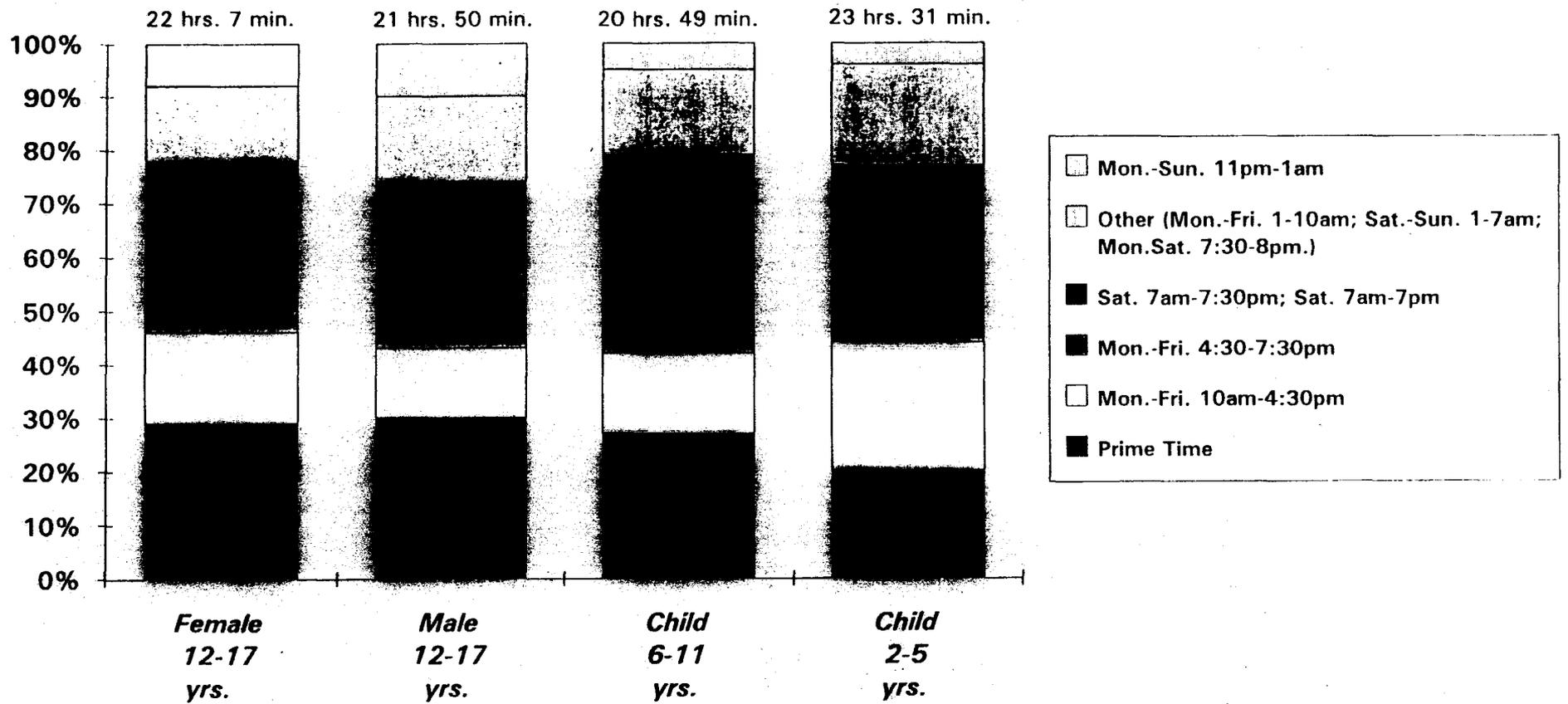


Distribution of Weekly TV Viewing by Children



Source: Nielsen Media Research, Television Audience 1993, at 14.

**Supplemental Statement of
Commissioner James H. Quello**

**RE: *Policies and Rules Concerning Children's Television Programming
(MM Docket No. 93-48)***

This item has good news and bad news. The good news is, we have proposed a range of options for encouraging broadcasters to air more and better children's educational and informational programming. The bad news is, two of these three options, quantitative programming standards and probably processing guidelines, are First Amendment time bombs waiting to explode in a court of law.

The First Amendment will be uppermost in my thinking when I develop my ultimate position in this proceeding. At least one commentary published before the Commission's 1994 en banc hearing on Children's Television has asked "Who Speaks for the First Amendment?" Robert Corn-Revere, Who Speaks for the First Amendment?, Broadcasting and Cable, June 27, 1994 at 18, 20. I speak for the First Amendment in this proceeding, loud, long and clear. While the Chairman and Commissioners were advised by our General Counsel that quantitative programming standards or processing guidelines would pass constitutional muster, I beg to differ. As Broadcasting and Cable pointed out, the D.C. Circuit has suggested several times in recent years that the scarcity rationale, which was the basis of the Supreme Court's decision in Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969) (broadcasters are entitled to less constitutional protection than traditional speakers due to scarcity of spectrum), may already have been rendered obsolete by the existence of new technology. Corn-Revere, supra at 18 (citing CBS, Inc. v. Democratic Nat'l Comm., 412 U.S. 94 (1973); FCC v. WNCN Listeners Guild, 450 U.D. 582 (1981); CBS, Inc. v. FCC, 453 U.S. 367 (1981); FCC v. League of Women Voters, 468 U.D. 364 (1984)). Indeed, in cases adopted since Red Lion, the trend has been to restrict the government's ability to intrude on editorial decisions and instead to place greater reliance on broadcasters' discretion. See id.

In perhaps the strongest statement to date, the Supreme Court last summer, in a ruling on the must carry provisions of the 1992 Cable Act, stated:

The FCC's oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations; for although "the Commission may inquire of licensees what they have done to determine the needs of the community they propose to serve, the Commission may not impose upon them its private notions of what the public ought to hear.

Turner Broadcasting System, Inc. v. FCC, 114 S. Ct. 2445, 2463 (quoting Network

Programming Inquiry, Report and Statement of Policy, 25 Fed. Reg. 7293 (1960)), reh'g denied, 115 S. Ct. 30 (1994). Quantitative programming standards or processing guidelines, in my view, would fall squarely within this warning that the FCC ought not impose on broadcasters their own notion of what the public ought to hear. We ignore this potent warning from the Supreme Court at our peril.

Congress itself recognized the importance of the First Amendment by devoting a great deal of discussion (seven pages) in the legislative history to the constitutionality of the programming portion of the Children's Television Act. H.R. 385, 101st Cong., 1st Sess. (1989). Congress concluded that, after close examination of the constitutionality of the legislation, "imposing...an affirmative obligation on licensees to serve the special needs of children in no way would violate the Constitution." *Id.* Accordingly, Congress directed the FCC, in ensuring that licensees include as part of their overall programming, programming that serves the educational and informational needs of children, to review broadcasters' applications for license renewal for compliance with the Act. Congress *did* adopt quantitative commercial limits; the fact that it *did not* adopt quantitative programming standards or processing guidelines, with an extensive First Amendment analysis as a backdrop, speaks volumes.

In addition to the First Amendment implications, I am concerned with the proposal to adopt quantitative programming guidelines or processing standards in light of the significant changes in the video programming marketplace since passage of the Children's Television Act in 1990. Let me clarify that I take very seriously the mandates of the Act, and our obligation to enforce these mandates. However, I also would argue that the Children's Television Act was sufficiently broad so as not to require us to make decisions in a regulatory vacuum. We should seriously consider the need for numerical requirements for children's television programming in a world that now includes, or will soon include, cable television (which brings us Nickelodeon, the Learning Channel, Discovery, the Disney Channel), direct broadcast satellite, wireless cable, video dialtone, video cassette recorders, and interactive video and computer programs. To ignore the realities of the marketplace in reaching a decision in this proceeding would be nothing short of regulatory malfeasance.

There are several good proposals in this NPRM which, together, could result in an effective means of encouraging broadcasters to improve on their children's programming record, without imposing unnecessarily on their editorial discretion. These proposals include: (1) clarifying the definition of educational and informational programming "specifically designed" to serve the needs of children; (2) requiring broadcasters to specify in writing in a children's programming report the educational objective of the program and the target child audience; (3) providing the public with more information regarding the educational and informational programming provided by broadcasters, including placing their children's programming report in a separate "children's file" at the same location as the station's public inspection file; (4) urging

the public to use this information by first approaching the stations in their community if they have any concerns about the amount and type of children's programming being aired before complaining to the Commission; and (5) monitoring for a specified period of time the progress of broadcasters under the new definitions and improvements in information flow. These proposals, taken together, could go a long way toward improving the amount of educational and informational programming for children while at the same time preserving the First Amendment rights of broadcasters.

One final aside. Although not before us in this item, there has been much talk recently about auctioning broadcast spectrum, or exchanging spectrum for an agreement from broadcasters to air more children's programming or to provide free time to political candidates. I strongly oppose any scheme to auction off spectrum used for broadcasting. To the extent such spectrum is used to offer subscription-based services, I think it is reasonable to require broadcasters to pay a fair value for that use. However, by "fair value" I do not mean to encourage the auctioning of the spectrum or the extraction of any content-based quid pro quo on the altar of Commission regulation. I consider this type of "social compact" nothing more than regulatory extortion.

STATEMENT

OF

**COMMISSIONER ANDREW C. BARRETT
CONCURRING IN PART/DISSENTING IN PART**

In Re: Policies and Rules Concerning Children's Television Programming; Revision of Programming Policies for Television Broadcast Stations (Notice of Proposed Rule Making)

Today, the Commission adopts a Notice of Proposed Rule Making ("NPRM") which sets forth a proposed modification of the definition of children's educational and informational programming that complies with the Children's Television Act ("CTA"), and seeks to facilitate the public's monitoring of their local broadcasters' compliance under the CTA. The Commission also proposes to elect one of several options designed to address a perceived dearth of children's educational and informational programming upon clarification of the definition of such programming under the CTA. These options include monitoring the industry for a specified period of time or the adoption of quantitative standards to be applied upon submission of a licensee's renewal application either as a processing guideline or a standard. The Commission also seeks comment on a proposal to allow a station to fulfill its CTA obligation, in part, by sponsoring programs on other stations in the same market. I concur with the Commission's decision to modify the definition of educational and informational programming in order to provide clarification for both broadcasters and the public alike. Though a clear statement of opposition is unusual at this stage of a rule making, I must dissent with regard to the Commission's consideration of certain portions of the definition proposal, quantitative standards for broadcasters, and to the sponsorship program.

In March 1993, the Commission issued a Notice of Inquiry ("NOI") seeking comment on whether a need exists to clarify the children's educational and informational programming requirements.¹ We also sought comment on whether to adopt guidelines for the amount of core programming required to comply with the Act. I supported the NOI because, at the time, the information available to the Commission substantiated allegations that there was an insufficient increase in the amount of children's programming that complied with the CTA. My concern was that this could have been due, in part, to the lack of clarity the definition provided regarding the scope of broadcasters' children's educational and informational programming obligations.

¹ Notice of Inquiry, MM Docket No. 93-48, 8 FCC Rcd 1841 (1993).

I also supported the NOI because it clearly indicated that the Commission would not establish quantitative standards to address its concerns regarding a lack of children's programming. In fact, we specifically stated that Congress' express preference was to avoid quantitative standards and to rely on the licensee's judgment in meeting children's programming needs.

I believe that circumstances have since improved and some parties contend that there has been an increase in children's programming.² Unfortunately, the Commission has summarily dismissed this information by concluding that even if we were to accept that the amount of educational programming has increased, the degree of that increase has been modest. In my opinion, however, this NPRM marks a clear and substantial departure from prior Commission actions.

QUANTITATIVE GUIDELINES

Congress, pursuant to the CTA, gave the Commission a clear mandate--to increase the amount of children's programming. In response to that directive, the Commission undertook a rulemaking and adopted rules pursuant to a Report and Order ("R&O")³ that, among other things, set forth the definition of children's educational and informational programming and the requirement that a licensee be in compliance with these requirements when renewing its license. Yet, the Commission emphatically stated at that time (and on two other occasions) that it would not rely on a quantitative standard to achieve that goal.⁴

² See, generally NAB En Banc Reply Comments which contends that the average commercial station aired slightly more than 2 hours per week of regularly scheduled, standard-length educational and informational programming in the fall of 1990 and 3.6 hours per week of such programming in the fall of 1993. See also, INTV En Banc Reply Comments providing data which demonstrates an increase in the amount of this programming from the first quarter of 1990 to the first quarter of 1994 for its members who believed that they had complied with the CTA.

³See Report and Order, In the Matter of Policies and Rules Governing Children's Television Programming, MM Docket No. 90-570 and 83-670, 6 FCC Rcd 2111.

⁴ In the R&O, we stated that "[t]he Act imposes no quantitative standards and the legislative history suggests that Congress meant that no minimum amount criterion be imposed...We thus decline to establish any minimum programming requirement for licensees for renewal review independent of that established by the Act." See, R&O at 24. Also, in our Memorandum Opinion and Order in this proceeding, we stated that "we agree with NAB, however, that [quantitative processing] guidelines, even if they do not automatically result in sanctions if violated, conflict with Congressional intent not to establish minimum criteria that would limit broadcasters programming discretion." Memorandum Opinion and Order, MM Docket Nos. 90-570 and 83-670, FCC Rcd 2111 (1991). Finally, in the NOI, we noted that "consistent with Congress' express preference for avoiding quantitative standards and for relying on licensee judgment in meeting children's programming needs, we have consistently favored statements of purpose over specific regulatory

We admit in this NPRM, that since the adoption of that R&O, the Commission has seen an increase in the amount of educational and informational programming. Now, despite this acknowledgement and without the benefit of conclusive data to quantify that increase, the Commission has determined that a shortage still exists today. I disagree with this approach. It seems that the more appropriate step would have been to first determine the level of programming that could be deemed to satisfy the educational and informational needs of children, then to determine whether a sufficient amount of such programming exists in the market and, if not, adopt measures to increase the programming under a modified definition.

Two of the options that the Commission presents as proposals for further action to increase the amount of children's programming are premised on the establishment of a quantitative standard. Indeed, some have argued that there is an administrative benefit for the Commission, broadcasters and the public--to know exactly how much educational and informational programming is required of each broadcaster. Moreover, as the NPRM, points out, there is no statutory prohibition under the CTA or within the CTA's legislative history that precludes the Commission from setting these standards. However, I believe that the Commission, by proposing to take this alternative measure, approaches content-based regulation that is violative of broadcasters' First Amendment right to free speech.

In the prior decisions in this proceeding, I based my support on the fact that: (i) the Commission was able to satisfy the requirements of the Act without intrusive regulation and (ii) broadcasters are afforded discretion to determine the type and amount of educational and informational programming that they need to air in order to satisfy their obligation under the Act. I cannot now consider this quantitative proposal, as a guideline or as a standard, because it represents a clear departure from my policy views with respect to this issue. While I believe that broadcasters can do better, I have been and continue to be unwilling to support the notion that we, by virtue of our positions as regulators, are entitled to infringe upon the rights of broadcasters by unilaterally dictating the amount and type of programming that the Commission deems is appropriate for carriage in accordance with the Act.⁵

requirements." We expressed a belief that licensees must, for the most part, themselves define the appropriate scope of their service to children in their communities. See, NOI, at 5.

⁵Interestingly enough, some parties have argued that certain cartoons should not be considered informational or educational programming for purposes of satisfying the requirements under the Act. However, in the April 12, 1991 Report and Order, we indicated that "[w]here determinations of whether a program qualifies as "educational and informational" are in doubt, ... [w]e will rely on

Further, I question the Commission's proposed disparate treatment of community-oriented interest programming such as public affairs and news programming as compared to children's educational and informational programming. A broadcaster has an affirmative obligation to carry and to maintain an updated list that exemplifies its most significant treatment of community issues for the purpose of renewing its license. Despite this public interest obligation, the Commission has not proposed or established similar quantitative requirements for these other forms of public or community-oriented programming.

QUALITATIVE STANDARD

While I support the Commission's tentative conclusion to clarify the definition of educational and informational programming, my dissatisfaction regarding the definition of "core" educational and informational programming is primarily focused on specific aspects of the requirements. I do not believe that the Commission should require that the program be aired between the hours of 6:00 a.m. and 11:00 p.m. nor am I willing to support a requirement that a program be regularly scheduled⁶. In both instances, I am again concerned about the First Amendment implications of such requirements. With respect to the requirement that the program be identified as educational at the time it is aired, I will be particularly interested in the economic impact that broadcasters will be forced to bear in order to comply with this obligation as compared to the projected benefit to the public.

While I am pleased that the public will be better informed about the time and a broadcasters' rationale for deeming a program educational under the proposed modifications, I am not convinced that the public has not previously been so informed. As it now stands, broadcasters have an affirmative obligation to maintain their children's programming records as part of their issues list or maintain them separately.⁷ Arguably, lack of access may not be the reason for lack of participation by the public in the monitoring process.

the guidance given in the legislative history, including the specific examples cited above, in ruling on the sufficiency of such demonstrations". See, Report and Order, In the Matter of Policies and Rules Concerning Children's Television Programming, 6 FCC Rcd 2111, para.26 (1991). The examples included programs such as "Saved By the Bell" and "The Smurfs".

⁶While the Commission seeks comment on the definition of "regularly scheduled" programming, I believe that a broadcaster should be credited with any programming that satisfies the definition even if it is not aired at regularly scheduled times.

⁷See, Report and Order para. 31.

Bearing that in mind, I am concerned that we not unintentionally encourage censorship of broadcast programming by individuals or communities that have different views about educational programming that satisfies the proposed definition. Therefore, I will review the comments regarding proposals seeking to facilitate public participation with great interest to make certain that the Commission does not inspire unfair and costly challenges with respect to educational and informational programming.

SPONSORSHIP PROGRAM

The NPRM seeks comment on a proposal to allow broadcasters to satisfy through educational and informational programming through a sponsorship program. In this regard, should the Commission develop a quantitative standard, a broadcaster would be given the option to air the entire amount of its quantitative obligation or to air a portion of its obligation and provide financial support for programming aired on other stations in its market. The Commission tentatively concludes that a licensee may not satisfy its entire obligation by sponsoring programming on other stations in the market. However, we must bear in mind that the Commission grants a license to an individual broadcaster, not to a market of broadcasters. Therefore, although we allow for contributions toward the children's educational programming obligation for nonbroadcast efforts,⁸ I am not convinced that such sponsorship for core requirements should be permissible.

Finally, I have concurred in part because today's decision follows the NOI which seeks comment on a modification of the definition for children's educational and informational programming. However, I am particularly troubled by the Commission's willingness to consider the abandonment of its prior policy regarding quantitative standards or processing guidelines and to allow broadcasters to enter into sponsorship arrangements for the satisfaction of their obligation under the CTA. In the end, should the Commission opt for these changes, I believe it will be faced with constitutional challenges that may further delay the increase in educational and informational programming that it seeks to secure.

⁸See Report and Order, para. 29.

SEPARATE STATEMENT
OF
COMMISSIONER SUSAN NESS

Re: *Policies and Rules Concerning Children's Television Programming*
(MM Docket No. 93-48)

The central goal established by Congress in the Children's Television Act is for television broadcasters to air programming that serves the educational and informational needs of our nation's children.

Our task is to implement better that legislative directive. My preference would have been for broadcasters voluntarily to have met the needs of the children in their audience. Some dedicated broadcasters are working diligently toward that end. But from the record developed in response to our Notice of Inquiry and the testimony at our en banc hearing, I have concluded that the programming mandate of the Act generally is not being fulfilled.

As we take our next steps to implement the Act, it is important to maintain a steady focus on what it is we are trying to accomplish. My own perspective is that we should emphasize quality of programming -- programming that children will want to watch and that responsible parents will want their children to watch. We need to find better ways to promote the widespread availability of programming that educates, enlightens, entertains, excites, and ennobles -- all at the same time.

I see three major impediments to increasing the availability of quality children's programming: the production cost of such programming, the difficulty of integrating it with other elements of the program schedule, and the need to promote it so that parents and children know when to tune in. In this Notice we seek comment on creative proposals to encourage broadcasters to overcome these hurdles.

I hope that broadcasters will find new ways of funding programming that serves educational and informational needs. The Wisconsin State Broadcasters

Association, for example, has established a foundation that funds the production of quality programming that is available to its members on a non-exclusive basis at a nominal cost. Not surprisingly, a large number of broadcasters in the state choose to air this programming. Bill Nye, The Science Guy, has teamed up with the National Science Foundation, public television, and Disney to produce excellent programs that are aired on both commercial and public TV. A constructive dialogue may yield useful lessons on other workable models.

Scheduling is also important. The record clearly demonstrates that regularly scheduled programs attract larger audiences. It is also important that the programming fit with the surrounding schedule; I, for one, am not enthusiastic about sandwiching children's programming in between tabloid-style talk shows. One idea suggested in the Notice, and supported by provisions in the Act, is for one or more stations in a market to air substantial amounts of children's programming with support from other stations in the market. Other approaches to scheduling issues also need to be explored.

Promotion is another important consideration. Programming that is designed to educate and inform cannot serve its purpose if parents and children don't know it is there. A requirement that broadcasters identify what they believe to be their educational and informational programs to newspapers and other TV program guides may be a necessary and minimally burdensome way to ensure that the public is informed.

Over the past months I have been encouraging broadcasters and others to tender creative, market-friendly approaches for improving compliance with the Children's Television Act. We have heard some good ideas, but we have a long way to go.

This Notice presents several specific proposals, and I look forward to studying the comments they engender. In particular, I am interested in exploring the use of processing guidelines as a vehicle for encouraging increased compliance. Broadcasters are entitled to know what we expect of them, and a "safe harbor" approach will provide a "constitutionally friendly" measure of certainty while still allowing the flexibility to accommodate broadcasters who choose to emphasize quality and community service. It is not our role to prescribe content or to force broadcasters into a common mold.

I look forward to a dialogue involving all interested parties. The means to meet our goals must be developed and implemented through cooperative efforts of broadcasters, program creators, advertisers, parents, educators, newspaper publishers, and government officials.

I care about the programs children watch. Broadcasters have a special obligation to serve the public interest. More than one-third of TV households do not subscribe to cable, and many children who do not have access to cable or satellite dishes live in low-income homes. They deserve our help.

We need to work together to address what is, fundamentally, a common objective. We need to think these ideas through, and we need to make genuine progress in the near-term.

SEPARATE STATEMENT OF
COMMISSIONER RACHELLE B. CHONG

Re: Policies and Rules Concerning Children's Television Programming, MM Doc. No. 93-48

Who holds the souls of children, holds the nation.

Anonymous

Today we add yet another page to the already lengthy chronicle of the FCC's regulation of children's television programming on the commercial television broadcast medium. Like the many Commissioners that have preceded us, we propose this action with due respect for our cherished First Amendment rights. While I believe that we should tread carefully in this constitutionally sensitive area, I do not believe that we are paralyzed. The First Amendment clearly permits narrowly tailored regulations designed to fulfill a compelling government interest. I cannot think of a more compelling government interest than that of protecting and nurturing our most precious resource - our children.

Congress has mandated that the Commission implement the Children's Television Act of 1990. The purpose of the Act is "to increase the amount of educational and informational broadcast television programming available to children"¹ Thus, I believe our foremost goal should be to ensure that our rules provide incentives for commercial television broadcasters to increase the amount of children's educational and informational programming aired. Given our existing advertiser-supported, commercial market structure, I recognize that it is not easy for broadcasters to make a commitment to increase such programming. This is why Congress believed government intervention was needed.

¹ Children's Television Act of 1989, Senate Committee on Commerce, Science and Transportation, S. Rep. No. 227, 101st Cong., 1st Sess. 1, at 1 (1989) ("Senate Report").

As far back as 1960, the Commission recognized that broadcasters have a duty as public trustees of the airwaves to provide programs for children, as well as for the adults in their audience.² Too often, that duty has taken a back seat to commercial gain. Taking the long view of how children's programming has been treated in the past decade and a half, I find disappointing the historical performance of commercial television broadcasters in the area of children's educational and informational programming. In discussing this issue with various network representatives and broadcasters, I have discovered that, among many, there is a distinct lack of enthusiasm and sincere commitment to fulfilling the Act's goal. Their proffered reasons can be boiled down to one primary motivator – the opportunity cost of airing children's educational television (even if well done) vis-a-vis a general audience program for adults is simply too high.

As a result, some parties to this proceeding have argued that children's educational programming has received "second class status" from broadcasters. Such programs have been shunted into marginal time slots, i.e. predawn time slots when not many children may be watching television,³ where broadcasters can discharge their responsibilities under the Act with the minimal amount of economic impact. Children's advocates argue that the best time slots go to children's shows that feature licensed toy products, not educational programs. They further contend that children's educational programs often do not enjoy adequate promotion or regular time slots where they can build an audience, alleging that such shows are placed in poor time slots where they are often preempted by overtime sporting events.⁴ Thus, the evidence in the record supports the fact that children's educational and informational programs face an uphill battle to succeed in a commercial environment.

It is my opinion that bold and creative approaches are necessary in order to tap television's tremendous potential to teach our children. Television can help impart to our children information, skills and prosocial behavior, while still entertaining them and stimulating their curiosity to explore the world around them. I believe that we are taking an important step forward in clarifying our rules, making it clear that we expect significant

² Report and Statement of Policy Re: Programming, 20 Rad. Reg (P&F) 1901 (1960)("Programs for Children" was listed as one of the "major elements usually necessary to meet the public interest, needs and desires of the community" as developed by the industry and recognized by the Commission); see also Children's Television Report & Policy Statement, 50 FCC 2d 1, 4 (1974), Senate Report at 2.

³ Testimony of Peggy Charren, Founder, Action for Children's Television, at FCC En Banc Hearing on Children's Television, at 12 (June 28, 1994)("Charren Testimony"); Testimony of Center for Media Education, by Patricia Aufderheide, Ph.D. and Kathryn Montgomery, Ph.D, at FCC En Banc Hearing on Children's Television, at 1-2 (June 28, 1994)("CME Testimony").

⁴ CME Testimony, at 1.

and substantial increases in the amount of children's educational television, and urging broadcasters to voluntarily fulfill their duties as public trustees of the airwaves.

I am hopeful that the specific proposals we are making today will prove effective. We are specifically proposing to clarify our definition of qualifying children's educational and informational programming. We take this action because some broadcasters have chosen to claim cartoons, news programs, or some general audience programs of dubious educational value in their renewal applications as qualifying children's educational and informational programming.⁵ Many parties have urged the Commission to clarify our current definition so there is no confusion about what programming qualifies under the Act.⁶ I strongly support the proposed clarified definition.

On a related issue, I am troubled by the apparent failure of some broadcasters to comply with our modest reporting requirements demonstrating the extent to which the licensees have responded to the educational and informational needs of children with their programming. Under our present policy, we simply require the licensee to submit records indicating the date, time, duration and "a brief description of any programming claimed as educational."⁷ A party that studied license renewal claims in 1993 found that more than a quarter of all stations failed to comply with these reporting requirements.⁸ I emphasize our expectation that our licensees comply with our reporting requirements. This important information assists the Commission in determining whether an overall increase in the

⁵ Testimony of Dale Kunkel, Ph.D., Department of Communications, UC Santa Barbara, on behalf of the American Psychological Association, FCC En Banc Hearing, at 4 (June 28, 1994)("Kunkel Testimony")(citing program titles including "Teenage Mutant Ninja Turtles" and "The Jetsons"); Charren Testimony, at 7 (citing 1992 report on industry compliance with the 1990 law which stated that stations claimed that "The Jetsons," "Super Mario Brothers," "Leave it to Beaver," and "G.I. Joe" were specifically designed to educate children).

⁶ Id.

⁷ Report and Order, In the Matter of Policies and Rules Concerning Children's Television Programming, 6 FCC Rcd. 2111, para. 31 (1991)("[A]t a minimum, as the legislative history suggests, such record should indicate the time, date, duration and a brief description of the program or non-broadcast effort the licensee has made."); see also Memorandum Opinion and Order, In the Matter of Policies and Rules Concerning Children's Television Programming, FCC 91-248, at para. 47 (1991)("[C]ommercial licensees must submit all of their children's program lists at renewal time Interested members of the public have the right to know the basis for a claim that a station has met the educational and informational needs of children.")

⁸ More than one-fifth of stations did not identify any of their claimed educational content as "specifically designed for children" while others submitted only lists of their children's program titles, omitting other related information such as days/times of broadcast or providing no content descriptions. Kunkel Testimony, at 4.

amount of children's educational programming has been achieved. This is necessary for us to measure compliance with the Act.

We are also proposing actions today that will assist the public, especially parents, educators and child advocacy groups, in scrutinizing the efforts of broadcasters to provide children's educational and informational programming. I support these efforts to make this process more "user friendly" to the public. I believe that public accountability of the broadcasters to their viewers on this issue could be beneficial.

It is my hope that this improved flow of information and accountability will encourage broadcasters to interact with these types of groups and voluntarily improve their service to the needs of children within their service areas. As a first step, I encourage all those involved in the effort to bring educational programming to our children - broadcasters, children's television producers, major advertisers, network executives, parents, educators, child advocacy groups and government officials - to meet and work together to make more programming available. Perhaps networks, broadcasters and program producers will forge new partnerships and explore new approaches to making attractive children's educational and informational programming. We should plot a course together in a way that is sensible, does not require much regulatory oversight, and results in better and more children's educational programs.

As to what path we take next, we have laid out a number of options for comment. I urge all parties to consider these options carefully and give us as much information as possible on their benefits and detriments in the real world. I am keeping an open mind as to what path we should take next, but it is my hope that broadcasters will take some voluntary steps that would obviate the need for regulatory action.

In seeking creative approaches to children's educational television, I have looked outside of our borders for new ideas and inspiration. To this end, I attended the recent World Summit on Children and Television in Melbourne, Australia. There, I gained a deeper understanding of children's needs as to the television medium and approaches taken by other countries as to children's television.

I discovered that there is a great commitment to children's television in many other countries. Some countries have imposed quantitative standards on commercial broadcasters to air children's educational programming, while others have assigned the duty primarily to public television. For example, in Australia, commercial broadcasters are required to air 7.5 hours per week of children's programming, of which a certain portion must consist of Australian-content drama programs.

Australia has also established an Australian Children's Television Foundation, a national non-profit company supported by the government. This foundation produces quality children's television shows for domestic and international audiences, and provides seed money to developers of children's programming. Other countries, such as Great

Britain, Japan, and Sweden, generate significant funding for the production of noncommercial television programming, including children's programming, using methods such as an annual broadcast license fee imposed on every household.

Another idea discussed at the World Summit was the voluntary use of rating icons by broadcasters to identify children's programming and provide other helpful information to parents about the program.⁹ Broadcasters and program producers could work together to voluntarily develop a system of ratings icons so that parents have more information to enhance their ability to monitor their children's TV viewing habits.

Perhaps we can learn from the experiences of other countries in achieving the goals of our Act. I bring these examples to light to encourage creativity in our approach.

Finally, I believe that we must not lose sight of our ultimate objective here, which is to make use of the power of television to capture our children's imaginations and teach them about our world. Let's take advantage of the fact that children like television. When it is done well, children's educational television should appeal to their sense of humor and to their hearts and minds as well. If we dare to think creatively and selflessly, we can harness television's enormous potential to shape our nation's youth into better citizens.

⁹ The Entertainment Software Rating Board ("ESRB") has developed a voluntary system under which interactive entertainment products, including computer and video games, are rated by an independent rating board to give parents and consumers information they need to make informed purchasing decisions. Products are rated using five age-based categories: Early Childhood, Kids to Adults, Teen, Mature and Adults Only. The rating is placed on the outside of the product package, in addition to short phrases called "descriptors." These descriptors give more detail about the product in terms of violent content, language, sexual themes and other areas of concern to parents. Such rating categories and descriptors could be adaptable to a voluntary rating scheme for children's television shows. Such rating icons and descriptors would appear prior to the show airing. The ESRB is funded by the software industry and by fees are generated by the rating process.