



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

May 11, 2016

The Honorable Lamar Smith
U.S. House of Representatives
2409 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Smith:

Thank you for your letter expressing concern about content broadcast on cable and satellite television. Your views are very important and I appreciate you sharing them with me.

The Commission takes this issue seriously. We must carefully consider our legal authority while balancing our obligation to help consumers avoid unwanted content with the First Amendment rights of broadcasters and other content providers.

Congress has charged the Commission with regulating the broadcast of obscene and indecent material. The Commission has defined broadcast *indecent* as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory organs or activities." Indecent programming contains patently offensive sexual or excretory material that does not rise to the level of obscenity. Courts have held that indecent material is protected by the First Amendment and cannot be banned entirely. FCC rules therefore prohibit indecent speech on broadcast radio and television between 6 a.m. and 10 p.m., when there is reasonable risk that children may be in the audience.

The Commission has historically interpreted the statutory prohibition on indecency to apply to radio and television broadcasters, but has never extended it to cover cable or satellite operators. In addition, because cable and satellite services are subscription-based, viewers of these services have greater control over the programming content that comes into their homes, whereas broadcast content traditionally has been available to any member of the public with a radio or television.

Alternatively, *obscene* material is not protected by the First Amendment and cannot be broadcast at any time. The Supreme Court has established that to be considered obscene, material must meet a three-pronged test:

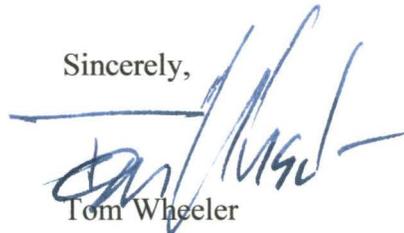
- An average person, applying contemporary community standards, must find that the material, as a whole, appeals to the prurient interest;
- The material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law; and
- The material, taken as a whole, must lack serious literary, artistic, political or scientific value.

Enforcement actions stemming from the broadcast of obscene or indecent material are generally based on documented complaints received from the public. Commission staff reviews each complaint to determine whether it contains sufficient information to suggest that there has been a violation of the obscenity or indecency laws and regulations. In making obscenity or indecency determinations, context is key. Commission staff must analyze what was actually aired, the meaning of what was aired, and the context in which it was aired. If the Commission determines that the complained-of material was obscene and/or indecent, it may take action against the violator. For instance, the Commission recently took significant action in this area, imposing the maximum allowable forfeiture against television station WDBJ in Roanoke, Virginia, after it broadcast indecent material during a 6:00 p.m. newscast. In addition, in cases in which obscene material is broadcast, the Commission may refer the matter to the Department of Justice for potential criminal prosecution.

Consumers may also take their own action against unwanted content through blocking mechanisms. Since 2000, the FCC has required all new television sets 13 inches or larger to contain a V-chip. The V-chip allows parents or other caregivers to block programming on their televisions that they don't want children to watch. Most television programs are now assigned a rating according to a system established by the television industry. The rating is encoded with the program before it airs. Parents can use the remote control to program the V-chip to block the display of programs that carry certain ratings. Also, many cable and satellite services have their own parental control features that allow consumers to block content in similar fashions.

The Commission will continue to take complaints about obscene or indecent broadcasts seriously. And we will continue to take appropriate action in cases where families and children have been exposed to indecent and obscene content. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", is written over a horizontal line. The signature is stylized and cursive.

Tom Wheeler