FROM: Phyllis Schlafly

68 FAIRMOUNT, ALTON, ILLINOIS 62002 / (618) 462-5415

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THE FCC'S ROLE IN PORNOGRAPHY

What is the most controversial appointment President Reagan has made? The answer to this question may be Mark Fowler, chairman of the Federal Communications Commission (FCC), whose term is up June 30 and who seeks to be reappointed.

An analysis of Fowler's policies, statements, and actions over the last four years shows that he has consistently refused to enforce the law against indecency and even obscenity on television, cable television, and radio. That's why broadcasters and cablecasters have been able to get by with ever more shocking levels of indecency, immorality, and violence which are beamed right into our homes.

The Federal Criminal Code provides a penalty for "whoever utters any obscene, indecent or profane language by means of radio communication." The Supreme Court upheld this law and extended it to television in the 1978 case of FCC v. Pacifica.

This standard for the electronic media is stricter than the Miller obscenity standard, which applies to the print media, and properly so, for many reasons. Television is a pervasive presence in our culture. It is vastly more powerful in changing attitudes and affecting behavior, is easily accessible to children, and is so very expensive that individuals cannot possibly compete with station owners and managers in electronic communication.

The Cable Communications Act of 1984 declared it the joint responsibility of the FCC and the Justice Department to enforce the obscenity standard for cable television, and also left the door open for the FCC to promulgate regulations to enforce a higher decency standard. In practice, neither agency has ever prosecuted a single case of obscenity on television, and the FCC told the National Commission on Pornography on October 16, 1985 that it has no intention of doing so.

Mark Fowler's attitude toward his job is out of sync with the law. U.S. law, starting with the 1934 Communications Act and continuing through Supreme Court decisions, is that the airwaves are a national resource which belong to the American people, and that

radio and television stations must act in the public interest.

Fowler's numerous public statements show that his FCC policy is non-enforcement of any standard. He calls this "the policy of maximizing the freedom of action of broadcasters in the marketplace."

In practice, this means that Fowler wants to allow television and radio owners and managers to do whatever they want or think is profitable, without any FCC-enforced obligations of decency or fairness. This means that broadcasters and cable telecasters are given unlimited rights, but as for the American public, Fowler replies, "Let them buy a radio station."

Fowler has eliminated the requirement for character references for prospective broadcast license holders, stating that all an applicant needs is "luck, expertise and money." That attitude would not bar ownership even by organized crime. The reality today is that ownership of stations is becoming concentrated in the hands of a very few people.

Without enforcement of the law against obscenity and indecency, cable television carries hard-core obscenity such as the Playboy channel, the independent TV stations try to compete by offering uncut R-rated movies, and primetime network television tries to retain its market share by offering raunchier and raunchier programming.

Fowler's advocacy of the commercial interests of broadcasters to the exclusion of the public interest is easy to understand in terms of his own career. His pre-FCC employment was with the broadcasting industry, and he can look forward to lucrative post-FCC employment in an industry he served so well as FCC Chairman while he was being paid to serve the public interest.

Fowler has pulled the wool over the eyes of some conservatives by waving the buzz word "deregulation." Deregulation of the airlines has been good because it brought about competitive low fares, which in turn enabled millions of Americans to ride on a plane for the first time.

But try asking those millions of Americans if they want "deregulation" of safety rules about air travel to follow deregulation of fares, and you'll get a thunderous "NO." Likewise with television and radio; price deregulation is welcome, but decency deregulation is unacceptable.