

“Radio and Talk Radio in particular - a bastion of Free Speech - seems, ironically, to be asking for some guidance from the FCC on content regulation.” Holland Cooke

I'm William Wertz, Executive Vice-President and co-owner of Fairfield Broadcasting Company in Kalamazoo, Michigan. Our company owns and operates 4 radio stations (Q-106.5 WQLR-FM, The Sports Station AM1660 WQSN-AM, Super Talk AM1470 WKLZ-AM and Kalamazoo's News/Talk AM590 WKZO-AM, all licensed to Kalamazoo. We are Kalamazoo's **only** locally owned and operated daily media and we've been serving the listeners of our area since 1972 with over 40 full-time employees. The Kalamazoo-Battle Creek 3-County (Kalamazoo-Calhoun-Van Buren) SMSA Census 2000 population 12+, updated by Claritas, is 381,800. I've been in radio since 1968 starting with Susquehanna Broadcasting Company in York, PA, worked as a Programming Consultant to over 100 Radio stations, am a founding member and current member of the Board of Directors of Kalamazoo Public Schools' non-commercial/educational Radio station WKDS-FM, am on the Board of Directors of the Michigan Association of Broadcasters Foundation, and have worked with my business partner, Stephen Trivers, since 1969. Mr. Trivers has spent his entire adult life in radio, having started at WAGA in Atlanta Georgia in the summer of 1957; he served as Program Director of WPAT AM/FM in New York City in 1963-1964 and held sales/management positions in Boston, Providence, and York PA in the late 60's/early 70's. He also served as Vice President of the NAFMB/NRBA Board of Directors in the 1970's/early 1980's and served as Chairman of the Michigan Association of Broadcasters in 1997.

I believe, as a preamble, it's appropriate to share the Mission Statement of our company...

“It is the mission of Fairfield Broadcasting Company to set the standard for radio broadcasting in the Kalamazoo Market. Our programming will be of the highest quality, emphasizing locally-focused content. Our advertising sales effort will be the most professional, client-focused available in the market. We will treat our employees with dignity and respect and we will endeavor to be fair in resolving conflicts. The entire staff will be the best-trained to be able to provide superior service to our listeners and advertisers.”

I have traveled here today to share with you our convictions on the issue of decency and community standards. We're a long-time Broadcast licensee (1972-current)...**asking** for direction from an FCC that seems not-to-want-to-take-on Infinity's "stunts" or, more specifically, issues that many of those of us in the industry consider to be beyond generally accepted community standards. I've always believed AM/FM/TV Broadcast licensees should not be permitted to use the 7-words George Carlin says you can't say on-the-air. At the same time the "cure" is sometimes more difficult than the "disease" itself and I understand to some degree why the FCC has been reluctant to take a firm stand on obscenity/community standards issues. The root of this likely dates to when the National Association of Broadcasters NAB Code of Ethics was struck down on anti-trust issues over 20 years ago in a court case brought by the Justice Department against the NAB. Since this Code of Ethics was eliminated there has been a steady decline of over-the-air decency standards as some Broadcasters, for a wide variety of reasons, have pushed the envelope to the ripping point and far exceeded what any reasonable person would define as generally accepted community standards.

We aired promo's on WQLR-FM and WKZO-AM for 2 days, asking for comments, and they are included here. Please remember that our stations primarily appeal to Adults 25+. The beauty of radio is the ability to "target"

a particular socio-economic group and, as such, responses from listeners under the age of 25 are likely to be not included in the following comments I've received...

Here are the scripts Fairfield Broadcasting Company VP/Operations Ken Lanphear and WKZO Program Director Dave Jacquette recorded for WQLR-FM and WKZO...

HI, I'M KEN LANPHEAR FROM THE Q-106.5 MORNING SHOW. AT Q-106.5, WE WORK TO MAKE OUR PROGRAMMING **SAFE FOR THE WHOLE FAMILY**, SO YOU'LL NEVER HAVE TO BE UNCOMFORTABLE TO LISTEN WHILE YOUR KIDS ARE ALONG SIDE. THE RADIO INDUSTRY AS A WHOLE, PROUD SUPPORTERS OF FREE SPEECH, IS SEEKING GUIDANCE ON CONTENT FROM THE FEDERAL COMMUNICATIONS COMMISSION. FAIRFIELD BROADCASTING COMPANY, LOCALLY OWNED OPERATORS OF Q-106.5, HAS BEEN INVITED TO MAKE A PRESENTATION TO CONGRESSMAN FRED UPTON'S HEARING WEDNESDAY, JANUARY 28TH ON THE TOPIC "CAN YOU SAY THAT ON TV". AND, WHILE RADIO IS NOT DIRECTLY ADDRESSED, IT IS A PART OF THE HEARING AND WE'D LIKE TO HEAR FROM YOU ON THE SUBJECT. PLEASE E-MAIL YOUR THOUGHTS ON BROADCAST CONTENT TO WJW@FAIRFIELD-RADIO.COM. THAT'S WJW@FAIRFIELD-RADIO.COM AND WE WILL INCLUDE YOUR THOUGHTS IN THE PRESENTATION TO CONGRESSMAN UPTON'S HEARING. AND, THANKS FROM Q-106.5

HI, I'M WKZO'S DAVE JACONETTE. THE RADIO INDUSTRY, AS A WHOLE, PROUD SUPPORTERS OF FREE SPEECH, IS SEEKING GUIDANCE ON CONTENT FROM THE FEDERAL COMMUNICATIONS COMMISSION. FAIRFIELD BROADCASTING COMPANY, LOCALLY OWNED OPERATORS OF AM 590 WKZO, HAS BEEN INVITED TO MAKE A PRESENTATION TO CONGRESSMAN FRED UPTON'S HEARING, WEDNESDAY, JANUARY 28TH. ON THE TOPIC "CAN YOU SAY THAT ON TV". RADIO CONTENT IS A PART OF THE HEARING AND WE'D LIKE TO HEAR FROM YOU ABOUT WHAT'S APPROPRIATE ON THE AIR. PLEASE E-MAIL YOUR THOUGHTS ON BROADCAST CONTENT TO WJW@FAIRFIELD-RADIO.COM. THAT'S WJW@FAIRFIELD-RADIO.COM AND WE WILL INCLUDE YOUR THOUGHTS IN THE PRESENTATION TO CONGRESSMAN UPTON'S HEARING. AND, THANKS FROM WKZO.

These are the e-mails I've received as of January 23, 2004...

"Although I don't consider myself a prude, I find the level of obscenity on the air is intolerable. Please fight for much stricter guidelines and controls so our children don't have to listen to the vulgar garbage that seems to be taking over." (Ed Bernard)

"Thank you for the opportunity to provide you with input. This is a sensitive subject, especially when you are raising a 12-year-old son. Your stations, I believe, do set the tone in this community that I am extremely proud of. You and your management team should be proud of that.

It is so troubling to see what is really happening out there today in journalism, print, radio and television. I can remember when the biggest secret we had was to see women in the J.C. Penny catalog in the underwear pages. There just seems to almost no stopping as to wear this is going.

We do need standards and I believe you are a perfect one to represent West Michigan around your stations mission." Kathy Beauregard

"I agree the FCC needs to regulate what is seen and heard on TV. The amount of sex, nudity, violence and inappropriate language has escalated in the last several years and I believe will only get worse if nothing is done. Talk shows, advertising, films, music, cartoons and news broadcasts have all pushed the envelope. The morals in this country are at an all time low and I believe something needs to be done now as I don't want my grandchildren viewing and hearing the trash that TV currently broadcasts. Thanks for giving me a chance to express my opinion." (Gary Niemeck)

"I am writing regarding something I heard on the WKZO afternoon show yesterday, 1/21/2004. Dave Jaconette asked listeners for comments to be given to the FCC regarding profanity on the radio. I have two young daughters (ages 9 & 7) - we rarely allow them to watch TV, and my husband and I watch very little ourselves. We do not have cable, and we feel that most shows on "regular free" TV are trash - violent and/or filled with sex and sexual innuendos. The same holds true for radio. I don't let my children listen to very much radio except for the Children's Sunshine Network. I usually listen to WKZO and some radio talk shows in the evening (besides Christian stations) - but I will not listen to a station that is willing to broadcast offensive programming. I will not frequent businesses that support immoral, offensive TV or radio programs. I might be only one person, but I don't think I'm the only person who feels this way or responds as I do. For the love of our children, we should not rob them of their innocence by perverting their minds and exposing them to the vile hatred that we are witnessing in the world today. Let kids be kids while they are kids. We try to protect them from being hurt in automobiles by requiring them to be buckled in to their seats; we buy them helmets, knee pads, elbow pads, etc to protect them while they are bicycling and skating; we try to protect them from being hurt in fires by installing smoke detectors and sprinkler systems and teaching them escape routes; we try to protect them from the elements, such as damaging sun rays, by bundling them in the winter and covering their skin with sun block in the summer; there are laws in regards to noise pollution to protect their hearing, etc; there are warning labels on items with small pieces or plastic bags to protect children; our cleaning chemicals and medicines come in child resistant packaging to keep our children from swallowing something harmful; and the list could go on and on. How about their minds? When are we as a nation going to protect our children's minds from the damaging media presentations? If we allow their minds to be corrupted when they are young, they will grow up thinking that what they see and hear is the norm - no wonder so many teens are troubled. In my opinion, if adults want to see and hear trash, they should pay for it. But sponsored, free programming should be kept clean." (Robyn Lilek)

"I do not know how to respond to your request on Broadcast indecency other than to say some of the language I hear on both radio and TV bothers me. On radio I don't even like to hear a hell or

damn. Since TV gives me the ability to see the situation and contexts of the situation the language is used in I do not find that offensive. Any other language beyond the fore mentioned is not appropriate on either radio or TV. Maybe I am old fashion!!!" (Dan Nulty)

"You may be surprised that I would say this, but you cannot legislate morality. People have to change. If there was not a market for all of the indecency, immorality, vulgarity and violence we have on the airways today, advertisers would not buy the airtime and the junk would never make it to the first show. At the same time though, someone has to draw a line in the sand and say "we will go this far, but no further". Now I understand that where I would draw the line is different from where you would and much different than where the Hollywood producers would. What has to be decided is what Middle America wants. My opinion is that most Americans do not want to see a lot of skin or suggestive bedroom scenes. Nor do they want to hear a lot of four letter words. These kinds of pictures and language are degrading to the viewers/listeners and to society as a whole. If a writer/producer has to use "little left to the imagination" dress or bedrooms scenes and/or vulgar language to make the show appealing, something is wrong with the show to begin with. Many of today's programs, radio and television, present behavior and language that is unusual (at least for most of America) as the norm. Fifty years ago, if you had called someone a SOB or said "screw you" to someone, you would have at least received a scowl, if not a "watch you tongue". Today's young people do not even know what those words mean! They just know to use them when they are upset with someone. The broadcast industry should think about what is good for society as a whole, because, without the society, they will not have listeners and viewers. It is not good to suggest that cheating on your partner is normal and acceptable. Nor is good to suggest that it is normal and acceptable for two people of the same sex to be partners. The idea that the only way to solve a problem is to shot someone, may not be portrayed on all shows, but often times it is. Some of these behaviors may be normal on the east coast and the left coast. But, even if they are normal, this kind of behavior is not good. Sometimes laws have to be made because we, as a people (judges included), are to blind to figure what is right for ourselves. I'm hoping the broadcast industry can figure this out for themselves, without any new laws." Herb Persons

"In my opinion is it not merely a question of "Can you say that on TV?" it is really a question of "should you broadcast that on TV or Radio?" By definition, utilization of the broadcast media insures radio and television the maximum impact on the public. It would behove the Media to view this power as a public trust complete with the pre-requisite responsibility that any trust implies.

It is without doubt that the combined media of Television and Radio are the guarantors of "main stream" thought in America. If it is in the broadcast medium, a fashion, a catch phrase, a notion takes on a life of its own and becomes an acceptable (or at least more acceptable) fashion, phrase or notion than it would be if known to only a local audience.

Think of what you are mainstreaming when the afternoon television fair headlines teen paternity tests (where the number of former sexual partners has to be winnowed down in order to define paternity) or bizarre family betrayals (usually involving a mother sleeping with a daughter's teen boyfriend or, even more salaciously, girlfriend) are the constant messages.

Think of what you are doing when for the sake of ratings, quality programs are dropped from line-ups and replaced by "reality" shows where men and women gag on maggots, or bear all in a supposed contest to be the chosen partner for the Adonis or Helene due jour.

As I said, the Media is the guarantor of the American status quo. It is a responsibility, not a commodity." (Roberta Shultz)

"I am 47 years old, married with two children ages 10 and 8. Simply put, I feel that I should be able to turn on my radio or television and scan through the various channels without concern that my children might be subject to very inappropriate conversation or pictures.

It is so out of control that I can not even be comfortable watching sports on television due to the willingness of the broadcasters to air the sleaziest commercials, and what makes it worse is that the most disgusting, most suggestive commercials are for the broadcasters own shows not some other companies products. This is Saturday and Sunday afternoon sports broadcasting not late at night.

As for the radio, us parents (the ones who care anyway) are afraid to search for a station that plays something we want to listen to when the children are around because of what they might be exposed to while moving through the channels.

I do not advocate eliminating broadcasts from the airwaves as I believe that consenting adults have a right to view or listen to what they desire. However we need to be able to segregate the adult content from everything else so that individuals and particularly children are not subjected to it just by moving through the radio dial or the television/cable channels.

Neither my wife or I are prudes or overly conservative however children have a right to remain innocent for as long as possible and our current society is destroying that right. As parents we should be able to control when and how our children get exposed to things based on the child's maturity level." (*Larry Andreano*)

"I am usually one who wants LESS government intervention and LESS regulation, however I have NO problem with the FCC re-establishing better guidelines and a code of ethics for TV and radio. I can't think of any reason for vulgarity on the television or radio and all it does is tear at the moral fibers of our society. And I don't give any credibility to people who cry freedom of speech. Indecent language doesn't need to be broadcasted, plain and simple. If people want to use obscene language, they can do it in "appropriate circles" which is NOT public TV or radio." (Nancy Andreano)

"To me it's pretty simple. No one has the right to subject an unwilling adult, or any minor, to profanity, scatological remarks, pornography, indecent exposure and the like. Nor should our government be a party to such behavior. Broadcast companies utilizing the public radio/tv spectrum should be prevented from transmitting such material. There are many pay per view outlets for such stuff. I'm no prude. I'm not personally offended by it. However, minor children should not be exposed until they have reached adulthood, except with their parents consent. Adults who object should not be "ambushed" by unanticipated public broadcasts of such material. We all should have freedom of choice in whether or not we see and hear such material. When it suddenly pops up on the TV in the middle of a prime time sitcom, or on the radio as we are driving the carpool to school, that freedom of choice has been stolen from us. It is a clear abuse of the concept of freedom of speech, like falsely crying "fire" in a crowded theater." (Jim Holtshouse)

"There is a terrible problem with the loose regulations in broadcasting. I honor and respect your stand on this issue. I am truly disappointed and in awe, when I see the same

persons in legislation complaining about free speech and at the same time trying to stop it ...i.e. even mentioning religion in schools or government buildings, what hypocrisy! Yet people are supposed to be free to express their opinion, unless it is true or threatening. It is OK to tell our children their ancestors are monkeys or apes according to the theory of Darwin, however we cannot talk about the theory of Christ or any aspect of his being, because government is truly afraid to stand for truth. It appalls me to know that the same politicians that are telling our children and us what it is we must watch on t.v. and/or hear on radio are the same people that do not understand where their children are going and what will happen to them, because of their all too liberal life style. It will be their children and grand children that will one day be voting and trying to run this country, the problem is ... these kids are so liberated that they do not even know how to vote for the most part, let alone understand for who or what they are voting for. We definitely need some control on broadcasting, I hate knowing that driving down the road we have no control over what we might hear at any given time. Unfortunately we cannot turn back the hands of time and say, boy I didn't want to hear that, or I wish my 10 year old did not have to hear that! It is my opinion and same as many others that those that want to listen to filth or poor ethics should have to seek it out, it should never be pushed on anyone and by not having regulations, that is exactly what is happening. At the very least all broadcasting should have public warning not only at the beginning but through out the program and before each commentary that is not of high moral standards, contains graphic, lude or any degrading information that would be inappropriate for any young listener not having the ability to block it out. It is a disgrace that politicians are too afraid to allow for a more ethical and moral world, or maybe it is because they know they couldn't live up to their own rules if they existed. I am in total support of regulations in Broadcasting and think that there is no damage done to those who seek for themselves alternative and unethical programs if they so choose. But to force it on all is completely out of line. Looking at the standards set by our own government and them isolating religion, they too should isolate filth, and other inappropriate programming, Good luck!" James Kaiser

The following comments are from 2 of my co-workers...

"My biggest pet peeve is the relaxed views on violence versus conservative feelings on nudity and even more why there is such a huge difference in the amount of female nudity in movies and TV than male nudity." (Lacy Hemenway)

"As I understand it, obscene is defined as going against contemporary community standards. This is obviously a very ambiguous definition, and I believe it was designed to be so. I do not view the standards for over the air decency is declining. Rather, it is evolving to suit the changing standards of American society. Television and radio have always pushed the envelope to see what they could broadcast. In the 1950's, I Love Lucy, could not use the word "pregnant" in their dialogue. They were forced to use the word "expecting". Since our society has changed, pregnant is not only allowed now, you can even find the word in children's programming. In the past few years, formerly taboo subjects like T.V. bra commercials, semi- nudity and even the word "shit" have been used on a regular basis. On the radio, shock jocks such as Howard Stern have made an industry out of not only pushing the envelope, but actually creating new envelopes. In the future, the envelope for decency for television and radio will keep evolving. It is

inevitable. Any guidelines that lay down in black and white what is indecent and what is not will not hold up over time. Simply put, one person's indecency is another person's accepted practice. I believe that any rules describing what is indecent or obscene need to be handled on a case by case basis." (John Thierwachter)

The following excerpts are taken from 3 of Holland Cooke's newsletters, and included here with his permission, to his subscribers from October 2002 and May & October 2003 on the subject of obscenity. Mr. Cooke is America's #1 NewsTalk Radio consultant and has weighed in on the issue of decency, or more specifically, indecency, on numerous occasions. Mr. Cooke is often quoted in news media accounts of Broadcast issues including recently by the Washington Post and Entertainment Weekly. He was the Program Director of WTOP in Washington DC for 7 years from 1984-1991.

Holland Cooke Newsletter • October '02

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WHAT YOU MISSED IF YOU MISSED NAB'S RADIO SHOW IN SEATTLE

"Certainly nobody in this crowd doesn't cherish Free Speech. But if radio can spend a year congratulating ourselves over what we did in New York on September 11, we ought to be able to spend a few minutes talking about something else radio did in New York recently. As a Catholic, however lapsed, I am particularly offended that this Opie & Anthony fiasco occurred where it did, in St. Patrick's Cathedral. But suppose it was a synagogue. Or a Baptist church in Harlem. How can this licensee NOT be held-accountable for perpetrating a hate crime?"

My question to Commissioners Abernathy and Copps, during Q+A at that session.

"People are sick about this."

Commissioner Copps, responding, after a stunned silence.

- Copps was already on the warpath over Indecency BEFORE the Opie & Anthony incident. Now, he's calling for a return of the broadcast industry's voluntary programming code.
- He also renewed his proposal that stations voluntarily keep tapes of all programming, for review when there's a listener complaint. Presently, with no such requirement, the burden-of-proof is on the complainant. But Copps says "when something is said on the public airwaves, there ought to be a way to check." Though I'm a big fan of hers, it was disappointing to hear Commissioner Abernathy parrot-back Infinity's spin that, responding to public outrage over the situation, the company "acted quickly" by canceling The Opie & Anthony Show. Infinity acted pretty deliberately CREATING the show.

"It was one of the most horrible things I've ever heard in my lifetime."

Radio One exec Mary Catherine Sneed, on the Opie & Anthony incident, speaking at the **Radio Group Executives Super Session (02NABRS-SS2)**.

"It's the door of St. Patrick's Cathedral."

Clear Channel President & COO Mark Mays, answering the question "Where's 'the line' for Indecency?" at the same session.

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This month's issue is being distributed at **Talkers Magazine's New Media Seminar**, May 16-17 in New York. If we're meeting for the first time, hello! I'm Holland Cooke, the consultant, McVay Media's news/Talk Specialist. Look for me on the New Media Seminar opening panel.

A NEW LOW FOR TALK RADIO **FROM THE COMPANY THAT GAVE YOU OPIE &** **ANTHONY**

Think I'm exaggerating? Hit www.fcc.gov/Daily_Releases/Daily_Digest/2003/dd030403.html Scroll down to **Texts**, and click on the first blue link (**FCC-03-71A1.doc**). Unbelievably, the talent responsible for the transcript you will read has not been fired. **In January 2002, Detroit area listeners, possibly with children in the car during the 4PM hour, heard WKRK/Detroit hosts Deminski & Doyle and callers detail various oral, anal, and physically-violent sexual practices.** Your FCC is still hearing about it, not doing much about it, and trying to avoid saying anything about it. As a result, **Talk Radio – a bastion of Free Speech – seems, ironically, to be asking for some guidance on content regulation.** Yet, a year after FCC commissioners appearing at NAB's 2002 Las Vegas convention squirmed through questions about co-owned WNEW-FM's Opie & Anthony sex-in-St. Patrick's Cathedral episode, they ducked questions about the WKRK incident at NAB2003 (**#03NAB-KN4**). Yes, Commissioner Michael Copps dissented as his colleagues settled on WKRK's not-whopping fine; and, at this year's NAB session, he sounded every-bit -as-livid as he sounded last year over Opie & Anthony's incident. He has called the Deminski & Doyle show in question "some of the most vulgar and disgusting indecency that I have had the misfortune to examine since I joined the commission." Suggesting that the statutory maximum \$27,500 fine "will easily be absorbed by the station as 'a cost of doing business,'" Copps says he believes "that a financial slap on the wrist does not adequately reflect the seriousness of the station's actions." He's called for a hearing to revoke WKRK's license. But, when asked by both moderators and attendees in two NAB2003 sessions, whether the WKRK case would end with the fine, or whether there will be a revocation hearing, not one of the FCC's five commissioners would offer a simple yes/no answer. Chairman Powell started to answer, calling the Deminski & Doyle broadcast "indefensible and unlawful;" before – LAUGHINGLY -- admitting that the FCC's General Counsel, sitting in the audience, had gestured that he not reply further (**#03NAB-KN2**).

Should this not be a matter of public record?

Doesn't Talk Radio -- and the public -- deserve to know where we stand on this?

Members of Congress appearing at the convention were even less forthcoming (unfortunately, this session is not listed on Mobiltape's order form). Rep. Gene Green (R-TX) allowed that he'll "let the FCC do the best they can" with indecency enforcement, venturing only that "it's not impossible to imagine that Congress, at some point, could take action." Other members appearing winced and looked at the floor. **Having read a published transcript of the broadcast, I cannot imagine that radio has suffered more graphic, gratuitous pornography than the Deminski & Doyle show in question.** Stunts like this are one reason that "FM Talk" remains, largely, an oxymoron. After the Opie & Anthony flap, Infinity changed format in New York.

And how's this for justice? Although Infinity beat the bullet again, the consequence of its latest shock-jock gross-out could be tougher penalties for OTHER owners. The FCC notes that, since this Deminski & Doyle show comprised several distinct caller conversations, each call could have been fined as a separate violation. Although, in this case, it treated the WKRK broadcast as a single violation, the FCC warns that, in the future, similar material within a single program may be treated as multiple, repeated violations. NAB session moderator Sam Donaldson asked Chairman Powell why he thought hosts were wandering into smut. The chairman ventured that increased competition was pushing talkers to push the envelope. Generally, it is comforting to hear Mr. Powell call himself "a First Amendment guy" who's loath "to let three of five unelected Regulators decide what can and cannot be broadcast;" and to hear him say "I get queasy when the government is the editor." And he sounded duly deliberate waxing that "social mores and levels of acceptability of things change over time." But what does that tell YOU, the on-air talent, about doing your job? NAB President and CEO Eddie Fritts warned, "stations that cross that line do so at their own peril."
Without the guidance of a clear determination concerning these repeated demonstrations of Infinity's custody of the public trust, it's tough to spot that line. Wander near it at your peril.

Holland Cooke Newsletter • October '03

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I'm late...deliberately! So don't blame your mailman...unless his name is "Newwwwwwwman." I held-the-presses for this issue, so it can include my notes from The NAB Radio Show in Philadelphia. Look for the November issue around the first of the month, as usual.

"Is that Opie & Anthony?"

"Is that the one in Michigan?"

Exchange between FCC Commissioner Kathleen Q. Abernathy and an unidentified FCC staff counsel in the audience at NAB's FCC Breakfast

She was responding – or, possibly, attempting not-to – to my asking, during Q+A, if a final determination had been reached in the WKRK/Detroit Deminsky & Doyle indecency matter.

Though fellow commissioner Michael Copps has called for WKRK's license to be revoked, and remains on the warpath over indecency generally, and this episode in particular, Commissioner Abernathy continues to be non-committal, thus unhelpful, to those of us seeking the clear signal that the FCC could send us by closing this case.

Abernathy sounded duly diligent reciting, "I'm careful only to act on what the law defines as indecent, and not what I personally find offensive;" and assuring that continued complaints against a licensee would result in harsh-if-undefined penalties. Beyond sounding noncommittal, Abernathy sounded, frankly, uninformed, as she called out to a staff lawyer in the audience, asking, "Is this [the Deminsky & Doyle incident] the same station as Opie & Anthony?"

To help her, I clarified: "Same licensee, different episode at a different station."

But there was SOME news at the FCC Breakfast session. The New Year will bring a new series of public hearings, around the country, on localism in radio. Abernathy and her colleagues are hearing, loud-and-clear, a public increasingly uncomfortable with consolidation. Hearings will seek to determine the public sentiment on, as she put it, "whether our existing rules are serving the public interest, or should additional steps be taken?"

The National Association of Broadcasters NAB Code of Ethics was, in essence, a long-standing self-policing code that was terminated in 1982 in an anti-trust case brought against the NAB by the US Justice Department. NAB agreed to a settlement of this case and the NAB Code of Ethics was eliminated. In the early 1990's the NAB issued a voluntary "Statement of Principles" for Radio and TV Broadcasters but has no enforcement action. I would suggest the included NAB "Statement of Principles" in my presentation covers the majority of issues this Hearing is addressing.

**Statement of Principles
Of Radio and Television Broadcasters
Issued By
The Board of Directors of The
National Association of Broadcasters**

Preface

The following Statement of Principles of radio and television broadcasting was adopted by the Board of Directors of the National Association of Broadcasters on behalf of the Association and commercial radio and television stations it represents.

America's free over-the-air radio and television broadcasters have long and proud tradition of universal, local broadcast service to the American people. These broadcasters, large and small, representing diverse localities and perspectives, have strived to present programming of the highest quality to their local communities pursuant to standards of excellence and responsibility. They have done so and continue to do so out of respect for their status as daily guests in the homes and lives of a majority of Americans and with a sense of pride in their profession, in their product and in their public service.

The Board issues this statement of principles to record and reflect what it believes to be the generally accepted standards of America's radio and television broadcasters. The Board feels that such a statement will be particularly useful at this time, given public concern about certain serious societal problems, notably violence and drug abuse.

The Board believes that broadcasters will continue to earn public trust and confidence by following the same principles that have served them well for so long. Many broadcasters now have written standards of their own. All have their

own programming policies. NAB would hope that all broadcasters would set down in writing their general programming principles and policies, as the Board hereby sets down the following principles.

Principles Concerning Program Content

Responsibly exercised artistic freedom

The challenge to the broadcaster often is to determine how suitably to present the complexities of human behavior without compromising or reducing the range of subject matter, artistic expression or dramatic presentation desired by the broadcaster and its audience. For television and for radio, this requires exceptional awareness of considerations peculiar to each medium and of the composition and preferences of particular communities and audiences.

Each broadcaster should exercise responsible and careful judgment in the selection of material for broadcast. At the same time each broadcast licensee must be vigilant in exercising and defending its rights to program according to its own judgments and to the programming choices of its audiences. This often may include the presentation of sensitive or controversial material.

In selecting program subjects and themes of particular sensitivity, great care should be paid to treatment and presentation, so as to avoid presentations purely for the purpose of sensationalism or to appeal to prurient interest or morbid curiosity.

In scheduling programs of particular sensitivity, broadcasters should take account of the composition and the listening or viewing habits or their specific audiences. Scheduling generally should consider audience expectations and composition in various time periods.

Responsibility In Children's Programming

Programs designed primarily for children should take into account the range of interests and needs of children from informational material to wide variety of entertainment material. Children's programs should attempt to contribute to the sound, balanced development of children and to help them achieve a sense of the world at large.

SPECIAL PROGRAM PRINCIPLES

1. Violence.

Violence, physical or psychological, should only be portrayed in a responsible manner and should not be used exploitatively. Where consistent with the creative intent, programs involving violence should present the consequences of violence to its victims and perpetrators.

Presentation of the details of violence should avoid the excessive, the gratuitous and the instructional.

The use of violence for its own sake and the detailed dwelling upon brutality or physical agony, by sight or by sound, should be avoided.

Particular care should be exercised where children are involved in the depiction of violent behavior.

2. Drugs and Substance Abuse.

The use illegal drugs or other substance abuse should not be encouraged or shown as socially desirable.

Portrayal of drug or substance abuse should be reasonably related to plot, theme or character development. Where consistent with the creative intent, the adverse consequences of drug or substance abuse should be depicted.

Glamorization of drug and substance abuse should be avoided.

3. Sexually Oriented Material.

In evaluating programming dealing with human sexuality, broadcasters should consider the composition and expectations of the audience likely to be viewing or listening to their stations and/or to a particular program, the context in which sensitive material is presented and it's scheduling.

Creativity and diversity in programming that deals with human sexuality should be encouraged. Programming that purely panders to prurient or morbid interests should be avoided.

Where significant child audience can be expected, particular care should be exercised when addressing sexual themes.

Obscenity is not constitutionally protected speech and is at all times unacceptable for broadcast.

All programming decisions should take into account current federal requirements limiting the broadcast of indecent matter.

Endnote

This statement of principles is of necessity general and advisory rather than specific and restrictive. There will be no interpretation or enforcement of these principles by NAB or others. They are not intended to establish new criteria for programming decisions, but rather to reflect generally accepted practices of America's radio and television programmers. They similarly are not in any way

intended to inhibit creativity in or programming of controversial, diverse or sensitive subjects.

Specific standards and their applications and interpretations remain within the sole discretion of the individual television or radio licensee. Both NAB and the stations it represents respect and defend the individual broadcast's First Amendment rights to select and present programming according to its individual assessment of the desires and expectations of its audiences and of the public interests.

In conclusion I want to thank Congressman Fred Upton and his General Counsel, Will Nordwind, for giving me the opportunity to address this Hearing today. Our company has always strived to set the bar for Radio Broadcasting in Kalamazoo and the subject matter of this Hearing is vitally important to our company, our listeners, and our community. We are very concerned that we've witnessed a steady decline of over-the-air decency standards and, at the same time, lament the termination in 1982 of the NAB Code of Ethics that held stations to a higher standard for many years. The voluntary NAB "Statement of Principles" should, in my opinion, be an excellent starting point for restoring decency as defined by generally accepted community standards. It's my hope that the Government would permit NAB to establish voluntary guidelines and allow it to create a self-enforcement division to administer obscenity/decency on Radio and TV and also that NAB would accept this responsibility. I will personally volunteer my time to NAB if it is permitted to pursue this avenue. Many of us in Radio have repeatedly asked for *clear* guidelines and guidance from the FCC...but perhaps it's best if these guidelines were developed by those of us in the industry...on this issue. It's my hope that this Hearing today will begin that process.

Thank you

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