybody's talking about more choices. There was a recent study that linked consolidation with indecency, with increased indecency. I believe Creative Voices and Free Press released that study, along with media ownership, which is something the FCC has not reviewed in a very long time. Less than 4 percent of broadcast entities are owned by minorities, and that's all minorities, and that includes broadcast and TV. If we had the diverse voices everyone is talking about, I think that we could get rid of a lot of this indecency.

I wanted to talk about this "Saving Private Ryan" piece, because I listened to FCC Commissioner Martin when he was a commissioner talk about this and say that that's not something the FCC was ever looking at. I find that these broadcasters have this self-imposed fear that they put on the American public because we only get their perspective. I mean, the FCC does not have a line into America and to consumers. But if I sit here and watch C–SPAN for a while I can see these hearings and listen to people talk, and I remember him distinctly saying they put out a press release on their website, they kept telling everybody they're not going to fine them, because this came up before on like Memorial Day last year.

So we keep hearing this and you keep repeating this kind of propaganda that this was a problem somewhere, but it's not. We're talking about some of the things—and I'll repeat—this common sense type of stuff that could be done.

Again, I talk about—when I talk about indecency, I just want it on after 10:00 p.m., a safe haven for children. When I worked at Discovery Channel, that was—we had safe havens. I find that broadcast television, the radio—the radio should be a safe haven between 6:00 a.m. and 10:00 p.m., but we have things like "Tookie Must Die Hour" on Clear Channel stations, things that are like celebrating modern day lynchings.

So I just ask, when are we going to look at the common sense things and enforce what we have already on the books?

The CHAIRMAN. Matt.

Mr. POLKA. Yes, sir, thank you. I'd first like to point out to John from TBN the issue that he brought up concerning MTV and fam-

ily-oriented programming. That's an issue that our members experience every day. We would like the opportunity to put more independent diverse programming on our cable systems that our customers are asking for, but we can't because of the way that the system works, because of the way the programming contracts and wholesale practices work today, that basically, Mr. Chairman, require us to carry content on expanded basic. We do not have the ability to provide any other type of tier or any other type of tiered service, because the contracts that we receive from the major networks that own more than two-thirds of the programming dictate that we carry the programming on expanded basic, as the highest level of service we can carry on, on expanded basic.

Not only that, but again I come back to the point of using broadcast signals to tie and bundle affiliated programming. The effect of that, Mr. Chairman, is to keep independent programmers, other diverse programmers that are trying to actually come into the market with more family-friendly viewing, with more family-oriented programming, out because they cannot simply get—there is just not capacity for them to be carried.

Our cable systems, unfortunately, are not infinite. We only have a certain amount of space. Particularly in our markets, which are small or rural, we have smaller systems that do not have the capacity and the shelf space and the number of channels that some of the systems do in the urban systems. So consequently, the vast majority of the content that we carry is carried—is owned by one of the major four networks, that require us to carry that programming on expanded basic.

So that is a significant problem, and that's why I will just say to you I hope in your review as you move forward with this, besides looking at ratings and V-chips and things of that nature, you look at the wholesale programming practices that cause this content to come into the home, because I'm here to say on behalf of our members, who hear from our customers every month, this programming is coming into their home because of the way that we have to take that programming.

The CHAIRMAN. We've got Joey and then Martin and then Preston.

Mr. PANTOLIANO. I'm sitting here thinking. One thing that comes to mind is that we all want to watch what appeals to us when we want to watch it. So at the Creative Coalition, if we just offered up our talents, because we represent some of the finest writers, directors, actors, singers in the community, to partner up with Clear Channel and Fox and ABC and CBS and Trinity Broadcast Network and we did, we put together a budget and we did a series of PSA's to educate how to use the V-chip as a point of reference, so that within the next 5 months we could start putting these ads—I mean, every network has these PSA's that they do for their new season, their midseason replacements, so that we would be able to use all of our artists, like they do when we have natural disasters. Somebody writes a song and every famous person comes out and sings this song and donates all that money to the area of tragedy.

So if we all joined together and started educating parents as to how to use it, what not to watch, when to watch it, what would be

indicative of that, I think that would be an immediate start to solving this problem.

The CHAIRMAN. Thank you, Martin.

Mr. FRANKS. First I would like to come to the defense of Senator Inouye, since he was the broadcasters' champion a few years back in helping us gain retransmission consent, and regain control over our product. And I'd like to say to Mr. Polka, one of my other odd jobs at CBS is that I do negotiate retransmission consent deals, including with a few of my colleagues here at the table.

I'm in negotiation right now with a number of Mr. Polka's members. We have made it clear to them that we would happily accept a simple cash fee for our CBS product. And I can think of only one instance in which—in every other instance, Mr. Polka's members have come back and said we don't want to pay you a cash fee. But, if we can carry other of your cable channels, and pay them, can we have retransmission consent for that?

So, there are lots of confusing issues here today. There's multicast must-carry, and there are all these other things when I thought we were going to have a session about what we could do about decency. Dragging retransmission consent into this discussion is unfortunate. And I don't think entirely appropriate. Thank you.

The CHAIRMAN. Preston?

Mr. PADDEN. Yeah. I just want to second what Marty says. At ABC any cable operator who wants to carry just ABC, we're happy to do a deal with them. We have filed affidavits at the FCC swearing that the cable operator who wants to, can get just ABC. Doesn't need to carry anything else that we have. I actually sat down with Mr. Polka to try and resolve this and I said, Matt you can—you can pay cash for ABC. He said, well we don't want to do that. And I said, well then you could carry some other networks we have, in which case we'll give it to you for free. And he said, well we don't want to do that either. And I said, well how is it that you want to compensate us for the over $3 billion a year we spend in programming, creating the ABC program lineup that you want to sell to your customers? And he said, well that's the problem.

Mr. POLKA. Mr. Chairman, can I respond to that please? The problem is that under the current rules that have been created by the Congress and the FCC, the local broadcaster has the monopoly ability to dictate price in the marketplace. Yes, we have received cash offers from CBS, from ABC, from just about every other broadcast group. And in many cases if we were to agree to those cash options we would be applying rate increases to our customers that we have shown will be near $2 to $5, per subscriber, per month. That is not something that our subscribers in rural America can bear. And furthermore, it would put our members' ability to continue to provide advanced highspeed services at risk.

So, it is, I think unfair that both Mr. Franks and Mr. Padden would talk about cash offers when they know they have the ability, by the rules, to set the price as they see fit, without any competition in the marketplace. We have asked the FCC to consider, and the FCC has placed for comment, and it is pending before the Commission to reconsider retransmission consent. And to allow competition in the marketplace. Such that if a local broadcaster elected

retransmission consent and sought consideration for carriage of its station, whether through affiliated carriage or cash for carriage, that would allow us to seek lower cost alternatives in the marketplace. They—at this point—that is pending before the Commission. We hope the Commission will take this petition up, and decide that competition in the marketplace is good. Because, I believe if competition in the marketplace were permitted, then we would not have the types of negotiations that are taking place in the marketplace. And frankly, I think we would have these things solved.

The CHAIRMAN. Thank you. I'm trying to get a little legal advice here, about what really is the status of existing law with regard to the obscene, indecent, profane, and the violence issues. I find it sort of a patchwork really coming out of the 1934 Act, and coming forward with several different statutes. It would be our intent to try and recodify that and see if we can't get an understanding before we're through, of what really we're all taking about. And violence is not currently in the statute that I have before me, the criminal statute.

But, with regard to where we are now I would like to just direct our attention to the question, the basic question of two things. One, what do each of your groups, or whoever wants to speak for them believe there ought to be in Federal law that is not there now that deals with the subject of obscenity, indecency, profane language, or violence? And two, what voluntary measures of the industry itself would you be willing to accept to have a situation such as Jack had described of giving the industry an opportunity to set up a common standard of rating content? So, that we would have some basic endorsement of that, or at least acceptance of that to see how it worked.

Let me cover the first one first. Now, have any of you looked at the statutes? And have you decided whether we should change them, whether we should codify them, put them all together in terms of a definition that applies to communications, per se, that are provided to the public that deal with profanity, indecency, profanity—I'm repeating myself. It's obscenity, indecency, profanity, and violence. Do any of you want to express an opinion? Should the Federal statute cover all those? Brent?

Mr. BOZELL. Senator, two points if I may. One is there's been this discussion about how does one define indecency? I don't know how to do it. It is not that one says it can't be done. I just don't know how to do it. And I don't know of anyone who has come up with a definition of indecency. Note, that we're not talking about obscenity. And so much of what is on television today is obscene, in the Webster definition of the word obscenity. And yet it isn't legally obscene because the word obscenity has been defined in such a way, that I believe it must include visual insertion. So, nothing could be obscene on the radio.

So, this is so slippery a slope that you get into when you get into a full definition. But there's another point, Senators, that I think needs to be hammered home here. I think there's something that everyone is missing around this table, or doesn't want to address. Contrary to what we heard across the table, which is flat out wrong. It is not a function that the public doesn't care, and doesn't want government to do something. The Pew Center shows that 75

percent of the public wants tighter enforcement from the government on these rules. Now why is that? These airwaves are owned by the public. They're not owned by any company represented here, and they're not owned by the Parents Television Council either. They're owned by the public. The law states that you have to abide by community standards of decency.

Now there is some—there's going to be some gray area here. But, that there's some black and white area here as well. There are things that are on television, on broadcast television that are simply indecent. And I really don't care about how many band-aids we talk about it. Senators, the law says you can't be indecent. And people who violate that, willfully violate that, gratuitously violate that—"Saving Private Ryan" wasn't gratuitously violating anything. And that's a smokescreen. I'm talking about programming that gratuitously violates community standards of decency, should be fined.

The CHAIRMAN. I believe that it would be correct to say that the FCC has interpreted the criminal law, and said according to a note that I have here, that indecency is language or material that depicts or describes sexual or excretory activities and organs in terms patently offensive as measured by contemporary community standards for the broadcast medium. Now, that's pretty vague. But, it is defined by past FCC decisions. That's what you're talking about, and greater enforcement of that standard. Is that right Brent? Jack?

Mr. VALENTI. Mr. Chairman, again it's a standard. It is not an indictment, it's not the description of a crime. As a matter of fact in the motion picture business, we have obscenity laws in about 40 states pertaining to motion pictures. The last time that an obscenity case was filed against a motion picture was in Albany, Georgia. And that picture was—the one—I'm trying to think of it now. The one with Ann Margaret, and Jack Nicholson, and Candace Bergen—somebody will remember that picture. Carnal Knowledge. And it went all the way to the Supreme Court in a nine to nothing decision. They threw it out.

The reason why is, but we go by the Miller standard. Which is prevailing community standards. That is a loophole big enough for 10 Hummers to get through. And as a result, no District Attorney, no Attorney General has filed any obscenity charges against a motion picture. Because it will get thrown out in the higher courts, because of a lack of precision.

Now, when Brent talks about all of this terrible stuff that's on television, I'd like him to make a catalog of it. Because what you find is nobody can make these judgments. When I first started with the motion picture rating system, I retained two social scientists, one child behavioral expert, and a psychiatrist. And I said, what I need from you as we go to this rating system—put down on a piece of paper exactly where the demarcation lines are in these various categories that we have. But, it's got to be specific because otherwise we go back to subjective standards again. Guess what? Couldn't do it.

This reminded me, Mr. Chairman when President Johnson was President, Walter Lipman and Bill Fulbright would come in and fulminate against the Vietnam war, or whatever. The President

would say here's a piece of that yellow foolscap, and here's a lead in that pencil. Write down on there what is the specific order I half to give at 9 o'clock tomorrow morning? Well, Mr. President—of course, they didn't write it down because they couldn't. They didn't know what it was. I say again, standards are different from the specific definition that is lacking.

And that's what you have in the Supreme Court today. And that's the reason why to repeat, there's been in the last 25 years, there's been no case is filed because the District Attorneys understand there is no case there.

The CHAIRMAN. There is a law however, and it's basic criminal law. And they're based on FCC regulations that are being enforced today. And they have been enforced, and they've been upheld in various courts of the land. As to the FCC's fines, and the ability to dispense some sort of enforcement. And as I understand it the complaint we're hearing here today is there's not enough enforcement. Am I correct that the family groups—are you saying there's not enough law or there's not enough enforcement?

Ms. COMBS. Enforcement and law, both. Yeah, both. I would say both.

The CHAIRMAN. Well, tell me how would you change the law?

Ms. COMBS. Well, first of all I would pursue Senator Brownback's bill, and——

The CHAIRMAN. Well, that deals with fines. That deals with enforcements.

Ms. COMBS. Excuse me?

The CHAIRMAN. It's an enforcement bill.

Ms. COMBS. But you got to get—you got to get a bill—get it enacted in law. And then you can enforce the law after you legislate a bill.

The CHAIRMAN. What that does is increase the fine under the existing law, as I understand it.

Ms. COMBS. Right. That's a place to start. I mean I don't have that answer. But, I would certainly would agree to start there. I mean when you start fining people—what this is really all about—in my opinion. I'm only speaking on my opinion, at the end of the day, what we're really talking about is money and morals. I mean, that's where it really boils down to at the end of the day, in my opinion.

So, I just feel like you need to start somewhere, and you enforce fines. People are going to think twice, maybe before they do certain things, if they're going to be fined even up to $3 million. That's a pretty big fine that's in one of these laws. So, I think people will think twice, maybe before they, you know, do a lot of these different acts and a lot of these different things.

And I agree with Brent. You know, none of us like the government controlling our lives. I mean, we believe in a free enterprise. And we don't want the government in our lives. But, it comes to a point of that, if you have to have a choice where the government can come into our lives to legislate morals, and help what's on TV, or help stop what's on TV, or—I mean this is what's controlling the minds of our children. Our children watch so much TV every day, as we've all said in this room, and we all know. And both parents that have to work, and kids are left alone to watch TV, what they

want to watch. They are our future leaders. Their minds are being controlled by what's on TV. And I think that, you know we have to start somewhere.

The CHAIRMAN. The Brownback bill, S. 193 increases the maximum fines for obscene, indecent, or profane language. Which is the statute that I've referred to. It really says—that statute says radio transmissions. I don't know if you know that.

Ms. COMBS. Violations by television and radio broadcasters.

The CHAIRMAN. Not to exceed $3 million dollars for a 24 hour period. That's the one that you were talking about. Yes. Bruce?

Mr. REESE. Thank you Mr. Chairman. It just seems to me, and this is perhaps simplistic that we have two choices here. One, is that we can try to change the existing law. And to address all of the issues that have been put around the table today. We would probably need to add violence to that category. And then we would need to define them, first of all. So, we need some more specificity and we need to figure out what violence is. Second, we need to give someone the responsibility to enforce that. That's probably the FCC. We probably—and I think you made this point, Mr. Chairman. We need to give them the ability to enforce millions of these complaints that have come in. And we need to give them the resources to do that. And then we need to facilitate it so that they can do that on a consistent basis. So that everybody out there understands exactly what the rules are. And it seems to me, we need to stop treating broadcasters, over the air broadcasters as if they're somehow second-class citizens under the First Amendment. And treat them the same way, as at least we treat cable at the extended basic level.

Or, and what seems to me to be the alternative here is that we can try to use the systems that we have in place. Whether those are the systems the gaming industry has in place, whether those are the MPAA standards, whether it's the V-Chip. We can enhance the education of the public about those tools. We can do our best to simplify them where they're possible. We can try a voluntary system that's unlikely to be subject to those same sort of constitutional suspicions that the first route is going to be. And we can tell people about it. We can engage in a public campaign to tell people the about that this system. Including the idea that you put forward of, you know, that yellow tag on the TV set that tells people how to use it. And then we can let the people speak. And through that they speak. And if the V-Chip turns off a whole series of programs, then that programmers are going to understand that message. The advertisers are going to get that message. It seems to me we have the opportunity to try a voluntary system. Or to go down a route that is possibly constitutionally suspicious. And it seems to me that what this Committee ought to try to do is to get all the people around the table to try the first one first. Before we embark on something that may, as I think one of you said earlier, just sits in that court for years, and not really address the issues.

The CHAIRMAN. Any other comments on this? David?

Mr. KINNEY. I just want to say, Mr. Reese was saying that we have a couple of choices. And it seems like we sit here, and we're talking about indecency. And it kind of waivers between if we're talking about protecting children or are we trying to define inde-

cency generally, and so forth? So, again if we don't have one uniform, not standard, but definition of what indecency is. I think its wholly unfair to the broadcasters, be they open air broadcasters, cable broadcasters, and retailers for that matter. So, as to the question—OK. And so, then one path you go down is find people. And just keep on punishing, and punishing, and punishing. And you think that will help. But the other idea is, you know everybody is saying we have blocking technology and that the power should be in that hands all that consumer. And obviously that's what we need. We need—we need—you know we're America. We should have freedom of expression. We should be able to broadcast anything we want. At the same time, the consumers should have the right to decide what they want to see and hear. And they ought to be able to have the right to protect had their children. The only thing about the V-Chip, as we look at that is, if for instance somebody, and with all due respect, Mr. Valenti I disagree with you, as regards. But, this is again for me personally. I wouldn't want my child to see "Saving Private Ryan". I want my child to have childhood. I want them to, you know, think that everything is all daisies and fun. Until they're ready for it. But, I want to be able to make that determination. I simply don't want you to make that determination for me for my children. So, again you have to come up with something that doesn't say, in my opinion this is good for this age group or that age group. You have to come up with a process that says here's what's in it. And then let each consumer decide.

So, as to what can the industry do? The industry can provide prior access to TV programming and all programming for that matter, to independent ratings organizations. What can the government do? The FCC can create a process to accredit independent ratings organizations to ensure that we protect against piracy and everything else. But, that would have broadcasters, regardless of what media it is, provide the prior access to that content 48 to 72 hours in advance. So, that an independent organization can just say to consumers, here's what's in it, decide for yourself. Thank you.

The CHAIRMAN. Bill?

Mr. BAILEY. Just a final note for a lot of folks saying that robust blocking technology is really what we need. And again, as I alluded to in my opening statement, I think we have sort of the best of any blocking technology out there. And our customers are satisfied. In fact 95 percent of XM subscribers identify themselves as satisfied, 85 percent of XM subscribers identify themselves as very satisfied. So, I think if you do give the tools to parents they will be happy with it, and they will use them.

The CHAIRMAN. Thank you. Our last comment.

Ms. FAGER. Last comment. I wanted to say it. We keep talking about giving that parents the tools. What about giving that public the tools to hold broadcasters accountable. I mean, if we're going to educate, we should educate them on how to complain, how to, you know what we can do to change things. I find it very interesting that the RIAA is holding, you know, holding college kids accountable for downloading. But, we can't hold broadcasters accountable who reach, you know, who reach millions of people.

Also, what we can do to enhance or better this law is what other people have said is to define law. I know a lot of grassroots organizations across the country are upset by the many ratio slurs for minorities that are, you know, out there on their radio. But, there is no law to protect them. A lot have them want to see this under the profanity laws. But, nobody has addressed any of those issues.

The CHAIRMAN. My feeling is that we do have a Bill waiting at the desk. It is the house Bill. It's quite as I said, almost identical to the Bill that was reported out of our Committee. But, it only deals with 15 percent of the problem. It deals only with over the air broadcasting. As I understand the request from the family organizations, it is to be more inclusive and to deal—to the extent that it's possible—with cable, satellite, and we have no one to talk about broadband, but broadband and other means of communication.

I do come back—and that's why I've invited my good friend. We just discovered that were at the same base in Arizona in World War II. But, to comment and give you a little bit of background and experience of the Motion Picture Association. We would invite those people who are willing to participate and to have some discussions—further discussions coming into December—about what we might do to try to have an industry based rating system that would be simple and really effective as far as giving families the opportunity to judge programs. We can deal with the subject of greater Federal involvement and mandating the information about the V-Chip. And having demonstrations on all media about how to use it. And I think I've seen some pretty effective ones myself. I think this—is this material still in 106? There are some of these here though. You can take a look at it, one of the cable control concepts. That I think has to be explored. And we also have to explore the question of what to do with the basic amendment that—Senator Brownback's bill in effect is an amendment to the House passed bill. If you look at it the right way. And whether the fines should be increased, and to what extent they should become more applicable. The three strikes and you're out concept is in the bill. And a concept of a hearing on license renewal for an FCC license. All of those just hit a very small portion of the communications systems now. And I do believe the greater goal ought to be able to find some way to see if we can rate all programming. And get an efficient way to notify the public of that. And to get a way to notify the public of the existence of the V-Chips, or control mechanisms that the manufacturers are including in their sets.

And Kyle, you mentioned the set top boxes. If we're up to 2008 we will soon have set top boxes, if the bill we've got in in conference passes, as far as the spectrum option is concerned. So I think we're in a period of change. Between now and 2009, most people will transition to digital receivers. And the spectrum option will allow us to buy the set top boxes for those who can't afford them. If the bill passes, as is outlined in both the House and Senate bill.

I do think that this is the time now, as we approach 2006, we ought to look at getting a bill that will deal with this subject. Whether it's a mandate or approval of a process, or whether it is going to have to be one that just deals with each segment of the communications industry is still left open, I take it. But, we

would—I would welcome the participation of the industry to assist us in making these judgments. And welcome the comments of the family based organizations on their assessment of the rating process as it develops. Senator Inouye, any comments?

Senator INOUYE. I'd just like to thank all of you, I join my Chairman because I know you're busy. So, let's all get back to work. Thank you.

The CHAIRMAN. We do thank you for coming. And it would be my hope to schedule a meeting of some kind, if necessary in this room on December 12th, to follow through with what we've done here today, and see if we can get a follow-up between now and then. The Senate comes back into session on December 12th. And we'll be in session during that week. That first day there won't be any votes until—I don't think until 5 o'clock. We have plenty of time during the day to have conference or a meeting here, or discussions, to try and further the concept of—see if we can facilitate the formation of a—really a total ratings system for communications in dealing with content. Any disagreement? We do thank you. You're all very busy people. You've been very good about staying through the day, and I personally thank you very much for your help.

[Whereupon the meeting was adjourned at 3:50 p.m.]

A P P E N D I X

PREPARED STATEMENT OF HON. SAM BROWNBACK,
U.S. SENATOR FROM KANSAS

Mr. Chairman, I first want to acknowledge and applaud your efforts today. I appreciate the work you continue to do to keep our airwaves clean and decent. This has long been a goal of mine and I am pleased to see that we appear to be making real progress. I am glad that so many from the broadcast industry are willing to participate in this Forum. We must all work together if we are to satisfy the goals of the many interested parties.

A 2003 study by the Parents' Television Council found that the use of profanity increased by nearly 95 percent between 1998 and 2002. Another study, by the Kaiser Family Foundation, showed that nine out of ten parents believe that the media contributes to children using more profanity, becoming sexually active at younger ages, and behaving in violent ways. I am among that 90 percent of parents who believe the media affects our children. Some programming clearly has a positive effect, and I applaud those broadcasters who provide educational and entertaining material suitable for children. However, a growing number of broadcasters are allowing indecent and obscene material to be broadcast between the hours of 6 a.m. and 10 p.m. when children are likely to be watching and listening. The amount of profanity, violence, and sexually explicit material broadcast on the most popular primetime shows is alarming. As a parent, I want to know that the free, publicly available content that is broadcast in my home is safe. I want to allow my children to watch television and listen to the radio without constantly worrying that they will be subject to indecent material. The ability to broadcast to large audiences during primetime hours, carries with it the responsibility of keeping the content of the programming decent.

As you know, I introduced a bill earlier this year to increase the penalties on broadcasters who broadcast indecent or obscene material. My bill, S. 193, was introduced in January and currently has twenty-seven bipartisan cosponsors. It is short and simple. It increases the maximum penalties on broadcasters from the current $32,500 to $325,000 per violation. Fines are imposed on broadcasters who are broadcast obscene, indecent or profane language as determined by the FCC. There is a cap on the penalties such that no continuing violation can result in a penalty in excess of $3 million.

This is a simple first step in the fight for decency on the public airwaves. It may not be the final answer, and may not be the perfect solution, but it is something we can do in the short term, to deter broadcasters from letting obscene and indecent matter be distributed to the general public. This bill imposes reasonable fines. The fines currently in place are not reasonable. They are hardly a slap on the wrist of broadcasters who refuse to respect our right to be free from indecent programming. My bill would impose penalties that would make broadcasters think twice before broadcasting indecent material over the public airwaves.

Thank you, Mr. Chairman, for convening this Forum. I hope that we will move forward quickly with legislation that will protect our children from exposure to inappropriate and offensive programming. Thank you.

OPEN FORUM ON DECENCY—FOLLOW–UP MEETING

MONDAY, DECEMBER 12, 2005

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

The Committee met, pursuant to notice, at 10 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. Good morning. Senator Inouye is delayed, but he asked that we go ahead. He should be here in 15 or 20 minutes.

As we all know, this Committee held a summit on decency 2 weeks ago and received some very valuable input from all those who participated. And we certainly commend, and thank, all those individuals who took the time to visit with us on this subject.

The Committee has been encouraged to hear that progress has been made since then, and we have read about some of the comments that have been made about market-based solutions. Therefore, we've invited back again two of the participants to come and put on the record an update on what they have been working on in the past 2 weeks.

Now, many others have made valuable input as well, and we're going to look forward to continuing our dialogueue with all who participated in that last meeting. We'll have another hearing on January 19th, after we reconvene, next year.

As for today's Forum, we'll hear from our good friend Jack Valenti, who spent a lot of time working on this issue and made substantial contributions that first meeting on November 29, particularly on the issue of universal ratings systems. And we also have, today, Kyle McSlarrow, who's from the National Cable & Telecommunications Association, who has been working on solutions in the cable industry.

Basically, what we're doing today is to try and keep the ball rolling and keep people thinking about solutions to the problems we discussed at the last meeting. So, Mr. Valenti, would you like to give us a little update on what you've been doing since we last met?

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

Mr. VALENTI. Yes, sir, Mr. Chairman. I would like to, on behalf——

The CHAIRMAN. You have to hit the button.

Mr. VALENTI. I never can figure out how to hit the button. OK?

On behalf of my colleagues in cable, broadcast television, and movies, I want to report to you that we have been hard at work trying to make the American parent understand that they have total control today over all the visual programs that come into their home. And I'll tell you some of the things we're doing to make that a reality. Then I'd like to comment briefly on, I think, the most valuable concept in our Constitution today, which is called freedom.

Since our last Forum in November, we have met 3 times and in addition, twice by conference call. We intend to meet twice a week, beginning this week, with an additional 2 to 3 conference calls, until we're ready to put to paper what we hope is a plan that you and Senator Inouye will find to be suitable, reasonable, and beneficial for parents.

Now, let me tell you what it is we've been working on, and I'll give it to you in highlight form, because, obviously, no final conclusions have been reached.

The first thing is that we're trying to show a closer rapport between TV ratings and movie ratings. Movie ratings are the most highly recognized and understood. They've been in the marketplace for 37 years, and parents now instinctively know what a G rating is and what a PG, what a PG–13, and an R—and they know that. So, what we're trying to do in some of the work we're doing is to make parents understand the close resemblance between TV ratings and movie ratings, and, thereby, enable parents more quickly and easily, and more confidently, to know what these ratings mean.

Second, we want to see how we can offer more informational and educational presentations to parents to make them know that they have, as I said, total control over the kind of family viewing decisions they want to make today. And we want to explain that to them.

Third, we want to reach out to TV retailers and also to manufacturers, so that when a customer comes in to buy a TV set, they instantly realize that within that TV set is a V-Chip, and brief instructions on how to use it.

Fourth, we want to make sure that the TV icons are readable, presentable, understandable, and stay on the right length of time.

Fifth, we want to reach out to community centers and to churches and to service organizations to give them information they can distribute which shows that parents have control, can choose the programs they want, or the programs they don't want.

And, finally, we are reaching out to the respected and prestigious Ad Council, to try to enlist them in our labors, so that, through them, we can communicate more frequently, more believably, and more persuasively with the American public.

That's just some of the things we're doing. We're going to have other creative ideas. But, in the end, we're trying to reaffirm to parents that, through the V-Chip and through cable blocking mech-

anisms, they have within their power to exert all the command they choose over what they want to see, or not see.

Now, let me take about 2 minutes here, Mr. Chairman, though, to talk about a truth that is larger and, in my judgment, far more important than anything we will say here today. It is a truth that cannot be repealed or shrunk. And it is this. Governments—which means the Congress and the Federal Communications Commission—cannot, and must not, strip away from the people their right to choose the way they want to—whatever they want to see or read or think or watch or hear. It is in the long-term interest of this country, Mr. Chairman, that the people make sure that the Congress and regulatory agencies never intrude on rights that are writ large in the title deeds of freedom which are resident in our Constitution today, rights that sustain and nourish this country.

Now, I don't have to tell you and the absent Senator Inouye what those rights are. Both of you served your country in war, you fought for your country, you almost died for your country. So, you don't need me, or anybody else, trying to tell you about those rights. You know them. And they ought be treated with great veneration and with a sacrosanct value.

In national survey after national survey, Mr. Chairman, one significant fact emerges. And it is this. The surveys show that, yes, many Americans do object to TV programming—some TV programming that comes into their home. But when you ask them, "Do you want the government to step in and fix it," the answer overwhelmingly is no. Now, these surveys—there are more than a half a dozen of them—the answers range from 29 percent to 8 percent that say, "Yes, we would like the government to step in," contrasted with 70 percent to 80 percent of Americans who say, "No, we do not want the government to be involved in this."

So, I say thank God—thank God—the vast majority of Americans, in their native wisdom and in their commonsense wisdom, understand that you cannot take away these rights from Americans. And you cannot allow a few loud voices outside the Congress to try to entice the government to go where the people plainly do not want this government to go. I can't explain it any more clearly than that, so I'm going to do the reasonable thing—no, Mr. Chairman, given the fact that—the title of this Forum, I'm going to do the decent thing and say thank you very much.

The CHAIRMAN. Well, Mr. Valenti, Jack, really, to me, you're demonstrating, once again, that you're the icon of American entertainment, as I understand what you're doing, all on your own time. You're retired now. What you've done in the last weeks since we had that meeting, I think, is overwhelming. We've had constant reports about changes that are taking place. And I—we agree with you, I'm sure—Senator Inouye and I agree with you that it ought to be possible to have a system of ratings that is so similar to the motion-picture industry that there will not be confusion in the minds of parents as to what their children should not be exposed to.

But we look forward to working with you, and it sounds like you're going to have a busy couple of weeks before Christmas. And I look forward to having you come back again, if you will, in January, and let us know what further progress has been made.

Mr. VALENTI. Yes, sir.

The CHAIRMAN. But we thank you for keeping the pressure on. Some of us don't like that legislation that's been introduced, but I think it would have overwhelming approval here, unless some action was taken, on a voluntary basis, by the industry. So, we thank you for keeping the pressure on.

Now, Mr. McSlarrow, I was in hopes that Dan would be here before we called on you, but it's my understanding that you, too, have been very hard at work. You represent NCTA here today, have you got anything you'd like to tell us that is happening, or going to happen, in your part of the industry?

STATEMENT OF KYLE MCSLARROW, PRESIDENT/CEO, NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

Mr. MCSLARROW. Well, Mr. Chairman, let me, first, just add my thanks to Jack Valenti. After the last Forum, I and a group of other industry leaders, approached him and asked him to suit up once again. And, as you pointed out, he's done a great job, and we appreciate his leadership.

Let me just say, also—I'm not going to try to duplicate Jack's eloquence on the First Amendment, but I will state, for the record, all of that is something that I wholeheartedly agree with.

As we talked about earlier, and you've seen some press reports, I did want to at least report to you on some decisions made by individual cable operators.

When we met last—at the last Forum, in November, there were a lot of ideas put on the table. And I hope I was fairly clear that our view, partly for First-Amendment reasons, and partly for some practical reasons that I'll get into in a second, was that government mandates are not the answer, whether it's an indecency standard or a mandated tiering solution or, worst of all, a mandated a la carte. The right place for these kinds of decisions to be made is in the marketplace, partly between operator and programmer, and certainly between those offering a service and the customer.

Over the last few weeks, I've had a number of conversations with cable operators, and I can report the following, in terms of individual decisions that have been made. Comcast, Time Warner Cable, Advance/Newhouse Communications, Inside Communications, Bresnan Communications, and Midcontinent Communications have each told me that they intend to offer what they call a "family choice tier" in the near future. All of these operators have reported, by the way, that they intend to offer such a tier, subject to existing commitments and program agreements, and they're currently reviewing those agreements to determine how such an offering can be made.

In addition to the companies I've named, there are other operators who have told me that they intend to—or are interested in offering a family choice tier, but they're still reviewing the technical and legal contractual issues related to such an offering.

Now, Mr. Chairman, I can't sit here today and tell you exactly what that looks like, because these are individual company decisions, they're subject to negotiation with programmers. I suspect that they'll look differently, one to another. But at a broad conceptual level, the idea, I think, from the conversations I've had, goes

like this, which is, in addition to the choice that people have today to get a broadcast basic tier, which would have all of the broadcast networks—ABC, CBS, FOX, and the like—plus public-access channels, you would have a fork in the road, in essence. You could then take that broadcast basic, which, by law, you're compelled to buy, and you could—you could get an expanded basic package, which is the 70–80 channel lineup that we all are very familiar with today, or, instead, you could choose not to purchase the expanded basic, and you could buy what would be called a "family choice tier" that would be a digital tier. And, again, I don't know—and I think it's still to be determined, at this point—what exactly the offering would look like, what networks would be on it, the pricing and the mechanism, but, at a conceptual level, it would give people a choice.

As you know, Mr. Chairman, I represent an organization that has an interesting makeup. I represent not just cable operators, who, themselves, serve 90 percent of the cable subscribers in the United States, but I also serve 200 cable networks. And I should say that these individual decisions made by these operators were not easy decisions, nor is this an easy place. Because when you think about the cable offering that's developed over the last 25 years, the marketplace and the negotiations between cable operators and programmers has produced the single-greatest engine for diversity and compelling content in the world. It should not be lightly intruded on. This has developed over a number of years. We are able to give people packages of all kinds of content for the best value and the best price and the greatest choice. And everybody's got something different that they like, even though there are, obviously, higher-rated programs than others. But what this means is, these decisions by the operators are probably going to produce some very serious negotiations between operators and programmers.

The good news is, they have a 25-year history of working together to produce what I regard, as I said a moment ago, the greatest engine for diversity and content in America today. But I don't want to downplay this—the fact that this is a very tough place to be. And I think the practical consequences ought to highlight my final point, which is that it's for that reason that I really hope we can take mandates off the table, because it's hard enough for the people in this space—operator, programmer, and customer—to figure out the best way to deliver these services. If the government intrudes into this space, they will get it wrong. That is my firm belief. And I think—for all of the eloquent reasons that Jack just stated, I think they will do so in violation of the First Amendment.

So, I think the posture of the industry—and now I'm just talking on behalf of the cable industry—is one where we want to do exactly what Jack described, we want to continue driving parental controls into the home. We want to make it easy, simple, understandable for people to use the remote, or some other means, for a V-Chip or our cable parental blocking technologies. We want to, essentially, give people the ability in the home to control the viewing, to see anything they want to see as adults, and, surely, to protect their children from any content that's unsuitable. And I think the combination of looking at the ratings, driving the message into the

home about parental controls, making the parental controls even better, and then these kinds of individual decisions to offer a family tier by the operators, ought to be a complete answer, in my view.

And I'll stop there. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. The Committee's Co-Chairman has arrived.

Senator Inouye?

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

Senator INOUYE. Well, I'm sorry I wasn't here to receive your testimony, but we've been receiving reports that cable is now prepared to provide family tier channels.

Mr. MCSLARROW. Yes, sir. As I just reported, I'm in a position right now to report some individual decisions. Comcast, Time Warner Cable, Advance/Newhouse, Insight, Bresnan, and Midcontinent Communications, who, together, I think, represent well over half of the cable subscribers in the country, have told me that they intend to offer a family tier in the near future. And then there's another group who are looking into it, and looking at the technical and legal ramifications.

Senator INOUYE. Well, I want to commend you on that. If I may ask a few more questions. When do you anticipate beginning this programming?

Mr. MCSLARROW. I don't know, is the short answer. What I have been told—because, again, these will be company-by-company announcements. I believe, over the next couple of weeks, that you'll see at least one, if not two, cable operators make announcements of their offerings, and when it's going to roll out. And I think others may follow on there. And I think everybody that I've talked to is pointed toward trying to work as hard as possible to deliver a service as early in the new year as they can.

Senator INOUYE. I would suppose that everyone here has a different opinion, but who will decide on what is family friendly?

Mr. MCSLARROW. Well, I think, ultimately, it's going to be the cable operators' decision, but it has to be a decision that's done in conjunction with programmers. And I think one of the difficulties about getting into this kind of arrangement is trying to ensure that you meet customer expectations. If you tell people it's a family friendly tier, there's got to be some logic principle that underlines that. I think it will be different for different operators, you know, because I should point out—it probably doesn't need to be said, but I'll say it for the record—that you can't have a situation where operators can get together and actually determine an offering without getting into antitrust implications. So, they're going to each make individual decisions, and I think they're all going to be focused on what is best for the customer. If there's an expectation of a family friendly nature for programming, they're going to try to meet that, but there may be different ways of coming at that. Some may be ratings-driven, and others may meet some other logical principle that underscores that.

Senator INOUYE. Mr. Valenti, we've been advised that, in the few short days that you've had since our first Forum, that you've been frantically working to figure out some way to simplify the system

so that you don't have to be a college grad to figure out what G is, and what PG is. Can you tell us about your effort?

Mr. VALENTI. Mr. Chairman, as I said earlier, we have been working—and I want to say how wonderful it's been to work with Kyle. That's just—we've been working broadcast television, movies, and cable in a grateful unity. There has been no discord at all. They're all on the same hymn sheet.

What we're trying to do is to let parents understand, first, that they have total control now over all visual programming that comes into their home. No. 2, I think our immediate priority is to try to let them know, through information, how closely resembling are the TV ratings and the movie ratings. The movie ratings have been in the marketplace for 37 years, and have overwhelming parental support. And, therefore, if we can show the parents that, when you see a G, PG, PG–13, and R, it comports with TV–G, TV–PG, TV–14, and TV–M, so that you can instinctively make judgments based on your knowledge of the movie ratings systems, and the close relationship between the TV ratings—when we organized that with MPAA and NCTA and NAB, we had that in mind, to make them closely allied. And then we're trying to give a lot of—more information to parents, we're trying to get the Ad Council involved in it, so we can have more frequent, more persuasive, more believable presentations, educational and instructional, to parents. Because the thing is, Senator Inouye, that right now the power is there. Every parent can take command of their television set. At this very instant, nothing else has to be done. And, as I said in kind of an aside here to Senator Stevens, we're dealing here with protected speech. And we can't ever forget that. And, therefore, I think it's far more important for the Congress to get this done through self-determination, self-regulation, self-movement on behalf of cable and the television people, than to have any kind of laws done, and particularly laws that are—or regulations that are done through threats and coercion. That's not the way we need to deal with this, and particularly in this very fragile, very sensitive area of speech that is protected by the First Amendment.

So, I'm very grateful for the opportunity to try to be able to lend some modest help here in bringing about a situation where the future will be in command of the parent. And, with our help, we want to give that—we want to reaffirm to the parent that he and she have total power, right now, to determine what they want to see and what they don't want to see.

Senator INOUYE. I want to commend my Chairman, because he's been, from day one, seeking to come forth with a joint congressional/industry type bill, and I think we've taken the first steps, so we should come out with something that most people should be pleased with.

Thank you very much, sir.

The CHAIRMAN. Thank you very much.

Let me ask you this. Would it be possible to tie something like a remote into a situation where it could only reach the family tier? I mean, could the V-Chip be modified so there was one access only to that family tier for a certain number of—you know, for children?

Mr. VALENTI. Well, I—the V-Chip came in about 10 years ago. It is irretrievable. It is irrevocable. When the manufacturers put the

V-Chip in there—I think Kyle will just verify this—it can't be changed.

The CHAIRMAN. Well, I've got to show my ignorance and not know its function, in terms of how you can only use it to—as I understand it, to deny access to certain channels. Isn't that right?

Mr. VALENTI. That's correct.

Mr. MCSLARROW. Yeah.

Mr. VALENTI. And it's based on the TV ratings. For example—and Kyle can go into more detail on this, because the cable people have an extraordinarily effective, easily understandable blocking mechanism that even I, with my—who is technologically illiterate, I even was able to understand it. But it's all based on the ratings. If you want to say, "I don't want anything that's above TV–PG," you can, with two strokes of your keyboard, it's all gone.

The CHAIRMAN. Well, what I'm getting at, Jack, is there's millions of sets out there already that have got a V-Chip in them. Will this system now be adaptable to that V-Chip if we go to a tier—family tier?

Mr. VALENTI. That, I—Kyle, you want to——

Mr. MCSLARROW. Well, there are a couple of different things. One, as Jack said, I believe there are probably a hundred million TV sets in circulation right now with the V-Chip actually embedded into the television set, itself. So, it's hardwired in. And so, you have to deal with it as it is.

What—and cable is different in this regard—what cable offers is on top of the V-Chip, which is already in the television set. If you have a set-top box, particularly if it's a digital set-top box, you have even greater flexibility and the ability to block, not just by rating, but by channel. You can take titles that are on the program guide, and you can block those out if you want, so that kids don't even see what's being offered. And every day, people are coming up with more ideas, in terms of the flexibility of that parental control. So, yeah, one—and the point of the campaign that NCTA, in conjunction with the sister organizations, launched this year was that you have the ability, today, to, in essence, create your own family-friendly tier, if you take the very few minutes of time necessary to put in a code and block out those channels or the networks, or by rating. There's far less time actually involved with this than most of us are used to do just getting our cell phones up and running, so this is—this is easily, in this day and age, something that's accessible to most Americans, and understandable. But, nonetheless, we accept that we have a responsibility to continue educating people better.

I think—to your question about whether or not you can do more with the remote, I think the answer is yes. Clearly, it's going to become an increasingly flexible tool. I would say that was really tied to digital subscribers. But I think part of what we had in the discussion at the last Forum, and what I've been working on all year long, has been a recognition that, in terms of how people actually buy packages, whether or not there was a way to actually offer some more flexibility in packages. And, as I said before, in my opening statement, I think the right way to answer that is in the marketplace, because it's easy to stand outside and say, "Well, gee, I would just do expanded basic tiers differently, and I would put

this network on, and take this one off." Well, you've got millions of Americans—in the case of cable, 66 million cable customers—who all have different views. So, our view is, the right way to do this is, let the individual choose, with the remote, how to do it.

Nonetheless, because of the concerns that you have expressed, Senator Inouye has expressed, Chairman Martin, other people, and the fact that the customers, at least some portion of them, have called for some type of option along the lines of a family tier, it's clear that some individual operators are going to respond to that and see whether or not this is something that could be successful. But, ultimately, as I said at the last Forum, to you, Mr. Chairman, I think this is a vanishing problem. I think as everybody moves into the digital age, whether they're a cable customer or a digital broadcast customer or a satellite customer, they're going to have so much flexibility, and the tools right in front of them to manipulate how they watch TV, that these kinds of discussions we're having today, I think, are going to seem antiquated in fairly short order. But, nonetheless, we're going to step forward, as much as we can, on the kinds of programs that Jack outlined, and continue pressing forward on it.

The CHAIRMAN. Have your people, Kyle, told you the timeframe for adoption of a family tier, if they decide to do that? How long would it be before the viewers would have that option?

Mr. MCSLARROW. The operators that I have talked to have all been talking about trying to do something in the first quarter of next year, so I think they would like to get on this as quickly as possible. There are a host—and I won't burden you with this—there are a host of technical issues involved in how you actually deliver—because you're essentially providing people a fork in the road. It's more complicated, but it can be done. And, apparently, according to these operators, they're confident it can be done, but they've got to work through it. But I think they—their plan is to be as aggressive as possible, so I would expect sometime in the first quarter, at least for some of them.

The CHAIRMAN. Well, the two of you heard the same that we heard from the family-based organizations that were at our last meeting. They were clearly unanimous in their approach that there has to be something in addition to what's there now, or something to make what's there now more understandable and workable, as far as the American family is concerned. So, I think time is the question here now. We're under, really, substantial pressure to move one of these bills. That pressure will increase as we come back next year. We're certainly not going to try to do it this year. There's no opportunity to do it at all. But we have that. And I would think that the competitive factor of some entities offering the family tier, and others not, ought to be the proof of the marketplace, because if parents vote with their feet and go to the point—go to the providers who offer the family tier, that will—that will make the point that that is an action that they approve. Now, I don't expect some of the family based organizations to give up, in terms of their pressure on Congress to enact the legislation that's before us now. So, I think time is a consideration. And cost will be a consideration. Do you have any indication that a family tier

would cost more than it costs today to selectively go to those channels using a V-Chip?

Mr. MCSLARROW. I've had no discussions about price. I don't think anybody's been prepared to do that. But I think the point here is—with the rest of our offerings, is that it's going to be the most affordable offering that you can get on the market. I mean, we live in a competitive world.

Mr. VALENTI. Mr. Chairman?

The CHAIRMAN. Yeah, Jack?

Mr. VALENTI. Could I say something here?

The CHAIRMAN. Yes.

Mr. VALENTI. I said this earlier, Senator Inouye. There have been maybe a half a dozen, to 7 or 8, national surveys taken on this subject. And I said earlier that these surveys show, yes, that many Americans do object to the nature of some of the TV programs that come into their home. But when you ask these people, "Do you want the government to step in and fix this?" overwhelmingly—overwhelmingly—70 to 80 percent of the American people say, "No, we don't want the government to step in." So, it seems to me that Congress, which is a creature of the constituencies and the people that you represent, these people that you represent don't want the government involved in things about what they see, what they read, what they think, and what they watch, and what they hear. So, I think that's got to be involved in this.

The CHAIRMAN. Do you have any questions?

Mr. VALENTI. Senator Stevens says, quite rightly, this ought to be done in the marketplace. It ought to be done in a self-regulatory fashion. It ought to be done in a self-determination fashion by cable operators and by programmers, and—because each passing month, there comes more technology out there that's easier and simpler to understand, which gives people almost unparalleled power to deal with what comes into their home.

So, I think we ought to keep in consideration, before any laws are passed—what the people of this country want is, they don't want the government to be passing laws like this.

The CHAIRMAN. Well, you don't contemplate, then, that it would take any legislation to put into effect—or to sanction the family tier, is that correct?

Mr. MCSLARROW. That's correct. I think the right way to do this is to allow operators and programmers to negotiate a path forward, to the extent somebody's going to offer a family tier.

The CHAIRMAN. Do you think this will be far enough along so that we might have what I would call a show-and-tell at our hearing on the 19th of how this might develop, so all the Members could understand what we've heard today?

Mr. MCSLARROW. It's quite possible.

The CHAIRMAN. Could we arrange that with some of your people coming in? We'll set up a room somewhere, where you can outline, and maybe have a little diagram and whatnot, how this is going to work.

Mr. MCSLARROW. It's quite possible, and I'll certainly look into it.

The CHAIRMAN. I wish you would.

There's one subject we haven't mentioned, now, and that's the, "One, two, three strikes, you're out." That's the one that really got this all going—the massive fine that's been suggested by some of our colleagues on even one instance of a swear word or exposure of a body part. We have to have some consultation about that legislation, too. And I'm in hopes that we'll be able to sit down and visit with some of the FCC commissioners and get their point of view about this. I think we are working together in tandem. That's a good group at the FCC, and they've been very responsive. And we're trying to be responsive to what they're doing. But what about that process now? What do you think, Mr. Valenti, about this demand for increased fines for such incidents?

Mr. VALENTI. Well, as I've said in the first Forum, Mr. Chairman, I'm always a little bit agitated and fretful and worried when there is such a wide vagary about what is indecent. How does one explain that? If I say the word "hell" on television, is that indecent? If I say the word "damn" on television, is that indecent? Where is this line drawn? It's indistinct, it's blurred. And our whole system of jurisprudence is to be precise when you indict somebody for a crime. The crime is spelled out in some detail. It's only when you get into subjective things, like movie ratings or what is too much violence or what is indecency, that you begin to stumble, because we're not dealing with Euclidian geometry here. We're dealing with something that's quite subjective. And that's why I worry about that. How do you fine somebody, when the statute or the regulation doesn't point out what it is that the crime is all about? And if you—if you do the "three strikes and you're out," you can take away somebody's license for somebody saying "hell" three times on television. It seems not only absurd, but fearful if something like that is part of America. I recoil from it.

The CHAIRMAN. Well, there was such an overwhelming public reaction to the one incident in the Super Bowl last year. I agree with you, we've got to deal with it somehow, though, because we have not one—three bills? How many bills do we have? About four bills that we have to do something with. I don't think we need to pursue that further here, but that's one of the questions that's out there, and how we can react to it.

I, personally, think that when there is no real control over someone that's on a public event like that one, the Super Bowl, for the system, as a whole, to pay for the actions of one person puts a—I don't know how you can control those people. But I—we have to respond to it some way.

Senator Inouye, do you have any other questions, sir?

Senator INOUYE. I just hope it doesn't affect hula dancing.

[Laughter.]

Mr. MCSLARROW. I'm making a note.

[Laughter.]

The CHAIRMAN. And I can meet him on that. Or the blanket toss. You ever seen the blanket toss?

Mr. MCSLARROW. I have not.

Mr. VALENTI. I haven't, either.

The CHAIRMAN. Well, it's not—it's not advisable for young women with skirts on, let me put it that way.

[Laughter.]

The CHAIRMAN. This is our Forum. We have put it together now for all of you. And in case some of you need—some of your Members didn't get the information, we would invite you to share that with them, that the family based organizations were very direct and, I think, very plain to all of us that day, that this is something they believe the government has a role in. And we're trying to find a way to achieve that goal through the voluntary action of the industry, as Mr. Valenti did, back in the days when there was such an overwhelming reaction to films and some—families of America demanded some kind of way to—for some—some way that they could determine for themselves whether children should view those films.

So, Jack, we thank you very much for your continued dialogueue with all the people that are meeting with you.

I don't have any further questions. Did any other Senators come in today?

And, Kyle, we have to congratulate you. That's a strong leadership position you've taken for NCTA, and we want to back you all the way, in terms of trying to get family tiers. I, personally, think a family tier is going to be something that parents will want, and parents will change to the entities that provide it.

So, once a few of your people provide it, they're all going to have to provide it, or they're going to see a migration to those that do. That's my personal judgment.

Senator INOUYE. You're right.

The CHAIRMAN. Any comment?

Senator INOUYE. He's absolutely correct.

The CHAIRMAN. We thank you both for your time and for what you've done.

[Whereupon, at 10:40 a.m., the Forum was adjourned.]

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