

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

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

**COMMENTS OF THE  
NATIONAL HISPANIC MEDIA COALITION**

**INTRODUCTION**

The National Hispanic Media Coalition (“NHMC”)<sup>1</sup> respectfully submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“NPRM”)<sup>2</sup> in the above captioned proceeding. The proposals in the NPRM are a clear departure from the direction of the FCC’s well-reasoned 1996 Children’s Television Order (“1996 Order”),<sup>3</sup> and jettison the vital tools that the 1996 Order gave to American parents and children who continue to rely on broadcast television as a means to learn and flourish.<sup>4</sup> The proposals set forth by this Commission would effectively dismantle the

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<sup>1</sup> The National Hispanic Media Coalition is the media watchdog for the Latino community who, among other ventures, works to open new opportunities for Latinos to consume programming that is inclusive, free from bias, affordable, and culturally relevant.

<sup>2</sup> *Children’s Television Programming Rules; Modernization of Media Regulation Initiative*, MB Docket No. 18-202, Notice of Proposed Rulemaking, FCC 18-93 (July 13, 2018) (*NPRM*).

<sup>3</sup> *Policies and Rules Concerning Children’s Television Programming*, MM Docket No. 93-48, Report and Order, 11 FCC Rcd 10660 (1996) (*1996 Order*).

<sup>4</sup> *Id.*

existing children's television regulations, decrease quality educational content for children who rely on local broadcast programming, and foster reliance on inadequate, often inaccessible, non-educational, and highly commercial broadcast substitutes. Notably, the proposed rule changes will adversely affect children in low-income, rural, and minority communities who do not have access to Internet or paid-television alternatives and have no alternative to free, local broadcasts for educational programs and information.

NHMC urges the Commission to abandon the proposals set forth in the NPRM which will surely undermine quality children's educational programming, promote platforms that are inaccessible to many children, and further augment the digital and educational divide. While the 1996 Order should be reevaluated to ensure that it continues to meet the needs of the 21st century media market, the Commission has yet to complete the requisite data collection and analysis needed to justify its proposals. Importantly, the analysis contained in the current NPRM ignores a dispositive fact -- many of the nation's poorest families cannot afford broadband or cable television alternatives.

NHMC is particularly concerned about the Commission's willingness to make sweeping changes without the requisite data collection and analysis. For instance, the Commission has failed to explain how (a) eliminating requirements that broadcasters generate program guides and quarterly reports that inform the public of educational programming viewing opportunities and ensure broadcaster compliance;<sup>5</sup> (b) increasing flexibility for broadcasters to choose which of their broadcast streams air Core Programming and reroute children's educational programming around high profit yielding segments;<sup>6</sup> and (c) eliminating requirements that Core Programming be at least 30 minutes in length, regularly scheduled, and identified on-screen by commercial and

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<sup>5</sup> *NPRM* at 14-18.

<sup>6</sup> *Id.* at 23-27.

noncommercial stations with an E/I symbol<sup>7</sup> will improve the quality of children's programming for those who rely on broadcast television, in particular, or advance the public interest at large.

The Commission should commit to ensuring that all children, including those from marginalized and low-income populations, are able to access and enjoy 21<sup>st</sup> century educational and informational programming on free, local broadcast television. Otherwise, the nation's most vulnerable children and families will shoulder the inadvertent harms that accompany the current proposals.

## **DISCUSSION**

### **I. THE PROPOSED RULES ARE DESIGNED TO REDUCE BROADCASTERS' RESPONSIBILITIES AT THE PUBLIC'S EXPENSE**

The public gave broadcasters a great deal in the 1930's. Broadcasters use public airwaves now worth more than half a trillion dollars for free. In return, Congress has required broadcasters to fulfill a minimal public duty – providing American children with three hours of free educational television per week.

To this end, Congress enacted the Children's Television Act ("CTA") in 1990 so that the FCC would regulate broadcasters' obligations to serve "the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs."<sup>8</sup> The Commission determined that broadcast television stations could satisfy their public obligations by meeting specific standards and guidelines set forth in the 1996 Order.<sup>9</sup> The NPRM relieves broadcasters of their public duty for using free airwaves by dissolving the standards and procedures that guarantee free educational television for all American children.

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<sup>7</sup> *Id.* at 10-13.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *See 1996 Order* at 2.

Three hours of educational and informational programming for American children hardly seems like a “burden” for broadcasters as the FCC, in a reversal of their own position, now claims. It is quite the opposite. Three hours of educational programming for free use of valuable public airwaves is a great deal. Education is universally accepted to yield high returns for children and society. Federally mandated educational television provides opportunities for all children to excel academically and socially, especially children in communities of color and those living in rural or impoverished areas.

The NPRM’s proposed rule changes would allow private broadcasters to incur additional benefits at the expense of American children. Leaving educational programming up to broadcasters’ discretion means that free educational programs will eventually disappear from free broadcast television. Without federally mandated rules to protect American children, there is no financial incentive for broadcasters to develop and deliver educational children’s programming according to public interest standards.<sup>10</sup> Even under the current rules there has been chronic broadcaster resistance to any such standards. A high-profile violation of the 1996 Order’s requirements resulted in a \$24 million fine for Univision when its stations aired a soap opera featuring teenage twins (*Cómplices Al Rescate*) to fulfill their educational requirements.<sup>11</sup> If the current rules were removed, it would be hard to imagine how any children’s programming would meet meaningful and acceptable educational standards.

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<sup>10</sup> Patt Morrison, *The Broadcast TV Networks Want to Dumb Down Kids' Programming — and the FCC Might Let Them do it*, THE LA TIMES (Aug. 2018), <http://www.latimes.com/opinion/op-ed/la-ol-patt-morrison-dale-kunkel-fcc-tv-20180808-htmlstory.html#> (“If the FCC goes through with their deregulatory proposal, as I suspect they will, I think what happens is that children’s programming on broadcast television essentially goes to nil. It’s going to be invisible. The content that’s on won’t be regularly scheduled. It will no longer be required to be a full-length program.”).

<sup>11</sup> Brooks Boliek, *After penalty, FCC Fine with Univision Sale*, The Hollywood reporter (Mar. 28, 2007), <https://www.hollywoodreporter.com/news/penalty-fcc-fine-univision-sale-132914>.

As childhood expert Dale Kunkel stated, “We can’t give the airwaves away for free and get nothing back for the public. That doesn’t make sense.”<sup>12</sup> Broadcasters should keep their end of the bargain mandated in the Communications Act, or all American children lose; especially those in low-income and rural areas where local broadcasts may be the most accessible and least expensive media platform available.

## **II. BASELESS CALLS FOR DEREGULATION HARM AMERICAN CHILDREN**

The Commission’s proposal to sweep out the broadcaster’s public responsibilities<sup>13</sup> should be carefully studied and justified. In any deregulatory proceeding, the Administrative Procedure Act and principles of fairness require the Commission to provide a robust discussion on the merits of the proposals, including providing details of choices and reasoning, coupled with supporting evidence and a discussion of alternative ways to achieve the FCC’s objectives and potential adverse effects.<sup>14</sup>

In this NPRM, the Commission makes at least eleven tentative conclusions with absolutely no supporting evidence.<sup>15</sup> Equally troublesome, there is certainly no consideration of the low-income, rural, and minority children who would be impacted by these changes.<sup>16</sup> As Commissioner Rosenworcel stated in dissent, “there is a lot of hand-wringing about change, but too little science to suggest what children it affects, and what we should do about it.”<sup>17</sup>

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<sup>12</sup> *Supra* note 10.

<sup>13</sup> *NPRM* at 10-27.

<sup>14</sup> See 5 U.S.C. §§ 553, 706 (2006); see also the Office of the Federal Register, *A Guide to the Rulemaking Process*, FED. REG. (2011), [https://www.federalregister.gov/uploads/2011/01/the\\_rulemaking\\_process.pdf](https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf).

<sup>15</sup> *NPRM* at 10-27.

<sup>16</sup> *Id.*

<sup>17</sup> Dissenting Statement of Commissioner Jessica Rosenworcel, *Children’s Television Programming Rules, Modernization of Media Regulation Initiative*, MB Docket No. 17-05, FCC 18-93 (July 12, 2018), available at <https://docs.fcc.gov/public/attachments/DOC-352514A1.pdf>.

Members of Congress, many of whom authored the CTA, have also expressed their concerns over the lack of a “thorough fact-gathering process” in this NPRM.<sup>18</sup> Senators Markey and Blumenthal rightly stated that, “in the absence of key information on how significant changes to the ‘Kid Vid’ rules would affect access, the Commission’s proposed rulemaking is premature. The Commission should not act in haste to revise rules in a manner that will negatively impact children in our country.”<sup>19</sup>

Given the vast number of unsupported claims and unanswered questions, as well as the numerous potential negative effects on disadvantaged and minority children, NHMC strongly urges the Commission not to move forward with any of the NPRM proposals until it can take the time necessary to study the consequences and effects of its rule changes.

### **III. ALL AMERICAN CHILDREN HAVE ACCESS TO BROADCAST TELEVISION, WHILE ALTERNATIVES REMAIN INACCESSIBLE TO MANY**

#### **A. American Households Still Rely on Broadcast Television**

The current children’s television rules are the bare minimum to ensure that all American children have access to educational and informational programming. The Commission justifies its proposal to eliminate these rules by claiming that the media landscape has shifted towards cable, video-on-demand, and Over-the-Top (“OTT”) services.<sup>20</sup> That analysis is based on the assumption that all American children have access to these services,<sup>21</sup> but the data proves otherwise.

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<sup>18</sup> Ted Johnson, *FCC Takes First Step Toward Easing Children’s TV Mandates on Broadcasters*, VARIETY (July 12, 2018), <https://variety.com/2018/politics/news/fcc-childrens-television-broadcasters-1202871448/>.

<sup>19</sup> Letter from Senator Edward J. Markey to the Federal Communications Commission at 1 (May 21, 2018), <https://www.markey.senate.gov/imo/media/doc/Kid%20Vid%20FCC%20.pdf>.

<sup>20</sup> NPRM at 1-2; *but see* Nielsen, *Nielsen Total Audience Report Q1 2018* at 19 (“Nielsen Report”) (noting children ages 2-11 only watch 15% of their television content by streaming).

<sup>21</sup> NPRM at 9-10.

Broadcast television remains uniquely pervasive and accessible to children among all forms of media, and it is available to all American households.<sup>22</sup> However, by the Commission's own estimate, "nearly 30 million Americans cannot reap the benefits of the digital age."<sup>23</sup> Among the disconnected are families living on the margins or in communities where the cost or access to cable and digital on-demand platforms are beyond reach. These families still rely on free, local broadcasts for news, information, and educational programming. We urge the Commission to collect information on how many of those families would feel the impact of the current proposals, especially the 600,000 households in communities of color who do not have access to cable or Internet alternatives.<sup>24</sup>

It is easy to underestimate the consequences of this proceeding. Until the Commission does the requisite analysis on its own, NHMC will continue to lift up voices from marginalized communities who have not been able to speak for themselves. For instance, Gabriela Lopez lives in Dana Point, California with her four-year-old and a six-year-old daughters. She relies on free educational programs on PBS to help teach her children about animals and kindness. Her girls "rely on PBS for knowledge, information, and a deeper understanding about the world around them." Elena Brewer, a single mom from Santa Clarita, California, used free educational programs like *Mr. Rogers*, *Arthur*, and *Wild Kratt* to help teach her children about being a good neighbor and how to use the library. According to Brewer, "it would have been much harder to teach my children about all of these things were it not for free programming. Many of us can't

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<sup>22</sup> See *FCC v. Pacifica Found.*, 438 U.S. 726, 728 (1978).

<sup>23</sup> FCC, *Bridging the Digital Divide*, <https://www.fcc.gov/about-fcc/fcc-initiatives/bridging-digital-divide-all-americans> (last visited Sept. 23, 2018).

<sup>24</sup> See Americans for Tax Reform et al., *Letter to Chairman Pay* (June 21, 2018), <https://ecfsapi.fcc.gov/file/106222242601905/Coalition%20ltr%20Media%20Modernization%20062118.pdf> (finding that approximately 0.5% of households with children do not have internet or cable); see also Statista, *Number of TV Households in the United States* (last visited Sept. 20, 2018), <https://www.statista.com/statistics/243789/number-of-tv-households-in-the-us/> (finding 119.6 million TV households in the 2017-2018 season).

afford cable.” Broadcast television still plays an important role in households with limited resources and access.

By any measure, advances in technology and media platforms have drastically changed the media landscape since the 1996 Order, but many American households have also fallen prey to the digital divide and are still forced to rely on broadcast television to stay connected. As of March 2018, Nielsen has reported that 13% of total households rely on over the air television, a number that increases in minority households.<sup>25</sup> Among Hispanic audiences, 20% rely on over the air television, and 16% of African American audiences rely on over the air television.<sup>26</sup> The accelerating trend of “cord-cutting” also indicates that the number of households that have access to television only through broadcast will likely increase over time despite the availability of new digital platforms.<sup>27</sup>

Importantly, the Commission has not explained why families that can afford paid alternatives should not maintain access to quality educational programming on broadcast television. Nothing in the NPRM absolves the FCC from its duty to provide children with access to educational programming. For example, Alex Nogales, NHMC’s CEO and veteran media advocate, could provide his children with paid-television options. Still, *Sesame Street* and *The Electric Company* were staple programs in his home and helped his four children learn about letters, numbers, and the values of friends and family. From his perspective, “if it wasn’t for educational programming on free television, my job as a parent would have been much harder and difficult and my girls would not have become as well-adjusted and successful.” Every child should have those same opportunities.

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> See Forbes, *Cord Cutting Is Not Stopping Anytime Soon* (Dec. 7, 2017), <https://www.forbes.com/sites/bradadgate/2017/12/07/cord-cutting-is-not-stopping-any-time-soon/#61bbb84b5ef0>.



The Commission has a responsibility to ensure that all children have access to content that helps them learn, compete and thrive. The NPRM's proposals to relax or eliminate the existing rules will over time effectively deprive an increasingly large number of broadcast reliant households of access to meaningful children's educational programming.

### **B. The High Cost of Broadcast Alternatives Ostracizes Low-Income American Households**

Children from low-income households that rely on broadcast programming would be particularly harmed by the Commission's proposals. The high monthly cost of cable makes the service unaffordable for these families.<sup>28</sup> Video-on-demand and OTT services have even higher costs. New digital media services require monthly payments for the service subscription, monthly payments for terrestrial or mobile broadband with speeds that can handle streaming, and single payments for streaming devices. Access to one streaming service and broadband can easily cost over \$700 a year for the most basic plans.<sup>29</sup>

Statistics show that the high cost of accessing new and emerging media is an insurmountable barrier to many low-income families. Only 45% of adults making less than \$30,000 a year have access to broadband Internet in their homes, as opposed to 87% of adults making at least \$75,000 having access to broadband Internet in their homes.<sup>30</sup> Broadcast media, which still requires only a television with an antenna, remains an affordable option for everyone.

Minority children will be uniquely harmed by the proposed rule changes because they are more likely to live in a low-income household. According to the United States Census Bureau,

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<sup>28</sup> See Comcast, *Comcast Xfinity TV Service*, <https://www.xfinity.com/learn/offers?lob=tv,internet> (last visited 9/23/2018) (selling the most basic cable services for \$30 a month and average cable services for over \$60 a month).

<sup>29</sup> *Id.*; see also Comcast, *Comcast Xfinity TV Service*, <https://www.xfinity.com/learn/internet-service/modems-and-routers> (last visited 9/23/2018) (selling basic Internet services for \$39.99 a month plus equipment rental fees of \$11 a month); Netflix, *Netflix*, <https://www.netflix.com/signup/planform> (last visited Sept. 19, 2018) (selling a basic streaming plan for \$7.99 a month).

<sup>30</sup> See Pew, *Internet/Broadband Fact Sheet* (last visited Sept. 20, 2018), <http://www.pewinternet.org/fact-sheet/internet-broadband/> (Pew Internet Factsheet).

nearly 20% of Hispanic and 22% of Black Americans were classified as living in poverty in 2016, as opposed to 11% of White Americans.<sup>31</sup> Affordability remains the main barrier to home Internet adoption for low-income families who are also commonly forced to drop service in the face of financial stress.<sup>32</sup> Only 47% of Hispanic and 57% of African-American adults have in-home broadband, while 72% of White adults have home broadband.<sup>33</sup>

Too many minority children living in poverty are already at a disadvantage. Reducing or eliminating educational programming requirements will inevitably create new obstacles for low-income children to access educational opportunities to offset these hardships, ultimately widening the digital divide.

### **C. Many Children in Rural Communities Do Not Have Access to Broadcast Alternatives**

Children in rural communities could also be disadvantaged by the proposed rules because many of these rural households lack the infrastructure or high broadband speeds required for new media platforms. Many simply do not have access to the high-speed broadband required for streaming. In fact, the Commission has noted that broadband deployment in rural areas continues to fall behind urban areas.<sup>34</sup> Despite efforts to encourage rural broadband deployment, fixed rural broadband deployment of 25 Mbps/3 Mbps is only at 69.3%.<sup>35</sup> American children in 30.7% of

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<sup>31</sup> See United States Census Bureau, *Income and Poverty in the United States: 2016* at 13, <https://www.census.gov/content/dam/Census/library/publications/2017/demo/P60-259.pdf>

<sup>32</sup> See S. Derek Turner, *Digital Denied: Systemic Racial Discrimination in Home-Internet Adoption*, FREE PRESS at 104 (Dec. 2016) (“Some people with severe budget constraints may see a maze of expensive, bundled wired Internet and pay-TV offerings, and simply choose to stick with their mobile data connection. Others may go for a promotional bundle deal, only to drop the service after the bill shock hits when the discount expires.”), [https://www.freepress.net/sites/default/files/resources/digital\\_denied\\_free\\_press\\_report\\_december\\_2016.pdf](https://www.freepress.net/sites/default/files/resources/digital_denied_free_press_report_december_2016.pdf).

<sup>33</sup> See Pew Internet Factsheet.

<sup>34</sup> 2018 FCC Broadband Deployment Report at 22, available at <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2018-broadband-deployment-report>.

<sup>35</sup> *Id.*

rural households do not have access to sufficient broadband services, so these children cannot access new media content even if they could afford them.<sup>36</sup>

NHMC is also concerned with how the proposed rule changes will impact children in the rapidly growing rural Hispanic population. Minority population growth made up 75% of population growth in rural areas from 2000-2010, and over half of rural population growth is attributable to Hispanics.<sup>37</sup> NHMC urges the Commission to collect information to assess whether the proposed rule changes could harm children living in rural communities that do not have access to broadband alternatives for educational programming.

#### **D. Broadcast Alternatives Offer Inadequate Educational Content and Can Even Be Dangerous**

Even if children have access to cable or sufficient broadband for video-on-demand streaming services, the content available on these services does not replace the need for federally mandated educational content. From a financial perspective, educational programming will always be less desirable to air than entertainment based programming. Higher advertising revenue makes entertainment based programming inherently more profitable. Additionally, the broadcast markets are fragmented and small, so service providers have little incentive to produce or air educational content without a regulatory mandate. The Commission has not produced any data to show that children will derive an educational benefit from being funneled to commercial content for children on cable and Internet or related services and platforms.

Children should also be protected as much as possible from the predatory violations of privacy that can result from Internet use. Limiting a child's Internet access and protecting their

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<sup>36</sup> *Id.*; see also United States Government Accountability Office, *FCC's Data Overstate Access on Tribal Lands*, available at <https://www.gao.gov/assets/700/694386.pdf> (noting that the Commission's data on broadband access is overinflated, so the number of children without sufficient broadband services is probably significantly more than 30.7%).

<sup>37</sup> See The Housing Assistance Council, *Race and Ethnicity in Rural America* (April 2012) (last accessed Sept. 18 2018), available at [http://www.ruralhome.org/storage/research\\_notes/rnn-race-and-ethnicity-web.pdf](http://www.ruralhome.org/storage/research_notes/rnn-race-and-ethnicity-web.pdf).

personal information often safeguards children from threats such as online predators, hackers, identity theft, cyberbullying, and loss of future opportunities.<sup>38</sup> Moreover, it is clear that there is little quality control for content over the Internet, so children could easily be exposed to inappropriate, malicious, and violent content.

Widespread cell phone and tablet use has also made data collection of personal information and targeted advertising commonplace. Because they are still developing, children are even more susceptible to the targeted advertising placed on Internet-based services. While parental supervision and control of a child's Internet access may be the ideal way to protect children from these threats, many parents are limited by a lack of time or technical knowledge. Removing effective educational programming from broadcast television and pushing children towards greater unmonitored Internet use will only increase chances for child privacy violations. Regulated airwaves and the modest programming and reporting requirements in the 1996 Order preserve a safe space for children to learn and grow.

#### **IV. THE PROPOSED RULES ERODE THE CTA's COMMITMENT TO SERVING THE EDUCATIONAL NEEDS OF AMERICAN CHILDREN**

##### **A. Dismantling the Consumer Protections Outlined In the CTA Will Have Far-Reaching Consequences**

NHMC implores the Commission to reconsider the unintended consequences that the current proposals could have on children in marginalized communities. While the current rules should be reevaluated, the NPRM is riddled with unsubstantiated assumptions and scant data collection that undermines good rule-making. NHMC maintains that many rules should not be changed; however, loosening some rules without strengthening others is even worse because it jeopardizes the well-reasoned balance achieved by the 1996 Order. The current proposals risk

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<sup>38</sup> See CNN, *Why You Should Protect Your Child's Online Privacy* (June 7, 2017), <https://www.cnn.com/2017/06/07/health/parents-children-online-privacy-partner/index.html>.

arming broadcasters with the tools to reduce the amount of educational programming and virtually eliminating the practical view-ability of educational programming for children, while simultaneously stripping from parents the tools to make informed decisions about educational programming for their children.

The proposed deregulation would likely decrease the amount of educational programming available to children. The existing reporting requirements and processing guidelines keep broadcasters accountable for producing educational programming in return for the broadcaster's free license. Further, they are not overly burdensome because, without them, the market failure prompting the CTA would likely return.

Congress passed the CTA in recognition of the need for governmental regulation to address the market inadequacies that stifled natural production of quality educational programming for children.<sup>39</sup> However, the initial implementation of the CTA failed to properly hold broadcasters accountable, so broadcasters could pass off television shows like *Yogi Bear* as educational.<sup>40</sup> The 1996 Order responded to this market failure not only by clarifying the definition of educational programming but also by requiring strong filing and processing guideline standards.<sup>41</sup> Loosening the reporting requirements and processing guidelines would be a clear step towards returning to the market failures that existed before the 1996 Order,<sup>42</sup> decreasing the amount of educational programming available to children. The current amount of educational programming broadcasters provide is already the bare minimum. The current proposals do not improve choice or development opportunities for American children.

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<sup>39</sup> See S. Rep. No. 227, 101st Cong., 1st Sess. 7, 9 (1989) (*Senate Report*); *1996 Order* at 11 (clarifying that "the FCC could not rely solely on market forces to increase the educational and informational programming available to children on commercial television").

<sup>40</sup> *Supra* note 10.

<sup>41</sup> See *NPRM* at 4-5.

<sup>42</sup> *Supra* note 10.

Moreover, children deserve programming that fits within their schedule. Broadcasters will have compelling financial incentives to prioritize profit-generating commercial programming over educational programming if given the chance. The FCC should not give broadcasters the tools to manipulate programming schedules so that profit-generating commercial content dominate time slots with large audiences while educational content is sequestered to time slots with low viewership or isolated on the least viewed multicast station.<sup>43</sup> Further, weakening the rules on preemption could give broadcasters a back door to rescheduling educational programming to ineffective time slots despite otherwise robust scheduling regulations.<sup>44</sup> Educational programming scheduled to reach large and diverse audiences maximizes the developmental return of the programming. Broadcasters profit from using the public airways and, in exchange, have a duty to provide educational programming that can reach all children. Granting broadcasters increased “flexibility”<sup>45</sup> compromises the CTA’s ability to help satisfy the educational needs of American children, undermining the future of the American people.

At the same time, parents need the tools to make informed decisions about educational programming for their children. Parents rely on the regularly scheduled weekly programming requirement, the on-air notification requirement, the publication of program guides, and similar tools that increase the transparency of educational programming.<sup>46</sup> And the accuracy, consistency, and predictability of these tools are necessary for parents to be able to rely on the educational programming to help satisfy the developmental needs of their children, as Congress

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<sup>43</sup> See *NPRM* at 11-15 (proposing to eliminate or questioning the merits of the Core Programming requirements); *NPRM* at 23-26 (proposing to allow broadcasters to choose which over the air stream to air Core Programming).

<sup>44</sup> *NPRM* at 26-27 (questioning the continued need for preemptions).

<sup>45</sup> See *supra* note 10 (arguing that the FCC’s call for “flexibility” is really deregulation that will reduce the educational programming that reaches kids on the TV airwaves”).

<sup>46</sup> See *1996 Order* at 23 (concluding that parents use programming information and that insufficient programming information contributes to a lack of educational programming).

intended.<sup>47</sup> When parents are more aware of which shows are educational or when those shows air, the children are better able to actually take advantage of the programming. When parents lack adequate tools and are less aware, the parents are unable to actively monitor a broadcaster's performance under the CTA. In turn, effective communication between the broadcasters and parents breaks down, and parents are less able to urge broadcasters to implement relevant programming improvements.

The 1996 Order evidenced the FCC's understanding that an informed public decreases the need for government intervention to achieve the goals of the CTA,<sup>48</sup> and even broadcasters tend to agree that their audiences are better situated than the government to make quality judgments about the broadcaster's programming.<sup>49</sup> Traditionally, the Commission has recognized this balance. However, current proposals eliminate or doubt the value of several tools designed to increase transparency and awareness for parents, which jeopardizes access and future success for children who rely on broadcast television for educational opportunities. The FCC should recommit to its strategic goals and promote public engagement by maintaining the current level of transparency between broadcasters and the public.<sup>50</sup>

## **B. Eliminating the 30-Minute Core Programming Length Requirement Compromises the Cognitive Development of American Children**

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<sup>47</sup> See 1996 Order at 22-23 (concluding that "enhancing parents' knowledge of children's educational programming" by improving programming information would help address the market inadequacies Congress set out to fix).

<sup>48</sup> 1996 Order at 23 ("easy public access to information permits the Commission to rely more on marketplace forces to achieve the goals of the CTA and facilitates enforcement of the statute by allowing parents, educators, and others to actively monitor a station's performance").

<sup>49</sup> See, e.g., *id.* (quoting CBS).

<sup>50</sup> FCC, *Strategic Goal #4: Promoting Operational Excellence*, <https://www.fcc.gov/about/overview> ("Make the FCC a model for excellence in government by effectively managing the FCC's resources and maintaining a commitment to transparent and responsive processes that encourage public involvement and best serve the public interest").

NHMC urges the Commission to maintain the 30-minute length requirement for Core Programming because the requirement is fair<sup>51</sup> and backed by science.<sup>52</sup> In 1996, the FCC addressed and rejected the broadcaster-lobbied arguments backing the proposal to remove the 30-minute length requirement.<sup>53</sup> However, the merits behind the 30-minute length requirement, based on the FCC's own logic in 1996, were not considered in this NPRM.<sup>54</sup>

The 30-minute length requirement helps promote the public interest. Although Congress did not explicitly mandate a defined length for the Core Programming, Congress intended the Core Programming to be at least 30 minutes in length.<sup>55</sup> The 1996 Order believed this Congressional intent was further supported by the fact that the dominant broadcast format is at least 30 minutes in length.<sup>56</sup> Because the dominant broadcast format has not departed from the 30 minute or longer length, it is still fair to hold broadcasters to their own industry practices "to promote the accessibility of children's educational and informational programming."<sup>57</sup> Furthermore, the National Association of Broadcasters argument that the 30 minute length requirement stifles the variety of children's educational programming is overblown because broadcasters may still count short segment programming, such as *Schoolhouse Rock*, as educational and informational pursuant to the CTA.<sup>58</sup>

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<sup>51</sup> See, e.g., 1996 Order at 52 (finding the 30-minute length requirement reasonable because it reflects the industry standard format for broadcast television).

<sup>52</sup> See The American Psychological Association Comments, MM Docket No. 93-48, at 3 (1993) (arguing that reliance on short segment programming would "significantly diminish the learning opportunities and outcomes for children") (*APA Comments*).

<sup>53</sup> 1996 Order at 51-53.

<sup>54</sup> Compare NPRM at 11 (claiming a long standing recognition by the FCC that short segment programming "can serve the educational and informational needs of children") (emphasis added), with 1996 Order at 53 (acknowledging that short segment programming "can contribute to serving children's needs," yet dismissing broadcaster reliance on short segment programming to fulfill "core" programming) (emphasis added).

<sup>55</sup> See S. Rep. No. 227, 101st Cong., 1st Sess. 5-9 (1989) (*Senate Report*).

<sup>56</sup> See 1996 Order at 52 (citing *Senate Report* at 6-9).

<sup>57</sup> 1996 Order at 52.

<sup>58</sup> See *id.* at 53 (encouraging broadcasters to provide a diverse mix of educational and informational programming even short segment programming is not suitable for the definition of "core" programming).



The 30-minute length requirement is backed by science. 30-minute programming is more effective than short segment programming because it provides more content, allows for the development of a theme, and permits educational messages to be told in the form of a story.<sup>59</sup> During the 1996 Revisions, the FCC found this scientifically-backed argument more persuasive than the unsubstantiated argument for short segment programming based on the notion children have short attention spans.<sup>60</sup> While short length programming does not actively hurt children's development, the American Psychological Association contended that reliance on short segment programming would "significantly diminish the learning opportunities and outcomes for children" because children's cognitive capabilities develop much better with 30 minute programming.<sup>61</sup>

This NPRM has not only failed to present scientific evidence justifying the elimination of the 30-minute length requirement, but failed to address the scientific evidence established during the 1996 Revisions.<sup>62</sup> Without evidence calling into question the relevant experts' understanding of children's cognitive development in 1995, the FCC should not depart from the scientifically backed 30-minute length requirement.

## CONCLUSION

NHMC requests that the Commission abandon the proposals in the NPRM which, if enacted, would absolve broadcasters' of their public interest duty. It should instead take the time necessary to conduct adequate data collection and analyze the potential deleterious effects of these proposals on American children. The Commission should also focus on implementing its 1996 Order and working to ensure that all children, including those from marginalized and low-

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<sup>59</sup> See *1996 Order* at 52 (citing "Huston and Wright Comments at 6-7").

<sup>60</sup> See *1996 Order* at 52.

<sup>61</sup> *APA Comment*; see also *1996 Order* at 52-53 (noting that the improved development also applies to young children).

<sup>62</sup> See *NPRM* at 11, n.92 (relying on an unsubstantiated blog post to justify that short segment programming is an effective method to educate and inform children).

income populations, are able to access and enjoy free, over-the-air, educational and informational programming in the 21st century media market.

Respectfully Submitted,

/s/ \_\_\_\_\_

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