

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
TV Ratings System and the)	MB Docket No. 19-41
Oversight Monitoring Board)	

**JOINT REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS,
NCTA – THE INTERNET & TELEVISION ASSOCIATION, AND
THE MOTION PICTURE ASSOCIATION OF AMERICA**

The record in this proceeding¹ supports the position of the NAB, NCTA, and MPAA (hereinafter “Joint Commenters”) that the FCC should report to Congress² that the TV Parental Guidelines (“Guidelines” or “rating system”) continue to provide a valuable and effective tool to help parents make informed choices about their children’s television viewing, and that its governing body, the TV Parental Guidelines Monitoring Board (“Monitoring Board”), plays an important oversight role.³

I. INTRODUCTION

Our initial comments endeavored to answer the questions posed in the Public Notice, as well as to address Senator Lankford’s interest in ensuring that “parents and families can adequately evaluate television content based on an accurate rating system driven by content creators in a

¹ See *Media Bureau Seeks Comment on the TV Ratings System and the Oversight Monitoring Board*, MB Dkt. No. 19-41, DA 19-120 (rel. Feb. 26, 2019) (“Public Notice”).

² Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, Explanatory Statement (H. Rept. 116-9, Division D, Title V, p. 673), 133 Stat. 13 (2019) (Act) (“the FCC is directed to report ... on the extent to which the rating system matches the video content that is being shown and the ability of the TV Parental Guidelines Oversight Monitoring Board to address public concerns”).

³ Joint Comments at 3-4, 8-13.

responsible manner.”⁴ We explained how the Guidelines were created and implemented, with input from parents’ groups, as well as children’s, educational, medical, religious, and similar organizations, and how the Monitoring Board and other industry outreach incorporates input from such entities.⁵ In this way, the industry endeavors to ensure the system is useful, accurate, and consistent, and that it evolves with television service and content.⁶

We also agree with Senator Lankford that “[p]rogramming creators have a First Amendment right to create content without interference from the government,” and “do not believe the government needs to enter into the business of regulating the entertainment industry.”⁷ Congress did not authorize the FCC to regulate the rating system—either in the 1996 Telecommunications Act or the 2019 Consolidated Appropriations Act—and the First Amendment would prohibit such FCC interference in any event.⁸

Although certain commenters, such as the Parents Television Council (“PTC”), Concerned Women for America (“CWA”), Campaign for a Commercial-Free Childhood (“CCFC”), Focus on the Family, and some individuals, express concerns with the TV rating system, the overwhelming

⁴ Sen. Lankford Comments at 1. Senator Lankford authored the appropriations bill report language that prompted the Media Bureau to issue the Public Notice.

⁵ Joint Comments at 6, 8.

⁶ The industry also is sensitive to concerns as expressed by some regarding the content in commercials created to advertise programming. See Sen. Lankford Comments at 2. But as the Commission previously explained, Congress authorized it in 1996 to evaluate an industry-created ratings system for *programming*, not commercials. See *Implementation of Section 551 of the Telecommunications Act of 1996, Video Programming Ratings*, Report and Order, 13 FCC Rcd. 8232, 8233 (1998) (“*Ratings Order*”) (observing that “Congress’ goal [was] achieving an effective method by which ... parents [can] block *programming* they believe is harmful to their children”) (emphasis added). See also *id.* at 8232 (Sections 303(x) and 330(c) seek to “allow [parents] to [] block ... *programming* ...”) (emphasis added).

⁷ Sen. Lankford Comments at 1.

⁸ Joint Comments at 2.

majority of parents find the TV rating system useful and accurate.⁹ While there may be programming that PTC and other groups disfavor, audiences have more video choices than ever before.¹⁰ The rating system is not—and should not be—designed to influence the content of programming.¹¹ As demonstrated in our Comments, the TV rating system provides parents with useful and accurate information, creates a system through which the public can provide input, and establishes a mechanism under which the industry can—and does—respond.¹² The record ultimately illustrates that, while some may disagree with certain ratings or seek to go beyond the narrow focus of this proceeding, the overarching system continues to serve parents and respond to public concerns. The Joint Commenters urge the Commission to remain focused on the specific congressional mandate, which is to provide information in the form of a report, and not to accept entreaties to exceed statutory authority or constitutional limits.

II. THE TV RATING SYSTEM PROVIDES USEFUL AND RELIABLE INFORMATION

As explained in our Comments, the TV Parental Guidelines are designed as an information tool to help parents make their own decisions about their children's viewing, rather than as a prescriptive mechanism for restricting what is on television.¹³ The Joint Commenters submitted information explaining how the Guidelines were developed and what they seek to achieve, as well

⁹ Joint Comments at 3-4.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 2.

¹² *Id.* at 12-13

¹³ *Id.*

as survey data indicating the vast majority of parents find the ratings useful in helping them make viewing decisions for their households.¹⁴

Critics of the system cite particular programs they believe were inaccurately rated and suggest, as a consequence, that the system should be overhauled. While a given rating may occasionally vary from individuals' particular views, surveys show that parents, including those who can recall having seen a program rating with which they disagreed, still overwhelmingly found the rating system to be helpful. In 2018, only 14 percent of all parents said they had seen an inaccurate rating frequently, and most of those parents who recall seeing inaccurate ratings still have a favorable view of the TV rating system.¹⁵

PTC criticizes the current system for “inaccuracies” and claims that it needs to be more “objective,” like nutrition labeling.¹⁶ Similarly, CWA compares “inaccurate” ratings to mislabeled drugs.¹⁷ But entertainment programming is not like food or drugs. While individuals in good faith make every effort to attach appropriate ratings to television programming, rating programs is not an “objective” science, and ratings necessarily reflect editorial judgment based on multiple factors.

¹⁴ *Id.* § II.

¹⁵ See http://www.tvguidelines.org/resources/Release_102418.pdf. See also Key Findings From 2018 TV Ratings Research Among Parents (<http://www.tvguidelines.org/resources/2018KeyFindings.pdf>). The 2016 survey by Hart Research Associates found 35 percent of respondents said they could recall seeing a show they thought might have been inaccurately rated, but that 76 percent who gave that response viewed the rating system favorably, while 91 percent of all respondents reported being very or somewhat satisfied with the accuracy of ratings in general. See http://www.tvguidelines.org/resources/2016MBKeyFindings_HartResearch.pdf. Similarly, the 2014 survey found that even among those who reported seeing a program they believed was not rated accurately, 72 percent viewed the rating system favorably. See <http://www.tvguidelines.org/resources/KeyFindings2014Research.pdf>.

¹⁶ PTC Comments at 1-4.

¹⁷ CWA Comments at 1.

Moreover, the Supreme Court has rejected this false analogy between the regulation of commodities, like food or drugs, and government oversight of creative content. Unlike medicine and groceries, books, films and television programs receive constitutional protections.¹⁸

Complaints that the system is inaccurate based on the assertion that some programs may be rated differently on different networks are also misplaced.¹⁹ As the Joint Commenters explained, since each episode of a television series is rated separately, individual episodes may be rated differently depending on the theme and specific content of that episode.²⁰ Additionally, each episode of a particular series may be edited differently when aired on a different network based on a number of factors, including the target audience of the network, time of day when the program airs, etc. As a result, a program or movie may contain different content from service to service and thus carry a different rating reflecting the specific content in that version. In particular, individual shows may be edited and rated differently depending on whether they are carried on premium cable, basic cable or a broadcast service. The system's ability to address such nuances rather than apply a "one size fits all" rating is a strength of the system, not a flaw.

Some commenters' contentions that the Guidelines are too complex²¹ fail to recognize that the initial rating system was revised to include content descriptors *at the request of advocacy*

¹⁸ *E.g.*, *Smith v. California*, 361 U.S. 147, 152-153 (1959) ("There is no specific constitutional inhibition against making the distributors of food the strictest censors of their merchandise, but the constitutional guarantees of the freedom of speech and of the press stand in the way of imposing a similar requirement on the bookseller."); *Marcus v. Search Warrant*, 367 U.S. 717, 730 (1961) (because of First Amendment concerns, regulating books is not comparable to regulating "impure food and drugs").

¹⁹ *E.g.*, PTC Comments at 3.

²⁰ Joint Comments at 8-9 (explaining how ratings are determined).

²¹ *E.g.*, CCFC Comments at 1; Joyce Brinkerhoff Comments; Richard and Laura Debord Comments.

groups that sought more detailed information.²² While the television industry is always looking for ways to improve the system and to educate parents about its use,²³ the Guidelines seek to strike the balance between ease of use and detailed information. And surveys show high levels of use and approval of the Guidelines that the industry adopted and the Commission accepted under Section 551(e) of the 1996 Telecommunications Act.²⁴

III. THE TV RATING SYSTEM EVOLVES WITH TELEVISION SERVICE AND PROGRAMMING AND IS RESPONSIVE TO PUBLIC INPUT

As the Joint Commenters explained in our initial filing, the Monitoring Board is designed to ensure the rating system keeps up with the evolution of television service and programming, and is responsive to public input, by providing a mechanism for regular review and consultation with a variety of parents' and children's groups and similar organizations.²⁵ The Monitoring Board receives public input and facilitates discussion among those responsible for creating and rating the programming.²⁶ Ratings also are reviewed in response to the relatively small proportion of complaints received compared to the overall amount of programming aired, and the industry does make

²² Joint Comments at 8-9. *See Modification of Industry Proposal for Rating Video Programming*, 12 FCC Rcd. 3135 (CSB 1997) ("[T]he revised guidelines are supported by leading family and child advocacy groups, as well as by television broadcasters, cable systems and networks, and television production companies.").

²³ *See infra* § III.

²⁴ Joint Comments § II. PTC seeks to dismiss these consistent survey findings "as the type of polling results that might be found in a North Korean election," PTC Comments at 5. This quip ignores the confirming experience of the Monitoring Board and the relative absence of complaints about the system. Joint Comments at 14-15.

²⁵ Joint Comments at 6, 8.

²⁶ *Id.* § IV.B

changes when the complaints are well-founded.²⁷ The PTC acknowledges, for example, that “[t]here were three instances where [its] outreach resulted in a change to a content rating.”²⁸

The consistent practice of the Board is to respond to complaints received from the public by acknowledging receipt and forwarding the complaint to the network involved for further review. Such public input also is considered as the Board deliberates about possible improvements to and implementation of the rating system. The Monitoring Board thus plays a valuable role in relaying questions and complaints to individual networks, and actively working to ensure that the rating system continues to serve parents and their children.²⁹

IV. CONGRESS HAS NOT AUTHORIZED THE FCC TO PLAY A ROLE IN THE RATING SYSTEM AND INTERVENTION WOULD BE UNCONSTITUTIONAL

The Commission’s task in this proceeding is straightforward—to report on the accuracy of the rating system and the ability of the Monitoring Board to address public concerns.³⁰ Several comments, however, call for FCC intervention in the rating system. The PTC, for example, calls for the Commission to provide “real oversight” and even suggests the FCC should perhaps attend ratings meetings.³¹ The CWA and CCFC call for the FCC to “intervene” and revise the rating system or create one anew.³²

²⁷ *Id.* 4, 7, 12-13.

²⁸ PTC Comments at 4.

²⁹ The change of companies serving as the Monitoring Board’s executive secretariat did not result in a lapse “of at least one year (late 2017 through late 2018)” in the ability of viewers to communicate with the Board, as claimed by PTC.

³⁰ Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, Explanatory Statement (H. Rept. 116-9, Division D, Title V, p. 673), 133 Stat. 13 (2019).

³¹ PTC Comments at 5-6.

³² CWA Comments at 2; CCFC Comments at 1.

Such proposals exceed the scope of this Public Notice and fail to recognize the statutory limits on the Commission's authority to regulate either the rating system or the programming itself.

The report language for Section 551 of the 1996 Telecommunications Act made clear that:

the guidelines and recommended procedures for a rating system [in section 551 of the 1996 Act] are not rules and do not include requirements. They are intended to provide industry with a carefully considered and practical system for rating programs *if industry does not develop such a system itself*. However, nothing in subsection (b)(1) authorizes, and the conferees do not intend that, the Commission require the adoption of the recommended rating system nor that any particular program be rated.³³

Moreover, what authority the Commission had regarding the television rating system expired in March 1998, when the Commission found that the Guidelines satisfied Section 551 of the Telecommunications Act of 1996. Indeed, Section 551(e) states that:

the amendment made by subsection (b) of this section shall take effect 1 year after the date of enactment of this Act, *but only if* the Commission determines, in consultation with appropriate public interest groups and interested individuals from the private sector, that distributors of video programming have not, by such date (A) established voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children, and such rules are acceptable to the Commission; and (B) agreed voluntarily to broadcast signals that contain ratings of such programming.³⁴

These commenters' proposals also raise issues of content regulation that necessarily implicate the First Amendment. The Commission recognized decades ago that regulatory action in this area would "raise sensitive First Amendment problems" because "[g]overnment rules could create the risk of improper governmental interference in sensitive, subjective decisions about programming, could tend to freeze present standards and could also discourage creative developments

³³ S. Conf. Rep. No. 104-230, at 195 (emphasis added).

³⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 551(e) (1996) (emphasis added). *See also Ratings Order*, 13 FCC Rcd. at ¶ 4.

in the medium.”³⁵ In the years since, court rulings have confirmed that governmental mandates that incorporate private ratings systems and/or compel their use violate the First Amendment.³⁶

Finally, the PTC’s claims that television programming is linked with violent behavior and therefore should be subject to greater oversight not only are beyond the scope of this proceeding, but raise even greater statutory and constitutional problems. In any event, PTC’s arguments have been thoroughly addressed and refuted in other proceedings.³⁷

V. CONCLUSION

For the foregoing reasons, the Joint Commenters urge the Commission to adhere to the congressional directive to issue a report on the TV rating system. To go beyond that, and embark on a regulatory initiative, would exceed its statutory and constitutional authority to regulate in this area. The record in this proceeding supports a report that the Guidelines provides an accurate and reliable tool for parents to use in making decisions about their children’s television viewing, and that the Monitoring Board plays a valuable role in administering the ratings.

³⁵ *Report on the Broadcast of Violent, Indecent, and Obscene Material*, 51 F.C.C.2d 418, 420 (1975).

³⁶ *See, e.g., Entertainment Software Ass’n. v. Blagojevich*, 469 F.3d 641, 652-653 (7th Cir. 2006) (compelled rating scheme was subject to strict scrutiny and was held to be unconstitutional because it “communicates a subjective and highly controversial message”); *Video Software Dealers Ass’n v. Schwarzenegger*, 556 F.3d 950, 966-967 & n.20 (9th Cir. 2009) (compelled labeling system fails even rational basis review), *aff’d on other grounds sub nom. Brown v. EMA*, 564 U.S. 786 (2011).

³⁷ *See* Ltr. from Timothy F. Winter, PTC, to Marlene H. Dortch, MB Docket No. 19-41, Mar. 6, 2019). PTC submitted a 2018 “mini-study” that purports to link television programming with violence, including school shootings, and quotes a 2000 statement from several medical associations suggesting a “causal” relationship between popular entertainment and societal violence. Putting aside that such claims are not responsive to the questions in this Public Notice, they were thoroughly addressed (including the 2000 statement from medical associations) in Comments of the Media Associations in MB Docket No. 04-261, *In the Matter of Violent Television Programming and its Impact on Children*, at pp. 7-12. (The Media Associations included NAB, MPAA, Association of National Advertisers, American Advertising Federation, American Association of Advertising Agencies, and the Satellite Broadcasting & Communication Association.). *See also generally Brown v. EMA*, 564 U.S. 786, *supra* note 36. While PTC’s “mini-study” purports to count depictions of violence in television programming, it does not seek to explain the decades-long reductions in violent crime during the periods covered by its analysis.

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Respectfully submitted,



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