

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Children's Television Programming Rules)	MB Docket No. 18-202
)	
Modernization of Media Regulation Initiative))	MB Docket No. 17-105
)	

COMMENTS OF COMMON SENSE KIDS ACTION

James P. Steyer
Founder and CEO
Common Sense Media

Ariel Fox Johnson
Senior Policy Counsel,
Privacy and Consumer Affairs

Amina Fazlullah
Digital Equity Counsel,
Common Sense Kids Action

650 Townsend Street, Suite 435
San Francisco, CA 94103



September 24, 2018

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Common Sense Media Opposes Changes that would Reduce the Amount of Programming Available to Kids	3
a.	Modifying or Eliminating the Processing Guideline Would Decrease the Amount of Core Programming On the Air	3
b.	Eliminating the Comparable Carriage Requirement Would Limit the Reach of Educational/Informational Programming.....	5
c.	Several Proposed Changes Would Make Educational/Informational Programming Less Effective for Children	6
1.	The Proposed Changes to Core Programming Requirements Would be Detrimental to Children	6
2.	If the Second Home Preemption Requirement is Eliminated, Efforts to Publicize Core Programming Should Increase to Better Inform Parents.....	7
III.	Many Children Do Not Have Effective Substitutes to Broadcast Core Programming.....	8
a.	Many Children Cannot Access Substitutes Because They Don't Have the Means to Afford Them.....	9
b.	Some of the Proposed Substitutes in the NPRM are not Adequate Replacements for Core Programming	9
IV.	Conclusion	11

I. Introduction

Common Sense Kids Action, the advocacy arm of Common Sense Media (collectively, “Common Sense”) on behalf of Color of Change and Professor Jenny Radesky M.D is pleased to submit these comments in response to the Notice of Proposed Rulemaking In the Matter of Children’s Television Programming Rules by the Federal Communications Commission (the “Commission” or “FCC”). Common Sense is a national, independent, nonpartisan voice for America’s children, working to ensure that every child has the opportunity to thrive in the 21st century. Common Sense has researched media and technology use by children and teens from a variety of perspectives. Our most recent reports include *The Common Sense Census: Media Use by Kids Age 0-8* (2017), *Character Is Common Sense: A Report on an Initiative Linking Media, Kids, and Character Strengths* (2017), and *News and America’s Kids: How Young People Perceive and Are Impacted by the News* (2017). We appreciate the opportunity to provide comments on the Commission’s proposed changes to the Children’s Television Act rules.¹

Color of Change is the country’s largest online racial justice organization. Color Of Change has led a number of campaigns centered around the health and wellbeing of Black children- these campaigns include the impacts of targeted junk food advertising, the digital divide in Black communities and access to quality education and enrichment opportunities. Color of Change sees current Children’s Television Act rules as crucial to ensuring early exposure to educational and diverse programming for children at lower socio-economic levels.

Professor Jenny Radesky a Developmental Behavioral Pediatrician whose research focuses on family digital media use, child social-emotional development, and parent-child interaction. She uses a combination of observational, qualitative, and passive sensing methods to examine how parents and young children use mobile media throughout daily routines. She authored the 2016 American Academy of Pediatrics digital media guidelines for young children.

While we recognize the Commission seeks to lessen burdens for broadcasters, Common Sense is concerned that the rules as proposed would ultimately reduce the amount quality broadcast programming options, which would impact the overall children’s programming market. For families without the means to pay for streaming or other non-broadcast content these changes would significantly impact their access to quality children’s content. The proposed changes to rules pertaining to scheduling would make children’s programming less effective and would make it more difficult for parents to find quality children’s programming. For families without the means to own multiple devices or to subscribe to premium cable or video streaming these rules negatively impact their access to quality children’s programming. We are also concerned that the proposed rules rely

¹ Common Sense thanks Meg Schumm, legal intern and law student at George Washington University, for her contributions to these Comments.

heavily on unregulated streaming content to make up for the shortfalls in educational and informational content.

Even in 2018, broadcast television remains an important medium and means of educating and informing children. Although many children have access to educational media via cable packages and streaming video subscriptions, a segment of the population still depends solely on broadcast television. More than six million households have neither cable nor high-speed Internet,² and one study estimates that 24% of Americans will be without a pay TV subscription by the end of 2017.³ Almost two million of these households are African-American, and another 1.5 million are Hispanic,⁴ making minority households disproportionately likely to lack cable television and high-speed internet. Low-income families generally cannot afford high-speed internet necessary for streaming video, or devices capable of streaming video on a television.⁵ This is especially true for rural low-income families, of whom 28% cannot afford broadband internet.⁶ In addition, children from low-income families are more likely than other children to rely on broadcast television and on watching TV shows as they are aired rather than through time-shifting.⁷ Educational/Informational programming provides a unique opportunity for children from these households to catch up to their peers. These children should not be left behind in a rush to ease broadcasters' public interest obligations.

Additionally, even among children who have access to other content sources, television remains the dominant form of screen media in their lives. Almost half of households that owned streaming devices only watched traditional television in an average day, reflecting broadcast television's continued prominence.⁸ Specifically, children still spend more time in front of a television than with any other form of media.¹⁰ Children eight years old and up spend on average two hours a day watching television,¹¹ and it is

² See Nielsen Total Audience Report Q2 2017, 26;

³ See *Optimistic Outlook on Multicasts Prospects*, TVNewsCheck (Jul. 18, 2017) <https://tvnewscheck.com/article/105653/optimistic-outlook-on-multicasts-prospects/>

⁴ *Supra*, note 1, at 26

⁵ Only 20% of households making less than \$40,000 a year own a device capable of streaming video to a television. See Nielsen Local Watch Report Q2 2017, 8

⁶ See Wireless Broadband Alliance and HIS Market June 2017

⁷ See *The Common Sense Census: Media Use Among Kids Ages 0-8* (2017)

⁸ Nielsen Local Watch Report Q2 2017, 13

⁹ About a third (30%) of parents in this country own an HD antenna, which allows their families to watch broadcast television without a subscription. See *The Common Sense Census: Media Use Among Kids Ages 0-8* (2017)

¹⁰ *Supra*, note 5

¹¹ See *Media Use in School-Aged Children and Adolescents*, American Academy of Pediatrics (2016). This estimate does not include time children spend watching content originally created for television on laptops and streaming devices. Such content is ubiquitous, with many of the top kids' shows on services like Amazon Prime Video and Netflix merely ported from traditional television. Reducing the amount of quality children's content available on television could also reduce the amount of that content available on the Internet and from other sources, especially those that are free.

important that what children watch during that time continues to be quality content meeting the goals of the Children's Television Act that at the very least, does no harm.

II. Common Sense Media Opposes Changes that would Reduce the Amount of Quality Programming Available to Kids

The Children's Television Act of 1990 (CTA) establishes a clear Congressional mandate that broadcasters help serve the educational needs of America's children in exchange for their broadcast licenses.¹² The current programming guideline ensures that networks provide at least three hours a week of educational/informational content geared specifically to children. As advocates for children and families, we oppose any changes to the FCC's children's television rules that lessen broadcasters' obligations at the expense of children. The Commission must ensure that, following any changes, there remains at least equivalent, if not additional, content that is truly comparable in quality and available for all children.

a. Modifying or Eliminating the Processing Guideline Would Decrease the Amount of Core Quality Programming On the Air

Some of the proposed changes in the NPRM would lead to a direct decrease in the number of hours of educational content available to children over the air: eliminating or modifying the E/I processing guideline for primary channels, and eliminating the additional processing guideline for stations that multicast.

The NPRM suggests either modifying or eliminating the three-hour processing guideline for E/I content.¹³ It is not clear what the Commission would replace the processing guideline with, nor is it clear how the Media Bureau staff would be able to efficiently approve station licenses in compliance with the statutory language of the Children's Television Act without a quantitative guideline. When the FCC instituted the processing guideline in 1996, they said, "a processing guideline is a clear, fair, and efficient way of implementing the Children's Television Act."¹⁴ It is not clear from the NPRM that the Commission has come up with another clear, fair, and efficient means of implementing the CTA that could work as well as the processing guideline. The proposed changes would remove the predictability that broadcasters value,¹⁵ but – more concerning for Common Sense-- changing the processing guideline would also not be good for children.

¹² 47 U.S.C. §§ 303a, 303b

¹³ See *Children's Television Programming Rules Media Modernization Initiative*, 47 CFR 73, ¶ 28-35 (2018)

¹⁴ See *Policies and Rules Concerning Children's Television Programming*, Report and Order, 11 FCC Rcd 10660, ¶ 6 (1996).

¹⁵ See *Reply Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, and FBC Television Affiliates Association*, "Affiliates Associations", Aug 4, 2017, at ii. ("The Affiliates Associations value the certainty and predictability of the three-hour-per-week 'category A' children's E/I programming compliance option.")

Eliminating or modifying the guideline would likely reduce the amount of children's educational television, as all of the major broadcast networks air the required three hours of children's E/I content a week and no more.¹⁶ A 2011 Government Accountability Office Report that found an increase in core children's programming between 1998 and 2010 attributed the growth to the existence of the processing guideline, finding that new broadcast stations and channels since 1998 had increased the total amount of children's content in order to meet the Core Programming requirement during their license renewals.¹⁷ It is likely that without a processing guideline, these networks would no longer air as much or perhaps any educational content for children. The GAO report notes that the CTA was passed initially in response to a decline in children's content on broadcast television,¹⁸ and given the history, there is no reason to believe that television networks would be more likely to air children's content without a processing guideline than with one.¹⁹

The FCC's proposal to eliminate the processing guideline for multicast channels is similarly problematic.²⁰ Analysis of publicly-available Children's Television Reports shows that many of the current core programming hours air on multicast channels.²¹ For example, in the New York Designated Market Area ("DMA"),²² 14 networks aired 229 additional hours of core children's programming per week compared to 53 hours of core programming on their primary channels. Although some of this additional core programming comes from networks like Ion, who provide far more than the required 3 hours a week, 135 of the multicast core programming hours in the New York market are required for CTA compliance.²³ If the Commission eliminates the processing guideline for multicast stations, this programming would likely no longer exist, depriving children in just one market of more than 100 hours of educational content per week.

In smaller markets, the total number of core programming hours that could be lost by eliminating the multicasting processing guideline is less than in New York, as there are fewer multicast channels. However, in these smaller markets, fewer networks operate, and independent children-focused networks like Qubo from Ion generally are not available, making the existence of each hour of core programming even more important for

¹⁶ See *Children's Television Act: FCC Could Improve Efforts to Oversee Enforcement and Provide Public Information*, GAO Report to the Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate (2011), 10

¹⁷ *Id.*, at 9

¹⁸ *Id.*, at 4

¹⁹ See *Supra*, note 13, at ¶ 16 (Finding that while the television industry complied with self-regulation regarding ad limits in the 1970s before the CTA was passed, they did not follow their own voluntary rules regarding educational content in children's programming.)

²⁰ See *Supra*, note 12, at ¶ 50

²¹ See *Children's Television Reports*, FCC, <http://licensing.fcc.gov/KidVidNew/public/report/9/index.faces>

²² New York is the largest DMA in the country.

²³ Multicast channels in the NY DMA aired 7,584 hours of content weekly. Under the processing guideline that requires 3 hours of core programming for every 168 hours of multicast content, 135.4 additional hours of core programming must be aired weekly in NY.

children.²⁴ For example, the Charleston, SC, DMA airs just 13 hours of core programming a week on primary channels, and an additional 30 hours of core programming on multicast channels. Over two-thirds of the core children’s programming on the air in Charleston would likely disappear if the multicast processing guideline was eliminated. We thus encourage the commission to not dismantle the multicast processing guideline, as it is an important source of educational programming for many children.

b. Eliminating the Comparable Carriage Requirement Would Limit the Reach of Educational/Informational Programming

By allowing stations to broadcast their E/I programming on multicast channels and eliminating the MVPD comparable carriage requirement, the FCC would necessarily cut off some children from educational television. [Maybe insert additional signposting language] Currently, a broadcaster has to offer children’s programming on its main channel as well as one additional hour of E/I programming on a multicast channel for every 168 hours of multicast programming the station broadcasts weekly. If a broadcaster wishes to move E/I programming from one multicast channel to another, the channel that they move the E/I content to must be as accessible as the original channel to viewers who watch TV through a cable or satellite provider (“MVPD”). This ensures that stations do not move core programming to multicast channels that little of the station’s total audience can actually watch. The NPRM proposes eliminating this comparable carriage requirement in favor of allowing broadcasters to air core programming on whichever of their programming streams they wish.²⁵

MVPD operators are not required to carry every multicast stream offered by a broadcaster, and many only carry a station’s primary content stream. The most popular national multicast channel carrying children’s programming is Qubo, and it only receives 67% national coverage.²⁶ This means that 1/3 of families cannot view Qubo, because their cable or satellite provider does not carry it in their area. No other children’s network is in the top 25 list of multicast channels.²⁷ In a list of the top 40 cable and multicast channels ranked by coverage, not a single children’s or educational multicast channel made the list.²⁸

Eliminating the comparable MVPD carriage requirement would allow stations to air their required core programming not on their main channel, but on multicast channels that do not get as much viewership, or even as much coverage, as is currently required. This

²⁴ For example, the Charleston, SC market is the 70th largest in the country out of just over 200 DMAs. Charleston has 30 hours of additional core programming on its multicast stations, which is much less than New York. However, because Ion does not operate as an independent network in the Charleston market, all 30 of those hours would be in jeopardy if the multicast processing guideline was eliminated.

²⁵ *Supra*, note 12, at ¶ 49

²⁶ See *Digital Subchannels and Diginets*, TVB, <https://www.tvb.org/Default.aspx?TabID=1535> (2017) (coverage percentages provided by networks to TVNewsCheck).

²⁷ *Id.*

²⁸ See *Report: Diginets*, Katz Media Group, 2 (Oct. 2017)

would mean fewer children would be able to watch core programming, which almost certainly entails that fewer children *will* watch core programming. The comparable MVPD carriage requirement is a way to ensure that stations cannot evade their CTA programming duties by placing E/I content on digital streams that MVPD subscribers cannot view. It should not be done away with, because many fewer children would have access to E/I content in its absence.

Furthermore, getting rid of the comparable carriage MVPD requirement would make the Commission's proposal to allow stations to move all of their E/I programming to a multicast channel, rather than air it on the primary channel, significantly more problematic. It would greatly decrease the audience for E/I programming. It would needlessly limit E/I programming to only those cable operators who choose to carry it. This is not an acceptable solution to broadcasters' requests for additional flexibility, which cannot come at the expense of kids. Any move of core programming from a primary channel to a multicast channel should be conditioned on that multicast channel receiving comparable MVPD coverage as the primary stream. Additionally, if broadcasters do take advantage of flexibility in moving to a multicast channel with comparable coverage, they should offer more hours of E/I programming in exchange. Otherwise, too many children will be left without access to E/I programming that should be available to all.

c. Several Proposed Changes Would Make Educational/Informational Programming Less Effective for Children

1. The Proposed Changes to Core Programming Requirements Would be Detrimental to Children

In addition to opposing changes that would reduce the amount of educational and informational children's programming on television, we also object to proposals in the NPRM that would make E/I programming less effective for children. Namely, the proposed elimination of many of the requirements for core programming, such as the conditions that a core program be regularly scheduled and weekly occurring.²⁹ Because data shows that children learn better with regular, repeated content,³⁰ these changes will make core programming less effective in its goal of educating children.

Numerous studies have shown that children learn better with repeated lessons than from one-off videos.³¹ For example, one study found that children who had watched the same episode of *Blue's Clues* every day for a week had a much higher level of comprehension of the show's messages than children who had seen the show once.³² These results have been verified by other studies, consistently finding that repetition reinforces

²⁹ *Supra*, note 12, at ¶ 15

³⁰ See *Media and Young Children's Learning*, The Future of Children, Vol. 18 No. 1, 39-61, 51 (Spring 2008)

³¹ *Id.*, at 52

³² See *Effects of Repeated Exposures to a Single Episode of the Television Program Blue's Clues on the Viewing Behaviors and Comprehension of Preschool Children*, J. of Ed. Psychology, 630-37 (1999)

comprehension in children. This is also true for a series of different but clearly related (e.g., containing the same characters) videos that share an educational message.³³ Regularly scheduled programming gives children an opportunity to learn from familiar characters and similar situations by watching different episodes of the same show from week to week. This increases children's comprehension and retention of the lessons contained in the programming when compared to singly aired specials.³⁴ Regularly scheduled programming also allows parents to plan ahead regarding children's media use, and this type of intentional media usage is recommended by the American Academy of Pediatrics and other health or childhood organizations. Parents may also be more likely to co-view when it's a predictable, recurrent set of characters. For these reasons we think the requirement that core programming be regularly scheduled should not be changed.

Moreover, removing the regularly scheduled requirement could result in decreased viewership of core programming, which translates to fewer children learning. Parents would be less aware of content aired as intermittent "specials" than regular programs, and would therefore be less likely to know they should have their children tune in. Removing the requirements that core programming be regularly scheduled and aired weekly will make it more difficult for interested parents to locate core programming, especially when combined with the proposed changes in reporting and publicization requirements.³⁵

Similar concerns plague the proposal to make the processing guideline an annual guideline, rather than a weekly guideline averaged over a six-month period.³⁶ In the NPRM, the Commission admits that this may encourage broadcasters to "stack" all their required E/I programming into one week a year.³⁷ This presents the same problems with repetition as does eliminating the regularly scheduled requirement: children can't internalize the lessons from educational programming if they only get to see the programs once over the course of a year.³⁸ It is also more likely that busy parents will miss core programming if they have only one chance a year to get their children to view it, instead of weekly opportunities.

2. If the Second Home Preemption Requirement is Eliminated, Efforts to Publicize Core Programming Should Increase to Better Inform Parents

In response to networks' request for greater flexibility regarding preemption, the NPRM proposes eliminating the "second home" rule.³⁹ This rule, introduced in the 2004

³³ See Fisch, Shalom, *Children's Learning from Educational Television: Sesame Street and Beyond*, 32-3 (2004)

³⁴ See *id.*, at 29, citing Hodapp, T. V., *Children's Ability to Learn Problem-Solving Strategies from Television*. Alberta J. of Ed. Research, 23(3), 171-177 (1977).

³⁵ See *Children's Television Programming Rules*, 47 CFR 73, ¶ 28-35 (2018)

³⁶ *Supra*, note 12, at ¶ 39

³⁷ *Id.*

³⁸ *Supra*, note 12, at ¶ 25

³⁹ *Supra*, note 12, at ¶ 27

rulemaking, allows broadcasters to bypass strict preemption limits, as long as the channel that the core programming is moved to has comparable MVPD carriage as the channel it would usually air on, and the broadcasters provide adequate information about the move to their viewers.⁴⁰ The NPRM proposes eliminating the comparable MVPD carriage requirement of this rule, and allowing stations to broadcast preempted programs on any of the stations multicast channels and at any time, provided that the broadcaster gives adequate notice of the rescheduled time.⁴¹ In addition to the general problems caused by eliminating the comparable carriage requirement, noted above, allowing broadcasters to move core programming around without clearly defining what constitutes “adequate notice” could make it more difficult for parents to locate rescheduled core programming, as well as for broadcasters to know whether they are in compliance.

Providing guidance as to what constitutes adequate and appropriate notice is key because current practices have been found to be insufficient. Specifically, the 2011 GAO Report found current program guide requirements to be inadequate because cable operators are not required to publish the information they receive from stations in their program guides, and as a likely consequence, that they generally do not publish the information.⁴² It would not be beneficial to children’s learning outcomes if families do not know when and where to find E/I programming. If the Commission decides to eliminate this rule and allow more preemption, we request that new strong notification requirements be imposed, on-air, on digital program guides created by cable providers, and on station websites.

If the second home requirement is eliminated and preemption is expanded, broadcasters should have clear rules regarding where and when notice of that preemption should be published in order to ensure that families can find core programming. Parents need to be able to find core programming content for their children for the CTA to be effective, and additional notification mechanisms are needed to better inform parents. Such rules would also suit broadcasters’ desire for clarity and certainty regarding CTA compliance.

III. Many Children Do Not Have Effective Substitutes to Broadcast Core Programming

The NPRM asks commenters to consider the extent to which E/I programming on broadcast television is no longer necessary due to substitutes on cable television and streaming video.⁴³ Unfortunately, many children do not have access to these substitutes for financial reasons, and many of the proposed substitutes are not adequate replacements for E/I programming in the first place. Children should not be shut out from the educational content promised by the Children’s Television Act because they grow up in a low-income family, and the FCC must ensure that all programming intended to fulfill the goals of the CTA is high quality.

⁴⁰ See *Children’s Television Obligations of Digital Broadcasters*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943, 22944, ¶ 40 (2004)

⁴¹ *Supra*, note 12, at 24

⁴² *Supra*, note 12, at 24

⁴³ *Supra*, note 12, at ¶ 42

a. Many Children Cannot Access Substitutes Because They Don't Have the Means to Afford Them

As noted above, six million US households lack a paid television subscription or Internet suited for video playback.⁴⁴ These families rely entirely on the CTA to provide their children with quality programming. They may also watch more television than other families—the households without cable or broadband are more likely to be low-income, and children from low-income families consume more television than their peers.⁴⁵ These children should be considered in the FCC's rulemaking. In addition, 14 million total households lack a paid television subscription,⁴⁶ and since 70% of households who have a subscription to an Internet streaming service also have a paid television subscription,⁴⁷ many of these 14 million families rely on broadcast television for quality content. For families that have access to basic cable, the children's networks and multicast channels are out of reach in most markets as they are available only through premium plans.

b. Some of the Proposed Substitutes in the NPRM are not Adequate Replacements for Core Programming

Even for those families who can afford online and/or cable programming, the offerings the FCC offers as substitutes are not in fact educational or informational programming for children.

We are particularly concerned that the Commission treats unregulated, streaming video sources as equivalent to educational broadcast television in the NPRM. Internet sources of media content are not subject to FCC oversight, and thus do not have to comply with decency rules or advertising limits. Television is a uniquely moderated medium, and as such it is a gift to parents, who can be confident that what their child views on television is not harmful or inappropriate. The same cannot be said of Internet video platforms, whose content is frequently the source of complaints and concern – by advocates, parents, and Congress alike. For example, YouTube has recently faced criticism, a letter from concerned U.S. Senators,⁴⁸ and an FTC Complaint,⁴⁹ after it recommended inappropriate content to young children, including pornography disguised as the popular children's show *Peppa Pig*.⁵⁰ Even networks who air advertising content in compliance with FCC rules on

⁴⁴ *Supra*, note 1

⁴⁵ *Supra*, note 6, at 20

⁴⁶ *Supra*, note 1

⁴⁷ See *You Down with OTT?*, Video Advertising Bureau (2018), <http://www.thevab.com/wp-content/uploads/2018/03/OTT-Ecosystem-Overview-Final.pdf>

⁴⁸ See *Letter to Susan Wojcicki*, Sens. Cortez Masto, Hassan, and Udall (Apr. 27, 2018)

⁴⁹ See *Letter to Donald Clark*, Campaign for a Commercial Free Childhood (May 19, 2015) http://www.commercialfreechildhood.org/sites/default/files/FTC_youtube_update.pdf

⁵⁰ See <http://sanfrancisco.cbslocal.com/2017/11/10/youtube-kids-disturbing-cartoons-google-crackdown/>

television do not follow those rules when they put that same content on the Internet.⁵¹ In addition to content concerns, Internet content also presents unique concerns for parents, such as children's privacy, which make online videos potentially more hazardous to children than broadcast television. For example, in April, Common Sense and other children's advocacy groups filed an FTC complaint against YouTube, as the site appears to collect children's personal information without consent in violation of the Children's Online Privacy Protection Act ("COPPA"). Streaming content is not an adequate substitute for children's E/I television.

Furthermore, we are concerned that the NPRM conflates "children's media" with "educational media" and vice versa. The CTA is intended to further media that is (1) for children and (2) educational; falling into one or the other bucket is not sufficient. The FCC noted this as an issue when commercial television stations were combining these two separate content types in their 1996 Report.⁵² At that time, there were no standards for what constituted educational children's programming beyond a general guideline for broadcasters to air some amount of standard-length educational and informational programming "specifically designed for children 16 years of age and under."⁵³ As a result, broadcasters were labeling children's shows with no educational content such as *Chip n Dale Rescue Rangers*, *GI Joe*, and *Ducktales* as E/I programming.⁵⁴ They were also designating as E/I programming shows for general audiences—including the *Jerry Springer Show*.⁵⁵ In response, the FCC noted that programming that only has educational content as an incidental or "wrap-around message" could not be said to be fulfilling the requirement of educational programming specifically designed for children.⁵⁶ Yet the current NPRM seems to repeat this mistake.

The NPRM offers the Disney Channel and Nickelodeon as examples of "children's educational media," when those channels actually show children's entertainment media.⁵⁷ Studies have found that children who are exposed to educational programming perform better scholastically than children who watch entertainment programming.⁵⁸ Indeed, children who watch violent video content are more likely to do poorly in school than children who have not been exposed to such content.⁵⁹ Not all children's entertainment television is violent, but even so, viewing entertainment television does not have the same

⁵¹ See *Rethinking Children's Advertising Policies for the Digital Age*, 29 Loy. Consumer L. Rev., 21 (2017); See also *Id.* at 33-4 (finding that members of an industry group designed to self-regulate ads both on TV and online consistently violated the group's ad policies when creating online ads.)

⁵² See *supra*, note 13, ¶ 87

⁵³ *Supra*, note 11, ¶ 26

⁵⁴ See *A Report on Station Compliance with the Children's Television Act*, Center for Media Education, 6 (1992)

⁵⁵ *Id.*, at 9

⁵⁶ *Supra*, note 51

⁵⁷ See *supra*, note 12, at ¶¶ 16, 42

⁵⁸ See *supra*, note 29, at 48 ("studies have found that achievement is linked to early exposure to specifically educational television programming.")

⁵⁹ *Id.*, at 49

benefits for a child's later achievement that watching educational television does.⁶⁰ For this reason, children's entertainment media should not be seen as a substitute for children's educational media.

Similarly, the NPRM mentions the Discovery Channel and the History Channel as networks showing educational media that could substitute for E/I programming,⁶¹ when many of the programs on these channels are not suitable for children.⁶² In fact, Discovery certifies every quarter to cable operators that its programming on the main Discovery Channel is not intended to be children's programming, as does A and E Networks for the History Channel.⁶³ The statutory language of the CTA mandates programming "specifically designed" to serve *children's* educational needs.⁶⁴ General audience programming, even if educational, has not been specifically designed to serve children, and thus can never be an "adequate substitute" for broadcaster's public interest obligation to serve children.⁶⁵

IV. Conclusion

The Commission has proposed many changes to its Children's Television Programming Rules in an attempt to modernize children's television. Common Sense is concerned that the rules, as proposed, would ultimately reduce the amount quality broadcast programming options, which would impact the overall children's programming market. For families without the means to pay for streaming or other non-broadcast content these changes would significantly impact their access to quality children's content. The proposed changes to rules pertaining to scheduling would make children's programming less effective and would make it more difficult for parents to find quality children's programming. For families without the means to own multiple devices or to subscribe to premium cable or video streaming these rules negatively impact their access to quality children's programming. We are also concerned that the proposed rules rely heavily on unregulated streaming content to make up the shortfalls in educational and informational content that results from the proposed rule changes. We support on principle updating the rules to reflect the current media landscape but oppose any specific changes that would harm children.

We look forward to working with the Commission and other stakeholders on these issues.

⁶⁰ *Id.*

⁶¹ *See supra*, note 56

⁶² For example, the top promoted show on Discovery's website as of 6/25/18 is *Naked and Afraid*, a TV-14 rated show where a man and a woman meet and spend 30 days surviving together in a jungle environment - in the nude. *See Naked and Afraid*, Discovery Communications, 2017, <https://www.discovery.com/tv-shows/naked-and-afraid/about>

⁶³ *See ACA ExParte*, Attachment A (2018)

⁶⁴ *Supra*, note 11

⁶⁵ *See supra*, note 12, at ¶ 42

Respectfully submitted,

/s/ Amina Fazlullah

Amina Fazlullah
Digital Equity Counsel
Common Sense Kids Action
2200 Pennsylvania Ave NW, 4E
Washington, DC 20037