

with the market, or with the changing expectations and behaviors of parents and children.² Viacom shares the view of these commenters that the Commission adopted the children’s programming rules for a different generation of children living in a very different media landscape than exists today, at a time when linear television (via MVPD or over-the-air) was the primary means of watching content. In 1991, when the Commission adopted most of the children’s programming rules, less than two percent of the U.S. population used the Internet³—principally via dial-up services—and Tim Berners-Lee had just invented the world’s first web browser.⁴ Neither the Commission nor producers of children’s programming foresaw (understandably) the technological developments over the more than 25 years since then that have changed how children interact with the world. Even the website display rule of 2004 predated the rise of tablets, smartphones, and video streaming services.

The pace and scale of technological and behavioral change is sufficient justification for a comprehensive re-examination of the children’s programming rules. As the Content Companies noted, in light of the significant changes in the programming marketplace, “the Commission should review its children’s programming rules and their implementation with the goal of

² See Comments of the National Association of Broadcasters at 10-14, 24-37, *Modernization of Media Regulation Initiative*, MB Docket No. 17-105 (filed July 5, 2017); Comments of CBS Corporation, The Walt Disney Company, 21st Century Fox Inc., and Univision Communications Inc. at 5-9, 13, *Modernization of Media Regulation Initiative*, MB Docket No. 17-105 (filed July 5, 2017) (“Content Companies Comments”); Comments of Gray Television, Inc. at 3-8, *Modernization of Media Regulation Initiative*, MB Docket No. 17-105 (filed July 5, 2017); Comments of NCTA — The Internet and Television Association at 21, *Modernization of Media Regulation Initiative*, MB Docket No. 17-105 (filed July 5, 2017).

³ See *Internet Users (Per 100 People)*, UN Data, <http://data.un.org/Data.aspx?d=WDI&f=Indicator%3AIT.NET.USER.P2> (last visited Aug. 4, 2017) (reporting Internet usage data indicating that only 1.2% of Americans used the Internet in 1991).

⁴ See *History of the Web*, World Wide Web Foundation, <http://webfoundation.org/about/vision/history-of-the-web> (last visited Aug. 4, 2017).

ensuring that” entities providing programming directed to children “can continue to do so in an appropriate, effective and relevant way.”⁵

Viacom’s own experience confirms the need for a fresh look at the children’s programming rules. For example, in 2015, Nickelodeon launched *Game Shakers*, a show about two girls who start a multimillion-dollar video gaming company, to show girls they can “crack the code” to rewarding careers in technology.⁶ A key part of the initiative was the creation and distribution of “Coding Kickoff,” a free coding tutorial game, and other games and resources available in mobile app stores.⁷ But due to the website display rule—a rule that, among other things, prohibits the display of a website in a children’s program during program or promotional time if that website is not at least two clicks away from any website or app containing “commercial” content⁸—Nickelodeon did not direct the show’s viewers to app stores where they could download the games. Viacom doubts that the Commission intended its website display rule to inhibit the promotion of computer science skills to girls, but it did so in this case.

Viacom also has found that the website display rule can diminish its ability to promote corporate social responsibility campaigns to parents and children. One such campaign is Nickelodeon’s Worldwide Day of Play, an annual event during which Nickelodeon suspends programming on all of its networks and websites from noon to 3 p.m. (ET/PT) to encourage

⁵ Content Companies Comments at 6.

⁶ See *Game Shakers*, Nickelodeon, <http://www.nick.com/game-shakers> (last visited Aug. 4, 2017).

⁷ See *Coding Kickoff*, Nickelodeon, <http://www.nick.com/mash-ups/games/nickelodeon-coding-kickoff> (last visited Aug. 4, 2017).

⁸ See 47 C.F.R. § 73.670(b) (providing that “[t]he display of Internet Web site addresses during program material or promotional material not counted as commercial time is permitted only if,” among other things, “[t]he page of the Web site to which viewers are directed by the Web site address is not used for e-commerce, advertising, or other commercial purposes (e.g., contains no links labeled ‘store’ and no links to another page with commercial material)”).

children to go outside and play.⁹ Nickelodeon promotes and hosts play-focused events for children with partners at the local and national level, including the NFL, NBA, Boys & Girls Clubs of America, and U.S. Tennis Association. Again, due to the website display rule, the Nickelodeon networks cannot display partner websites that promote Worldwide Day of Play during program or promotional time if those websites contain *any* commercial content—potentially even when that “commercial” content merely highlights the partners’ corporate social responsibility initiatives.¹⁰ A similar restriction applies to website links in public service announcements featuring SpongeBob SquarePants and the Teenage Mutant Ninja Turtles.

The unforeseen consequences of the application of these rules in our current environment are exacerbated by the unlevel playing field they have created. As several commenters have noted, edge providers like Google’s YouTube can freely direct children to commercial sites and are not subject to any of the Commission’s children’s programming rules.¹¹ As *Marketplace* reported with respect to newly-announced ad spending by a major toy manufacturer on YouTube Kids, if successful, this type of advertising “will only increase” because platforms like YouTube Kids are “an unregulated space for connecting with children,” in contrast to MVPD- and broadcast-distributed programming.¹² Notably, if Nickelodeon had distributed *Game Shakers*

⁹ See Press Release, Nickelodeon, *Nickelodeon to Help Make the World a More Playful Place with Summer-long Celebration of Play* (July 17, 2017), <http://www.nickpress.com/press-releases/2017/07/17/nickelodeon-to-help-make-the-world-a-more-playful-place-with-summer-long-celebration-of-play>.

¹⁰ Another corporate social responsibility campaign by Nickelodeon, “Helping and Leading Others,” or HALO, similarly has been limited in its ability to include partner websites in on-air promotions about the campaign. For information about HALO, see Christine Woo, *Jason Derulo Jams Alongside Hailee Steinfeld and More to Celebrate Nickelodeon’s 2016 HALO Honorees*, Viacom (Jan. 6, 2017, 6:17 p.m.), <http://blog.viacom.com/2017/01/jason-derulo-jams-alongside-hailee-steinfeld-and-more-to-celebrate-nickelodeons-2016-halo-honorees>.

¹¹ See Content Companies Comments at 7; Comments of NCTA – The Internet and Television Association at 21.

¹² *Goodbye Cable, Hello YouTube: As Kids Move Online, So Do Mattel’s Ad Dollars*, *Marketplace* (Aug. 3, 2017, 8:06 a.m.) (quoting Professor Benjamin Burroughs of the Hank Greenspun School of Journalism and Media Studies at the University of Nevada, Las Vegas), <https://www.marketplace.org/2017/08/03/business/goodbye-cable-hello-youtube-kids-move-online-so-does-mattel-s-ad-dollars>; see also Mike Shields, *YouTube Is Making a Play for* (continued...)

only through the Nick.com website and not on linear television, for example, it would have faced no restrictions on directing children to app stores from its webpages dedicated to the *Game Shakers* property.

The Commission also should evaluate the unintended consequences of its host-selling policies. The policy bars the use of “program talent or other identifiable program characteristics to deliver commercials” during or adjacent to children’s programming featuring that character or other identifiable program characteristics.¹³ In the prototypical example motivating the host-selling policy, “the program host actually delivers the commercial in his character role on the program set.”¹⁴ The host-selling rule was intended to address this issue by ensuring that children are able to distinguish program content from advertising. Yet, the host-selling policy as currently applied can limit a programmers’ ability to alert children and their parents—in an appropriate manner—to content that may interest them. Likewise, the application of the host-selling policy to some online platforms via the website display rule can limit the availability of online content for children in unintended and counterproductive ways. Viacom urges the Commission to consider fully whether the scope of the host-selling rule in its present form aligns with the Commission’s goal of facilitating children’s (and parents’) access to useful and entertaining content tailored to their interests.

Nickelodeon’s Lunch Money, Business Insider (Aug. 2, 2017, 9:46 a.m.), <http://www.businessinsider.com/youtube-is-making-a-play-for-nickelodeons-lunch-money-2017-8>.

¹³ *Policies and Rules Concerning Children’s Television Programming; Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Memorandum Opinion and Order, 6 FCC Rcd 5093, 5097 (¶ 18) (1991).

¹⁴ *Petition of Action for Children’s Television (Act) for Rulemaking Looking Toward the Elimination of Sponsorship and Commercial Content in Children’s Programming and the Establishment of a Weekly 14-Hour Quota of Children’s Television Programs*, Children’s Television Report and Policy Statement, 50 F.C.C.2d 1, 16 (¶ 18) (1974).

Finally, Viacom agrees that the Commission should review its *implementation* of the commercial limit rules¹⁵—again, to ensure that they do not yield unintended, and deleterious, consequences.¹⁶ As the Content Companies explain, “confusion over the scope of the interpretation or implementation of rules” can affect business decisions in ways that “limit[] the commercial viability of programming originally produced for children and mak[e] it less likely that investment will flow to such programming.”¹⁷ For example, Section 73.670 of the Commission’s rules, which establishes the commercial time limits, states in a note following the principal rule text that the term “children’s programming” refers to programs “*originally* produced and broadcast primarily for an audience of children 12 years old and younger.”¹⁸ If applied in an unduly conservative manner, this definition could be read to limit the distribution of quality programming that is directed to children in the first instance but may be delivered to a broader audience at a later date.

In conclusion, the marketplace for children’s programming and the expectations and behavior of parents and their children have undergone significant change in the 26 years since the Commission’s children’s programming rules and policies were adopted. Viacom believes, and the record demonstrates, that these changes warrant thoughtful examination of, and potential changes to, those rules and policies.

¹⁵ See 47 C.F.R. § 73.670(a).

¹⁶ See Content Companies Comments at 8.

¹⁷ *Id.*

¹⁸ 47 C.F.R. § 73.670 n.2 (emphasis added).

Respectfully submitted,

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