

current definition of educational and informational programming makes clear) educational purposes include promoting social and emotional as well as cognitive and intellectual goals.

**B. The FCC Should Require Qualifying "Core" Programs To Have Written Educational Objectives, Including Target Audience Age.**

As noted, a requirement that a qualifying "specifically designed" program's educational objectives and target audience be specified in writing in licensees' children's programming reports has been a critical component of CTW's proposed definition of such programming, one that PBS and NBC both cite as key to their developing educationally effective children's programming. With the notable exception of NAB, the proposal to require written educational goals received broad support from public interest groups and other broadcasters alike, including INTV, Westinghouse, ABC (so long as a series' written goals would suffice for each episode), CBS (excluding the target age

requirement), CME, Dr. Dale Kunkel, Children Now, and The Children's Television Resource and Education Center ("C-TREC").<sup>30/</sup>

There is no basis for NAB's position that the Commission's proposal constitutes an unnecessary paperwork burden.<sup>31/</sup> Since, as Senator Wirth stated, "a broadcast licensee must demonstrate it has provided programming specifically developed with the educational and informational needs of children in mind,"<sup>32/</sup> requiring a brief, plain-English statement of a program's educational goals is a minimally intrusive method of making such a demonstration, and will also have the salutary effect of forcing writers, producers and broadcasters to focus at the planning stage, where it should be done, on how a qualifying program will be structured to achieve the selected educational objectives.

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<sup>30/</sup> See INTV Comments at 8, 26, Westinghouse Broadcasting Comments at 5, Capital Cities/ABC Comments at 20, CBS Comments at 10 & n.14, CME Comments at 27-28, Comments of Dr. Dale Kunkel at 8-10, Children Now Comments at 3, and C-TREC Comments at 3.

<sup>31/</sup> NAB Comments at 22.

<sup>32/</sup> 136 Cong. Rec. S10126 (daily ed. July 19, 1990).

**C. No Credit Should Be Given For Programming Aired Before 7 am Or After 10 pm.**

CTW agrees with CME, Children Now, the Children's Defense Fund, C-TREC and the American Academy of Pediatrics that qualifying "core" programming should be aired not earlier than 7 am.<sup>33/</sup> As CTW demonstrated in Attachment 5 to its comments, according to Nielsen Media Research the 7 to 7:30 am time period drew nearly three times as many television viewers aged 2-11 nationwide in a recent month as did the 6 to 6:30 am time period. Yet according to NAB's study of fall 1994 starting times for regularly-scheduled children's educational programming, a good 18.6 percent of such programming was broadcast before 7 am,<sup>34/</sup> while INTV reported that almost one-third of syndicated educational children's programs were shown between 6 and 7 am in May 1995 -- more than in any other time period.<sup>35/</sup> These numbers, offered by the broadcasters' trade associations to demonstrate that the FCC need not disqualify "core" programming

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<sup>33/</sup> See CME Comments at 28-29, Children Now Comments at 3, Children's Defense Fund Comments at 8-9, C-TREC Comments at 4, and American Academy of Pediatrics Comments at 2.

<sup>34/</sup> NAB Comments, Att. 1 at 11-12.

<sup>35/</sup> INTV Comments, Exhibit A at 7 & Table II.

aired before 7 am, in CTW's view demonstrate the opposite -- that far too much "core" programming is aired when far too few children are watching television. The FCC should substitute 7 am for its proposed 6 am earliest starting time for qualifying "core" programming.<sup>36/</sup>

**D. The FCC Should Not Deny "Core" Programming Credit To Specials and Short-Segment Programming.**

CTW continues to agree with broadcasters, broadcast networks and Disney that specials and short-form programming, if specifically designed to meet children's educational needs and otherwise in compliance with the Commission's "definition" of "core" programming, should receive credit as such programming. Although CTW believes that regularly-scheduled, standard-length programming specifically designed to meet children's educational and informational needs should be the primary component of the "core" programming requirement, commenters have presented many compelling examples of specials and short-form programming specifically designed to educate children for which they should

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<sup>36/</sup> Although CTW advocates a 10 pm (rather than 11 pm) termination time for qualifying programming because young children are generally asleep by then, the issue may currently be of limited importance since "core" children's programming is rarely broadcast during prime time hours.

continue to receive credit. It is unwise for the FCC to provide disincentives to creating any educationally effective programming.

**E. The FCC Should Abandon Its Proposal To Require Icons Or Other On-Screen Educational Identifiers.**

In its comments, CTW supported all Commission proposals to increase the flow of educational programming information to parents and other care-givers, but strongly opposed the required dissemination of educational programming information to children by means of icons or other on-screen identifiers. CTW pointed out that an icon will not draw a child otherwise not drawn to a program, and may well provide a disincentive for watching a program that might otherwise have attracted the child by suggesting that the program is "eat-your-spinach" television.

For the same reasons, strong opposition to educational icons or other on-screen identifiers was expressed by a broad range of broadcast interests.<sup>37/</sup> In CTW's view, arguments to the contrary by several public interest filers do not reflect a

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<sup>37/</sup> See Capital Cities/ABC Comments at 15-16, CBS Comments at 7 n.6, NBC Comments at 14-15, NAB Comments at 24-25, Disney Comments at 11-13, The Warner Bros. Television Network Comments at 13-14, Tribune Broadcasting Comments at 20-21, and Cosmos Broadcasting et al. Comments at 7.

realistic view of children's behavior. The FCC should reject required icons as a component of its new "definition" of "core" programming.

**III. THERE IS NO PROOF THAT CONGRESS INTENDED TO PRECLUDE QUANTITATIVE PROGRAMMING STANDARDS. HOWEVER, THE FCC SHOULD REJECT "PROGRAM SPONSORSHIP."**

Despite broadcasters' opposition, CTW continues to support a processing guideline of three hours per week of programming meeting the Commission's new "definition," or if legally feasible, a quantitative programming standard of the same amount.<sup>38/</sup> The monitoring option favored by broadcasters -- relying on voluntary service to children -- is not significantly different than the FCC regulatory regime with which Congress grew sufficiently impatient to cause it to pass the CTA.

As detailed in the comments of CME, the history of reliance on broadcasters to voluntarily fulfill their obligation to children dates from 1960, and demonstrates conclusively that increases in children's educational programming are not sustained

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<sup>38/</sup> This guideline could be met, for example, by a 30-minute children's series broadcast Monday through Friday, together with a 30-minute Saturday program, much as the Fox Children's Network schedules "Fox Cubhouse" and "Carmen San Diego."

once governmental pressure is eased.<sup>39/</sup> Regretfully, CTW believes that although adoption of a "definition" of programming specifically designed to educate children will eliminate uncertainty about what programming qualifies to meet the Act's "core" programming requirement (and will also facilitate Commission review of television renewal applications), it will not stimulate the sizeable increase in such programming that the CTA was intended to foster. The Commission should therefore adopt a quantitative processing guideline or mandatory standard.

As is now shown, contrary to the claims of some broadcasters, it is a gross oversimplification to suggest that Congress "considered and rejected" the notion of fixed quantitative programming standards,<sup>40/</sup> and that as a result, the FCC cannot adopt such standards itself.

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<sup>39/</sup> See CME Comments at 9-17.

<sup>40/</sup> Tribune Comments at 4.

**A. Congress Expected The FCC To Implement The Act's Goals As It Saw Fit.**

Many broadcasters claim that the FCC's proposals to adopt either a processing guideline or a programming standard contravene Congress' intent.<sup>41/</sup> They rely chiefly on Congress' statement that it did "not intend that the FCC interpret this legislation as requiring or mandating quantification standards governing the amount or placement of children's educational and informational programming that a broadcast licensee must air...."<sup>42/</sup> But as former Telecommunications Subcommittee Chairman Ed Markey recently pointed out, to assert based on this statement that Congress intended no quantification is "in error....There is no bar, in the legislative history or

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<sup>41/</sup> See, e.g., NAB Comments at 10-13, INTV Comments at 44-47, and Capital Cities/ABC Comments at 30-33.

<sup>42/</sup> 136 Cong. Rec. S10122 (daily ed. July 19, 1990) (statement of Sen. Inouye); H.R. Rep. No. 385, 101st Cong., 1st Sess. 17 (1989) (containing nearly identical language). These commenters place secondary reliance on statements in the legislative history regarding broadcasters' retention of flexibility in determining how to discharge their obligation to serve children. See, e.g., 136 Cong. Rec. S10121 (daily ed. July 19, 1990) (statement of Sen. Inouye). Those statements, however, relate to the mix of acceptable programming, not to how much of such programming should be broadcast.

elsewhere, to specifying that each licensee meet a minimum quantified standard or guideline."<sup>43/</sup>

Note, first, that Congress did not direct the FCC not to impose quantification standards; it simply told the agency that the CTA does not require it to do so. Indeed, Congressional staff explicitly rejected broadcasters' requests to include language in the legislative history that would have affirmatively barred the FCC from imposing quantitative standards.

If anything, Congress punted this political football to the FCC, telling the agency that the law "does not require the FCC to set quantitative guidelines,"<sup>44/</sup> but carefully avoiding ruling such guidelines out. Indeed, in Senator Inouye's words at the time, "[t]he legislation is not intended to restrict the FCC's ability to exercise its discretion at renewal time with regard to enforcement...including the adoption of policies to adhere to the guidelines and their development of reasonable methods to ensure compliance."<sup>45/</sup> Thus, as Representative

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<sup>43/</sup> Letter from Rep. Edward J. Markey to FCC Commissioners RE: MM Docket No. 93-48 (Nov. 14, 1995) ("1995 Markey Letter").

<sup>44/</sup> 136 Cong. Rec. H8537 (daily ed. Oct. 1, 1990) (statement of Rep. Markey).

<sup>45/</sup> 136 Cong. Rec. S13554 (daily ed. Sept. 24, 1990) (statement of Sen. Inouye).

Markey has just stated, whether or not to set a minimum quantified standard or guideline "is a decision for the FCC to make on the basis of the record of this rulemaking."<sup>46/</sup>

If the FCC were to consider that every bill introduced in Congress but not enacted into law is a proposal "considered and rejected" by Congress and therefore inappropriate for consideration by the FCC, then current Commission proposals other than quantitative programming standards would also have to be rejected. For example, S. 1215, a predecessor to the CTA introduced by Senators Wirth, Metzenbaum and Lautenberg on June 21, 1989 but never enacted, contained a requirement that television licensees "provide public notice to assist interested individuals in identifying programs specifically designed to serve the educational and informational needs of children."<sup>47/</sup>

This public notice requirement was absent from successor bills, and is not contained in the CTA. Does this mean that the FCC should not have proposed the several initiatives outlined in the Notice to improve the flow of educational programming information to the public? Of course not.

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<sup>46/</sup> 1995 Markey Letter at 1.

<sup>47/</sup> S. 1215, *reprinted in* S. 707/S. 1215 Hearing at 11.

Similarly, the fact that quantitative standards were not included in the CTA in order to achieve the passage of bipartisan, industry-supported legislation does not mean that the FCC has been given any mandate not to adopt such standards.<sup>48/</sup>

**B. The FCC Should Reject "Program Sponsorship."**

In its comments, CTW expressed strong opposition to the Commission's proposal that broadcast stations be permitted to "sponsor" educational and informational children's programming on other local stations, thereby paying such "host" stations to fulfill, in part, the sponsors' public service obligations to children. CTW observed that a responsibility which Congress deemed so important as to have been the impetus for the Act should not be capable of being evaded, even in part, and that the proposal will cause a "ghetto" stigma to attach to host stations and perhaps even to "core" programming itself. CTW also noted that program sponsorship will not support an increase in

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<sup>48/</sup> Nor should the Commission adopt a weak enforcement posture with respect to the CTA based on the belief that Congress, today, would not enact such legislation. The fact that so-called "V-chip" legislation (requiring television sets to contain circuitry enabling parents to block viewing of violent programming) recently passed both Houses of Congress surprised most observers, but reflects continuing active Congressional concern over television's impact on children.

nationally-distributed educational programming (which generally has the greatest potential for engaging children's interest), and that unless joint sponsorship (of the same program) and "double counting" (crediting both the sponsor and the host for the same program) are both barred, program sponsorship could actually result in a decrease in available educational programming.

Although commercial broadcasters generally did not comment on the sponsorship proposal, most public interest parties, including CME, Children Now, the American Academy of Pediatrics, and the Office of Communication of the United Church of Christ ("UCC") vigorously oppose the concept. In addition to the arguments advanced by CTW in opposition to the proposal, CME and UCC make the important point that sponsorship may undermine the goal of building audiences for educational children's programming by enabling counter-programming, whereby a sponsor station weakens its sponsored program by simultaneously airing, over its own facilities, popular children's entertainment programming.<sup>49/</sup>

CTW also agrees with the argument of C-TREC that if sponsorship is permitted, existing programming should not be able

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<sup>49/</sup> See CME Comments at 50, UCC Comments at 10-11.

to be sponsored. Particularly if local broadcasts of existing PBS programs were permitted to be underwritten by commercial stations for "core" programming credit, the result in major markets with several noncommercial stations could be a significant decrease in the number of "core" programs aired by commercial stations, as such stations drop their own educational programming to sponsor existing PBS programs.<sup>50/</sup>

CTW strongly supports public television and wholeheartedly agrees with PBS/APTS and CPB that CPB, PBS and PBS' member stations have consistently been the television industry leaders in sponsoring, distributing and broadcasting educationally effective children's programming. For the reasons set out above, however, CTW is unable to support either program sponsorship in general, or the particular sponsorship proposal advanced by PBS/APTS whereby in partial fulfillment of their obligations under the CTA, commercial broadcasters would obtain credit for new public television programming broadcast on public television stations. The CTA was created not to increase educational programming on noncommercial stations, but in response to the fact that "commercial television broadcasters

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<sup>50/</sup> C-TREC Comments at 7-8.

have failed the children of this Nation."<sup>51/</sup> Program sponsorship would subvert the Act's goal of requiring all broadcasters to meet their basic obligation to serve children. As Senator Lautenberg eloquently and unequivocally stated, "Educating and informing our children should not be an option that broadcasters can choose to pursue or not pursue. It is part of their legal obligation to serve the public."<sup>52/</sup>

#### **CONCLUSION**

The central goal of the Children's Television Act was to put an end to commercial broadcasters' selling children short, by requiring each of them to provide programming specifically designed to educate and inform children. The most effective means available to the FCC to implement this goal without involving itself in content regulation are to enact a clear, process-oriented description of qualifying "specifically designed" programming as described herein, and to adopt a processing guideline or programming standard of at least three hours per week of such programming. "Program sponsorship,"

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<sup>51/</sup> 136 Cong. Rec. S10124 (daily ed. July 19, 1990) (statement of Sen. Lautenberg).

<sup>52/</sup> Id.

however, should be rejected: it sends a message that the broadcast of programming specifically designed to educate is not so important after all.

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