Senator Bids to Extend Indecency Rules to Cable
Industry Defends Its Self-Policing Activities as Sufficient

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Cable television shows packed with sex and profanity, such as HBO's "Deadwood," FX's "Nip/Tuck" and Comedy Central's "South Park," would be subject to the same indecency regulations that govern over-the-air broadcasts if the chairman of the Senate Commerce Committee has his way.

Currently, the Federal Communications Commission has the authority to fine only over-the-air radio and television broadcasters for violating its indecency regulations, which forbid airing sexual or excretory material between 6 a.m. and 10 p.m., when children are most likely watching.

But Sen. Ted Stevens (R-Alaska) told a group of broadcasters yesterday that he wants to extend that authority to cover the hundreds of cable and satellite television and radio channels that operate outside of the government's control. In addition to basic cable channels such as ESPN, Discovery and MTV, that would include premium channels such as HBO and Showtime and the two satellite radio services, XM and Sirius.

"We put restrictions on the over-the-air signals," Stevens said after his address to the National Association of Broadcasters, according to news reports confirmed by his staff. "I think we can put restrictions on cable itself. At least I intend to do my best to push that."

Last year, as the Senate considered a bill raising indecency fines for broadcast, Sen. John Breaux (D-La.) -- who has retired -- proposed an amendment that would have extended the indecency rules to cable. Stevens voted against the amendment and it failed, 12 to 11. However, Stevens opposed Breaux's amendment because he thought it was being used as a way to kill the bill raising the fines, Senate staffers said.
The government has resisted policing cable in the past, citing First Amendment hurdles to governing content that consumers pay for rather than receive free. But Stevens said he thought the Supreme Court, which ruled that cable systems must carry local television station signals, would also require cable to hew to broadcast decency standards.

The cable industry, wary of regulation, said its self-policing is sufficient.

"Cable technology already provides families the tools to block unwanted channels from entering the home, and leading cable companies will provide this technology at no additional charge to customers who don't have the means to block unwanted programming," Brian Dietz, vice president of communications for the National Cable & Telecommunications Association, said in a written statement.

In the House, Rep. Joe Barton (R-Tex.), chairman of the House Energy and Commerce Committee, said he supported equal treatment of cable networks and would talk to Stevens about possible legislation.

There are bills in both houses of Congress that would substantially increase the amount the FCC could fine over-the-air broadcasters for indecency, increasing the maximum $32,500 penalty to as much as $500,000 in the House version of the bill, passed last month. That bill also includes a provision that would force broadcasters to face license-revocation hearings after a third indecency violation, which Stevens supports.

Some said that attempts to regulate cable and satellite might rile opponents to also try to kill the legislation on fines.

"Attempting to apply regulation to cable and satellite would seriously jeopardize our efforts," Rep. Fred Upton (R-Mich.) said in a written statement. "Moreover, I have strong concerns about the constitutionality of such a provision."

Cable channels have been snatching viewers from the broadcast networks in recent years, partially because they can program nudity and profanity and other potentially objectionable material that networks, such as ABC and Fox, would be fined for showing. Broadcasters have argued that the decency regulations create an uneven playing field, with producers and directors preferring to take their edgier and often more-popular material to cable.

Howard Stern, for instance, announced that he will move to Sirius Satellite Radio when his contract with Infinity Broadcasting expires in January, saying he had been chased from the airwaves by the government's indecency crackdown.

Also yesterday, David H. Solomon -- as head of the FCC's enforcement bureau, the man who investigates all indecency complaints -- told his staff that he would leave in May after 18 years in the job.

Solomon, who stayed largely under the radar for most of his career, achieved a measure of fame in 2003 when his division ruled that a profanity uttered by U2 singer Bono during a live NBC awards broadcast was not indecent, essentially because the musician used it as an adjective rather than a noun. Late-night comics and commentators lampooned the decision, which later was reversed by the five-member FCC commission. The commission noted that Solomon correctly had applied the decency rules to Bono's profanity, but that it led to a result that made it
appear the FCC condoned the use of "the f-word," as Chairman Michael K. Powell called it, on television.