

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

OCT 13 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Policies and Rules Concerning)
Children's Television Programming)
)
Revision of Programming Policies)
for Television Broadcast Stations)

MM Docket No. 93-48

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COMMENTS OF THE OKTV FOUNDATION

The OKTV Foundation ("OKTV") respectfully submits these comments in response to the Notice of Proposed Rule Making in the above-captioned matter, released April 7, 1995 (the "Notice").

I. INTRODUCTION

The OKTV (Our Kid's TV) Foundation is an independent non-profit entity that will be supported by grants from foundations, corporations and individuals. To help parents manage television for their children, OKTV will offer a service activated by parents using their remote control to conveniently separate television programming into three categories: for viewing by children, for viewing by families and for unrestricted viewing by general audiences. The system will be based on program appraisals made in accordance with standards established by an independent group of experts in child development with input from parents and children. Once a category is selected, the system will operate automatically. The service will permit parents, whether or not at home, to block programs unsuitable for children and to substitute an on-screen listing of "now-showing" programs

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suitable for children. The concept has been developed and planning studies completed that establish the technical, economic, and operational feasibility of the service. A non-profit framework for going forward is now in place, and OKTV is in the process of attracting support for developing the service into a self-sustaining, non-profit operation.

Set forth below is information about the OKTV system, how its standards for evaluating programming will be determined and how its technical system will operate. While OKTV is unaware of systems offering similar comprehensive help to parents, other approaches having similar purposes may be under development. The specific discussion about OKTV is intended as an example of a feasible approach to bringing children's television viewing under convenient parental control and to thereby improve the quality of children's television. Depending upon whether v-chip legislation currently pending before Congress is enacted and the final form of such legislation, the OKTV system could serve as a means of implementing the proposed legislation or realizing the purposes that the legislation seeks to achieve.

If successful, the OKTV service or other similar approaches would offer a non-governmental, non-profit solution to the Commission's and Congress' concerns about the paucity of children's television programming without raising complex and difficult First Amendment issues. Accordingly, OKTV recommends that the Commission evaluate such solutions and their potential for achieving the goals of the Children's Television Act of

1990¹ before adopting the proposed safe harbor quantitative processing guideline or programming standard establishing a minimum amount of children's programming that a licensee must broadcast. In the alternative, OKTV recommends that the Commission adopt interim rules to be evaluated after three years in light to the nongovernmental developments now in progress.

II. THE OKTV SYSTEM

a. What the System Does

The OKTV system will enable parents to program their television receivers through a set-top device to display one of three categories of programs: (1) programs suitable for viewing by children up to 12 years old; (2) programs suitable for co-viewing by children and adults ("family programs");² and (3) unrestricted programs for adults. Within the children's category, parents will be able to program their television sets for categories of programming developmentally suited for toddlers up to 36 months old, children 3 to 7 years old or children 8 to 12 years old. Once the OKTV system is activated, it will block programs that are unsuitable for children to view alone, whether or not parents are at home or otherwise occupied. Generally, programs blocked will be those that contain excessive or

¹47 U.S.C. §§ 303a, 303b.

²Material in this category will consist of programs deemed to require parents to interpret program content in a manner that is beneficial rather than harmful to children. Accordingly, this category of programming will encourage parents to use television to rear their children with the insights and values they find suitable.

inappropriate violence, horror, sex, nudity, language, illegal and harmful behavior such as drug or alcohol abuse or other content intended for mature audiences.³ If a child viewer tries to tune to a blocked channel, a list of suitable programs then available will be displayed instead. The system will be set to switch automatically to unrestricted programming at preselected hours, generally when children are asleep, such as from 8 p.m. to 6 a.m. Parents may elect to have the system active all 24 hours or may turn on or override the system at any time based on their own assessment of a program's suitability for their children. The OKTV system represents a practical and convenient option for parents who find other alternatives impractical. Parents need not search through advisories and monitoring reports, make decisions about the propriety of individual shows, consult program schedules, operate a blocking device or receiver circuit and then supervise their children to assure that they are not viewing unsuitable programs. In sum, to help parents manage their television sets for the protection and benefit of their children, OKTV will offer a comprehensive service that integrates the best advice available with a convenient, affordable means for acting on that advice.

Initially, the OKTV system will be available to cable

³Of course, parents who think that their children are mature enough to view programming designed for adults may choose the unrestricted programming option. In all cases, it will be parents who make the viewing decisions for their children. The OKTV system will merely facilitate the ability of parents to limit the viewing of their children to age-appropriate programming if they wish to do so.

subscribers equipped with compatible set-top units. Once the service is established, it will be adapted to serve cable homes without such set-tops and non-cable homes through the provision of low-cost, set-top boxes of specific functionality, or it can be used to activate television sets with compatible switching circuitry. OKTV is currently in discussion with segments of the cable television industry now offering their subscribers advanced set-top boxes. Such units are either compatible with OKTV service or can be made compatible with minor modification. OKTV anticipates that it will be compensated by such cable systems on a modest per subscriber basis at a level justifiable without rate increase as part of customer and public service budgets. For less affluent households without set-top boxes and for broadcast only homes, OKTV is considering methods of funding to subsidize purchases of devices needed to implement the OKTV system once the service proves its value in homes now being equipped with compatible units.

b. How Standards are Established and Programs Appraised

OKTV will create standards for evaluating programming by combining surveys of parents and children with advice from an independent advisory board of child development experts. See Attachment A. The advisory board, whose members are chosen from pediatricians, developmental psychologists, educators, child psychiatrists and experts in child care and children's television, will establish guidelines from the perspective of children, taking into account the interaction of television and

children in various stages of their development.

Feedback from parents and children will be used to adjust and refine the standards. The standards will be made available under an appropriate system of monitoring and enforcement to cable and broadcast networks desirous of handling the appraisal function themselves. Appraisers will evaluate programs in accordance with the OKTV standards to determine whether and for which child age group the programming is suitable, with or without co-viewing with parents. Live programs such as certain sports events and newscasts will generally be pre-evaluated as either suitable for family viewing or unsuitable for children based on OKTV's standards.

c. How the OKTV Technical System Works

OKTV appraisal codes will be entered into OKTV's computer database. These codes will be combined with electronic program guide data, and the package of data will be transmitted by schedule providers transparently through cable headends to customers' set-top units.

Parents will be provided with a remote control PIN number by which they will control the system. Once parents activate the system, the OKTV appraisal codes will block programs inappropriate for the selected age group. When programs are blocked, an alternative program listing will appear as a menu on-screen so that the viewer may select another channel showing a program that has been appraised as suitable. By entering their PIN number into the remote control unit, parents will be able to

override the OKTV system to view unrestricted programming, to block a program that the OKTV appraisal staff has found acceptable or to extend the OKTV service beyond the scheduled hours.

d. Current Status of OKTV

OKTV's business plan has been completed, and its management structure and administrative system are in place. Studies evaluating the technical system have been completed, the core advisory board of child development experts has been chosen, preliminary standards for evaluation of programming have been developed and the appraisal database has been initiated. Certain patent and trademark licenses are under negotiation.

OKTV's current projections call for it to begin offering its service experimentally on cable systems in mid-1996.

III. THE OKTV SYSTEM REPRESENTS A NONGOVERNMENTAL, NONPROFIT METHOD OF ACCOMPLISHING THE COMMISSION'S GOAL OF INCREASING THE QUANTITY AND QUALITY OF CHILDREN'S EDUCATIONAL AND INFORMATIONAL PROGRAMMING

As the Commission indicated in its Notice, Congress enacted the Children's Television Act in order to stimulate an increase in the amount of children's educational and informational programming.⁴ Studies and expert opinion reveal that children spend eighty-five percent or more of their television viewing time watching programs intended for adults, many of which are

⁴See Notice at ¶ 1.

unsuitable for children.⁵ If parents use the OKTV system to make such adult programming unavailable to their children and to provide them with information on viewing alternatives suitable for them, children will have more time to watch programming designed for them and will be aided in finding such programs. Thus, the OKTV service will generate increased demand for children's programming -- more children's "eyeballs" in the vernacular of the advertising community. Both PBS and private networks offering programs intended for children, such as Nickelodeon, the Learning Channel and prospective digital broadcast channels, will likely respond to this increased demand by offering more programming designed and suitable for children, thereby lessening and possibly obviating the need for Commission intervention through regulation.

The OKTV Foundation is a non-governmental institution that will rely on a free market approach to solving the problem of an inadequate supply of children's programming. Both because it is a nongovernmental institution and because it will function solely as the agent of parents, it will avoid First Amendment dilemmas raised by government regulation. Furthermore, the OKTV system will not rely on classifications, advisories or monitoring reports prepared or sponsored by the entertainment industry,

⁵See, e.g., George Comstock, Television and the American Child xi (1991) ("Typically about 95% of the average child's viewing is of programs not specifically produced for children."); Slaby & Quarfoth, Effects of Television on the Developing Child (1980) ("It has been estimated that 85% of children's actual viewing time occurs during general audience or 'adult' programming." (citing NSF, 1975)).

which generally are based on adult perspectives and may be tainted by commercial interests. The entertainment industry is bound by the imperative of the free market system to provide its customers with as much and as diverse programming as they want and are willing to pay for. By enabling parents to separate programs intended for adults from programs appropriate for children, the OKTV system will allow cable and broadcast networks to program freely for adults without restricting that freedom in order to serve the government's "substantial interest in furthering the education and welfare of children through implementation of the [Children's Television Act]."⁶

OKTV's program standards will be developed by experts independent of government or commercial interests with input from parents and children. While taking account of classifications, advisories and monitoring reports by private industry and others, the OKTV system will not rely on criteria developed by the entertainment industry or government. The OKTV system will integrate for parents both convenient access to expert judgment and a practical method of applying this advice to control their children's viewing. This approach is consistent with the principle followed by the Commission in its Notice that judgments of the quality of a licensee's programming are best made by the audience, not by the federal government.⁷

⁶Notice at ¶ 67.

⁷Notice at ¶ 4.

**IV. THE COMMISSION SHOULD EXPLORE AND EVALUATE
NONGOVERNMENTAL APPROACHES SUCH AS OKTV TO INCREASING
THE QUALITY AND QUANTITY OF CHILDREN'S TELEVISION
PROGRAMMING BEFORE IMPOSING A REGULATORY SOLUTION OR,
IN THE ALTERNATIVE, ADOPT INTERIM RULES TO BE REVIEWED
IN THREE YEARS IN LIGHT OF NONGOVERNMENTAL DEVELOPMENTS**

OKTV believes that the availability of services such as the one proposed by OKTV will improve the quality and quantity of children's television substantially more than will content regulation of broadcasting as proposed in the Notice. For example, as suggested in the above comments, a nongovernmental institution offering services to protect children from harmful programs and substitute instead their access to beneficial programs is likely to contribute more to the purposes of the Children's Television Act than government regulations, which will always be subject to severe judicial limitation arising from the imperatives of the First Amendment.

Furthermore, despite all the diverse parental aids that may be volunteered by the private entertainment industry -- such as advisories, monitoring reports and marketing of various types of blocking hardware -- the burden on most parents is simply too great for these devices to significantly aid parents in coping with the extensive problem of managing their children's viewing. Television, which literally pours in upon children at home several hours or more a day, has become an overwhelming influence on children's development. An integrated system of expert advice coupled with a convenient means of parental help offered by a non-profit, non-governmental institution is likely to be substantially more effective than a burdensome collection of

piecemeal aids offered by private industry.

Another factor that may argue against imposition of regulations by the Commission is that both government and private industry are institutionally very limited in the help they can provide parents -- the former by the free speech imperative of the First Amendment and the latter by the free market imperative of a private enterprise economic system. The non-profit sector operated by institutions such as OKTV is not limited by either of these two imperatives of U.S. society.

For these reasons, OKTV believes that, before adopting regulations that could constitute intrusions into the programming judgments of licensees and offend First Amendment values, the Commission should evaluate the nongovernmental alternatives currently in development and the extent to which they are likely, without the adoption of government regulation, to result in an increase in the quantity and quality for television programming for children. If the Commission finds that these alternatives are promising, it could consider what action, if any, it might take to facilitate and hasten their development. Such an approach is compelled by the First Amendment mandate that government not regulate speech if it can accomplish its purpose with other forms of regulation or without any regulation.⁸ On the other hand, if the Commission feels compelled to act now to

⁸See, e.g., Sable Communications of California, Inc. v. FCC, 492 U.S. 115, 126 (1989) (stating that the government must serve its legitimate interests "by narrowly drawn regulations designed to serve those interests without unnecessarily interfering with First Amendment freedoms" (citations omitted)).

increase the quality and quantity of children's programming, then OKTV urges that it adopt only interim rules, which it would review in three years to determine their then continuing necessity in light of the development of alternatives to regulation such as OKTV and the v-chip.

V. CONCLUSION

For the foregoing reasons, the OKTV Foundation recommends that the Commission evaluate OKTV's system and other nongovernmental approaches with similar goals to determine whether they might result in an increase in the quantity and quality of children's programming and how those developments might be facilitated and hastened before adopting a safe harbor guideline or a programming standard establishing a minimum amount of children's programming that a licensee must broadcast. In the alternative, if the Commission feels compelled to adopt regulations promptly, the OKTV Foundation recommends that the Commission adopt interim rules to be reviewed in three years after the nongovernmental approaches currently under development have been implemented.

Respectfully submitted,

THE OKTV FOUNDATION

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Attachment A

INITIAL MEMBERS OKTV Standards and Appraisal Advisory Board

William C. Brennan (M.F.A., Columbia), Director of Harvard Business School Video in the Business School's Publishing Company, has produced children's programs for NBC, WCVB-TV (Boston) and WGBH-TV (PBS, Boston). As Executive Producer at WGBH, Brennan was responsible for a wide variety of national programming including *NOVA*, *Discovering Psychology* and the children's series *Long Ago and Far Away*. He is a contributing author to Science and Children's Television: Experts look at the Issues (1984) and co-author of The Portrayal of Children in the Entertainment Media: A Guide to the Creative Process (1988). Brennan is a member of the Writer's Guild and the Director's Guild of America. His programs have been honored with numerous awards including the Emmy, Gabriel, Ohio State, UPI, IFPA, ACT, Gavel, IRIS, NEA and New York International Film and Television Festival Gold Medal.

Aimee Dorr (Ph.D., Stanford), Professor in the Graduate School of Education at the University of California, Los Angeles, conducted research for the original 1972 report to the Surgeon General on television and social behavior and for its 1982 update. Dorr is author of numerous articles and a textbook on television and children. She served on the Social Science Research Council Committee on Television and Social Behavior and the Mental Health Behavioral Sciences Research Committee of the National Institute of Mental Health. Dorr has consulted to the Children's Television Workshop, the Children's Advertising Review Unit of the Council of Better Business Bureaus, as well as the Federal Communication Commission. She has testified before the Federal Trade Commission and the Federal Communications Commission. She is a member of the American Educational Research Association, the American Psychological Society, the Society for Research in Child Development and the American Psychological Association.

Phyllis A. Katz (Ph.D., Yale), Director of the Institute for Research on Social Problems in Boulder, Colorado, has focused her research and writing on children's gender-role development and racial attitude acquisition. She has edited Towards the elimination of racism and Eliminating racism: Profiles in controversy. Katz was a member of the American Psychological Association's Task Force on Television and Society and coauthor of its 1992 publication Big World, Small Screen: The role of television in American society. She is also a member of the Association's Child Care Committee. She serves on Colorado's Child Care Advisory Committee which is chaired by Mrs. Bea Romer. Katz is the founder and editor of Sex Roles: A Journal of Research and she is Editor-Elect of the Journal of Social Issues. She has consulted to WNBC (New York), WNET (PBS, New York), KOCE (California) WCBS (New York) and *Sesame Street*.

John B. Livingstone (M.D., Harvard, F.R.S.H.), Senior Child, Adolescent, and Adult Psychiatrist in private practice, is Associate Child Psychiatrist in the McLean Hospital-Massachusetts General Hospital training programs, and Assistant Clinical Professor of Psychiatry at Harvard Medical School. He has developed new models of comprehensive care services for children and their parents. Livingstone has devoted much of his career to training medical, mental health and social service professionals to work with parents. He also works on national and international public mental health projects involving the influence of media on the mental health and development of families. He has consulted with "NOVA", to the broadcast standards and practices of Hanna-Barbera Productions, TBS's prime time special, "TV Violence, Parents Under the Gun", with numerous magazines for parents and children and with the United Nations regarding displaced children in Asia and Africa. He was founding Mental Health Editor of Dialogue (Institute for Mental Health Initiatives, Washington, D.C.), written for and in collaboration with television, film, and print media writers and executives. Written for journalists, Livingstone has authored the monograph, The Violence Framework, on the factors contributing to domestic and community violence.

John P. Murray (Ph.D., Catholic University of America), Professor and Director of the School of Family Studies and Human Services at Kansas State University has interest in television and society and public policy concerning children, youth and families. In the late 1960's and early 70's, Murray served as Research Coordinator for the Surgeon General's Scientific Advisory Committee on Television and Social Behavior at the National Institute of Mental Health resulting in the first Surgeon General's report on television violence. At the School of Behavioural Sciences at Macquarie University in Sydney he conducted research on the effects of the introduction of television in the Australian "outback". Murray has published extensively on children's television, including a 1980 reference book, Television and Youth: 25 Years of Research and Controversy, and 1992 American Psychological Association Report, Big World, Small Screen: The role of television in American society. He is a Fellow of the American Psychological Association and recent President of its Division of Child Youth and Family Services. Murray is member of the American Sociological Association, the International Association of Mass Communication Research, the National Council on Family Relations and the Society for Research on Child Development.

S. Norman Sherry (M.D., Maryland), is Assistant Clinical Professor of Pediatrics at the Harvard Medical School. He has served as Director of Pediatrics at McLean Hospital (Belmont, MA) and Gaebler Children's Center (Waltham, MA). Sherry has consulted for the children's television program "ZOOM" (PBS). He currently serves as an Advisor to the Recreational Software Advisory Council (RSAC). He has published in professional journals on pediatrics, child psychiatry, family adoptions and parenting. As a member of the American Academy of Pediatrics, one of his committee assignments is designated liaison representative to the Child Welfare League of America. Sherry is a member and has chaired the Academy's Council on Adoption and Dependent Care, and Council on Child and Adolescent Health.