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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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MAY - 7 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Policies and Rules Concerning Children's Television Programming	)	MM Docket No. 93-48
	)	
Revision of Programming Policies for Television Broadcast Stations	)	

To: The Commission

COMMENTS OF
ACT III BROADCASTING, INC. ON NOTICE OF INQUIRY

ACT III BROADCASTING, INC.

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Dated: May 7, 1993

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SUMMARY

In its original decisions implementing the Children's Television Act of 1990, the Commission made clear the obligations of commercial television broadcasters to serve the educational and informational needs of children in their program offerings and adopted rules and policies that emphasized broadcasters' flexibility and discretion in meeting these obligations. While the Commission's present Notice of Inquiry ("NOI") is laudable in its efforts to provide additional guidance for broadcasters in meeting their children's television obligations, the views expressed in the NOI in many respects signify a marked retreat from the licensee flexibility that was the centerpiece of the Commission's initial implementation of the Act.

For example, the NOI apparently signals the Commission's reentry into the business of making subjective, qualitative programming judgments, by suggesting that children's programming should be primarily educational and informational and secondarily entertaining. Such a formulation, if adopted, could give rise to manifold definitional problems and inconsistent treatment of renewal applications. Moreover, children will not watch a program that is not entertaining -- even though it might be of the highest educational and informational value. And broadcasters will be fearful of airing a program that is too "entertaining" lest it fail to fulfill programming obligations

The NOI also strongly suggests that broadcasters should focus on airing full-length children's programming, and deemphasize short-segment vignettes. This approach would all but eliminate broadcasters' provision of programming that -- as the Commission itself has found -- is particularly suited to children's short attention spans. Moreover, except for the few stations that can afford to produce full-length children's programs of their own, such an approach would eliminate much or all of the production of locally flavored children's programs.

Act III agrees that specific guidance would be helpful as to the specific amounts and air times of children's educational and informational programming necessary to satisfy the Act's requirements. Such guidelines should take the form of a policy statement, and should take into account stations' widely divergent market situations and financial abilities, as well as the lifestyles of young people.

Finally, Act III requests more specific guidance on those programs to which the children's commercial limits apply. There is substantial confusion in this area, and a more definitive indication of the limits' applicability is needed.

In sum, Act III urges the Commission to assure television broadcasters broad flexibility in the types, lengths, and air times of their children's educational and informational programming, and to recognize the considerable time stations would need to meet the stringent requirements the Commission apparently envisions.

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To: The Commission

COMMENTS OF
ACT III BROADCASTING, INC. ON NOTICE OF INQUIRY

Act III Broadcasting, Inc. ("Act III") by its attorneys, hereby submits its Comments in the above-referenced proceeding.

I. Preliminary Statement

1. Act III is the parent of Act III Broadcasting of South Dakota, Inc., which in turn owns 100% of the following television licensees: Act III Broadcasting of Dayton, Inc., the licensee of Station WRGT-TV, Dayton, Ohio; Act III Broadcasting of Charleston, Inc., the licensee of Station WTAT-TV, Charleston, South Carolina; Act III Broadcasting of Rochester, Inc., the licensee of Station WUHF-TV, Rochester, New York; Act III Broadcasting of Nashville, Inc., the licensee of Station WZTV(TV), Nashville, Tennessee and Station WNRW(TV), Winston-Salem, North Carolina; Act III Broadcasting of Richmond, Inc., the licensee of Station WRLH-TV, Richmond, Virginia; Act III Broadcasting of West Virginia, Inc., the licensee of Station WVAH-TV, Charleston, West Virginia; and Act III Broadcasting of

Buffalo, Inc., the licensee of Station WUTV(TV), Buffalo, New York. All of the Act III stations, with the exception of WVAH-TV, Channel 11, Charleston, West Virginia, are UHF stations, and all are affiliated with the Fox television network.

2. Act III is pleased that, through the Notice of Inquiry ("NOI") in this proceeding, the Commission is seeking to provide further guidance as to the levels and types of programming that broadcasters should air to adequately serve the educational and informational needs of children. It is Act III's desire to provide the type of children's programming that will fulfill the goals of the Children's Television Act of 1990 (the "Act")[1/], and the existing guidelines in this area have been a source of considerable confusion. However, Act III is concerned that the

Children's Television Act and that broadcasters must air some

7. Act III submits that a radical change in policy is not warranted and will impose a substantial burden on broadcasters. The Act III stations have been working to find network and syndicated programming which will fulfill the objectives of the Children's Television Act. A good deal of the programming that is currently available may not meet a standard that requires children's programming to be "primarily" educational and informational. Moreover, in most markets, a number of broadcasters are bidding for these programs. Although there is more children's programming in development, broadcasters are as yet uncertain whether this programming will meet the children's programming requirements of the Act because pilots have not yet been produced. Thus, it appears that time will resolve a good part of the Commission's concern, but time to adjust is essential.

8. Since the adoption of the Children's Television Act, the Act III stations have developed locally produced PSAs and vignettes to meet their obligations under the Act. Some of the stations are now working on plans to develop additional locally-

as specials or broadcast on a quarterly or monthly basis.[2/] It is important that broadcasters have flexibility to develop local children's programming of all lengths and to air the programming when it reasonably can be expected to be effective in meeting local needs, taking into account cost considerations as well as local viewer feedback.

III. The Commission Should Broadly Define Educational and Informational Programming for Children and Defer to Licensee Discretion

9. In the NOI, the Commission states that "it may be appropriate to specify that the primary objective of qualifying 'core' children's programming should be educational and informational, with entertainment as a secondary goal." Since broadcasting is primarily a medium of entertainment, Act III finds the definition overly confining. It is difficult to understand why a program cannot be both educational and informational as well as entertaining. The reality is that children are unlikely to watch educational and informational programming unless the program's educational and informational aspects are flavored with a degree of entertainment. Yet under the Commission's apparent view, such a program would pose too much of a risk of being unacceptable to satisfy the licensee's programming obligations for a broadcaster to air it. Thus, a program with substantial educational value will have been lost. Moreover, Act III is concerned that it is not simple to

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2/ One of the Act III stations, WRGT-TV, Dayton, Ohio, presently produces a 30-minute local children's program. That program presently airs on a quarterly basis.

categorize programming. The following examples are illustrative of this point.

10. At an April 1993 NAB session on children's programming, the following question was included in the hand-out material (see Attachment A):

> 2. The FCC defines "educational and informational programming" very broadly: it is any "programming that furthers the positive development of the child in any respect, including the child's cognitive/intellectual or emotional/ social needs." Which of the following can be relied on to meet the "core" requirement of broadcasting programs specifically designed to meet such needs?
>
> a. "National Geographic" specials.
>
> b. "The Flintstones."
>
> c. "Saved By the Bell."
>
> d. Any cartoon with a wrap-around pro-social message.
>
> e. "G.I. Joe."
>
> f. All of the above.
>
> g. None of the above.

The answer contained on the hand-out material was:

> A. c. "Saved By the Bell" was one of a number of programs specifically singled out by Congress as serving children's developmental and informational needs.

11. Act III is at a loss to understand why National Geographic specials would not be considered as furthering a

"educational", it is Act III's understanding that "Beverly Hills 90210" apparently is not. Yet, the general areas covered by both shows are similar -- divorce, dating, school-life etc. "Saved By the Bell" is designed for a younger audience (and achieves its highest ratings among pre-adolescents), whereas "Beverly Hills 90210" has a slightly older audience and deals with more adult-oriented topics (sex, alcohol, etc.). Older teens (14-16) do not watch "Saved By the Bell," yet their needs still need to be addressed. The Commission needs to recognize that it is particularly difficult to program for very young children and for those approaching adulthood. If they can be reached more effectively through a program which combines education and information with entertainment, there is no reason to discount such a program.

12. Similar confusion prevails in the cartoon area. The Commission considers "The Smurfs" as serving children's educational or emotional/social needs. While the "The Smurfs" is credited because it is mentioned in the legislative history of the Children's Television Act, it is not clear what other animated shows would qualify. Does "Captain Planet" which deals with the life sciences and ecology problems qualify? Does "Little Mermaid", a beautifully conceived animated show, qualify? The Commission's Report and Order clearly sends the message that animated programming can serve the purposes of the Act.

13. Licensees should be permitted to demonstrate how their programming serves the needs of local children and discretion should be afforded. The definition of qualifying programming should not be restricted. As the above discussion reflects,

education and information can be provided in a program that includes entertainment. We need only to think back on those teachers or professors we had who stand out as exemplary educators -- they were entertainers as well.

IV. Licensees Should Be Free To Provide Programming Of Varying Lengths To Serve The Educational And Informational Needs of Children

14. As the Commission observes in the NOI, the Children's Television Act does not prescribe any minimum amount of programming and "[s]hort segment programming, including vignettes and public service announcements, live action, animated and general audience programs, whether network, syndicated or locally produced, can all be relied upon as contributing to a licensee's programming efforts on behalf of children." (para. 4). Nevertheless, the NOI proposes that broadcasters should place their primary reliance on standard-length programming.

15. As discussed in Section II above, the Commission's Report and Order implementing the Children's Television Act recognized that short-segment programming was a particularly appropriate way to reach a child audience. Act III's programming consultants have confirmed that this is true. There is no foundation for the change in philosophy that is contained in the NOI.

16. The NOI seems to favor standard-length programming because it "is scheduled and therefore available to the child audience at predictable times." But television guides are so prevalent today and so detailed, and special programs are so

heavily promoted, that this rationale appears misplaced. If broadcasters must place their primary reliance on standard-length programming to satisfy the Act, they may be dissuaded from developing local short-segment programming. Because standard-length programming is time-intensive, consumes the energies of a large number of personnel, and is costly, broadcasters may be more likely to turn to network or syndicated programming to meet their obligations. There is recognized merit to short-segment locally produced programming which should not be ignored.

17. Those broadcasters who do develop local programming, whether standard-length or short-segment, should receive extra credit at renewal time. The production of such programming requires extra effort and shows a particular dedication to addressing the needs of local children.

V. The Commission Should Issue A Policy Statement Providing Guidance As To What Licenses Must Do To Comply With the Act

18. The NOI also seeks comment on whether the Commission should adopt staff processing guidelines specifying an amount and type of children's programming that would permit staff grant of a license renewal application meeting the guideline. According to the NOI, the guideline could be one hour per week or one hour during the week and one hour during the weekend of standard-length, informational and educational programming.

19. While the legislative history of the Children's Television Act does not reflect any intent by Congress to adopt a quantification requirement, Act III submits that guidelines would be helpful. At the present time there appear to be unwritten

guidelines which the Commission's staff uses to process applications. Unfortunately, broadcasters do not know what these guidelines are. The Commission should make clear in a Policy Statement just what programming it expects licensees to provide for children on a weekly basis and the time periods during which the programming should be aired. In reaching its determination on appropriate guidelines, the Commission should take into consideration the following facts: the television marketplace is radically different in large and small markets; most markets have public television stations which air large amounts of children's programming; network-affiliated stations do not have large blocks

set forth in the Children's Television Act need not be applied to these programs because they were designed for a general audience. Nevertheless, when these programs air during the early morning, afternoon or early fringe time slots, the Commission's staff appears to be taking the position that the children's commercial limits do apply. This is not an isolated problem; it potentially affects many broadcasters and their compliance with the commercial limits. For instance, "Wonderful World of Disney" was originally produced for a general audience on Sunday evenings. If it is aired on Saturday morning adjacent to children's programming, do the children's commercial limits apply? Does the answer change depending on whether the program is animated or not? Act III requests the Commission to provide guidance in this area and requests that sanctions not be imposed for unintended violations.

VII. CONCLUSION

In sum, the NOI reflects a marked departure from the framework which the Children's Television Act sets forth and the guidance provided in the Commission's 1991 Report and Order. Broadcasters are trying to comply with the Act, and the justification for a sudden change does not exist. The proposal that broadcasters must primarily rely on standard-length programming is likely to discourage the production of local short-segment programming. If any changes in the guiding principles are imposed, broadcasters should have sufficient advance notice. The Commission should provide guidance as to the level of programming it expects of licensees and the times such

programming would be appropriate. Any guidelines that are adopted should be imposed on a gradual basis so that stations have sufficient time to prepare for any changes and to adjust programming schedules.

Respectfully submitted,

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Dated: May 7, 1993

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ATTACHMENT A

APRIL 1993

MIDTERM EXAM ON KIDVID
Answer Sheet

Programming

1. The "core" requirement of the Children's Television Act is to air programming specifically designed to serve the educational and informational needs of:

    a. children 12 and under.

    b. children and teens 16 and under.

    c. children and teens 19 and under.

    A. b. Children and teens 16 and under. The commercial limits, however, apply to programs produced for children 12 and under.

2. The FCC defines "educational and informational programming" very broadly: it is any "programming that furthers the positive development of the child in any respect, including the child's cognitive/intellectual or emotional/social needs." Which of the following can be relied on to meet the "core" requirement of broadcasting programs specifically designed to meet such needs?

    a. "National Geographic" specials

    b. "The Flintstones"

    c. "Saved By the Bell"

    d. Any cartoon with a wrap-around pro-social message

    e. "G.I. Joe"

    f. All of the above

    g. None of the above

    A. c. "Saved By the Bell" was one of a number of programs specifically singled out by Congress as serving children's developmental and informational needs.

CERTIFICATE OF SERVICE

I, SYBIL R. BRIGGS, do hereby certify that I have this 7th day of May, 1992, mailed by first class United States mail, postage prepaid, copies of the foregoing "**COMMENTS OF ACT III BROADCASTING, INC. ON NOTICE OF INQUIRY**" to the following:

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