Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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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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REPLY COMMENTS OF THE ASSOCIATION OF INDEPENDENT TELEVISION STATIONS, INC.

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REPLY COMMENTS OF THE ASSOCIATION OF INDEPENDENT TELEVISION STATIONS, INC.

The following reply comments are submitted by the Association of Independent Television Stations, Inc. ("INTV"), in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding.[1] INTV also has submitted comments in response to the *Notice*.[2]

INTV submits that little has been left unsaid about regulation of children's television programming and has attempted merciful brevity in these reply comments. INTV, however, does reserve its right to comment further if additional probative information is submitted to the Commission in response to recent requests to INTV, NAB, and Dr. Kunkel.[3]

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[1]FCC 95-143 (released April 7, 1995)[hereinafter cited as *Notice*].

[2]Comments of the Association of Independent Television Stations, Inc., MM Docket No. 93-48 (filed October 16, 1995) [hereinafter cited as "INTV Comments"].

[3]*See, e.g.*, Letter of October 25, 1995, from Roy J. Stewart, Chief, Mass Media Bureau, to Dr. Dale Kunkel.

INTV initially reiterates its view that all commenting parties are striving in good faith to resolve this proceeding in the manner most beneficial to children. The zealous advocacy of strongly-held views coming from all sides cannot detract from the good intentions which underlie them. Thus, whereas INTV strongly disagrees with some of the proposals offered by other commenting parties, it casts no aspersions at them or their motives. INTV continues to believe that intellectual honesty and common sense ultimately will produce the most desirable result.

INTV also by way of introduction wishes to say a word about the nature of the evidence before the Commission. In this proceeding, the Commission has the benefit of a record which includes direct testimony from many witnesses who are the "professionals" of children's television, the producers and broadcasters who create and deliver children's programs to television screens every day. They have imparted an insider's first-hand knowledge of the art, craft, and business of children's television. Their testimony and their statements deserve particular attention and regard because they bring the refreshing wind of reality to a proceeding otherwise long on theory and rhetoric.

The focal points of this proceeding remain proposals to require stations to broadcast a specific amount of core programming (a "quantitative requirement") and to tighten the definition of core programming in some significant ways. INTV holds to its view that a quantitative requirement not only is of highly dubious legality and constitutionality, but also would be counterproductive. INTV also has supported modest changes in the definition of core programming, but opposed exclusion of beneficial program formats such as short-segment programming and specials.

The various parties supporting imposition of a quantitative requirement fail to make their case. First, their skepticism about "voluntary" compliance based on broadcasters' pre-Act behavior

is misplaced and unfounded. When Congress passed the Act, it changed the regulatory landscape in a material and meaningful way. To predict post-Act behavior on the basis of pre-Act behavior, therefore, would be arbitrary and insupportable.

Furthermore, references to alleged poor performance by stations in the immediate post-Act period are neither material nor probative. Stations are providing substantially more educational and informational programming for children than they did prior to passage of the Act. Indeed, the record before the Commission establishes stations have performed admirably since passage of the Act. However one may quibble with the various methodologies employed in the studies submitted to the Commission, they all confirm that stations on average broadcast three to four hours of educational and informational programming for children each week.

Critics of broadcaster performance go on to claim that this is not enough. The inherent infirmity of such a criticism is the lack of any criteria for determining how much is enough! None of the parties urging adoption of a quantitative requirement presents any sound basis for their conclusion that the current level of educational and informational programming for children is insufficient. They simply posit that *X* hours a day would be enough, but provide no basis in logic or fact for selection of *X* as the magic number to optimize the public interest benefit from educational and informational programming for children. At best they beg the question. At worst, their arguments dissemble in a logical void. In no case, do they establish any rational nexus between their chosen quantity and the public interest.

They also gloss over other critical infirmities and adverse effects of a quantitative requirement. As the record already demonstrates, legal and constitutional barriers are insurmountable. The Commission must pay heed to the limitations on its powers even assuming *arguendo* that *Red Lion* remains a valid governing precedent. The Court in *Turner v. FCC* left no doubt that the Commission was not to be the content dictator of broadcast programming. INTV

also reminds the Commission that solving problems which do not exist (*i.e.*, an alleged insufficiency of educational and informational programming for children) invites judicial rebuke. Finally, the failure of each major proponent of a quantitative requirement to establish any sound basis for the particular amount of core programming required invites a court to find a quantitative requirement inherently arbitrary.

Proponents of a quantitative requirement also neglect the well-known consequence of minimum quantitative requirements. They ultimately establish a maximum and steer resources to quantity rather than quality.

The record also is sadly lacking in justifications for most of the "popular" proposals for narrowing the definition. First, focusing on a few instances in which stations have stretched the definition of core programming no longer contributes to a rational debate over the definition of core programming. The problem doubtless has been not the definition, but with station judgments in the uncertain period immediately following passage of the Act. That time has passed. The issue has been noisily ventilated in the trade press. No station now may claim the sort of confusion which led early on to misclassification of purely entertainment programs as core programming. In any event, none of the parties alleging continuing abuse on more than an isolated basis have begun to prove their case.

Those who seek to exclude such programming genres as specials, short-form formats (under 30-minutes), and interstitial short-segments and announcements invite a significant diminution in such programming. These program types contribute materially to children's educational and informational needs. A reduction in production and broadcast of these programs would deprive children of valuable educational and informational activities.The loss would be especially significant because these program types often are locally-produced. Thus, they can focus

on the particular educational and informational needs of local children in ways which network and syndicated programming cannot.

The comments filed confirm the wisdom of INTV's position that on-air identification of educational and informational programming for children should be left to station discretion. The proposal garnered mixed reviews. Some thought on-air identifications would be useful. Others were concerned they would drive off potential child viewers. Decisions made by stations at the local level, therefore, will most likely reflect the true utility of such announcements in any given market.

Several parties have called for a narrower time restriction than that posed by the Commission. INTV submits that they have not made their case. Whereas some periods (*e.g.* 6-7 a.m. and 10-11 p.m.) may fall short of "prime" children's time, their inclusion in the definition of core programming hardly approaches the arbitrary. Millions of children are watching.

Several parties have urged the Commission to require that stations designate the target audience of their various educational and informational programs. Age-specific programming is not required. Therefore, no valid regulatory purpose would be served by requiring stations to designate the target audience of their various educational and informational programs.

Commenting parties have offered conflicting views on whether to permit stations to fulfill their programming obligations by sponsoring programming on other stations. The criticisms of permitting such arrangements fall far short of justifying a nullification of the Act. They may, however, suggest that reasonable safeguards be installed, many of which easily draw INTV's concurrence. First, both the host and sponsoring station should agree on the nature of the support and its use. Second, the support should be directed to programming which responds to the educational and informational needs of children. Third, the host station should be licensed to a

community in the same market (DMA) as the sponsoring station. INTV also suggests that creative sponsorship arrangements for network and syndicated programming should be developed and permitted.

Finally, the Commission's current enforcement mechanisms are more than adequate. A mid-term review is unnecessary. The ultimate sanction awaits stations which disregard their obligations under the Act, and public monitoring is constant. Stations now are well aware of their obligations and monitor their own performance as well. Furthermore, no lack of industry-wide compliance with the Act exists upon which general mid-term reviews might be predicated.

Finally, no special announcements are necessary. They would serve little purpose. Stations are far from invisible in their communities. Indeed, FCC rules assure that they remain accessible to the public. In short, members of the public know how and where to complain about station programming.

A. Enactment Of The Children's Television Act Of 1990 Has Impressed Broadcast Licensees with the Extent and Gravity of Their Obligations to Provide Educational and Informational Programming for Children.

Those who stridently proclaim with righteous indignation that broadcasters are untrustworthy and hardly may be expected to provide an adequate amount of educational and informational programming for children neglect the vastly different posture of broadcast stations *vis-a-vis* their children's programming obligations since passage of the Act.[4] They claim that broadcasters' voluntary efforts to provide more educational and informational programming for children have come only after pressure from the Commission and only then for brief periods of time. Therefore, they conclude, the Commission now may place no trust in broadcasters' promises or their voluntary efforts to provide more educational and informational programming for children.

Even assuming *arguendo* their version of history is accurate, their conclusion that history will repeat itself hardly follows. They neglect a fundamental distinction between the contexts of 1974 or 1984 and that in which stations operate today. The times of "promises" of improvement and "voluntary" compliance are no more. In 1990, Congress passed the Children's Television Act of 1990. Now broadcast television licensees are subject to a definitive *statutory* obligation to

[4]*See, e.g.,* Comments of Center for Media Education *et al.*, MM Docket No. 93-48 (filed October 16, 1995) at 11-14, 17 [hereinafter cited as "CME"]; Comments of Dale Kunkel, Ph.D., MM Docket No. 93-48 (filed October 16, 1995) at 7 [hereinafter cited as "Kunkel"]; Comments of Children Now, MM Docket No. 93-48 (filed October 16, 1995) at 3 [hereinafter cited as "Children Now"].

provide programming responsive to the educational and informational needs of children. Now every broadcast television licensee must *account* to the public and the Commission for its performance pursuant to this obligation when seeking renewal of its license. No longer are station licensees left to find a footing in the allegedly shifting sands of Commission pronouncements. Licensees now are well aware that they must provide educational and informational programming for children and are fully cognizant that their performance is subject to scrutiny by the public and review by the Commission. They now know full well that a failure to comply with this law will result in sanctions -- among them the severest sanction of non-renewal. Thus, broadcast licensees operate today in a materially different legal environment than they did in 1974 or 1984.

Predictions of the future which fail to take into account this dramatic distinction in the regulatory context enjoy no credibility. In marked contrast to the 70s and 80s, as perceived by proponents of quantitative requirements, the Commission will be placing no reliance on broadcaster promises of voluntary compliance. Compliance today is in no way "voluntary." Compliance is legally mandated. Regardless of the Commission's views or shifts in political outlook, stations will remain subject to a definitive continuing statutory obligation and will be held accountable. Therefore, history could not, as some urge, repeat itself.

Those that say history already is repeating itself must grasp at specious arguments. First, they point to broadcaster performance in the immediate post-Act period.[5] As has been said many times, the production of new educational and informational programming for children took time.[6] Now, the supply of educational and informational programming for children has begun to catch up

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[5]CME at 14; Kunkel at 2-7; Comments of the Children's Defense Fund *et al.*, MM Docket No. 93-48 (filed October 16, 1995) at 6 [hereinafter cited as "CDF"]; Comments of Children's Television Workshop, MM Docket No. 93-48 (filed October 16, 1995) at 2 [hereinafter cited as "CTW"].

[6]*See* INTV Comments at 16-17.

with demand. As a result more programs are cleared in more markets.[7] Moreover, as set forth below, stations are providing substantially more educational and informational programming for children than they did prior to passage of the Act. Therefore, references to the immediate post-Act period are neither material nor probative.

In sum, when Congress passed the Act, it changed the regulatory landscape in a material and meaningful way. To predict post-Act behavior on the basis of pre-Act behavior, therefore, would be arbitrary and insupportable.

B. The Record Reveals that Broadcast Stations Have Performed Admirably Since Enactment of The Children's Television Act Of 1990.

Claims that broadcast television stations have failed to improve their service to children since passage of the Act are literally incredible. The record amassed already in this proceeding confirms that stations are, indeed, providing considerably more educational and informational programming for children than they did prior to passage of the Act. More to the point, they are providing a substantial amount of such programming and almost invariably at times children routinely watch television.[8]

Criticisms of this conclusion are insupportable. They take two forms. Either the estimates of the amount of educational and informational programming for children broadcast by television stations are said to be unreliable or the results are said to show that stations are not providing enough such programming. The first form of criticism now may be laid to rest. Whatever one's concerns might be about the methodology or reliability of surveys conducted and submitted to the

[7]INTV Comments at 17-18.

[8]*See, e.g.,* Comments of INTV at 12; Comments of the National Association of Broadcasters, MM Docket No. 93-48 (filed October 16, 1995) at 3-9 [hereinafter cited as "NAB"].

Commission in this proceeding, the strikingly consistent results across the studies provide a strong indication that their results are valid and reliable. INTV's study found that the average independent broadcast 3.77 hours per week of core programming each week.[9] The National Association of Broadcasters' study found that the average station broadcast over 3.5 hours of core programming each week.[10] Kunkel and Goetta found that the average station broadcast 3.4 hours of core programming each week.[11] These surveys also are corroborated by INTV's syndication studies, which have drawn no criticism to this point.[12] They also show more production and broadcast of educational and informational programming for children. Thus, evidence in the record strongly supports the conclusion that broadcast stations now are providing on average three to four hours of regularly scheduled core programming each week.

The second form of criticism says simply that this is not enough. The inherent infirmity of such a criticism is the lack of any criteria for determining how much is enough! As set forth more fully below, none of the parties urging adoption of a quantitative requirement presents any sound basis for their conclusion that the current level of educational and informational programming for children is insufficient. They simply posit that *X* hours a day would be enough, but provide no basis in logic or fact for selection of *X* as the magic number to optimize the public interest benefit from educational and informational programming for children.

Therefore, no rational or supportable case may be made that broadcast television stations have failed to respond adequately to the mandate of the Act. Much to the contrary, the record

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[9]INTV Comments at 12.

[10]NAB at 6.

[11]Kunkel at 3.

[12]*See* INTV Comments at 14-15.

establishes that stations are providing more than adequate, if not exemplary service to the children of their communities.

C. Proponents of a Quantitative Requirement Gloss Over the Perilous Infirmities and Counterproductive Consequences of Such a Requirement.

The Commission consistently has resisted the call to impose a quantitative requirement and for good reason.[13] Few solutions are so laced with their own problems that they self-destruct as readily under careful scrutiny. Proponents of a quantitative requirement ignore the side-effects of their prescription. The Commission, however, may do so now no more than it has in the past.

1. No Rational Basis Exists for Establishing the Requisite Amount of Educational And Informational Programming For Children.

Proponents of a quantitative standard propose various minimum levels of service. Some suggest three hours per week.[14] Others suggest as much as seven hours per week.[15] Necessarily they attempt to provide some bases for their proposed standard, but none in any way suggests any rational nexus between their standard and any public interest consideration. CME, for example, proposes a one hour per day requirement because "children watch an average of 28 hours of television each week."[16] They add that "one hour per day amounts to only 4 percent, a minuscule

[13]Indeed, INTV recalls no instance in which the Commission has imposed an outright requirement that stations broadcast so much of this sort of programming or the other. Whereas the Commission once maintained processing guidelines for some programming categories, those were long ago abandoned. *Television Deregulation,* 98 FCC 2d 1076, 1080 (1984).

[14]Comments of the United States Catholic Conference, MM Docket No. 93-48 (filed October 16, 1995) at 1 [hereinafter cited as "USCC"].

[15]CDF at 10; CME at 24; Children Now at 4-6.

[16]CME at 24.

proportion, of a licensee's total programming."[17] May one deduce that if children watched 14 hours of programming a week that the standard should be a half-hour? Would a half-hour per day standard be better because it would be an even more minuscule proportion of a station's broadcast schedule? Ultimately, CME argues that such a standard would "ensure that children of all ages and interests have available to them a *reasonable opportunity* to view diverse, engaging, and age-appropriate educational programming."[18] Children Now supports the same standard, one hour per day, because it is "eminently reasonable." Such statements, of course, only beg the question. The Children's Defense Fund also supports the one hour per day standard because it "greatly improves children's options for television viewing."[19] Again, the question of how great an improvement is optimal is begged.

CDF does go on to observe that, "If each commercial station chose to meet the one hour per day requirement, most children would have available to them at least 28 hours of educational and informational broadcasting each week."[20] If, as CME asserts, children on average watch 28 hours of programming per week, this theoretically might permit the average child to spend all of his or her television time watching educational and informational programming. If some implicit rationale exists in such a comparison (*i.e.*, a one-to-one ratio between viewing time and the amount of educational and informational programming for children available), INTV submits that any such rationale is unsound. First, in many markets, more than four commercial stations are on-the-air. Indeed, with the emergence of the UPN and WB networks and the continuation of must carry requirements, a real prospect exists that most markets ultimately will be served by at least six local

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[17] *Id.*

[18] *Id.* [emphasis supplied].

[19] CDF at 10.

[20] CDF at 10.

commercial broadcast television stations. This would result in provision of 42 hours per week of educational and informational programming for children, or half again as much as the total amount of time the average child spends watching television.[21] Second, the logical extension of such a policy would be a requirement that stations devote seven hours per day to news and public affairs programming because such programming is considered beneficial and because the average viewer hypothetically spends seven hours a day watching television.[22] Third, making programming available hardly assures that it will be watched. A substantial majority of children just as easily could turn to entertainment programming on a cable channel, and all children could turn to entertainment programming on another broadcast station. Finally, of course, no magical ratio between viewing and programming availability has been demonstrated, much less proffered by any proponent of a quantitative requirement.

Children Now further justifies its proposal by noting that it would impose no significant economic cost on stations in light of the fact that stations already are providing more than three hours a week of educational and informational programming for children. As anyone who watched *Sesame Street* knows, seven hours per week is more than twice three hours per week. If, as Children Now also asserts, stations lose audience and revenue broadcasting educational and informational programming for children, then economic costs would double. If this fails to qualify as "significant" or "substantial," INTV would hesitate to ask them to define "reasonable." In any event, whereas INTV appreciates Children Now's concern about station costs, it must point out that this consideration logically fits into the analysis only as a *constraint* on the amount of

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[21]This, of course, ignores the plethora of educational and informational programming for children on public television and nonbroadcast media.

[22]The marginal benefit of such a requirement in a world served by CNN and other nonbroadcast news services would be nil.

educational and informational programming for children to be required. It says nothing about what an otherwise optimal level of such programming would be.

Finally, the United States Catholic Conference urges a three hour per week requirement. This requirement it submits is "supported by the nature of the content of the majority of the offerings thrust at children coupled with the ease of access to television by children."[23] Initially, INTV respectfully suggests that a three hour requirement is by definition unnecessary. Stations already provide more than that. A rule would be superfluous. Furthermore, if, as the USCC suggests, the purpose of programming perceived to be good is to supplant programming perceived to be bad, this still leaves unanswered the question of how much purportedly good programming should squeeze out purportedly bad programming. Moreover, what is to stop stations from replacing not "bad" programming but other "good" programming with educational and informational programming for children?[24]

Therefore, the many well-intentioned, but logically lame attempts to justify a particular quantitative requirement lack merit.

2. Quantitative Requirements Contravene the Children's Television Act of 1990, the Communications Act, and the Constitution.

Many proponents of a quantitative requirement gloss benignly over critical legal obstacles to the adoption of such a requirement. These obstacles have been thoroughly ventilated in the

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[23]USCC at 4.

[24]The USCC also posits that the easy access of children to television supports a three hour requirement. In that respect, INTV must note that pending V-chip legislation, to say nothing of OKTV's "set-top censor" (or even TCI's Remote-a-Saurus™), are designed to diminish children's access to unsuitable programming. If such devices become pervasive, the USCC's logic would compel the conclusion that less educational and informational programming for children should be required. *See* Comments of OKTV, MM Docket No. 93-48 (filed October 16, 1995); INTV Comments at 22, n.52. INTV is deeply concerned that such program "steering" devices will have intended or unintended effects on competition. Thus, INTV has opposed V-chip legislation.

comments previously submitted in this proceeding.[25] Suffice it to say at this point that several features of the debate serve to highlight the legal infirmities of an attempt to impose a quantitative requirement. First, even assuming *arguendo* that such a requirement would be evaluated under *Red Lion v FCC*, 395 U.S. 367 (1967), the Court in *Turner v. FCC*, 114 S. Ct. 2445, 2463 (1994), emphasized that the Commission still lacked power to impose its programming preferences on broadcast licensees:

> In particular, 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....

Thus, whatever vitality *Red Lion* may harbor in today's video marketplace, it in no way stands for the proposition that the Commission may determine the content of programming on broadcast stations.[26]

Second, the Commission has suffered judicial rebuke for solving problems which do not exist. *Home Box Office v. FCC,* 507 F. 2d 9 (D.C. Cir. 1977). The Act and broadcast stations' response thereto have solved the problem Congress perceived in 1990. Substantial amounts of educational and informational programming for children are available. More to the point, the amount of such programming has increased dramatically since the Act was passed. Indeed, posed against the industry's current performance level, the Commission's proposal to require three hours of core educational and informational programming for children would accomplish nothing. Even Dr. Kunkel found that stations on average were providing more than three hours of programming

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[25]See, *e.g,* NAB at 26.

[26]As recognized by Dr. Kunkel, "Although the Commission obviously does not want to exert control over broadcasters' content-based decisions any more than is essential to its public interest responsibilities, the policy concern with children's television is *all about content*.." Kunkel at 8 [emphasis supplied].

per week.[27] Putting aside the dampening effect on creativity inherent in a quantitative requirement, bringing all stations into a lock-step three hour performance level would accomplish little or nothing not already accomplished in the marketplace.[28] Thus, the Commission would be justifiably fearful of judicial review of an order adopting a quantitative requirement.

Finally, the failure of each major proponent of a quantitative requirement to establish any sound basis for the particular amount of core programming required invites a court to find a quantitative requirement inherently arbitrary. Again, the precise amount to be required is a very different issue from whether to require stations to provide educational and informational programming for children. Congress resolved the latter issue in 1990. Broadcasters *are required* to broadcast some programming specifically designed to serve the educational and informational needs of children. The issue before the Commission in this instance is whether to require a specific quantity of such programming and, if so, how much. This is where the arguments of proponents of a quantitative requirement have dissembled. As detailed above, no rational basis in fact, law, or policy has been presented to justify any specific quantitative requirement. In the absence of this core element of a rationale, no court would be likely to sustain any form of quantitative requirement.

3. A Regulatory Command to Provide a Certain Minimum Quantity of Educational And Informational Programming For Children Would Establish a Practical Ceiling on the Amount of Such Programming.

Assessing compliance on the basis of quantity invites stations to focus on quantity. In short order, the minimum level required by the Commission would become the minimum, maximum,

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[27]Kunkel, Dale & Goetta, Ursula, *Broadcasters' Response to the Children's Television Act,* at 9, Table 1, attached to Kunkel.

[28]A three hour minimum would lead to entirely consistent performance across station types and market sizes, but ultimately would reduce the average to three hours because stations now exceeding the three hour level very likely would reduce the amount of core programming they broadcast.

mean, and median level of performance. First, the good news: stations would comply. They would have no real choice. Second, the bad news: stations would comply. If, as CME and others contend, stations lack an economic incentive to broadcast educational and informational programming for children, then stations still would comply, but they would be foolish to do more.

INTV has urged the Commission to make modest "inclusive" modifications to its current definition of core programming.[29] Others would tighten the definition considerably. Such narrowing of the definition of core programming, however, moves the Commission more heavily into directing the programming content of broadcast television stations.[30] Furthermore, it would discourage production of non-core program genres. Thus, many beneficial programs may be lost.

In light of these costs of imposing a more constricted definition, one would anticipate sound and substantial reasons for each and every circumscription of the definition. However, the record is sadly lacking in justifications for most of the "popular" proposals for narrowing the definition. Indeed, the underlying suspicions of abuse which have prompted many of the suggested constrictions on the definition are increasingly unfounded.

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[29]INTV Comments at 25 *et seq.*

[30]Comments of Donrey Media Group, MM Docket No. 93-48 (filed October 16, 1995) at 7.

A. Alleged Abuses of the Current Definition Have Been Exaggerated.

Focusing on a few instances in which stations have stretched the definition of core programming no longer contributes to a rational debate over the definition of core programming. The problem doubtless has been not the definition, but with questionable station judgments in the uncertain period immediately following passage of the Act. That time has passed. The issue has been noisily ventilated in the trade press. No station now may claim the sort of confusion which led early on to misclassification of purely entertainment programs as core programming.

In any event, none of the parties alleging continuing abuse on more than an isolated basis has begun to prove its case. Dr. Kunkel, for example, lists shows for which broadcast stations claimed credit.[31] Omitted (quite glaringly from INTV's perspective) is any analysis of the frequency of mention by broadcasters of each program. Thus, determining the extent to which stations in 1994 misdefined programming is impossible. Indeed, Dr. Kunkel concludes only that "As was the case in 1992, stations continue to claim programming as educational when clearly it is not." Without a quantitative analysis to back them up, however, such a claim is neither material nor probative.

Therefore, the potential for abuse of the current definition is greatly exaggerated and now provides no rational basis for a tightening of the definition of core programming.

[31]Kunkel & Goetta, *supra*, at Table 2.

B. Narrow Definitions of Core Programming Would Serve as a Disincentive to Broadcast Beneficial Program Genres.

Those who seek to exclude such programming genres as specials, short-form formats (under 30-minutes), and interstitial short-segments and announcements invite a significant diminution in service to children. By reducing the credit for such programming, the Commission would reduce markedly the incentive to air such programming.The public interest cost is evident. These program types contribute materially to children's educational and informational needs.[32] A reduction in production and broadcast of these programs would deprive children of valuable educational and informational program material.

The loss would be especially significant because these program types often are locally-produced. Thus, they can focus on the particular educational and informational needs of local children in ways which network and syndicated programming cannot. Moreover, short-segment programming and interstitial announcements are tremendously effective vehicles for conveying information to children (and adults, too). Indeed, commercial advertisers and politicians bank their futures on the effectiveness of short-segments and announcements in conveying their messages to the public. Therefore, discounting the value of short-segment programming and interstitial announcements would add new definition to the term ludicrous.

Those who advance proposals to exclude such programming from the definition of core programming ignore this considerable public interest cost of their proposals. The Commission, however, may not.

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[32]Indeed, some confusion may have existed between the review of all children's programming for commercial time limit purposes and programming requirement purposes. The former category is much broader.

C. Contemporaneous On-air Identification Of Educational And Informational Programming For Children Should Be Voluntary.

INTV has posited that on-air identification of educational and informational programming for children should be left to station discretion. The comments filed confirm the wisdom of this position. The proposal garnered mixed reviews. Some thought on-air identifications would be useful.[33] Others were concerned they would drive off potential child viewers.[34] Station decisions at the local level are most likely to reflect the true utility and effect of on-air identifications.[35] Therefore, the local station should be the locus of the decision whether to use on-air identifications with any or all educational and informational programming for children broadcast by the station.

D. A 7 a.m. to 10 p.m. Limit on Core Programming Would Be Arbitrary.

Several parties have called for a narrower time restriction than that posed by the Commission. INTV submits that they have not made their case. In particular, the child audience begins to climb during the 6 a.m. to 7 a.m. hour.[36] Whereas this period may fall short of prime children's time, its inclusion in the definition of core programming hardly approaches the arbitrary. Millions of children are watching.[37]

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[33]CME at 32; CDF at 11; Kunkel at 11.

[34]CTW at 13-14.

[35]Indeed, such decisions might take into account the nature of the program, its target audience, the time of broadcast, and a host of local factors.

[36]NAB, Attachment 5.

[37]Id.

Secondly, between 10 and 11 p.m., children, particularly teenagers, remain in the audience. Again, including the final hour of prime time in the definition in no way would be arbitrary.

E. Designation of a Program's Target Audience Would Be Superfluous.

Several parties have urged the Commission to require that stations designate the target audience of their various educational and informational programs.[38] No reason exists to do so. The Commission has left to stations the mix of educational and informational programming for children for various age groups. Age-specific programming is not required.[39] Therefore, no valid regulatory purpose would be served by requiring stations to designate the target audience of their various educational and informational programs.

Commenting parties have offered conflicting views on whether to permit stations to fulfill their programming obligations by sponsoring programming on other stations.[40] Inasmuch as the Act expressly contemplates such arrangements' constituting partial fulfillment of a stations' obligation, the issue of whether to permit such sponsorship arrangements is decided. The criticisms of permitting such arrangements fall far short of justifying a nullification of the Act.

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[38]CME at 43; Children Now at 3; Kunkel at 9.

[39]*See Report and Order*, 6 FCC Rcd 2111, ¶17 (1990).

[40]INTV has urged that such sponsorship arrangements be permitted. INTV Comments at 40.

They may, however, suggest that reasonable safeguards be installed, many of which easily draw INTV's concurrence. First, sponsorship is a two party transaction. Both the host and sponsoring station should agree on the nature of the support and its use. Second, the support should be directed to programming which responds to the educational and informational needs of children. Third, the host station should be licensed to a community in the same market (DMA) as the sponsoring station.[41] This tracks the must carry and copyright statutes, which reflect the true market areas served by stations.[42] Such safeguards will assure that sponsorship arrangements do not become escape hatches by which stations may avoid their obligations under the Act.

Congress provided for meaningful enforcement of the Act in the Act. Stations' programming records are reviewed at renewal. In the absence of compliance, stations are subject to sanctions. Among them is the ultimate sanction of non-renewal -- a virtual death sentence. Consequently, stations can ill afford to ignore their obligations under the Act.

Additionally, stations compile annual or quarterly reports concerning their educational and informational programming for children. This material is placed in the public file. Any member of the public can review a station's performance either on paper or on-the-air. If a station's performance is lacking, members of the public may bring it to the station's attention at any time during the license term.

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[41]INTV does suggest, however, that the Commission also credit appropriate creative mechanisms which allow for the support of network or syndicated programming.

[42]47 U.S.C. §534 (h)(1)(C); 17 U.S.C. §111(f).