Remarks of
Jonathan S. Adelstein
Commissioner, Federal Communications Commission

Stuck in the Mud:
Time to Move an Agenda to Protect America's Children

Before the Media Institute
Washington, DC
June 11, 2008

[As prepared for delivery]

Thank you, Patrick, for that introduction.

It's good to be back at the Media Institute. I just got back from the National Conference on Media Reform in Minneapolis. Your ears must have been burning. We talked about you a bit.

We also talked about some of the issues I've raised here before in my previous two speeches on media consolidation and sponsorship identification.

It was in May 2003, just weeks before the ill-fated June decision to roll back our media ownership limits, when I warned you of a "powder keg of public anger about to explode." I heard grumblings then that I was exaggerating. Nobody would say that today.

In my second speech at the Media Institute, in 2005, I warned of growing concern over widespread reports of payola and other abuses of our sponsorship identification rules. Those concerns culminated in a series of consent decrees that include some of the largest fines in the history of American broadcasting. Those agreements instituted new policies that have hopefully curbed problems in the radio industry. The Commission also stepped up its enforcement of our sponsorship ID rules against undisclosed video news releases that involved corporate sales pitches disguised as objective news and information.

Though the topics I raise with this audience are rarely popular, they are always real. That's why the Media Institute makes sure you eat before I speak, so you don't lose your appetite. Seriously, I think it is important to speak directly with you in the media industry. Call me a cockeyed optimist, but I think Federal officials have a responsibility to relay major concerns we have directly to you -- to engage in a dialogue – so that we can move the ball forward. Given the issues I will raise today, the only way to succeed is by working together. But if I don't prod you, I'm not doing my job.

So today, I want to talk with you about an agenda to help American families and children cope with today's media landscape. In case you don't know it already, many parents are feeling inundated by an array of media that are flooding their children's minds with inappropriate material. Too many parents feel like they are losing control, and they're frustrated by a

seemingly relentless march of coarse material that is too violent, too sexual, too commercial or too unhealthy for their children. Messages or images their children are not ready to hear pop up in too many places for parents to easily control, from insensitively timed commercials during otherwise family-friendly programming to Internet ads and spam coming over the computer.

There is growing concern about unhealthful messages and images as well. We are all familiar, for instance, with the obesity epidemic in America, its impact on our children, and how much marketers are spending to sell unhealthful products to children. Many studies show the damaging effects of advertising on children's food choices. Some of your companies have taken important steps, but there is far more to be done.

For parents, it's like a game of whack-a-mole, with an increasing number of moles jumping up faster and faster. Too many parents suffer from a sense of exhaustion or futility. I suspect many of you share these concerns on a personal level, but many of you also work for powerful media companies that are helping this mole population to proliferate. I'm here to ask you to engage in a little "family planning."

We, at the Commission, also need to play a more effective and productive role in working with you to help parents insulate their children not only from indecent and profane programming, but also violent and unhealthful content. The Commission has not done all it can to protect children in a legally sustainable and constitutionally permissible manner.

The Commission has failed to take some of the more basic steps. We have limited authority to protect children in this age of convergence. So wherever we have clear authority, we need to act. And we need to establish a much more active working partnership with all of you -- producers and distributors of content -- that serves the best interest of protecting our children. Just because no single step will fully address the many issues we are discussing today doesn't mean we should take no steps at all. We are stuck in the mud on the railroad tracks with a freight train bearing down upon us. Standing still is not a good option. We need to find a way to get moving.

As a Commissioner, my job is to ask what the government can do. While I fully realize that whatever we do, it pales in comparison to what you can do, I nevertheless believe that we should proactively look for ways to protect children – online and over broadcast, cable and satellite. It is easy to give you a lot of rhetoric about how much we care. It is another thing to advocate real solutions. We need to take action now that will make a difference.

I believe I speak for millions of parents when I say we're overwhelmed, fed up and looking for help from the government *and* the industry alike. In that most important role in my life, as a parent, I live with the need to take meaningful, commonsense steps to protect my children. My family, like millions of families with children, needs help in navigating this treacherously complicated electronic media landscape.

Recently, after we had temporarily disabled the parental controls, my own 7-year old son accidentally stumbled upon a violent show that had what he explained as "lots of blood." He said it was "sickening," and it actually made him feel "sick." Perhaps he was so sensitive to it

because my wife and I have been so careful to shield him from inappropriate content. I felt terrible that I wasn't paying attention when this happened. Did I fail as a parent? Does the content creator or distributor share responsibility? I'm not sure, but I know I felt like I let my son down. Somehow, he got out of my supervision – somehow we turned our back for a second and one of those moles got loose – and my son got scared. I paid an immediate price. Not only did I feel bad, but he had nightmares that night. And guess who had to wake up and comfort him?

This is repeated in household after household in America, millions of times, night after night. No wonder we're fed up.

The FCC itself bears some responsibility – we need to assist with the "family planning." More than three years after the House Commerce Committee asked the FCC to study media violence and its impact on children, we produced a less than authoritative report that was, frankly, non-responsive to the congressional request.

The Committee asked us to formulate and propose a definition of "excessively violent programming" that would withstand constitutional scrutiny. The Committee specifically wanted us to analyze "whether there are any constitutional limitations in defining 'excessively violent programming that is harmful to children,' or in constraining or prohibiting broadcast of such material during hours when children are likely to be a significant part of the broadcast viewing audience." The Committee also asked for "measures that [could] facilitate a consumer's use of the television rating system."

As I said in my separate statement at the time, the violence report should have included an objective, authoritative discussion of the constitutional and regulatory challenges of regulating media content based on our experience with regulating indecent speech. The report should have provided:

- a good faith definition of violence, which we reasonably believed could sustain judicial scrutiny;

- a complete and thorough analysis of all parental control technologies, including their shortcomings, resources that are currently available to families and households, and real ways to improve them; and

- a broad set of options – in addition to content and price regulation.

In short, the violence report should have done what Congress asked us to do. But after more than three years, we produced a report that has added little, if any, analysis to the debate. The report surely did not display the experience and informed judgment of an expert federal agency that has regulated media content over seventy years. Nor did it deal adequately with the constitutional dimensions of regulating violent content on free over-the-air TV, or subscription-based cable and satellite TV services.

On the positive side, the report did conclude based on voluminous published literature that there is indeed a link between TV violence and harm to children. We summarized the extensive social science research documenting the effects of TV violence on children. We all know the case of twelve-year-old Lionel Tate in Ft. Lauderdale who was convicted of murdering a six-year-old girl while replicating wrestling moves he had seen on TV. Young children, especially those under age seven, cannot distinguish reality from fantasy violence. There is evidence showing a relationship between excessive TV violence and behavior. This conclusion means the *status quo* cannot stand – not at the FCC and not in your industry.

We unanimously endorsed time and place regulation, which would be a critical part of a comprehensive effort, if approved by Congress and upheld by the courts. Given the challenges on both fronts, I find the Commission's narrow focus is like that of a financial consultant who would base his advice on winning the lottery, without a comprehensive "Plan B" in case the optimal outcome does not pan out. Even if it does, it is prudent to have a multi-pronged approach given the seriousness of the situation.

So, perhaps the most glaring omission in the FCC's report was the failure to discuss the menu of parental assistance tools that are available today and how they could be improved. While the report rightly found problems with the V-Chip, rather than any attempt to discuss remedies, it merely gave up any pretense of trying. I looked in vain in the report for any real analysis or meaningful policy recommendations that could begin to address the problem.

Given the jarring conclusion that our children are in present danger, facing a daily media barrage that is causing them harm, one might think it would be a call to action. But what have we done to address children's issues since the report was issued? Over one year later, sadly and predictably, we have done absolutely nothing. We're stuck in the mud.

The Commission has tried to address concerns with indecent programming. I've supported efforts to bolster our enforcement, because earlier on we were asleep at the switch. But the pendulum swung to the other side, and we began fining a noncommercial educational station for broadcasting documentaries with artists talking about the real life and culture of blues artists, while permitting the same language in fictional portrayals of war.

The dangers inherent in our inconsistent and sometimes poorly explained policies were manifest when we were reversed by the 2nd Circuit in the *Fox v. FCC* case involving fleeting expletives at the 2002 and 2003 Billboard Music Awards shows. As disappointed as I was with that outcome, and whatever you think of the reasoning, the dicta in that case was a reminder that if we overstep our bounds and are restricted by the courts, we could forever lose our authority to protect children from harmful content. It is imperative to preserve the Commission's authority in this area. The Commission must, as we promised the Supreme Court in the *Pacifica* case, walk that judicial tightrope. The Supreme Court has taken up the *Fox* case and, depending on how it decides, we may get some needed clarity regarding the scope of our authority.

But, while the Supreme Court and other federal court cases are pending, the FCC's agenda to protect children should not be stuck in the mud, as it now appears to be.

Today, I would like to discuss some of the many ideas that are worthy of consideration by the Commission, Congress and your industry. Just because there are no easy answers, and no panacea, doesn't mean we should just give up. The task before us is as enormous as it is urgent. It needs our focus and attention now.

My frustration is that while the Commission has rightly focused on indecency regulation, which by its nature only affects a handful of cases, we have failed to exercise our other statutory responsibilities to promote comprehensive approaches that deal with the vast array of inappropriate material for children that does not meet the standard of indecency, including both sexual, violent and unhealthful material.

For example, the Senate Commerce Committee has concluded that section 551(e) of the 1996 Telecommunications Act requires the FCC to ensure that blocking capability continues to be available to consumers as technology advances, to take action to assess alternative program block technologies, and to expand the V-Chip requirement to facilitate the use of alternative technologies that may not rely on common ratings. As the Senate Commerce Committee found, since the initial implementation of the V-Chip, the FCC has not taken any real action to consider the viability or availability of alternative, advanced blocking technologies.

That's why Senator Pryor had to introduce legislation, the Child Safe Viewing Act, to compel the FCC to do its job. And despite the Senate Commerce Committee's unanimous approval of Senator Pryor's bill last summer, the Commission has still failed to act. Senator Pryor's legislation simply requires the Commission to initiate a notice of inquiry and file a report within 270 days of enactment on the existence and availability of advanced blocking technologies. The bill also asks the Commission to examine methods to encourage parents to learn about and use parental control technology.

There is no good reason why we have neglected to act on this commonsense approach even if the legislation is not ultimately enacted by Congress. It would certainly serve the interests of American families and children. So, today, I am calling on Chairman Martin and my fellow commissioners to launch a proceeding as soon as possible to examine comprehensively the existence and availability of advanced blocking technologies and to propose a national plan to inform U.S. households and parents about media literacy and parental controls, as proposed in the Pryor bill. We need to find ways to supplement the ongoing efforts of the broadcasting and cable industry.

While the Commission has shown benign neglect of blocking technologies like the V-Chip, they can be important tools when parents choose to use them. But one of the problems is that few families are aware of the availability of the V-Chip and the program ratings. So, they are rarely used. A 2007 study by the Kaiser Family Foundation found that only 16 percent of parents say they have used the V-Chip to block objectionable programming. And while 82 percent of parents say that they have purchased a new television since January 1, 2000, 57 percent are not aware that their television sets have V-Chips.

But even parents who are aware of the V-Chip technology find the TV Parental Guidelines, which were approved by the Commission, to be confusing and unhelpful. It requires

a doctorate in cinematography to understand the differences between "TV-PG" -- which means that parental guidance is suggested and that the show may be unsuitable for younger children -- and "TV-14" -- which means that the show may be unsuitable for children under 14. Most parents, and I would bet even many people here, do not quite remember what V, S, L, FV or D mean. If families do not understand the ratings, the V-Chip is – frankly – useless.

A comprehensive approach to protecting America's children must include improvements to the V-Chip that can provide the basis for a unified ratings standard across all platforms, including broadcast, cable, satellite, DVRs and, to the extent possible, the Internet. For parental controls to succeed, they must be easy to understand, easy to use, and universally accessible. Given that most Americans receive their video programming over pay services, we need to work with all of the industries represented here today to find solutions that work for all of you, because that will work best for parents.

To address this widespread lack of consumer awareness of the V-Chip and other blocking systems and to address consumer confusion about the rating system and content labels**,** I am calling on the TV Parental Guidelines Monitoring Board to update and clarify them. The Board also needs to improve the accuracy of the ratings. I also believe Chairman Martin needs to allocate resources within the Media and the Consumer and Government Affairs bureaus to develop a nationwide campaign to make parents and families aware of the V-Chip, and other blocking technologies, in coordination with the broadcasting and cable industry. We should ask Congress for the resources if necessary. We also need the commitment from all of you to build on your existing initiatives to engage in a prolonged, sustained public education effort.

As I have also mentioned to Kyle McSlarrow, who now chairs the Board, we need to begin finding ways to promote a third-party ratings system that takes advantage of the capacity of digital TV in the new era we are creating. After all, we are fining companies that do not include upgradeable V-Chip technology in the sets they manufacture and ship. Now we need to find ways to put useful data in it for parents from independent sources, as Congress intended when it enacted the provision. Many cable companies are already integrating third party ratings systems into their offerings, and they are to be commended.

The real goal, to make this work for parents, should be to integrate independent ratings into the interactive program guide. That way, as parents channel surf, they can simply and easily click on a program to get the detailed information they need to make informed choices about what they want to let their children watch. Life as parent is difficult enough. We need to make ratings and parental controls simple, accessible and easy to use so more people take advantage of them. For example, a single "block" button bottom on the remote control that allows parents to instantly restrict access to a specific program or channel would make it easier for parents to use and become more familiar with blocking technology. We have the technological capability to make major improvements. We need the equivalent to the iPhone for parental controls – transform them into something user-friendly and instinctive to use. Nothing would do more to increase parental use of them. As technology has vastly expanded the opportunities for children to come into contact with inappropriate material, just so we need to use technology to help protect them.

We also need to encourage ratings of all TV content – entertainment programming, promotions and commercials alike. One of the most frequent complaints I hear from parents is about watching sports, or other family-friendly programming, and then a raunchy beer commercial or a violent or sexually suggestive promotion for more mature program comes on. Broadcasting and cable need to better address this problem through responsible standards and practices to ensure that ads don't appear in programming watched by younger viewers than the promotions were intended for. To the extent possible, we should rate commercials, so at least parents can control what their kids see if they choose to do so.

Other proposals we need to consider include requiring the use of audio, in addition to visual, ratings and descriptors of all content, and encouraging or mandating manufacturers to set new TVs to receive "TV-7" children programming, until consumers and parents reset V-Chip for programming that is appropriate for their household viewing preference.

In order to offset the flood of inappropriate material, we should encourage more positive children's programming like the free quality children's programming offered by public broadcasters that require more resources to produce, and innovative commercial broadcasters that require more carriage by distributors to succeed. The Commission can help by providing broadcasters with a clearer set of guidelines to identify what constitutes "educational" content.

There are existing industry and non-profit efforts, such as TVboss.org., Pause Parent Play, and Common Sense Media to educate parents and families. We need to support and encourage investment in those efforts. That would include a massive effort to promote media literacy at schools. The FCC should help lead a national coordinated effort and education campaign, requesting funding from Congress to make it effective. And, as I suggested earlier, allowing parents to access third party ratings systems from these organizations would let parents tap into guidance from resources they trust and that match their values.

Video distributors and other industry leaders have taken steps like these that are to be commended. But, simply put, these individual efforts haven't made enough meaningful progress. It's time to put forth and implement a proactive agenda for our nation's children.

The Commission also needs to get its house in order. Items before us that impact children include a long-languishing Notice of Proposed Rulemaking on sponsorship ID and embedded advertising. We need to solicit public comment on whether our existing rules governing commercials in children's programming adequately promote the policy goals underlying the Children's Television Act and the sponsorship ID rules. This item is especially important with respect to embedded advertising in children's programming.

Since last year, with the support of Chairman Martin, a majority of the Commission has already voted to issue this notice. But there has been delay after delay, keeping this item frozen at the Commission. I am urging all of my colleagues to complete this item without further delay.

We also should move quickly on the Further Notice we issued in 2004 seeking comment on how to implement sensible restrictions on interactive ads targeting children. With the

growing convergence of TV and the Internet, we really need to take a hard look at interactive advertising and promulgate rules before it becomes an established business model. Digital TV and new interactive technologies can provide a wealth of opportunities to children and their parents, but they should not provide wealth to advertisers at the expense of children and their parents. With less than a year left in the DTV transition, the time is now to act on this important proceeding.

We need to do much more to protect our children while respecting the creative and expressive rights of Americans. Achieving one objective should not mean sacrificing the other. But the standard Washington stalemate, achieved through talk and delay, ideological posturing or artful lobbying does not address the needs of our children and does not nurture and protect the climate for creative expression.

I will encourage my colleagues to focus on these and any other proposals and come together to develop a consensus on what we can implement. We should host a Summit on Protecting America's Children to bring the best ideas forward, and develop best practices. It is time for a full Commission hearing, or en banc, to get us out of the mud and kickstart a sustained family agenda.

As a parent, I ask the industry to partner with the Commission to develop a comprehensive plan – in the spirit of cooperation. This is the only way to achieve real, lasting results. There is clearly a lot to do and a long way to go, and we have yet to begin. With a nod to Robert Frost, we have miles to go before we sleep, but we also have promises to keep. Our children deserve nothing less — and their vulnerability cries out for us to step up and act on their behalf.