

May 20, 2013  
VIA ELECTRONIC FILING

Comment of:  
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Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12 th Street, SW  
Washington, D.C. 20554

Re: In the Matter of BROADCAST INDECENCY COMPLAINTS,  
GN Docket No. 13-86

Dear Ms. Dortch:

The Commission in recent years has been overwhelmed with specious "indecent" complaints, driven largely by malicious robo-filers such as the American Family Association. Those complaints are often filed by persons who have never heard the subject broadcast content or its context in actual programs, acting on half-truth newsletters from a corporation whose clear intent is extreme hate speech against religions of different values, and to conspire in deprivation of rights under color of law against persons and values and lifestyles Rev. Wildmon's and similar hate cults dislike. Notably, deprivation of rights under color of law, or conspiracy therein, are Federal felonies under 18 USC 241 & 242, often found in tensioned opposition to First Amendment rights to petition government or express political or religious opinions, but not in ways that cause violations of rights of others, or misuse regulatory process and government actors in such criminal conspiracies.

Chairman Genachowski instructed Commission staff to commence a review of the Commission's broadcast indecency policies and enforcement to ensure they are fully consistent with vital First Amendment principles. Unlike technical regulations for spectrum allocation and compatible systems, or interesting challenges like interoperability of VOIP, Wireless, and PSTN telephony, the challenge in regulating speech content as Chairman Genachowski has laid out is an impossible one to engage without serious conflicts.

The Commission might consider an approach that would:

- 1) Require certification of stated legal grounds for an official complaint, under penalty of law such as 18 USC 1001 certification (as many other Commission applications and filings require);
- 2) Offer process to submit expression of grievances or public comment absent such stated legal basis or certification, as generic public comment without any formal standing as regulatory complaints;
- 3) Review the maze of case law, statute, and societal fact as now exists, compared to past times and likely future trends, to evaluate what conditions would be required to define speech falling in or outside First Amendment protections;
- 4) Consider potential unintended consequences of potential policies, such as distinguishing real harm to minors from false assumptions based on institutionalized prejudices, or regulatory actions having affects other than espoused goals;
- 5) Review existing Commission "indecentcy" and "profanity" definitions for validity, First Amendment defects, or patent frauds from past political factions intent on circumventing Constitutional boundaries.

As a broadcast engineer and consultant filing numerous engineering applications over the past 35 years, but also twice filing petitions to deny broadcast license renewals that did in fact result in non-renewals, I have a profound appreciation for the Commission's roles resolving issues where standards are needed for functional reasons, and they can be promulgated under neutral principles of law. As next generation ATSC to improve mobile function and companding for "4k" resolution is already in field tests, alongside rapidly changing data modes that many people still don't realize are how "voice" travels, it's clear the commission would be wasting resources if it invites massive backlogs of ideological speech content disputes where in most cases, the subject speech does in fact express religious, artistic, or political values of speakers, and it's because of such "strict scrutiny" nature that other factions seek to censor that speech. That cannot be done without playing favorites over issues that require neutrality, not decisions such as whether 8-VSB or ORDFM, or certain generations of MPEG or ITU CODEC standards, are designated as intended best choices where picking one is needed for functional reasons.

As a civil rights activist, I've been impressed at the number and quality of broadcast engineers found gracing ACLU and other free speech projects, apparently highly aware of the problems in playing favorites with subjective speech content favorites and outcasts. In fact, just this past week, legendary contributor to FCC technology development Jules Cohen was honored at an ACLU banquet outside D.C. Engineers tend to demand that legal standards fit requirements of being rationally based on underlying law, and accurate determination of facts. Even if a court allows regulating some kind of speech under often narrowly considered subsets of larger and more complex sets of issues, that doesn't make thinly veiled frauds in definitions or findings of facts legitimate. The Commission may at times find itself in a paradox situation, where the only ways to honestly interpret FCC v Fox, or Pacifica, are to find that a nul set of speech legitimately falls within the whole of legal theory and practice and societal fact.

As a scientific pantheist pagan, I co-wrote a policy laying out conditions necessary for actual neutrality of internet censorware as a project of the Earth Religions Legal Assistance Network, in the era when the first of several rounds of litigation and overturns of Title V of the Telecommunications Act of 1996 was pending (aka the CDA). After considering how some groups or vendors alleged to be operating on neutral criteria only, and not malicious or reckless prejudice and bigotry, we found that to be not true, and no actual neutral criteria for speech content censorship to exist that were not biased as to protected criteria for religions, cultures, and similar non-discrimination traits. So-called "neutral criteria" turned out to be merely frauds perpetrated by cherry picking core values economic or religious interests disliked, and giving them names separate from the larger source of overt or institutionalized prejudices and bigotry.

"Indecency" is a religious construct that has no neutral existence in law. The fraud of Pacifica to pretend otherwise, based on judicial or prolific societal bigotry, is overdue to be reversed.

"Profanity" means to disrespect some one or group's alleged deity(ies), by whatever supposed means causes that. Clearly that's legal and highly protected speech under the whole of US law, even if some countries retain blasphemy laws, or execute people over religious differences, in violation of international human rights. No sleight of hand by corrupt political factions can change the fact that by its very root and core meaning, profanity is any of many arbitrary, subjective, religious constructs, as well as being a concept that does not exist for atheists or persons whose theology follows different religious models where that concept is irrelevant.

The fact that such regulatory constructs as the Bush FCC defined for those terms have been used against speech as innocuous as a momentary view of a nipple, shows blatant disregard for even the Commission's own definitions, as anything but "patently offensive". Topfree Equality is a protected right on public streets of New York, California, and another 15 US states, all of Canada, much of Europe, and other countries. In many states, it's illegal for businesses or government to restrict public breast feeding, and in some cases businesses that have done so have paid thousands of dollars in fines. It's if anything, patently offensive for Congress or the FCC to censor open and honest presentation of perfectly street legal public activities.

As a naturist aware of how that and similar lifestyle or ritual practices are religious for many such persons, the idea that "nudity" is restricted also clearly becomes an issue not of protected against "public nuisance" as FCC definitions not pretend, but of blatant disregard for civil rights and discrimination hostile to minority religions. In fact, there is no honestly legally neutral definition of the very word "nudity", as most legal use assumes an Abrahamic religious bias against sex-positive religious values, and then cherry picks certain body parts to censor based on assumptions of evil in that biased cosmology. While the FCC is Constitutionally bound to end censorship practices with such bias, that issue is overdue for far broader protection of civil rights openly in society.

Existing policy is akin to declaring blacks a "nuisance", and banning them from certain housing, lunch counters, water fountains, bus seats, schools, etc. Regardless of how

many or few people retain such prejudices, they cannot be reconciled with Constitutional boundaries so long as they result in depriving any one or more persons of related rights, never mind millions as defective existing FCC policies do.

"Censorship is the most insidious form of hate speech."

Censorship as organized hate cult corporations promote does not protect minors. The history of arts and ideas across civilization shows that. The "Leading Coalition of Scholars" Amicus to US v Playboy in 2000 discusses a core underlying issue, of the difference between ideas some try to censor, and a conflict between those and indoctrinated triggers resulting in dysphoria. Rather than censor based on bias and bigotry, a neutral approach under law would be to treat parents, churches, schools, and other actors who indoctrinate kids to have trigger reactions on witnessing neighbors with lifestyles, speech, or other visible traits or actions properly within their civil rights, with severe enough dysphoria or cognitive dissonance as to constitute clinical harm, as child abusers to be held accountable for that abuse.

When instead mob railroading of civil rights of minorities is allowed or fostered, it denigrates actual persons of beliefs and practices entitled to full and equal protections of law, and prevents them from visibly existing in society. That may also reduce dysphoria in some, but by violating rights of minorities like secret police kidnapping persons into the night, rather than ban malicious child abuse or bury the medical need for past victims of such prejudice indoctrination to grow up and deal with diverse society maturely, with counseling or other treatment if need be.

Given the diversity of our society, it's impossible to outguess or fully identify which values and persons or practices qualify for elevated strict scrutiny review, for those who can afford such litigation or tolerate the privacy invasions of it. It's easy to identify that most conflicts over sexuality, body costuming including tattoos, piercings, and covered or uncovered parts (including faces, legs, etc for some), hair styles, etc, are generally religious or cultural differences properly protected in public and on broadcast media, not censored to match some archaic monoculture notion overt or institutionalized bigots disdain.

The Commissioners might do well to read law review articles by OSU professor Christopher M. Fairman found for free on [www.SSRN.org](http://www.SSRN.org) (Social Science Research Network), and Professor Fairman's book, "Fuck: Word Taboo and Protecting Our First Amendment Liberties". That work does a comprehensive review of history and culture leading to political, legal, and other conditions surrounding the conflicts the FCC is faced with mishandling, in the awkward position of political demands and even flawed court decisions that pressure actions that are impossible without violating many core tenets of law, even if enabled by treacherous circumvention strategies. In fact, that book or similar would make for good high school curriculum, as required study before qualifying for citizenship and adult rights in our society, so as to understand responsibilities as voters, jurors, parents, or informed citizens.

A certification that any FCC speech content complainant has studied that or similar background material, and relevant case and other law, certified under penalty of felony prosecution for false complaints under 18 USC 1001, and FCC notice that any

organization instigating 5 or more specious complaints is subject to 18 USC 241 & 242 prosecution, could severely reduce disruptive and wasteful FCC workload. Diversion of complaints lacking that legal process to other than official regulatory complaints, to be simply indexed and filed, would protect citizen rights to complain about issues without legal basis. It would also be possible to promulgate regulations and forfeitures such that willful false complaints could carry fines absent criminal prosecution, and even if a token amount like \$250, would discourage most specious individuals, or become serious penalties if a group's technology was found used on 150,000 complaints about content not legitimately subject to regulation, or filed maliciously absent viewing a program in context or to attack speech rights clearly protected by law. Pseudo-religious hate is a \$10 billion a year industry in the USA, that's backed by not just churches and visible 501c4 political groups, but behind the scenes tactical operations intent on abridging civil rights.

While such groups in the USA have history back to Comstock and associates in the 19<sup>th</sup> century, Citizens for Decent Literature as an Amici to *Jacobellis v Ohio* started a modern chain of them. That includes National Family Legal Foundation, and its successors in Scottsdale, AZ, CDC and ADF. One might consider that their effort to define and censor "pornography" in 1964 was rejected as void for vagueness, not considering other 1<sup>st</sup> Amendment grounds, with Justice Stewart becoming known for a paraphrasing of his opinion, that "porn is whatever gives the judge a hard on". Why is it that equally subjective concepts like indecency and profanity, with even stronger religious roots, are not treated as failing that test and others, to have no valid neutral legal definition, and therefore be impossible to legitimately regulate?

Beyond that falls rational review of different forms of disgust reactions such as studied extensively by Jonathan Haidt and peers, or the nature of "fuck" to often be used as an intensive or other parts of speech (with non-sexual, or context depending meaning only), failing the Commission's own flawed definitions they in recent years have often ignored. The history of Pacifica itself may on review demand treatment as protected rather than censored speech.

As told in large part by former FCC District Director Phil Kane, the Pacifica case actually started with the San Francisco Pacifica licensee requesting an advisory opinion from the Commission on the legality of airing a holiday special dramatic reading of an Edward Albee play. The Commission declined to answer, claiming that it would be illegal prior restraint to say no and be wrong, and improperly limit their duty to review complaints were they to say yes and get a complaint. While that's a classic "void for vagueness" legal condition when neither the regulated party nor the officials can determine up front the clear meaning of a law (much like recent "we need to review specific cases after the fact" policies), the Commission failed to just go on record with that legally accurate position that these issues cannot survive a Lemon test of rational basis and neutrality, never mind strict scrutiny when the intent and effect is malicious religious or cultural prejudice and discrimination.

The infamous Carlin sociology monologue came later, using the "7 words" from that Albee play about which Pacifica inquired, and ridiculing the social and political conditions leading to such matters even being questions citizens would ask government. That back story, that enabled and preceded the recording later aired on

a New York Pacifica station, is a lesser known element of how flawed the background to the Pacifica decision was, leading to ongoing messes since.

Obscenity law from Miller v CA isn't much better. While there are many fine criticisms of its flaws on professional legal sites and blogs, a focus on criteria like sex and excretion fails honest review if one includes values of sex-positive religions, and nature based religions that treat such natural functions as normal parts of life, not hot buttons for oppression.

In fact, US and other nations' war crimes, genocide campaigns, systemic rights violations by corrupt political process, or ecoterrorism by reckless operations in Alaska, the US Gulf, Nigeria, etc, by Exxon, BP, Shell, et al, far better qualify as "obscene" if other religious criteria than sex or excretion are substituted under "Miller" patently offensive guidelines. However, it's those criminal acts, not putting a needed critical spotlight on them, which amounts to the obscenity in those cases. The Miller case is overdue for that bias to be eradicated, which in our increasingly diverse nation, would gut the very construct of select speech as if obscene.

That's before considering the defects in Miller of different rights if one moves or travels among communities, rather than equal protections of law, or the yet larger challenges of a global village with outright conflicting standards.

If the Commission chooses to honor the whole of civil rights law and accurate, current fact, it might sidestep litigation that's overdue, to force the Supreme Court to catch up to modern reality in indecency and obscenity precedents.

The definitions related to religion and religious practices found in EEOC regulations, 29 CFR 1605, and related precedential basis, might be wise for the Commission to consider. It's often assumed that religion is limited to 501c3 corporate organizations, whereas in current reality, religions of current citizens is often solitary practice, or unincorporated association activity, that's not as openly visible unless one pays close attention (for about half of Americans). That includes legal equivalent religious practices necessary for equal protections rights to be respected, including as have been litigated by vegans multiple times, and as would similarly apply to some naturists and many other practices that meet the same base criteria as individuals apply practices to their own lives, that others may treat casually.

There are also issues of unintended consequences, or harmful effects of malicious censorship tactics that backfire.

Before a malicious religious bigotry driven speech content attack on the movie "Hungry Bitches", and a legally suspect obscenity conviction in kangaroo courts, that Brazilian scat porn full length movie was little known, and generally not available except to adults seeking it with a credit card to the Florida importer and distributor. Now, it's freely available to all ages from Amsterdam servers, while commenting on its trailer, "2 Girls, 1 Cup", was a well known cultural meme for teens and young adults. One might

seriously question whether a former Attorney General's political grandstanding showed reckless disregard for minors he claimed to protect, by promoting scat porn as a popular meme.

Malicious prosecutions sometimes backfire and have broader consequences of actual legal harm, without needed remedies.

The Kim Dotcom - Mega false arrests and asset thefts organized by misguided US thugs, acting on improper use even of "Disneyized" IP laws where Congress was bribed into perverting a "reasonable portion of the life of the creator" into the life of an infinite corporation, have forced many file sites to insulate themselves from US legal thuggery. That now results in popup and pop-over full screen ads for sites like [www.iXXX.com](http://www.iXXX.com) when one may download a Doctor Sues kid's book. More of a serious legal issue though, it also results in frauds from companies like iLivid or another that pushes fake Adobe Flash updates, to trick people into taking spyware and adware. That result of misguided, aggressive, content censorship policies fails to protect minors while enabling what are legitimately crimes to become more prolific, outside the scope of practical law enforcement.

It could be argued that such secondary consequences of malicious prosecutions are educational. Some of the porn genres on aggressive pop-over and full screen seizure ads from [iXXX.com](http://iXXX.com), [redtube.com](http://redtube.com), or [xhamster.com](http://xhamster.com), reflect slang terms for nationalities, sex acts, or other paraphilias and preferences, that take [www.UrbanDictionary.com](http://www.UrbanDictionary.com) to sort out. And, unlike the free and openly available videos on such sites, Urban Dictionary won litigation with ACLU backing, to protect its presence as a free and openly available public resource.

There's also full length BDSM movie content on file sharing sites from [Kink.com](http://Kink.com), parent to [FuckingMachines.com](http://FuckingMachines.com) and a related family of sites, which US IP law enforcement practices that have crossed outside the limits of international laws at times have made more available to all ages, since sites that didn't shut down created greater insulation from US legal abuses.

Technically predatory page loads, or deceptive or malicious software push feeds or social engineering trickery to get users to install, are consequences of misguided law enforcement practices that drive away otherwise more ethical site operators.

Such speech is in effect all ages in our current global village, and forms the foundation for evaluating context for realistic, fictitious, or politically driven illegal religious bias based FCC speech censorship practices and policies. Predatory software operations that impose spy or malware are clearly harmful to have be common online. Porn content generally isn't harmful to 9 year olds – they're simply bored by it and move on, if parents have educated them to be functional future adults in this modern world. For adults, harm is based on addictive or healthy uses of content, moreso than content itself, as well as how that relates to healthy or pathological personal values or past conditioning. If sick adults need Psychologists, that's outside Commission jurisdiction, even if in practice central to this set of issues.

It's not just private file traders, some legal and others not under IP laws, who risk abusive and predatory practices of some host sites or ad sites linked to them. Warner Brothers Records, among others, use public file hosting sites record companies and MPAA often claim are criminal, to distribute some digital content to broadcast stations and other high royalties commercial end users.

As the USA over recent decades has moved from a "melting pot" to a "mosaic nation", we're increasingly a quagmire of fragmented pieces of protected civil rights traits, not any single, simple, or clear uniform set of beliefs or practices. Economic pressures are so strong, that broadcasters would likely be caught censoring content at times catering to actual or perceived social masses, even if the Commission took an opposite approach to existing Pacifica linked rules, and instead banned censorship of news, public affairs, or creative efforts of program producers.

It is reasonably the duty and public service obligation of today's 4th Estate to air honest and uncensored discussions of public issues, even if marketing consultants advise it's risky to corporate profits. If anything, the FCC could position itself as a champion of speech needed in society, rather than a censor for political hacks demanding overt or de facto illegal content segregation based on ideological values. That includes speech now treated as if indecent or even obscene, which may well be broadcast to express disgust and political positions against censorship bias.

Is it even possible to have a sex act while fucking that draft (Cohen v CA)? Can streets have sex (Hess v IN, "we're gonna take back the fuckin streets")? Is Eric Idle of Monty Python really capable of sex with the FCC, in his ditty, with lyrics, "Fuck You Very Much, the FCC"? (lyrics transcript attached)

<https://www.youtube.com/watch?v=jixxYx9fkIM>

Those all amount to "strict scrutiny" speech, properly treated as such, and as all ages, any time of day, public issues.

Just as George Carlin often addressed serious social issues in his monologues, Penn & Teller also stage illustrations of the bias and futility of pretending that what's now FCC censored, often in conflict with the 1<sup>st</sup> Amendment, can be regulated with legitimate or functional public policy:

Penn & Teller - The Right Not to be Offended

<https://www.youtube.com/watch?v=2bwGsOBThE>

Penn and Teller - The FCC

<https://www.youtube.com/watch?v=lg5zodsZdds>

Pacifica and Miller decisions were always in part frauds, for the above discussed content bias and protected criteria issues, plus equal protections being incompatible

with variable community standards. They might have been valid prior to 1868, when the 14<sup>th</sup> Amendment changed the rules.

Since those decisions, society has become more accessible to information by all ages, such that kids who can't handle content some adults bitch about in stride can't handle larger issues of being students and future adults in this society, either (And it's the obligation of parents and schools to deal in that reality, like it or not, and not the FCC's job to impose illegal discrimination). At the same time, OTA (over the air) broadcast has become more SES stratified (socio-economic status), such that OTA signals are a major factor in less unequal access to the full scope of information present in society.

It simply cannot meet the legal or functional tests for our society, to censor broadcast content under broken rules that can't be fixed as to vagueness or ideological bias, nor in ways where that aggravates SES based content access often linked to racial and other demographic skewing. That's not new, but has shifted seriously since SCOTUS wrote *Pacifica*.

The Commission could, however, implement a complaint process as suggested above, that would filter off massive other than serious complaints e-filing has enabled, and impose certification of awareness of law and fact, plus penalties for malicious and specious formal filings.

That set of changes could honor the First Amendment in fact and not just evasive legal dance steps, while eliminating the majority of FCC staff resource waste on specious complaints.

Thank you for your consideration.

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"Censorship is the most insidious form of hate speech."

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Appendix: Lyrics transcript:

<https://www.youtube.com/watch?v=jixxYx9fkIM>

Eric Idle- The FCC Song (Fuck The FCC)  
Matthewcoates

Song by Eric Idle (lyrics in description) A song not just critising the FCC due to Eric Idle's fine, but also the entire Bush Administration. The pictures are my tribute to The Bush Administration, (or in it's correct

term The Bush Regime) and the wonderful job they have done over the past eight years (read Fuck you Bush!) But anyway this is a funny song no matter what way your politacally alinged.

## Lyrics

Here's a little song I wrote the other day while out duck hunting with a judge...

Fuck you very much the FCC,  
Fuck you very much for fining me,  
Five thousand bucks a fuck,  
So I'm really out of luck,  
That's more than Heidi Fleiss was charging me.

So fuck you very much the FCC,  
For proving that free speech just isn't free.  
Clear channel's a dear channel,  
So Howard Stern must go.  
Attorney General Ashcroft doesn't like strong words and so,  
He's charging twice as much as all the drugs for Rush Limbaugh,  
So fuck you all so very much.

So fuck you very much dear Mr Bush,  
For heroically sitting on your toosh.  
For Halliburton, Enron, all the companies who pale,  
Let's send them a clear signal and stick Martha straight in jail.  
She's an uppity rich bitch,  
And at least she isn't male,  
So fuck you all so very much.

So fuck you Mr Dickhead Cheney too,  
Fuck you and fuck everything you do,  
Your pacemaker must be a fake, you haven't got a heart,  
As far as I'm concerned you're just a pasty faced old fart.  
And as for Condoleeza, she's an intellectual tart,  
So fuck you all so very much.

So fuck you very much the EPA,  
For giving all Alaska's oil away,  
It really is a bummer,  
When I can't fill my hummer,  
The ozone's a no-go zone now that Arnold's here to say,  
"The Nuclear winter games are going to take place in LA,"  
So fuck you all so very much.

So what the planet fails,  
Let's save the great white males!  
And fuck you all so very much

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Did the FCC have sex with "that song"?

nb: There is nothing sexual the FCC is capable of, contrary to defective interpretations of existing FCC regulations and prejudice over use of Fuck.