

Nobel Prize laureate Leon Lederman assists teachers in translating this theory into reality. He founded Teachers Academy for Mathematics and Science, which teaches teachers how to make math and science interesting to students.⁷ The Academy's aim is "the withering away of old-time droning lectures, deadly book lessons and rote memorization."⁸ Lederman, for example, has taught students about conservation of angular momentum by stepping onto a turntable with a brick in each hand and spinning around like a figure skater.⁹

Today's educators combine such innovative teaching methods with a wide array of technology to make learning entertaining and fun, so that children *want* to learn. Virtually every child in America, for example, is introduced at a very early age to computers that engage the child in the learning process through software programs that both entertain and educate.

Entertainment is equally important in educational television programming. The most successful educational programs have been those like *Captain Kangaroo*, *Sesame Street*, and *Romper Room* that children watch primarily because they entertain. The entertainment value of these programs is therefore at least as important as their educational value. Thus, the Commission need only look at educational theory generally, and at successful educational television programming specifically, to see that children learn best when the learning process is entertaining.

7 Richard Wolkomir, *Putting A New Spin On Pitching Science To Kids*, Smithsonian, April 1993, at 104.

8 *Id.* at 112.

9 *Id.* at 104.

II. THE COMMISSION'S PROPOSAL TO REQUIRE THAT THE PRIMARY PURPOSE OF PROGRAMMING BE EDUCATIONAL, WITH ANY ENTERTAINMENT VALUE PURELY SECONDARY, WILL DISSERVE THE PUBLIC INTEREST

Given how critical entertainment is to the educational process, the Commission's proposal to require that any entertainment value of educational programming be purely secondary will disserve the public interest. The Commission's proposal puts broadcasters to the almost impossible task of ranking the educational and entertainment purposes of a program. The Commission thus will create such a degree of uncertainty (at least with respect to programs that both educate and entertain) that broadcasters will have a strong incentive to air pedantic and dull, albeit primarily educational, programs to ensure that they have met their educational programming obligation.

The Commission's regulatory scheme will thus encourage programs that educational experts would agree are *less effective* in teaching children. The more fundamental problem, however, is that the Commission's proposal will result in educational programs that children will not watch. The government can force children to go to school, but it cannot force children to watch educational television programs. Children have proven themselves to be sophisticated consumers with an uncanny ability to get what they want. (Just ask any parent.) They are also technologically sophisticated to the point of surpassing many of their parents when it comes to the high-tech world of computers, VCRs and the like. Children are experts at using the remote control -- and they will use it to exercise their television viewing choices. In short, they will quickly exit any program that does not hold their attention.

Given this reality, the Commission should reconsider its current proposal, which will serve to frustrate rather than further the Act's goal of educating children. The

Commission would better serve the public interest by encouraging programming that is at least as entertaining as it is educational.

A. The Commission's Proposal Will Frustrate The Purpose Of The Act By Unwittingly Encouraging Broadcasters To Air Programs That Children Will Not Watch

In its Notice of Inquiry, the Commission states that "it seems clear that Congress intended, in adopting the [Act], to increase the amount of educational and informational programming aimed expressly at the child audience."¹⁰ To be sure, the legislative history of the Act confirms the accuracy of the Commission's statement. That statement, however, tells only part of the story. Congress intended not only to increase the amount of educational programming on television, but also for children to watch and learn from that programming.¹¹

Congress understood that programs can be both educational and entertaining. Noting that "the questions most asked concerning educational programming are whether children will watch," Congress approvingly cited programs like *Sesame Street*, *Fat Albert and the Cosby Kids*, and *Winnie the Pooh and Friends*.¹² All these programs both educate and entertain; and it takes both attributes to further the Act's goal.

The problem recently identified by Congress is not that some programs are designed both to educate and to entertain. The problem is that some broadcasters are attempting to avoid their educational programming obligation by designating purely entertainment programs

¹⁰ Policies and Rules Concerning Children's Television Programming, Notice of Inquiry, MM Docket No. 93-48, 8 FCC Rcd. 1841, 1842 (1993) ("Notice of Inquiry").

¹¹ See, e.g., S. Rep. No. 227, 101st Cong., 1st Sess. 5 (1989) ("Senate Report") ("Moreover, there is a great deal of evidence that television can teach children effectively.").

¹² Senate Report at 8-9.

(e.g., *The Flintstones*) as educational programs. The Commission, in ensuring that broadcasters meet their educational programming obligation under the Act, must be careful not to discourage the very type of programming lauded by Congress -- entertaining educational programming.

Disney respectfully submits that the Commission's proposal will, in fact, discourage this type of programming. The Commission proposes to require broadcasters to determine whether *the primary* purpose of a program is educational. The program's entertainment value, under the Commission's proposal, can only be *implicit*. Broadcasters will thus have to decide -- usually with respect to programs others have produced -- whether those programs are designed to teach more than they are designed to entertain. This will, however, be a difficult distinction for broadcasters to draw -- particularly for programs that are designed to capture children's attention in an entertaining manner.¹³

Consider, for example, the award-winning and ever-popular *Sesame Street*. The program clearly is both educational and entertaining. Could a broadcaster be sure that the Commission would find that *the primary* purpose of the program is to educate, and that its entertainment value is purely a secondary goal? Could a broadcaster be certain that entertainment is not an explicit purpose of *Sesame Street*? Parents, after all, know that their children tune in to *Sesame Street* because they want to have fun with their friends Ernie and Bert, not because they want a dose of education.

¹³ The proposal thus fails, contrary to the Commission's intent, to "exemplify and define the [Act's] programming requirements" in order to "better guide broadcasters in discharging their children's programming obligations." Notice of Inquiry at 1842.

If broadcasters are uncertain whether the Commission will agree that the entertainment value of a program like *Sesame Street* is clearly secondary to its educational value and that its entertainment value is implicit rather than explicit, they will have a strong incentive to air instead programs that are less close a call -- *i.e.*, a "talking heads" type of program. But few children will watch such a pedantic and dull program. As a successful producer of children's television programming, Disney knows only too well that children are, in fact, a discerning audience that will not watch a program simply by virtue of its being on television. The program must be entertaining to attract and hold their attention.¹⁴

Without a substantial children's viewership, program producers will be forced to spend less on these programs, because their ability to recoup their costs and earn a profit from advertising revenues would be decreased.¹⁵ The result, however unintended, is clear: Educational programming will be dull, of poor quality and few children will watch it. As such, the programming will do little to "further[] the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs."¹⁶ While broadcasters would be complying with the literal

14 Children are no different from adults in this respect. For example, a comparison of news interview programs demonstrates that those that use a more entertaining format (*e.g.*, *60 Minutes* and *20/20*) earn far higher ratings than those that rely more on a "talking heads" format (*e.g.*, *Meet The Press* and *Face The Nation*).

15 Only two years ago the Commission appropriately recognized that quality programs require sufficient funding. Policies and Rules Concerning Children's Television Programming, Report and Order, MM Docket No. 90-570, 6 FCC Rcd. 2111, 2117 (1991) ("Report and Order"). See also Disney Comments (MM Docket No. 90-570) at 8-9.

16 47 C.F.R. § 73.671 Note (1992). Disney believes that this definition of educational and informational programming continues to be appropriate because it embodies the Act's goal.

requirements of the Act under the Commission's proposal, the Commission will have frustrated the Act's goal.

B. The Commission Can Further The Act's Purpose By Encouraging Programming That Is At Least As Entertaining As It Is Educational

The Commission should encourage rather than discourage broadcasters to air programming that is at least as entertaining as it is educational.¹⁷ Simply stated, entertainment is a positive attribute of educational programming. There is no reason, therefore, to relegate entertainment value to secondary status. To the contrary, it should be encouraged as an additional, explicit purpose of educational programming. Indeed, the Act's purpose is arguably better served if a child watches one program that is primarily entertaining but has educational elements than if a child fails to watch three "primarily educational" programs because they are too boring.

The Commission thus should encourage broadcasters to air programs like *Sesame Street* that are both educational *and* entertaining. This type of program serves the Act's purpose by educating children "while entertaining them and exciting their curiosity to learn."¹⁸

¹⁷ Indeed, as noted above, Congress approvingly cited numerous programs, such as *Winnie the Pooh and Friends*, that are both entertaining *and* educational. Senate Report at 8. The Commission similarly cited these programs. Report and Order at 2115. The Commission also recognized the intermingling of entertainment and educational values when it noted "the educational role toys or other related products can play in child development." *Id.* at 2117.

¹⁸ 47 U.S.C. § 303a (Supp. II 1990).

III. THE COMMISSION SHOULD DEFER TO A BROADCASTER'S REASONABLE, GOOD FAITH JUDGMENT THAT A SIGNIFICANT PURPOSE OF A PROGRAM IS EDUCATIONAL

Disney strongly urges the Commission not to adopt its proposal to require that *the primary* purpose of qualifying programming be educational. Rather, the Commission should allow a program to qualify so long as a broadcaster makes a reasonable, good faith judgment that *a significant* purpose of the program is to educate -- *i.e.*, to further "the child's intellectual/cognitive or social/emotional needs."¹⁹ Similarly, the Commission should not require that entertainment only be an implicit purpose of educational programming. To the contrary, as explained above, the Act's goal would be better served if educational programming is explicitly designed to be entertaining.

Deferring to a broadcaster's reasonable, good faith judgment that *a significant* purpose of a program is educational will relieve broadcasters of the difficult task of discerning whether the entertainment value of a clearly educational program is less than, rather than equal to, the educational value, as well as whether it is implicit rather than explicit. Broadcasters will then feel more comfortable airing programs that are both educational and entertaining.

Applying this standard, and deferring to the broadcaster's reasonable, good faith judgment, will also preserve for broadcasters the discretion that Congress intended they have with respect to identifying and airing informational and educational programming.²⁰ The

¹⁹ 47 C.F.R. § 73.671 Note (1992). The Commission has relied on the reasonable, good faith judgment of licensees in other contexts. For example, licensees are allowed to exercise their reasonable, good faith judgment in selecting which issues of importance to their community to address in their programming. Revision of Programming and Commercialization Policies, Report and Order, MM Docket No. 83-670, 98 F.C.C.2d 1076, 1092 (1984), *aff'd in pertinent part*, 821 F.2d 741 (D.C. Cir. 1987).

²⁰ See, e.g., Senate Report at 23.

broadcaster, is, after all, in the best position to decide what to air to meet the educational and informational needs of the children in the broadcaster's community based on its assessment of those needs.²¹ This approach also will permit the Commission to avoid unduly enmeshing itself in content regulation.²² When it first adopted regulations pursuant to the Act, the Commission was mindful of the First Amendment considerations, noting that it "wish[ed] to avoid any de facto system of precensorship."²³ The Commission carefully adopted a "restrained [approach],"²⁴ providing broadcasters with "substantial discretion . . . in determining whether a particular program qualifies as educational and informational . . ."²⁵ The Commission must be careful not to create the very "de facto system of precensorship" it properly sought to avoid.

21 This does not mean that broadcasters could designate any program as educational. For example, reasonable people would not conclude that education is a significant purpose of *The Flintstones*.

22 Just as the Commission does not regulate a broadcaster's programming format generally, so too it should not regulate the format of educational programs. Thus, a program's value as educational or informational programming should not depend on its status as live-action rather than animation. A program like *All Star Cartoons to the Rescue*, for example, is a clear example of an animated program with a significant educational purpose. In that unprecedented special, cartoon characters from a number of studios (e.g., Winnie the Pooh, Huey, Dewey and Louie, Bugs Bunny, and Daffy Duck) were featured in a story line in which they helped a boy discover the error of his ways in using drugs. Indeed, many of the programs cited by Congress use animation to deliver their educational and informational messages. See Senate Report at 8-9.

23 Policies and Rules Concerning Children's Television Programming, Notice of Proposed Rulemaking, MM Docket No. 90-570, 5 FCC Rcd. 7199, 7200 (1990).

24 Report and Order at 2118.

25 Notice of Inquiry at 1841. A broadcaster should be permitted to rely on the examples of educational programs previously cited by the Commission. If, therefore, the Commission should decide that some of those programs will no longer qualify as educational programming, it must give notice of this fact to broadcasters and apply its decision only prospectively.

CONCLUSION

Commissioner Duggan has called for "*voluntary* leadership by . . . industry leaders" in the important arena of educational children's television.²⁶ Disney accepts the challenge and stands ready to produce educational children's programming. All we ask is that the Commission not create a regulatory regime that stifles our ability to produce quality educational programs that will attract and hold children's attention, by engaging them in an entertaining manner.

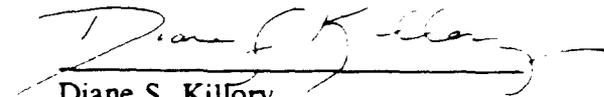
Specifically, Disney asks the Commission to reconsider its proposal to require that *the primary* purpose of a program be educational to satisfy a broadcaster's obligation to air educational programming. The Commission would better serve the Act's goal by encouraging programming that is as entertaining as it is educational. So long as a broadcaster makes a

²⁶ *Children's Television: Who Will Volunteer?*, *Broadcasting and Cable*, March 15, 1993, at 50 (emphasis in original).

reasonable, good faith determination that *a significant* purpose of a program is educational, the broadcaster should be permitted to rely on that program as an educational program.

Respectfully submitted,

THE WALT DISNEY COMPANY

A handwritten signature in cursive script, appearing to read "Diane S. Killory", written over a horizontal line.

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May 7, 1993

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

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

REPLY COMMENTS OF

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SUMMARY

At the end of the day, the success of the Children's Television Act of 1990 will depend on the Federal Communications Commission's willingness to create an environment that encourages innovative, exciting programs that educate children while attracting and holding their attention. Bluntly stated, this requires educational programs to entertain while they educate. And it also requires that the creators of such programs and the broadcasters who air them have the flexibility and incentive to experiment with different formats of educational programs. The goals of the Act will not be met if the Commission, however unwittingly, adopts a regulatory regime that encourages pedantic programs that all look alike -- and which children will never watch.

All commenters in this proceeding agree that the Commission's goal is to ensure that broadcasters fulfill their obligation to air programs that educate and inform children. All commenters also agree that programs like *The Flintstones* do not satisfy that obligation. The only significant disagreement among commenters is whether the Commission should identify a narrow category of "core" programming that will satisfy the broadcaster's obligation and, if so, whether the Commission should prescribe limiting characteristics of such programming. In particular, disagreement exists as to whether the Commission should specify the length and amount of such programming and whether the Commission should relegate the entertainment value of such programming to secondary status.

The Walt Disney Company ("Disney") urges the Commission to heed the warning of those commenters who are in the business of producing and broadcasting educational children's programs and, who, through years of experience, recognize the importance of presenting educational programs in an engaging manner in order to attract and hold children's

attention. These parties include not only other producers of children's programming such as Children's Television Workshop (producer of *Sesame Street*) but also broadcasters such as ABC and NBC, who have broadcast regularly scheduled educational programs like *Name Your Adventure*, specials like *President Clinton: Answering Children's Questions* and short-form programs like *ABC Schoolhouse Rock*.

The warning is clear: The Commission should not (and need not) overreact to the apparent abuses of a few in a manner that would frustrate the Act's purpose and unnecessarily tramell the First Amendment rights of broadcasters. The proposals set forth in the Commission's Notice of Inquiry, however, threaten to do just that. Defining educational programming as primarily educational, with any entertainment value relegated to purely secondary status, ignores the precept of modern educational theory that children learn best when they are engaged and entertained. The proposed definition fails to provide broadcasters with better guidance as to which programs meet the definition. And it discourages broadcasters from airing programs that both educate *and* entertain (and, therefore, that children will watch). Moreover, limiting "core" programming to regularly scheduled, standard-length programs will needlessly discourage specials and short-form programming and thereby eliminate the discretion Congress intended to afford broadcasters in determining how best to meet children's educational programming needs.

The Commission should not retract from the approach it so carefully adopted in 1991 to avoid a "de facto system of precensorship." It should not attempt to rank the educational and entertainment values of each program. And it should not employ the "core" concept at all. Rather, so long as a broadcaster makes a reasonable, good faith judgment that a *significant purpose* of a program is educational, the Commission should permit that program

to count toward the broadcaster's educational programming obligation. Such an approach will eliminate any problem of broadcasters designating purely entertainment programs (like *GI Joe*) as educational. At the same time, it will encourage innovative programming designed to teach children while, in the words of Congress, "entertaining them and exciting their curiosity to learn."

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Policies and Rules Concerning)
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Revision of Programming Policies)
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To: The Commission

**REPLY COMMENTS OF
THE WALT DISNEY COMPANY**

The Walt Disney Company, by its attorneys, submits these Reply Comments in response to comments filed in the above-captioned proceeding.

INTRODUCTION

In its Order adopting rules implementing the Children's Television Act of 1990 (the "Act"), the Commission effectively articulated its overarching policy goal:

We believe it is in the public interest to encourage stations, even those with limited resources, to air quality programming that will attract and hold a child audience.¹

The Commission accurately recognized that programming that is unable to "attract and hold a child audience" will be unable to fulfill the purpose of the Act -- to educate and inform children.

¹ Policies and Rules Concerning Children's Television Programming, 6 FCC Rcd. 5093, 5101 (1991) ("Recon. Order").

In its Notice of Inquiry ("NOI"), the Commission appears to have lost sight of this fundamental concept. The Commission proposes to "count" only "core" programming in assessing whether a broadcaster has fulfilled its educational programming obligation. And the Commission proposes that to qualify as "core" programming, a program must be regularly scheduled, at least 30 minutes in length, and its *primary* purpose must be educational (with entertainment only a *secondary* purpose).

As many commenters cogently demonstrate, the consequences of these proposals will ultimately disserve the Act's purpose. Accordingly, as explained more fully below, the Commission should discard the concept of "core" programming and, instead, encourage broadcasters to air a full range of educational programs that entertain as they educate.

I. THE CONCEPT OF "CORE" PROGRAMMING CONFUSES THE ISSUE AND ULTIMATELY FRUSTRATES THE ACT'S PURPOSE

In an attempt to provide broadcasters with further guidance as to which educational programs will qualify under the Act, the Commission has introduced (for the first time) the concept of "core" programming.² While Disney is sympathetic to the Commission's desire to provide better guidance to broadcasters, we agree with the many broadcasters who urge the Commission to reject the "core" concept. As explained below, the definition proposed for "core" programming (programming that has education as its primary objective with any entertainment value only secondary) confuses rather than clarifies which programs constitute educational programming. Moreover, the proposal to limit "core" programming to standard-length, regularly scheduled programs contravenes Congress' intent to afford broadcasters

² Policies and Rules Concerning Children's Television Programming, 8 FCC Rcd. 1841, 1842 (1993) ("NOI").

broad discretion in meeting children's educational needs and arbitrarily excludes programs that would otherwise contribute to a broadcaster's efforts to meet those needs.

A. Far From Clarifying What Constitutes Educational Programming, The Proposed Definition of "Core" Programming Only Confuses the Issue

Although the Commission and some commenters assert that the proposed definition of "core" programming will clarify which programs are educational, other commenters, particularly broadcasters, explain that the proposed definition will only confuse the issue further. In Disney's view, this second group of commenters has the better argument.

The Commission's own statement proves the point. Referring to its proposal to require that education be the primary purpose of "core" programming, with entertainment a secondary purpose, the Commission states:

This clarification should help licensees and the Commission to avoid the difficult and subjective task of distinguishing the relative educational merits of some programs identified approvingly in the legislative history (*e.g.*, *Pee Wee's Playhouse*, *The Smurfs*, *Winnie The Pooh*, *see Senate Report* at 7-8) and those listed in some renewal applications as educational (*e.g.*, *The Flintstones* or *The Jetsons*).³

But applying the Commission's proposed definition to the programs approvingly cited by Congress -- programs such as *Pee Wee's Playhouse* or *Winnie the Pooh* -- is, contrary to the Commission's intention, quite "difficult and subjective." These programs are at least as entertaining as they are educational. Indeed, no one has ever claimed that *the primary* purpose of these programs is to educate. Certainly, Disney, the producer of *Winnie the Pooh*, can state that

3 NOI at 1842-43 n.15.

education is not *the primary* purpose of that program. With all due respect, therefore, the education/entertainment dichotomy only confuses the issue.

The important distinction between educational programs like *Winnie The Pooh* and non-educational programs like *The Flintstones* is thus *not* whether the *primary purpose* is to educate. Rather, the critical distinction is whether education is a *significant purpose*. In short, the proposed definition of "core" programming fails to clarify what is educational and, as explained in Section II(A) below, will effectively discourage the very types of entertaining, educational programs approvingly cited by Congress.

B. The Concept of A Narrow Category of Qualifying "Core" Programming Is Inconsistent With Congressional Intent In That It Limits Broadcaster Discretion To Rely On Diverse Formats of Educational Programs

As the broadcast commenters correctly note, the Commission's concept of a narrow category of qualifying "core" programming is inconsistent with Congress' intent to allow broadcasters wide discretion in choosing from among a broad selection of programming to satisfy their obligations under the Act.⁴ As NBC notes, for example, Congress envisioned a standard that "does not exclude *any* programming that does in fact serve the educational and informational needs of children"⁵

⁴ See, e.g., Comments of NBC at 5-9. NBC accurately notes that Congress, in affording broadcasters such discretion, was sensitive to constitutional concerns regarding regulation of program content.

⁵ *Id.* at 5-6, citing Children's Television Act of 1990, House Committee on Energy and Commerce, H.R. Rep. No. 385, 101st Cong., 1st Sess. 16 (1989) ("House Report") at 11 (emphasis added); Children's Television Act of 1990, Senate Committee on Commerce, Science and Transportation, S. Rep. No. 227, 101st Cong., 1st Sess. 22 (1989) ("Senate Report") at 17 (emphasis added).

By identifying a narrow category of qualifying "core" programming, the Commission will effectively exclude certain programming, such as specials, short-form programs, and other programs that serve the informational and educational needs of children. If only "core" programming counts toward fulfilling a broadcaster's obligation, the broadcaster will have no incentive to air anything else. Act III Broadcasting, for example, explains that "[i]f broadcasters must place their primary reliance on standard-length programming to satisfy the Act, they may be dissuaded from developing local short-segment programming."⁶

Excluding specials and short-form programming, however, is antithetical to the Act's purpose. The Commission, in its 1991 Order, expressly found that short-form programming could serve a useful purpose in educating children.⁷ Many commenters in this proceeding continue to demonstrate the benefits that short-form programs can provide as a supplement to standard-length, regularly scheduled educational programming. For example, Act III Broadcasting notes that the relative low cost of short-form programs makes them more affordable to smaller, independent broadcasters who might otherwise be unable to produce their own local educational programming.⁸ In addition, short-form segments can be aired between popular entertainment programs -- taking advantage of existing audiences.⁹

6 Comments of Act III Broadcasting at 10. Broadcasters were understandably taken by surprise by the Commission's recent about-face with respect to short-form programming. A group of 36 broadcasters, for example, noted that the "Commission's new-found dislike of short segment programming is nothing short of mystifying." Comments of Hadley, Bader & Potts at 13.

7 Recon. Order at 5101.

8 Comments of Act III Broadcasting at 10. The Commission also recognized this benefit of short-form programs. Recon. Order at 5101.

9 See Comments of Tribune Broadcasting Company at 8-9 ("[T]he Commission should take a lesson from commercial advertisers (including political candidates) about the value of short-segment programming in delivering a message to an audience."); see also Comments of ABC at 2-6 (describing *ABC Schoolhouse Rock*, a highly successful example of short-form programming).

Commenters also note that specials (which are standard-length but, by definition, not regularly scheduled) can also significantly contribute to children's education. In our earlier comments, for example, we discuss the one-time *All Star Cartoons To The Rescue*, a special that dealt with drug abuse and earned high ratings and acclaim. A more recent example of an educational and informational special was ABC's *President Clinton: Answering Children's Questions*. These are but two examples of unique educational programs that could only be produced as specials.

The Commission's regulatory scheme should be structured to encourage, not discourage, broadcasters from airing programs like these.¹⁰ To this end, the Commission should create an environment that encourages a diverse array of innovative and exciting programs that educate children while attracting and holding their attention, regardless of the program's format or length. Simply stated, the Commission should discard its narrow "core" programming proposal.

II. THE COMMISSION SHOULD DEFER TO A BROADCASTER'S REASONABLE, GOOD FAITH JUDGMENT THAT "A SIGNIFICANT PURPOSE" OF A PROGRAM IS EDUCATIONAL

The Act requires broadcasters to air "programming designed to meet the educational and informational needs of children."¹¹ The Commission now proposes to allow broadcasters

¹⁰ The public interest will hardly be served if broadcasters received "credit" for airing (and therefore are encouraged to air) a regularly scheduled program that features a dry lecture by a teacher, but none for specials featuring the President answering children's questions. That, however, would be the consequence of the Commission's current proposals.

¹¹ 47 U.S.C. §§ 303a, 303b.

to satisfy this obligation only by airing programs that have education as their *primary* purpose, with entertainment value merely *secondary*. Although a few commenters support the Commission's primary purpose proposal,¹² most oppose it, because the education/entertainment distinction embodied in the definition is a false dichotomy that will frustrate rather than further the Act's purpose.¹³ Many of these commenters urge the Commission to rely instead upon a broadcaster's good faith judgment as to what programming best serves children's needs.¹⁴

Disney likewise opposes the Commission's proposal, because nothing is gained by a standard that encourages broadcasters to air programs that children will not watch. If children refuse to watch the programs because they are too boring, the Commission will have frustrated, not furthered, the purpose of the Act. Moreover, as we noted in our initial Comments, regulating entertainment out of children's educational programming flies in the face of modern educational theory that children learn best when they are engaged and entertained.

¹² See, e.g., Comments of the Center for Media Education et al. at 8, *citing* NOI at 1842.

¹³ See Comments of Children's Television Workshop at 6, Comments of NBC at 30 and Comments of Act III Broadcasting at ii.

¹⁴ See, e.g., Comments of NBC at 9-10 and Comments of NAB at 8.

A. Discouraging Programs That Are As Entertaining As They Are Educational Will Result In Programming That Children Will Not Watch

Commenters who support the Commission's "primary purpose" proposal urge the Commission to limit further its definition of "educational" programming. The Center for Media Education, for example, urges the Commission to delineate specific subjects that qualifying programs must address.¹⁵ While no doubt formulated with the best of intentions, proposals such as these would only stifle creative and innovative educational programming -- because the more restrictions the Commission imposes on educational programming, the less room it leaves for innovation. The Commission should be encouraging creativity, not restricting it.

In any event, proposals that reinforce the educational/entertainment dichotomy ignore the consequences that will ensue -- because all the sophisticated educational strategies in the world will fail if children do not watch the program. Yet, the Commission risks this very result if it ignores the value of entertainment and narrows the category of qualifying programming too severely.

We do not mean to suggest that sophisticated educational strategies are inappropriate in connection with children's programming. To the contrary, modern

¹⁵ Comments of the Center for Media Education at 11. Other commenters urge the Commission to require qualifying programming to specify a targeted age group. *E.g.*, Comments of the National Association for the Education of Young Children at 1. By its nature, educational children's programming will not appeal to all children aged 2 through 16. The Commission, therefore, need not mandate that such programming be age-specific. Rather, the Commission should permit but not require age-specific programming. *See* Comments of the Walt Disney Company, filed Feb. 20, 1991 at 21 n.51. In any event, the sub-groups to which educational programming appeals will depend more on a child's mental and cognitive development than on his or her chronological age.

educational theory teaches that the creative use of entertainment is, in itself, an important educational strategy.¹⁶ The comments of those who are in the business of attracting children's attention -- program producers and broadcasters -- confirm that what is true in the classroom is equally true on the television.

Children's Television Workshop ("CTW"), for example, creator of legendary children's programming such as *Sesame Street*,¹⁷ explains that a program must "reach" before it can "teach," and advocates education through high-quality and *entertaining* programming.¹⁸ CTW warns that ignoring the important component of entertainment in children's programming will result in "[d]ry pedantic formats" that "will not be watched."¹⁹ Like Disney, CTW recommends that the Commission encourage programming "that will *combine* audience appeal with educational effectiveness."²⁰

Broadcasters similarly understand that children will not watch programming that is not entertaining. NAB, for example, states that "children's programming must have high entertainment value to be watched and assimilated."²¹ ABC comments that "education and

16 See Comments of The Walt Disney Company at 4-5.

17 *Sesame Street*, in addition to being cited by Congress as a program of proven educational merit, is an international institution and is considered a prototype of educational programming that uses entertainment to educate.

18 In its programs, CTW strives to "not only impart[] information and teach[] cognitive and social skills, but also motivat[e] and empower[] children *to learn and to have fun doing so.*" Comments of CTW at 2 (emphasis added).

19 *Id.* at 7.

20 *Id.* (emphasis in original). Interestingly, some of the very groups who support the Commission's education/entertainment dichotomy point to *Sesame Street* as a prototype for children's programs. *E.g.*, Comments of the Center for Research on the Effects of Television at 8.

21 Comments of NAB at 21.