United States Court of Appeals

FOR THE EIGHTH CIRCUIT

CASE NO. 13-1506

Curtis J Neeley Jr., MFA

Plaintiff - Appellant

v.

Federal Communications Commission, et al.

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Arkansas – Fayetteville
(5:12-cv-5208-JLH)

REPLY BRIEF SUPPORTING
RA DOCKET No. 13-89

INTRODUCTION

Chairman Genachowski sought review of the Commission's broadcast indecency policies and enforcement to ensure they are fully consistent with vital First Amendment principles and reduce the BACKLOG of pending indecency complaints. The public notice was titled as follows and should be a "live" PDF link to the filing.

FCC Cuts Indecency Complaints By 1 Million; Seeks Comment on Policy (3)

COMMENTS SOUGHT

Poor confused Chairman Genachowski asked for comments regarding the current egregious cases policy and this first generated disparaging comments by one notable communications law firm of Fletcher, Heald and Hildreth posted by Harry Cole starting like follows.

> *Indecency Alert: New Unannounced "Egregiousness" Standard Now Apparently in Effect, But More Changes May Be On the Way, Eventually*
>
> *"In a public notice that surely ranks among the most bizarre any of us are likely to see, the FCC's Enforcement Bureau and General Counsel have made three startling announcements about the Commission's broadcast indecency policy. According to the notice, for the last seven months or so the Enforcement folks have been applying a new – but not formally announced – standard of "indecency" which is not subject to any official definition, as far as we can determine. And while the Enforcement Bureau and GC both commit themselves to continuing to implement that undescribed "standard", they have now initiated, in a semi-comic way, an inquiry into some possibly significant changes to major elements of the Commission's indecency policy.*
>
> *This could have been an April Fool's Day prank, but we're guessing it wasn't..."*

Curtis J Neeley Jr felt this BLOG entry was condescending and the title above the "snippet" should be a "live" PDF link to the entry. The entry magically updates and may even disappear.

COMMENTS RECEIVED

Comments were then received daily beginning on 3/03/2013 as follows.

<1|0, 2|0, 3|10, 4|(11), 5|(35), 6|0, 7|0, 8|(1,053), 9|(23,475), 10|(26,297), 11|(5,193), 12|(6,799), 13|0, 14|0, 15|(5,779), 16|(2,030), 17|(1,608), 18|(953), 19|(1,074), 20|0, 21|0, 22|(1,608), 23|(1,357), 24|(2,136), 25|(1,272), 26|(5,926), 27, 28, 29, 30>

The days with zero comments posted "online" are too far below the statistical probability to have actually occurred. There is some cause for this other than not actually being sent. From these comments those made containing the imaginary construct promoted by SCOTUS Sir Lord Honorable John Paul Stevens of [sic] "internet" to an inappropriate singular word used in law are distributed by day as follows.

<1|0, 2|0, 3|0, 4|1, 5|1, 6|0, 7|0, 8|(3), 9|(86), 10|(143), 11|(46), 12|(49), 13|0, 14|0, 15|(61), 16|(22), 17|(20), 18|(11), 19|(15), 20|0, 21|0, 22|(21), 23|(19), 24|(23), 25|(13), 26|(27), 27|, 28|, 29|, 30|>

Looking for another term that many equate with the inappropriate imaginary construct of [sic] "internet" is "online" and this term was used as follows and only occurred with the imaginary construct [sic] "internet" also in in the first usage.

<1|0, 2|0, 3|0, 4|(1), 5|(1), 6|0, 7|0, 8|(1), 9|(15), 10|(18), 11|(10), 12|(5), 13|0, 14|0, 15|(8), 16|(4), 17|(3), 18|(6), 19|(3), 20|0, 21|0, 22|(2), 23|(3), 24|(2), 25|(3), 26|(6), 27|, 28|, 29|, 30| >

There were (560) comments with the imaginary construct of [sic] "internet" and (91) comments with the term "online" with one comment using both terms as of 4/27/2013 at 5:35 CST. Curtis J Neeley Jr. examined each of these (651) comments and there were (31) who hoped egregious indecency would be shown on public radio broadcasts of television and radio instead of only on public wire broadcasts. These comments generally did not wish the FCC to perform their statutory mission of ensuring the safety of distant communications broadcast in commerce per 47 USC §151 and hoped the malfeasance occurring now on public broadcasts by wire communications defined in 47 USC §153 could now be extended to radio broadcasts also. These (31) public comments are linked to the commenter name or alias as follows as a "live" PDF link.

(Zachary Rutledge, Myrle Nugent, George Davis, Devin LeLeux, David Naylor, Shayna Smith, William Russell Gray, Ryan Marsh, Rob Pugh, One Million Moms(alias), Mike Cappiello, Jose Diaz, Jordan D. White, Jacob Schulz, Desaun Bowen, Emily, David Woolsey, Daniel Lewis, Brad Miller , Andrew Reis , Joshua Rutterbush, Alex Elert, William Spry, Raeford Brown, Karina Montgomery, Paul Shaikh, Tony Andrys, Heather Loveridge, David McLaughlin, Erik Oscar Erikson III , Victor Wilson)

The pornography supporters listed above would appreciate Chairman Genachowski's misunderstanding of First Amendment concerns when public safety is impacted. The safety of public broadcasts of communications must be made ensured by the FCC not only per the Communications Act of 1934 but through the *Pacifica* ruling as well as common sense that is apparently no longer common at the FCC.

United States courts were granted an undemocratic oligarchy of rule like Nobles or Lords once had due to appointments for life. Senior citizens may retire and draw social security at age 65. Sir Lord Honorable John Paul Stevens made the egregious error calling 47 USC §153 ¶(59), wire communications, a "*unique and wholly new medium*" instead of the communications by wire these ALWAYS WERE. This mistake was made by a senior citizen at age 77 over twelve years after retirement age. Of 65

This new usage of 47 USC §153 ¶(59), wire communications, was another replacement of machines connected to wires besides facsimile machines. Telegraph machines were now replaced by computers connected to wire. The [sic] "internet" was an advancement of telegraph machines patented in 1843 by Samuel Morse. Radio communications broadcasts by 47 USC §153 ¶(59) wire communications makes simultaneous usage of wire and radio communications cause public airwaves to often be filled with anything broadcast by unsafe and unregulated 47 USC §153 ¶(59) wire communications using the common carrier protocol for time based modulation of signals.

Artists or authors of indecent material have a clear moral duty to prevent these from being encountered by minors in ANY medium supported in part by 47 USC §605.

The following (64) commenters not only sought continued banning of radio/television broadcasts of nudity and vulgarity but each also sought and end to current FCC malfeasance on regulating broadcasts by wire and radio even when called [sic] “internet” or [sic] “online”.

> (Dale Hulse, Karl Mathias, Cecily Dossett, Marcy West, W.Harrington, Marcus Nelson, Karl Mathias, Naomi Brown, Bob Stone, Tara, Parent Television Council, Greg Carlisle, Megan Powell, James Frank Brockson, Jr., Michael G. O'leary, Rayda L Renshaw, Paul & Lori Wagner, Carolyn P Black, Calvin Simmons, Ted Kilcup, Emily Peterson, Joani Hatch, Carol Nibbelink, Scott Obermann, Samantha R., Ron Raridon, Robert Ziccarelli, Robert H. Pettitt, Patricia Strickland, Richard John, Kevin McWilliams, Joel Wright, Crystal Oprea, Stephen Crowell, Sherry Hepler, Lucille Mendenhall, Jodie, Jessica Wilemon, James Bushnell, Bruce Yovich, Amy Garst, L & T Lang, Linda M Bunsen, Aaron, Craig Beitinger, Carla, Laurie Kraemer, Johannes Perlmuther, Ave Hurley, Torrie Young, Shanna Ormond, Destroyed Family, William Eckmann, Richard C. August, Goldia, Lauren Hales, William Eckmann, Richard C. August, Dan, Laurie Kraemer, Johannes Perlmuther. Kurt Rowley, Ph.D., Denna L Davis, Niki Jensen)

Curtis J Neeley Jr. has pursued the FCC in Federal Court because of the malfeasance of the FCC failing to protecting wire communications disguised as the [sic] “internet”. Curtis J Neeley Jr. did not seek fiscal damages but a change in policy and was dismissed in error by senior citizen Sir Lord Honorable Jimm Larry Hendren. This lawsuit will seek fiscal damages on remand from each FCC Commissioner. The FCC will now face claims for millions of dollars of damages due to failing to make 47 USC §153 ¶(59), wire communications, safe and failing to enforce 47 USC §605 or allowing unauthorized publication and use of wire communications that had adult filtration installed to forbid display of naked art to anonymous minors. Viewership of naked images online should require logging-in where identities can be tracked and Defendant Google Inc and Defendant Microsoft Corporation each refuse to require this. Nevertheless; This should be required now by the FCC as well as adoption of rule sets protecting Free Speech AND children that has already been served in this complaint. See 47 USC §232.

It is not likely that a United States court will rule morally and prohibit Defendant Google Inc and Defendant Microsoft Corporation from bypassing adult filtration and certainly not then also require the FCC to pay for malfeasance that allows anonymous pornography since most elderly judges are addicted to anonymously accessing legal pornography. The laws of the United states will continue being ignored and this Plaintiff will be quietly dismissed.

The political drive to end porn-by-wire or [sic] “internet” communications may be the only manner for ending the immorality of the United States like the amendment allowing women to vote that passed after Susan B. Anthony unsuccessfully tried to alert SCOTUS of United States' immorality. Susan B. Anthony died still unable to vote but remained the only female voter in the history of the immoral United States.

The porn-by-wire or [sic] “internet” communications must be regulated before becoming as pervasive as FM radio communications are today as will soon occur like has been explained in this litigation.

Curtis J. Neeley Jr.
2619 N Quality Lane
Suite 123
Fayetteville, AR 72703

Respectfully Submitted,

/s/ Curtis J Neeley Jr

Curtis J Neeley Jr., MFA