**A blow to federal censorship**

FCC can't control vulgar language

July 15, 2010 | By Steve Chapman

When former NFL player Pat Tillman was killed in Afghanistan, Americans were more moved by it than by any other soldier's death in that war. There was intense interest, particularly in Phoenix, where he had played. But local TV stations dropped coverage of his memorial service as it was going on.

Why? Because some of the speakers used bad words. His brother Richard, for example, said, "He's not with God. He's (expletive) dead."

It was an honest statement at a public event. But airing such a remark could cost a TV station a large fine from the Federal Communications Commission — or even its license to broadcast.

The FCC has a policy against vulgar language, even in brief, unscripted outbursts. So broadcasters who know what's good for them do their best to avoid it, no matter how newsworthy, appropriate or even revealing it may be.

The Fox TV people need no reminder. In 2002, the network carried the Billboard Music Awards, where singer Cher used the F-word in reference to her detractors. The FCC moved to impose penalties on the network. But this week, a federal appeals court ruled the agency's ban on "fleeting expletives" unconstitutional.

Americans generally take a wary view of government interference and control in their lives. But for decades, federal regulators, acting at the behest of Congress and the president, have presumed to tell TV and radio stations what they can and cannot broadcast, which also means telling audiences what they may and may not hear.

Never mind that the First Amendment says Congress "shall make no law ... abridging the freedom of speech." Elsewhere, that means what it says. The government may not ban profanity in movies, CDs, e-mails, magazines, newspapers, Web sites, leaflets, T-shirts or bumper stickers. Only broadcasters are subject to these paternalistic dictates.

The reason offered by the Supreme Court in days of yore is that broadcasting is "uniquely pervasive" in American life. But today, it's barely more pervasive than other media, like cable TV and the Internet, that are immune from censorship.

This selective treatment is beginning to look like Tyrannosaurus Rex: fierce and terrifying but unsuited for the 21st century. The rules for over-the-air media no longer make any sense, and the Supreme Court may no longer be able to avoid acknowledging that reality.

The FCC has excelled in proving that federal officials cannot be trusted to make sensible or even intelligible decisions about what should be allowed. They barred a common reference to bovine excrement, but allowed the insulting use of an equally coarse term for male genitalia.

They allowed very bad words in the TV airing of "Saving Private Ryan" but not in a documentary about blues musicians. They forbade the use of one barnyard expletive because it came during an interview on a morning news show — then allowed it because, well, it came during an interview on a morning news show.

That leaves station owners gambling with their most valuable asset. As the appeals court noted Tuesday, when an FCC lawyer was asked "if a program about the dangers of premarital sex designed for teenagers would be permitted," the attorney replied gingerly, "I suspect it would."

Would I survive a single game of Russian roulette? I suspect I would.

The FCC and its supporters seem to think Americans desperately need government assistance to protect themselves and their children against an onslaught of filth. But why? Since broadcasters have an interest in not alienating their audiences, they are bound to exercise discretion.

Even Jon Stewart's "The Daily Show," which caters to a mature cable audience that is not easily offended, bleeps obscenities (which are frequent). Nickelodeon has a constitutional right to feature full-frontal nudity, but it doesn't.

Some networks are more graphic, because some viewers want such fare. But anyone who wants to avoid them can easily do so — by blocking those channels or by deploying V-chips (required on all new TVs since 2000) that filter programs based on a ratings system.

In practice, not many households bother with the V-chip. Apparently most Americans either don't feel much need for protection from coarse offerings or find other ways to shield themselves.

In other words, they've found that free expression, while sometimes distasteful, is not an intolerable nuisance. When will the FCC make the same discovery?