

With the Telecommunications Act of 1996 the national policy toward cable television became de-regulatory in order to further the growth of services available to the public. The 1992 Cable Act created a plan for state and local agencies to regulate cable systems in any area that the FCC did not have prior jurisdiction. Because of this, many areas have different rules regarding cable television. There is also regulation on the receiver end through means such as the V-chip and television ratings. This method places much of the responsibility of regulation and determining decency on the consumers, allowing each consumer to better decide what should be watched in their homes.

#### THE TELEVISION CODE OF THE NATIONAL ASSOCIATION OF RADIO AND TELEVISION BROADCASTERS (1952/1954)

In order that television programming may best serve the public interest, viewers should be encouraged to make their criticisms and positive suggestions known to the television broadcasters. Parents in particular should be urged to see to it that out of the richness of television fare, the best programs are brought to the attention of their children. . . . HBO and Showtime use 10 PM as a guideline for viewing adult materials. These commercial channels undoubtedly base that guideline on the FCC guideline of 10 PM. For the City to change that guideline means that the new time restrictions will have to be enforced by the City instead of the District Attorney. It will also make that restriction harder to legally defend since it is not based on FCC guidelines or standard commercial practices. This time could be viewed as being more restrictive than if necessary in curtailing First Amendment rights.

The FCC 10 PM time is purely a voluntary guideline because in 1984 it was struck down by the U.S. Supreme Court. The Council by setting a time that is more restrictive than the FCC regulation of 10 PM creates more of a legal risk. The FCC undoubtedly chose 10 PM (not 11 PM or 12 PM) because 10 PM is a standard bedtime for minors and better met the challenge of the least restrictive curtailing of First Amendment rights.

There is no legitimate reason why the City of Berkeley should adopt this unprecedented attempt to regulate the free speech rights of its citizens. By doing so, the City will be restricting the rights of its adult citizens to produce and access legal material. The adoption of this clearly unconstitutional ordinance will certainly lead to expensive and time consuming litigation when the City could better use its resources for educating parents and teachers about the currently available means for restricting access of their children to Indecent material by way of blocking channels, television timer devices, channel blocking on individual television units, parental supervision and other less restrictive alternatives. Therefore, I strongly urge you to reject this proposed ordinance and that it not be adopted.

Bozell disagrees. "That is statistically not true," Bozell said. "Look at the volume, look at the audience of HBO. They also point to MTV -- look at the audience of MTV. It's a fraction of what the broadcasters have. And if it's true, why don't they point to the audience of Nickelodeon, of TV Land. They always point to the bad things and say, 'We have to be as bad as they are.' But they never point to the good things and say, 'We ought to be as good as they are.'"

Cable stations are also prohibited from airing obscene material under the provisions of the Cable Act of 1984. Should someone air obscene material on cable, he will be subject to fines or imprisonment. But, courts have determined that state laws cannot ban indecency on cable and that the case of *FCC v Pacifica Foundation* does not apply to these stations.

To deal with the growing problem of media concentration, while still preserving the libertarian principles of the First Amendment, we must make an important distinction between the message, which should be entirely free of all government interference and control, and the medium, on which reasonable limits of ownership should be imposed.

We continue to increase the value proposition for Cox Cable customers as we introduce numerous service enhancements including digital cable, HDTV, Digital Video Recorders and Entertainment-on-Demand. The introduction of new technology also means enhanced tools to give parents more control over what their children are watching, including the V chip and program blocking. In particular, digital technology provides a highly secure, encrypted environment for adult programming, as well. For analog customers, Cox is providing traps to help them block programming they find unpalatable. And finally, Cox is launching a companywide consumer education program to help parents understand all of their parental control options, as well as where to find all of the great family-friendly programming available on cable. Meanwhile, Cox customers continue to have access to a low-priced, regulated lifeline basic tier, priced at roughly \$12 a month, featuring 15 to 25 channels of programming.

Consumers already can choose to avoid programming they don't want by subscribing to the broadcast basic tier. Some 10% of cable subscribers take only this service – over 25 channels in most markets for an industry average cost of about \$14;

Had the Super Bowl halftime show aired on MTV, however, the FCC would have been powerless to fine it. By federal law, the agency has no authority to crack down on profanity, vulgarity, nudity and sexual content on the hundreds of cable or satellite television channels now received in most homes.

The National Cable & Telecommunications Association -- the trade group that represents the largest cable companies, such as Comcast Corp. -- points out that technical safeguards exist allowing viewers to block cable programming they find objectionable. Set-top boxes are available that give viewers the ability to block channels. Some newer boxes even allow them to block shows with certain ratings, such as "TVMA." Even so, that means they are paying for channels they do not use.

FX displays a warning before the show, alerting viewers to its adult content. The show could be much racier were it not for its advertisers, said FX spokesman John Solberg. The show's producers give preview copies of upcoming episodes to media buyers and have cut material that advertisers found objectionable, he said.