Entertainment

Competition with racier cable TV has left networks

searching for an act that grabs our *attention*

The stunt by Janet Jackson and Justin Timberlake during the Super Bowl may have been equivalent to the Howard Dean scream that got everyone's attention, but television has been pushing the levels of decency for years.

Knight Ridder Tribune

By JOHN COOK
Chicago Tribune

It was one of the most anticipated television events of the year. As millions of viewers — many of them children — looked on from their living rooms during a time period generally reserved for family viewing, a prominent pop singer walked onstage before a live audience and exposed one of her breasts, with just a pastielike covering over her nipple.

It wasn't the Super Bowl on CBS. It was the 1999 Video Music Awards on MTV. And it wasn't Janet Jackson, it was Lil' Kim, wearing a dress that offered, shall we say, no support to her left breast (Jackson's right one was exposed). And, by and large, nobody cared — even though, according to Nielsen Media Research, nearly 12 million people were watching. The dress became infamous as a fashion statement, but no investigations were launched.

Broadcast executives have been ruefully pointing to that moment lately, among other cable excesses, as they warily navigate the shoals of congressional outrage and an FCC investigation in the wake of Jackson's action before nearly 90 million viewers during the Super Bowl recently. Why, they ask, should cable get a pass when we get congressional hearings and a media firestorm?

If the Jackson incident has received more than its fair share of attention, given that more than 4 million Americans were watching Kim Catrall graphically simulate sex on HBO's beloved *Sex and the City* at roughly the same time on Sunday night that Jackson was performing, it is because the Super Bowl halftime show was the television industry's version of presidential candidate Howard Dean's infamous Iowa concession shriek.

It became an instant shorthand for a larger defect about which suspicions already existed — in this case, that the broadcast networks are warrens of depravity, intent on ever lowering the common denominator of decency. And the anger extends beyond just CBS.

The furor began even before the Super Bowl, when the FCC's enforcement division ruled that Bono's exclamation "this is really, really, (expletive) brilliant" during the 2003 Golden Globe Awards on NBC was not indecent because it was "fleeting" in nature and didn't actually describe a sexual act. Even though the FCC has made similar rulings in the past, chairman Michael Powell vowed to hold hearings to reverse the decision.

"It's getting worse, and it's getting more smash-mouth in intensity," said L. Brent Bozell, president of the Parents Television Council, a group that advocates family-friendly programming. "It's been a confluence of events, and the cumulative effect has been the lancing of a boil, and the public is up in arms."

Broadcasters vigorously defend their programming but acknowledge that, even if you take CBS and MTV executives (MTV produced the halftime show) at their word when they say they did not plan the Jackson display, the general tenor of network television has changed in recent years. But they say it's not fair to bring the hammer down on just the broadcasters alone.

"What you're seeing now is an effect of intense competition from cable," said a lobbyist for a major broadcast network. "Because of the fact that there isn't a regulatory regime that impacts their content, they have these award-winning shows that are very — let's call them 'edgy.' And what it's done is force networks to try to have edgier programming, but up to a line, and I think that tension is increasing very rapidly.

"The inequitable regulatory regime is causing that to happen. There's concern that if you're trying to get at the four broadcast networks, you have to get at the 104 other channels, too. Because they're all just clicks on a clicker right now for the vast majority of the public."

The problem, the lobbyist said, is that cable can cross that line freely, without fear of government interference. If the current regulatory regime survives, it will continue to push the broadcasters to be more like cable. And if the FCC tightens the reigns on what broadcasters can get away with, it will simply push viewers to the racier cable programming they desire.

Bozell disagrees.

"That is statistically not true," he said. "Look at the volume, look at the audience of HBO. They also point to MTV — look at the audience of MTV. It's a fraction of what the broadcasters have. And if it's true, why don't they point to the audience of Nickelodeon, of TV Land. They always point to the bad things and say, 'We have to be as bad as they are.' But they never point to the good things and say, 'We ought to be as good as they are.' "

When it comes to network channels, the FCC has the authority to fine, or even revoke the license of, any broadcaster that airs indecent programming, which the commission defines as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs" from 7 a.m. to 11 p.m. EST.

But despite frequent complaints of family groups, the commission never penalized a television station for indecency until just days before the Super Bowl, when it applied the maximum fine of $27,500 to a San Francisco station for briefly, and accidentally, showing a man's penis during a live newscast.

But Tony Soprano utters numerous four-letter words frequently on HBO. Legal experts and industry insiders say that the realities of the digital age have rendered obsolete the justifications for treating television differently than any other medium — there is after all, no Federal Print Commission thumbing through men's magazines, looking for indecency, and such a law would be unconstitutional on the face of it. The reason the FCC has been granted an enormous and unique exception to First Amendment concerns with respect to broadcasters is a legal doctrine called "spectrum scarcity."

Knight Ridder Tribune

Janet Jackson wasn't the first pop star to bare her breast in front millions of viewers on prime-time TV. Lil Kim, shown during this year's Grammy Awards, did so during the 1999 MTV Video Music Awards.

The Charlotte Observer

U2 lead singer Bono, shown here performing during the Super Bowl XXXVI halftime show two years ago, sparked an investigation last year when he muttered an expletive during the Grammy Awards Show.

"(Stepping up FCC enforcement) certainly takes care of maybe the first six channels on my TV. What happens on the other 400?"

GREG WALDEN
representative, R-Ore.

"Initially, the only basis for treating television differently was that more people wanted to speak on the 'public's airwaves' than there was room for," said Floyd Abrams, a First Amendment attorney who has represented broadcasters. "So we had the government involved to decide who could speak, meaning who could have a license. And that was the entering wedge which allowed the Congress to establish the FCC, and to have the FCC start to apply very broad and loose notions of what is and what is not in the public interest."

But in a world in which more than 80 percent of the nation gets television through cable or direct-broadcast satellite systems, which offer hundreds of channels, including cable-access channels open to the public, the notion of more voices than channels seems woefully outdated. And the other legal argument supporting indecency regulation, articulated by the Supreme Court in its landmark 1978 "seven dirty words" case, is that the broadcast medium is so "pervasive" and difficult to avoid that the public's interest in decency trumps the First Amendment.

But, to judge by viewership, cable has become just as pervasive as broadcast television. On average, more people watched cable last year.

"In the old days of the pervasiveness of the broadcast signal into the home, content regulation was treated different for broadcasters," the lobbyist said. "But now that you have 85 percent of the country that gets cable and satellite combined, you no longer can make that argument."

"I think eventually the difference between broadcast and cable must crumble," Abrams said, describing the current regulatory scheme as a "historical anomaly." "From a practical point of view, when the channels are right next to each other, and indeed, some of the same entities own both — and when spectrum scarcity is no longer a viable justification for differential treatment — it becomes increasingly hard to justify different treatment."

Given the furor over the Super Bowl — as well as myriad of other enormously popular results of the regulation of broadcast television, such as required programming for children — it is unlikely that Congress will attempt to rectify the situation by deregulating broadcast anytime soon. And complicating the issue is, as Abrams said, all the major broadcast networks, or their parent companies, have significant cable holdings as well.

So while the network executives may feel unfairly singled out for regulation, their colleagues on the cable side, and their bosses, might disagree. But the notion of applying some standards to the cable operators is floating around Washington.

"I've heard members on both sides mention it," the lobbyist said. "I don't know how deep the feeling is, but once it starts getting into the general lexicon, it starts building up its own head of steam."

At a House telecommunications subcommittee hearing the week before the Super Bowl, Rep. Greg Walden, R-Ore., expressed frustration at the increasing coarseness over the airwaves and singled out cable and satellite channels as the main culprit.

"(Stepping up FCC enforcement) certainly takes care of maybe the first six channels on my TV. What happens on the other 400?" Walden asked. "I think that's where the worst abuses are, and none of that is regulated."