

Keynote Remarks of FCC Commissioner Kathleen Q. Abernathy  
The Media Institute Awards Dinner  
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As prepared for delivery.

Thank you so much for inviting me here tonight. It is an honor and a privilege for me, as an attorney, a government official, and a public citizen, to be associated with the Media Institute, a group whose commitment to both free speech and liberty is undisputed. And to be here with tonight's award recipients magnifies the honor and privilege. These two gentlemen, James Kennedy and Ralph Roberts, and the two companies they lead, Cox Enterprises and Comcast, exemplify what I want to talk about today -- the commitment and dedication of media companies and their leaders to serving their communities.

Where I work, at the FCC, we regulate a wide variety of money-making companies -- at least we trust that their goal is to make money even if it doesn't always work out that way. The vast majority of these companies present us with only typical business issues that can arise in any regulatory agency in Washington. But the companies that represent the media in America,-- many of you,-- present us with a wholly different and substantially unique set of problems because your businesses require me and my colleagues to make decisions that affect the most basic constitutional right, the right of free speech as protected by the First Amendment.

In exercising my duties as regulator, I try to resolve the complex disputes that arise by reminding myself to be humble -- and I do that by keeping two basic considerations in mind. First, Congress has legislated standards for me to apply, and to the extent that courts hold these standards to be constitutionally permissible I am committed to enforcing Congress' laws and the courts' decisions regardless of my own personal predilections. Second, I believe the Commission must regulate consistent with judicial precedent and our rules and refrain from making personal judgments about the messages that the media deliver. While we are obligated to enforce Congress' laws, we should remember that absent plain directives from Congress or the courts, the media -- not the Commission -- are the proper sources of wisdom -- and foolishness -- in American society.

Let me flush out these two considerations. First, with respect to Congressional guidance, legislation sometimes gives the FCC specific directions on how to balance the right of free speech against other public interests. We are directed, for example, to protect children from indecency and to promote their learning; we are directed to promote diversity of viewpoints among speakers and to increase competition among viewpoints; and we are directed to ensure that various local viewpoints are not lost in the national din. As a result, the FCC has adopted clear and explicit regulations on when indecent programming may be aired and how broadcasters must comply with their duty to serve the educational and informational needs of children. We also promote diversity in ownership, and we ensure that programmers are responsive to local public service needs. Thus, where Congress has the constitutional power to protect other very important interests and has, in a constitutionally permissible way, balanced those other interests against speech interests, my colleagues and I are bound to follow the Congressional directives. I respect that **they** are the national legislators, not me.

In other areas, however, Congress has not legislated. In these circumstances, the Commission is often pressured to act on its own – to start regulating what is deemed to be “good” or “bad” messages or what is “good” or “bad” television. Those who encourage us to act are often motivated by concerns that they truly believe to be morally desirable. But on these issues the Commission cannot begin to stray across the line to start regulating messages for their tastelessness. In my view, the Constitution largely prohibits even **elected** representatives from making such judgments; and it surely bars **unelected appointed** officials from rendering such judgments.

Some might ask, if Congress does not act in these circumstances and regulators do not act, who will act to influence the moral standards of the nation – to set us on the path to a more tolerant, more open, yet more disciplined and more morally demanding nation? That is where all of you – and tonight’s honorees come into the picture.

I find that the vast majority of leaders of the media, both print media and telecommunications media, understand and appreciate the unique role and responsibilities that their organizations play in their local communities and in the national society. Most media leaders value their reputations in the community – the members of the media live, work, and raise their families in the communities, local and national, that they serve. I submit that all of you – fighting, jousting, pushing in your own ways and with your own moral compasses – will point toward a much more reliable version of the “good society” than we regulators could ever bring about by governmental decree.

I also humbly reject the idea that government and the media must be adversaries. The recent tragic events in the Washington metropolitan area show us that government can properly make requests of the media that the media will reliably respect. When the Sniper Task Force requested that radio and television stations suspend their commuter traffic forecasts – so that the sniper would not know which roads were open for his escape – the stations responded with restraint, even though it may have hurt their “bottom lines” and even though it may have left their reporters chafing with a desire to be first with the story.

Other problems may be less clearly resolved. Recently, for example, my staff received a call from a father who was concerned that his children’s Saturday morning programming had been interrupted by a live news conference about the recent shootings. This father was concerned that the news conference was not appropriate for viewing by his children. Others, however, may have been very happy to have instantaneous coverage of such fast-breaking news. In my view, these difficult decisions are rightly placed in your hands, not mine ... and not my colleagues’.

Finally, let me say that I am not unmindful of the unique capacity the telecommunications media have for shaping American society in the Twenty-first Century. But every generation sees its new technology as truly unique and challenging – from the printing press, to the penny press, to the radio, then television, and now cable, satellite, the internet and other even newer, faster forms of transmitting news and viewpoints. We trusted the innovators of earlier generations to carry the news farther and faster, and in my opinion, we can trust today’s generation to do the same.

I am going to do my best, within my sphere of regulatory responsibility, to make American society the most that it can be and I will always enforce the law and our rules. But the major responsibility for ensuring that we become a fertile plain and not a wasteland is yours -- you Mr. Kennedy, you Mr. Roberts, and all of the American people who exercise their right of free speech.