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FCC EN BANC HEARING

6/28/94

AN HISTORICAL PERSPECTIVE

I am pleased to once again participate in an FCC en banc proceeding on the subject of children and television. Over eleven years ago I sat in this same room at the last children's en banc hearing to explore the role of the federal government in the future of children's TV. I think it is fair to say that we've come full circle in many areas.

A decade ago, I founded KIDSNET, a non-profit computerized clearinghouse on children's audio, video, radio and television. Our mission is to increase the quality and quantity of children's programs and by generating audiences for these programs we can increase the demand for more product of this caliber. KIDSNET already puts children's programming on the information superhighway. We are not just planning to do this in the future. It is something we have already put into practice--using the information infrastructure to help educators and parents identify quality programs for children.

The industry has argued for years that in lieu of a spectrum fee they offer programming in the public interest. Thus the fact that the economics of children's television are different than the financing of adult programming is in a real sense irrelevant. This "public interest" obligation is the proper basis for exceptional rules for children's television.

The Commission has, up to now, disavowed any responsibility for specific definitions for children's television. But this is the crux of the problem. By continuing to be vague about the broadcaster's responsibility to children the FCC is not being fair to the broadcaster nor representing the interest of the public.

THE BASIC APPROACH

Broadcasters cannot object to rendering such public service without looking foolish. They cannot say to Congress that there should be no spectrum usage fee because of their public service obligations, and then argue that there can be no reasonable accountability in this unique and most vital area.

The Commission cannot, of course, adjudge such quality by examination of the particular program; this would be a wholly inappropriate undertaking for a governmental agency. But it can set out procedures which, if followed in good faith by the broadcaster, have been shown to contribute to quality, and state that, therefore, these procedures can be appropriately taken into account in the renewal warrant a merit or credit which counts toward renewal.

SUGGESTED STEPS TO IMPROVE PUBLIC SERVICE FOR CHILDREN

- The FCC should create a Temporary Commission on Children's Television to provide a forum for dialogue in an non-adversarial atmosphere. This group would be charged with identifying the definition of what is educational and informational programming for children; what are the specific age groups that should be targeted with what specific objectives; and suggested ways that a broadcaster might meet these objectives with their programming.
- An important role for this Commission is to help define the target age groups.
- One of the problems that needs to be addressed by the industry is the matter of ratings for children's TV programs.
- In order to assist broadcasters in meeting the new FCC objectives for children's programming, the Commission should encourage them to develop other tools to help them meet these requirements.
 - a. Ascertainment
 - b. A Children's Advisory Board
 - c. Educational Consultants
 - d. Programs or Series with Ancillary Materials
 - e. Alternative Means of Distribution: Getting to the Superhighway
 - f. Well-Promoted Specials
 - g. "Family" Programming
 - h. Public Broadcasting/Commercial TV Alliances
 - i. Continuity

CONCLUSION

I would like to conclude my remarks on two positive notes. It is clear that generating a definition for children's programming that fits with certain requirements is a viable task. In addition, I have faith in the broadcasters of our country that they not only can meet the requirement, but they can make money doing it.

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
EN BANC HEARING**

**KAREN W. JAFFE
EXECUTIVE DIRECTOR
KIDSNET**

6/28/94

**"The Economics of Providing Educational & Informational
Programming for Children "**

AN HISTORICAL PERSPECTIVE

Mr. Chairman and members of the Commission, I am pleased to once again participate in an FCC en banc proceeding on the subject of children and television. Over eleven years ago I sat in this same room at the last children's en banc hearing representing the National Education Association, indeed with several of the other participants who have joined us today, to explore the role of the federal government in the future of children's TV. I think it is fair to say that we've come full circle in many areas.

A decade ago, I founded KIDSNET, a non-profit computerized clearinghouse on children's audio, video, radio and television. Our service operates a database of children's radio and TV programs referenced by curriculum, target age, and special needs (including programs captioned in another language and for the hearing impaired). This database is available electronically on America Online and is used by schools, libraries, and education professionals nationwide.

Industry users of KIDSNET include networks, syndicators, producers and distributors in the U.S. and abroad who are seeking acquisitions or tracking programming trends in the field of children's programming. Our mission is to increase the quality and quantity of children's programs and by generating audiences for these programs we can increase the demand for more product of this caliber. KIDSNET already puts children's programming on the information superhighway. We are not just planning to do this in the future. It is something we have to put into practice--using the information infrastructure to help educators and parents identify quality programs for children. Attached to my testimony is additional information on the services we offer and a list of our Board of Directors.

The premise for this hearing, and for the legislative and regulatory history on this issue, is that broadcasters operate in the public interest and that the needs of children are not only a part of that public interest, but deserve exceptional attention and treatment.

The FCC said in its 1983 "Report and Order" on children's television that "we recognize the special character of the child audience, including particularly the younger of that audience..."¹ The FCC also noted that "economic factors relating to the distribution of advertiser supported programming for children are likely to vary somewhat from

those associated with the distribution of programming for adults."²

The industry has argued for years that in lieu of a spectrum fee they offer programming in the public interest. Thus the fact that the economics of children's television are different than the financing of adult programming is in a real sense irrelevant and, indeed, the entire economic base of children's television cannot be said to be controlling or determinative of our discussion today. This "public interest" obligation is the proper basis for exceptional rules for children's television.

The precedent for identifying the child as a special audience, and the special obligation of the broadcasters to that audience, goes back to the 1974 "Children's Television Report and Policy Statement" and the many FCC rules that followed it regarding advertising limits and host selling. These rules contradict the Commission's position in 1983 that mandatory rules regarding children's programming would inhibit natural market specialization and hurt commercial incentives or that "regulators running against the grain of station sponsorship would reduce market incentives for the production of programming for specialized audiences."³ In the same 1983 "Report and Order" the FCC did admit that "attention (should be) paid to the developmental and emotional needs of children."⁴

The 1983 FCC "Report and Order" paraphrased a section of the Children's Television Task Force Report, issued in 1979 which the Commission cited to support the view that "the economic incentives of the advertiser-supported broadcasting system do not encourage the provision of specialized programming for children....Thus, the amount of money spent on children's advertising appears to be small relative to the amount spent advertising to adults."⁵

The 1983 Report went on to say "small numbers of children and the limited appeal of the children's market to advertisers, combined with the small number of adults in most markets, create incentives for the commercial television system to neglect the specific needs of the child audience."⁶ Once again the Commission identified unique characteristics that make children's television different from other programming sectors.

A contrary concern voiced by the Commission during this era was articulated by FCC Chairman Mark Fowler in a 1983 speech at Arizona State University. Chairman Fowler explained that in his opinion the Commission had previously regulated children's programming by "raised eyebrow" having no official authority to do so in any other way. He was clear, he said, that this was not an area in which the FCC should be involved. He went on to state that, even if it was

appropriate to do so, the FCC had no way of knowing how much children's TV should be mandated by the government. It was also in this speech that Chairman Fowler "reject(ed) the premise that TV watching is decisive in molding a child's attitudes, beliefs, values and behavior."

Without ignoring his other premise--that TV is only one aspect of a child's life, and the role of parents and teachers, caregivers and others contribute to the child's whole experience--I doubt that any of us in this room would agree that TV does not have a tremendous influence on children. That is why we are all here. Because we want this powerful and exceptional medium to be used for the benefit of our children, and thus ultimately for the good of our society, which the FCC serves.

It is clear, then, that the Commission can mandate a reasonable amount of public service devoted to children.

Let's now move forward in time to the April 1991 "Report and Order" on children's programming, which provides the questions that we have been requested to answer at today's en banc session. The Commission has, up to now, disavowed any responsibility for specific definitions for children's television. The Children's Television Act of 1990, however, left that job to the FCC and the FCC has so far passed the buck to the broadcaster. The FCC maintains that it is

"concerned with licensee responsiveness to children's needs, not with the precise methodology they use to assess those needs."⁷ But this is the crux of the problem. Former FCC Chairman Dean Burch said, concerning definitions of reasonable and substantial amounts of informational programming, which I think is relevant to this matter: "(t)hese are, in the vernacular, "marshmallow" phrases - they mean almost nothing in and of themselves or, conversely, almost anything that one wants them to mean....Their use as statutory standards would come down, in the end, to wholly subjective judgments by transient Commission majorities, and thus perpetuate rather than alleviate the problems we now face."⁸

In other words, by continuing to be vague about the broadcaster's responsibility to children the FCC is not being fair to the broadcaster nor representing the interest of the public.

In his book, "Television and America's Children: Crisis of Neglect," Dr. Edward Palmer documents the fact that more money is spent by many other countries for children's programs than it is by the U.S. When we think of Australia, Great Britain, or Canada we naturally assume that these shows are funded by the government. In fact most of them are. But his book also illustrates the fact that the

commercial networks in these countries also broadcast more children's programs than the U.S. does.

THE BASIC APPROACH

First then, the period of "mush" must end. That is the clear thrust of the 1990 Act: Television broadcasters are not to rely on a postcard in this sector, but must demonstrate to the Commission that they have served the informational and educational needs of the child audience, including programming specifically designed to do so. That is a unique requirement, and the Commission must insure that it is reasonably met by all stations. Broadcasters cannot object to rendering such public service without looking foolish: They cannot say to Congress that there should be no spectrum usage fee because of their public service obligations, and then argue that there can be no reasonable accountability in this unique and most vital area.

The most obvious requirement is a processing requirement as to the quantity of the core (i.e., specifically designed educational/informational) programming. I recognize that this is a matter for another panel, so I will only briefly note here its bedrock importance. As I said, this would be fair both to the public and the broadcaster. It would not mean that the broadcaster could not show additional efforts that it believes contribute to the public service requirement in this area. Of course, it can. But the

processing guideline would give the stations reasonable assurance of ready renewal and alert the Commission to those instances where scrutiny of the station's overall efforts and showing are called for.

Further, in my statement, I will discuss some of those efforts. I stress here that many of them contribute markedly to the quality of the broadcast. The Commission cannot, of course, adjudge such quality by examination of the particular program; this would be a wholly inappropriate undertaking for a governmental agency. But it can set out procedures which, if followed in good faith by the broadcaster, have been shown to contribute to quality, and state that, therefore, these procedures can be appropriately taken into account in the renewal process -- that is to say, they warrant a merit or credit which counts toward renewal. I turn now to a discussion of the non-quantitative aspects of this basic approach.

SUGGESTED STEPS TO IMPROVE PUBLIC SERVICE FOR CHILDREN

One of the significant references in the KIDSNET programming database is the availability of copyright information we identify which allows educators to tape programs off-air for use in the classroom. In addition to the standard 10-day use for broadcast programs allowed by the voluntary "off-air taping guidelines," some shows have more generous taping allowances. Programs that are part of the "Cable in the

"Classroom" initiative generally exceed the standard use and allow teachers to tape and retain programs for several months, several years, and in some cases in perpetuity. Some broadcast programs have unique exceptions as well, such as a CBS documentary on the anniversary of the first moon walk which aired in July several years ago and which allowed teachers to tape and use for six months to correspond to the school schedule.

When I spoke before the last FCC children's en banc hearing over ten years ago, I made a recommendation that is still valid: the FCC should create a Temporary Commission on Children's Television to provide a forum for dialogue in a non-adversarial atmosphere.⁹ This group would be charged with identifying the definition of what is educational and informational programming for children; what are the specific age groups that should be targeted with what specific objectives; and suggested ways that a broadcaster might meet these objectives with their programming.

This is not a new phenomenon. Public broadcasters, particularly in the field of children's programming, usually define learning objectives and educational goals for their programs. Others at this hearing have already attested to this. An important role for this Commission is to help define the target age groups. There is a great deal of research on this subject. In fact a background paper

prepared for the Advisory Council on Children's Educational Television, the group on which I sit which advises the National Endowment for Children's Educational Television, has summarized some of this research. A typical breakdown could include programs for preschool (ages 2-5); primary grades (ages 6-8); pre-teens (ages 9-12); and teens (ages 13-16). This is also how KIDSNET references its programs.

One of the problems that needs to be addressed by the industry is the matter of ratings for children's TV programs. The ratings services use much broader categories to document the child audience. Generally, children are defined in subgroups of 2-5, 6-11, and 12-17, which is a much larger age span than educators and child development specialists would recommend. This problem in defining the proper targeted age group is compounded by the fact that many broadcasters believe that the "people meter" does not accurately represent the child audience. An article in the March 15, 1993 Broadcasting & Cable magazine, quoted a broadcast executive as calling this the "undercounting of metered kids viewers." If the broadcasters were required to be more specific in defining the age group for children's programs, they would need to negotiate better audience categories with the rating services.

In order to assist broadcasters in meeting the new FCC objectives for children's programming, the Commission should

encourage them to develop other tools to help them meet these requirements. If broadcasters use these methods, they could list them in their station file and any renewal showing where they could be considered as a form of merit or "extra credit." Key to these recommendations, however, is how these resources are really used. In order to be valid additions to a station's public service showing, a detailed explanation of what these experts actually do, how it impacts programming, and some form of evaluation must be included. We've all seen the list of impressive credits at the end of a program. In this case, the Commission must be serious about the results. It's not just window-dressing. Among these might be the following:

1. Ascertainment

Some broadcasters, though not required, still conduct ascertainment. While recently conducting research for the Casey Journalism Center, I discovered a direct parallel between stations which still did ascertainment and the quality of the stations' programming efforts.

2. A Children's Advisory Board

This could evolve from an ascertainment procedure. It can provide invaluable assistance in creating targeted children's programming. I sit on several network advisory boards that contribute to various programming efforts. One of them, the Board for the Fox Children's Network, received

praise at Congressman Markey's hearings on children's TV earlier this month for launching an educational series on Saturday mornings and for developing several more educational projects to air in the fall.

3. Educational Consultants

Many broadcasters have hired these consultants for programs about kids, but they could be used in an ongoing fashion to help formulate objectives for children's programs and keep the shows on track.

4. Programs or Series with Ancillary Materials

These should qualify for "extra credit," as they do now, but there should be documentation as to how these materials are used. KIDSNET has a great deal of experience in both the production and distribution of study guides for children's shows, as well as identifying and promoting these materials which are produced by other groups. Shows like the recent CBS/FOX special primetime broadcast for preteens and adolescents, "Let's Stop Kids Killing Kids," which included extensive educational material for parents and for educators, won its time period. Substantial credit for this success should be given to the availability of these materials.

5. Alternative Means of Distribution: Getting to the Superhighway

Broadcasters like CBS, who offer a limited number of their "CBS Schoolbreak" series on video at cost to educators, should be encouraged to offer alternative means of program distribution to the public. This means encouraging creative financial arrangements and copyright clearances when programs are first developed. Commercial broadcasters who negotiate these deals should have some incentive, either through tax credits or FCC "credits," to do this. KIDSNET has found that educators and parents who can obtain a show they like after broadcast are more likely to watch the program in the first place. This kind of opportunity can not only build an audience (an important economic incentive), but depending on the structure of the deal it can, in some instances, put some dollars back into more children's programs.

As we all prepare for the opportunities of the electronic superhighway, it is important to consider the role of children's TV programming in planning what information will be accessible, especially to educators. We already have seen cooperative efforts and mergers among different information providers representing diverse technologies that can make television and video available through various delivery systems. This means that more teachers, health and social service professionals, civic and religious groups, and of

course parents, will have the ability to use children's programs in various formats.

Several bills in Congress now are exploring the notion of public access to these delivery systems and what special rights should be reserved and protected for the public. I strongly encourage the FCC at this juncture, while you are considering rules to increase the public service for children's programs, to generate creative incentives for the television industry to become a "player" in providing reasonable access to its programs through these new delivery mechanisms. Without restricting commerce I believe that there are several options for copyright allowances that could be negotiated among the producers and distributors of these programs which would benefit the public sector and in fact, as I have said, increase the initial audience for these programs. KIDSNET has extensive information on this notion which I would be pleased to share with the Commission at a later date.

6. Well-Promoted Specials

Specials like "Let's Stop Kids Killing Kids" or the famous Saturday morning special on drug abuse, "Cartoon Allstars to the Rescue," (which was carried simultaneously on the commercial networks, several cable networks and public broadcasting stations in 1990) have enjoyed major success. Educational materials for "Allstars," as well as copies of

the program, were distributed to elementary schools nationwide. The video was also made available at cost to parents and also to professionals who could use it in their work. Copies of "Let's Stop Kids Killing Kids" were available at cost from Blockbuster video stores, for example.

Broadcasters who air specials, whether they are one-time major efforts, or a series of several throughout a year, should be able to use them as "extra credit" towards programming. However, a broadcaster who uses "specials" as part of the children's television requirement must show how these specials are part of a continuing effort by the station to meet the children's programming guidelines.

7. "Family" Programming

There has been a great deal of discussion about the value to children of family programming, much of it in primetime, which often presents prosocial messages about behavior and health issues. While I do not think these programs should count as part of a broadcaster's core required programming for children, I do believe that if this programming is accompanied by a specific effort on the part of the station, either through promotion, community outreach, or ancillary materials that directly targets children as well as adults, an "extra credit" could be identified for this activity.

8. Public Broadcasting/Commercial TV Alliances

As a current member of the Council for the National Endowment for Children's Educational Television, I have recommended on several occasions that we explore the possibility of supporting children's television projects which are designed to be financed through public/private partnerships. It is my strong recommendation that the FCC should investigate options within the federal tax structure that could provide financial incentives for commercial companies to joint venture with public broadcasters' children's programs. The following examples reflect the successes of joint partnerships whose funding structure contributes to the development and distribution of quality programming for children.

-- as part of the PBS Wonderworks series the Disney Channel contributed to the funding of "Anne of Avonlea," the sequel to "Anne of Green Gables," allowing the show to premiere on PBS and then to air on the Disney Channel.

-- "In the Shadow of Love" was a special for pre-teens about AIDS which was cooperatively funded with public station WGBH TV in Boston and ABC and aired in primetime on PBS and in the daytime, as part of the "ABC Afterschool Special" series.

-- "Scared Silent: Exposing and Ending Child Abuse," a documentary about child abuse, was targeted to adults. It was underwritten by the USAA corporation and given to NBC, CBS, ABC, and PBS for free, and aired simultaneously on NBC, CBS, and PBS with a forty-eight hour delay on ABC.

-- Another example is the relationship between the public station in Seattle, Washington, KCTS TV, the real creator of "Bill Nye the Science Guy," and Buena Vista Television who syndicates the children's science series to commercial stations nationwide. In addition to the syndicated weekly half-hours on commercial TV, PBS strips the series weekly Monday through Friday. National Science Foundation money funded educational materials for students and teachers and will provide more funding for production in the second season. Former FCC Commissioner and PBS President, Ervin Duggan, said in the announcement of this partnership that "joint ventures with strong media partners will be a key strategy for PBS as the next chapter of our history unfolds."

-- The cable music video network VH-1 and the Chicago public TV station, WTTW, created an unusual alliance with the series, "Center Stage." This music anthology series was produced at WTTW studios, which created a half-hour version for the cable network and an hour-long show for PBS.

It is not just the networks that have benefited from these unique financing ventures. The attached list includes eleven examples of local commercial and public TV stations that have created programming together. (see attachment 1)

9. Continuity

My final, but most important recommendation is that any guidelines that the FCC determines to define educational and informational children's programming by quantity, i.e., number of hours per week, or to appropriately contribute to its quality, perhaps using some of my previous suggestions, must also include the stipulation that these programs must be aired with continuity and targeted for specific age groups. These regularly scheduled programs should also be publicized and promoted to the populations to which they are targeted.

In the past, the skepticism of the FCC regarding the economic viability of children's programming has been supported by a self-fulfilling prophesy; shows that have had little continuity and no advertising cannot build an audience--and they did not. Thus, advertisers are reluctant to support them. Also, if a program, unless it is identified as a "family" show, has too broad a range in terms of target audience, the show cannot possibly achieve any defined objectives of value to a specific age group.

I would like to conclude my remarks on two positive notes. Over the years a common justification for not defining what constitutes a children's programming effort meeting the public interest requirements was the fact that no legislator or regulator felt competent to the task. I think we have reached the point of no return--and there is no turning back. Whether the Commission forms a Temporary Commission to help set the criteria, as I have suggested, or whether you gather enough information from this hearing today, it is clear that generating a definition for children's programming that fits with certain requirements is a viable task.

In addition, I have faith in the broadcasters of our country that they not only can meet the requirement, but they can make money doing it. Many broadcasters who have assembled here today have children's programs which are successful. Gerry Laybourne's "Doug" and "Roundhouse" are two award-winning shows on Nickelodeon; "Beakman's World" airs on CBS and enjoys a large syndicated distribution; "Cro" will begin its second season on ABC--an example of a partnership between the National Science Foundation and ABC. Some specials for young children do well even in primetime. This past April NBC aired a very popular hour-long show, "Bedtime with Barney," which aired on a Sunday night at 8 pm. These are just some examples. Others, like many of David Britt's CTW programs or Shari Lewis's Lamb Chop series on PBS,

continue to get funding because they are very popular programs.

If broadcasters are required to air a certain number of hours of children's programs that meet specific criteria, I have no doubt that many will find a way to do it well. And if they do it well, and if they schedule the programs appropriately, and publicize and advertise them appropriately, the shows might very well make enough money to free children's programming from the role of "stepchild" of the industry to its rightful place as "Cinderella," where it belongs.

TV and children have been in the news a lot lately and not always in a positive light. Yet, scholars like E.B. White and Ernest Boyer have reminded us about TV's potential to enrich children's lives. In Dr. Boyer's 1991 report, "Ready to Learn, Mandate for the Nation," former FCC Chairman Newton Minow says, "A new generation has the chance to put the vision back in television, to travel from the wasteland to the promised land, and to make television a saving radiance in the sky." Education Secretary Riley, at his "State of Education" address last fall, placed television in the top three of his six recommendations to help children learn. He said "use TV wisely...and when chosen carefully, some television programs can help increase interest in learning." If each broadcaster had one show that would make

that list and reflect Minow's vision, we would all be in a better place in the future. The argument that the economics of children's television is different or difficult is simply not good enough to deny our children this future.

ENDNOTES

1. Federal Communications Commission, 1983 Report and Order, In the Matter of Policies and Rules Concerning Children's Television Programming, Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, Docket No. 90-570 and Docket No. 83-670, para 25, p 10.
2. Ibid.
3. Id., para 42, p 20.
4. Id., para 34, p 15.
5. Id., para 6, p 3.
6. Ibid.
7. Federal Communications Commission, 1991 Report and Order, In the Matter of Children's Television Programming and Advertising Practices, Docket No. 19142, adopted December 22, 1991, para 22, p 19.
8. Hearings on Broadcast License Renewal Before the House Subcommittee on Communications and Power, 93rd Cong., 1st Sess., ser. 93-96, pt.2, at 1120 (1973).
9. Federal Communications Commission, 1983 Report and Order, In the Matter of Policies and Rules Concerning Children's Television Programming, Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, Docket No. 90-570 and Docket No. 83-670, footnote 19, page 6.