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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**      **FCC 96-335**  
Washington, D.C. 20554

In the Matter of )  
)  
Policies and Rules Concerning )  
Children's Television Programming )      MM Docket No. 93-48  
)  
Revision of Programming Policies )  
for Television Broadcast Stations )

**REPORT AND ORDER**

Adopted: August 8, 1996      Released: August 8, 1996

By the Commission: Commissioner Quello concurring and issuing a statement;  
Commissioner Ness issuing a separate statement; Commissioner Chong concurring in part and  
issuing a statement.

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## I. INTRODUCTION

1. In this Order, we take action to strengthen our enforcement of the Children's Television Act of 1990 ("CTA"),<sup>1</sup> which requires the Commission, in its review of each television broadcast license renewal application, to "consider the extent to which the licensee . . . has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs."<sup>2</sup> In enacting the CTA, Congress found that television has the power to teach children -- that "television can assist children to learn important information, skills, values, and behavior, while entertaining them and exciting their curiosity to learn about the world around them."<sup>3</sup> Congress also found, however, that there are significant market disincentives for commercial broadcasters to air children's educational and informational programming.<sup>4</sup> The rules we adopt today are intended to counteract these market disincentives and to ensure that broadcasters fulfill the promise of the Children's Television Act to our nation's children. We alter our regulations to provide greater clarity about broadcasters' obligation under the CTA to air programming "specifically designed" to serve the educational and informational needs of children and to improve public access to information about the availability of these programs.

2. As explained in greater detail below, we conclude that our initial regulations implementing the CTA have not been fully effective in prompting broadcasters "to increase the amount of educational and informational broadcast television programming available to children."<sup>5</sup> Our review of the record in this proceeding reveals several problems. First, because of their imprecision in defining the scope of a broadcaster's obligation under the Children's Television Act, our rules have led to a variation in the level and nature of broadcasters' compliance efforts that is incompatible with the intent of the CTA. In so doing, our rules fail to adequately counterbalance the marketplace disincentives as Congress intended when it enacted the CTA. Indeed, some broadcasters are carrying very little regularly scheduled standard length programming specifically designed to educate and inform children. Second, some broadcasters are claiming to have satisfied their statutory obligations with shows that, by any reasonable benchmark, cannot be said to be "specifically designed" to educate and inform children within the meaning of the CTA. Third, parents and others frequently lack timely access to information about the availability of programming in their

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<sup>1</sup>Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, 394.

<sup>2</sup>47 U.S.C. § 303b.

<sup>3</sup>47 U.S.C. § 303a note. See also S. Rep. No. 227, 101st Cong., 1st Sess. 5-9 (1989) ("Senate Report").

<sup>4</sup>Senate Report at 9.

<sup>5</sup>Id. at 1.

communities specifically designed to educate and inform children, exacerbating market disincentives. Therefore, as proposed in the Notice of Proposed Rule Making ("NPRM") we released in April 1995,<sup>6</sup> we refine our policies and rules implementing the CTA to remedy these problems.<sup>7</sup>

3. First, we adopt a number of proposals designed to provide better information to the public about the shows broadcasters air to fulfill their obligation to air educational and informational programming under the CTA. Such information will assist parents who wish to guide their children's television viewing and, if large numbers of parents use that information to choose educational programming for their children, increase the likelihood that the market will respond with more educational programming. In addition, better information should help parents and others have an effective dialogue with broadcasters in their community about children's programming and, where appropriate, to urge programming improvements without resorting to government intervention.

4. Second, we adopt a definition of programming "specifically designed" to educate and inform children (or "core" programming) that provides better guidance to broadcasters concerning programming that fulfills their statutory obligation to air such programming. In order to qualify as core programming, a show must have serving the educational and informational needs of children as a significant purpose. The Commission will ordinarily rely on the good faith judgments of broadcasters as to whether programming satisfies this test and will evaluate compliance of individual programs with this definition only as a last resort. Our new definition of core programming includes other objective elements. A core program must be a regularly scheduled, weekly program of at least 30 minutes, and aired between 7:00 a.m. and 10:00 p.m. The program must also be identified as educational and informational for children when it is aired and must be listed in the children's programming report placed in the broadcaster's public inspection file.

5. Third, we adopt a processing guideline that will provide certainty for broadcasters about how to comply with the CTA and facilitate our processing efforts. As described more fully below, under this guideline, broadcasters will receive staff-level approval of the CTA portion of their renewal applications if they air three hours per week of core programming or if, while providing somewhat less than three hours per week of core programming, they air a package of programming that demonstrates a level of commitment to

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<sup>6</sup>Notice of Proposed Rule Making, In the Matter of Policies and Rules Concerning Children's Television Programming and Revision of Programming Policies for Television Broadcast Stations, MM Docket No. 93-48, 10 FCC Rcd 6308 (1995).

<sup>7</sup>The actions we take today are consistent with a proposal submitted by President Clinton on behalf of "a group including educators, child advocates, and broadcast industry representatives" on how to revise our rules "to provide educational programming for America's children in fulfillment of the purpose of the 1990 Children's Television Act." Letter from President Clinton to Chairman Reed Hundt (July 31, 1996). The National Association of Broadcasters ("NAB") participated in this group and submitted the identical proposal in supplemental comments. See NAB Supplemental Comments (filed July 29, 1996).

educating and informing children that is at least equivalent to airing three hours per week of core programming. Broadcasters that do not meet this guideline will be referred to the full Commission for consideration, where they will have a full opportunity to demonstrate compliance with the CTA, including through efforts other than "core" programming and through nonbroadcast efforts.<sup>8</sup>

6. By publishing our guideline for processing television renewal applications, and by identifying in advance those broadcasters who clearly are in compliance with the CTA and those who may not be in compliance, a processing guideline will help ensure that broadcasters who wish to provide an ample amount of children's educational programming will not find themselves at an unfair disadvantage in the market relative to competing broadcasters who do not, and will not find themselves facing competitive pressure to forgo airing educational programs. A processing guideline will also facilitate speedy and consistent application processing by Commission staff. In short, a processing guideline is a clear, fair and efficient way to implement the Children's Television Act.

7. With regard to the constitutional arguments that have been raised in this proceeding, we conclude, as Congress did when it enacted the CTA, that requiring broadcasters to serve the educational and informational needs of their child audience is clearly within the scope of the long recognized obligation of broadcasters to serve the public interest. We further conclude that the regulations we adopt today directly advance the government's substantial, and indeed compelling, interest in educating America's children. At the same time, the regulations are appropriately tailored to provide flexibility for broadcasters.

8. Congress has enlisted the creativity of broadcasters to advance the nation's powerful interest in educating its youth. As Congress stated, "[i]t is difficult to think of an interest more substantial than the promotion of the welfare of children who watch so much television and rely upon it for so much of the information they receive."<sup>9</sup> We believe that this Report and Order advances that interest.

## II. BACKGROUND

### A. The Importance of Children's Educational Television Programming

9. Congress has recognized that television can benefit society by helping to educate and inform our children. In enacting the CTA, Congress cited research demonstrating

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<sup>8</sup>See 47 U.S.C. § 303b(b) (providing that, in addition to considering educational and informational programming aired on the licensee's station, the Commission may consider "any special nonbroadcast efforts" by the licensee to enhance the value of such programming, and "any special efforts" by the licensee to sponsor programming on another station in its market).

<sup>9</sup>Senate Report at 17; see also H. Rep. 385, 101st Cong., 1st Sess. 11 (1989) ("House Report").

that television programs designed to teach children specific skills are effective.<sup>10</sup> For example, children who watch "Mister Rogers' Neighborhood" and "Sesame Street" have been shown to learn task persistence, imaginative play, and letter and number skills.<sup>11</sup>

10. Studies confirm, and many commenters in this proceeding agree,<sup>12</sup> that children can benefit substantially from viewing educational television.<sup>13</sup> In one such study, children who watch "Barney" showed greater counting skills, knowledge of colors and shapes, vocabulary, and social skills, than children who did not watch the program.<sup>14</sup> Although all children can benefit from educational television, it has been found to be particularly beneficial to children from lower income families. A study conducted by Dr. Aletha Huston and Dr. John Wright, co-directors of the Center for Research on the Influences of Television on Children at the University of Kansas, demonstrated that children from low- and moderate-income families who frequently watch "Sesame Street" and other educational programs from ages 2 to 4 performed better on vocabulary, school readiness, pre-reading, and math tests than non-viewers as much as three years later.<sup>15</sup> These differences occurred even when results were controlled for initial language skill and qualities of family and home environment.<sup>16</sup> The

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<sup>10</sup>See Senate Report at 5-9. In addition, recent study published by the Department of Education concluded that 'contrary to popular assertions, children are cognitively active during television and attempt to form a coherent connected understanding of television programs.' See Daniel Anderson, *The Impact on Children's Education: Television's Influence on Cognitive Development*, U.S. Department of Education, Working Paper No. 2, April 1988; see also S. Hrg 101-69, April 12, 1989 (testimony of Daniel Anderson).

<sup>11</sup>See Senate Report at 5; see also S. Rep. No. 797, 101st Cong., 1st Sess. 4 (1989) (Senate Report accompanying National Endowment for Children's Educational Television Act -- referred to herein as "Endowment Report").

<sup>12</sup>See, e.g., Center for Educational Priorities ("CEP") Comments at 3-6; Children's Television Workshop ("CTW") Comments at 3-6; Huston & Wright Comments at 2-3. See also Comments of Newton C. Minow and Craig L. LaMay ("Minow and LaMay") at 44. These commenters submitted a copy of their book, "Abandoned in the Wasteland: Children, Television, and the First Amendment," Hill & Wang (1995). References to the comments filed by these parties refer to page numbers in this book.

<sup>13</sup>The Commission's Television Task Force found that educational programming positively affects the development of children, particularly preschool children, whose limited reading capacity restricts the range of educational resources available to them. See Federal Communications Commission, Television Programming for Children, A Report of the Children's Task Force, Vol. I, at 20 (1979).

<sup>14</sup>Jerome Singer, Ph.D. and Dorothy Singer, Ed.D., "Barney & Friends as Education and Entertainment," Feb. 25, 1994, at 21, 31.

<sup>15</sup>See Aletha C. Huston and John C. Wright ("Houston" and "Wright" ) Comments at 3. A complete copy of this study was submitted as Attachment 1 to the comments filed by CTW.

<sup>16</sup>Id. This study also showed that children ages 6-7 who regularly watched children's educational programs performed better on tests of reading comprehension and in-school adjustment than other children. In addition, children who watched shows such as "Sesame Street" spent less time watching cartoons than other children, and more time reading and engaged in educational activities. See CTW Comments, Attachment 1 (Huston & Wright study) at 1-2.

Children's Television Workshop ("CTW") submitted another recent study performed by Westat, Inc. that showed that preschoolers from low-income families who watch "Sesame Street" demonstrated more advanced literacy and numeracy skills than their counterparts who did not watch the program.<sup>17</sup> Thus, there is substantial information before us showing that television can educate children.

11. That television has the power to teach is important because nearly all American children have access to television and spend considerable time watching it. Recent data show that television reaches 98 percent of all American homes, including well over 90 percent of households with annual incomes below \$5,000.<sup>18</sup> Data also show that children from ages 2 to 17 watch on average more than 3 hours of television each day.<sup>19</sup> The significance of over-the-air television for children is reinforced by the fact that fewer children have access to cable television than to over-the-air television. In the United States, 38 percent of children from ages 12 to 17 and 37 percent of children from ages 2 to 11 live in homes that are not connected to cable television.<sup>20</sup> Indeed, according to the consumers expenditure survey of the Bureau of Labor Statistics, the percentage of consumer households<sup>21</sup> that subscribe to cable television or community antenna systems increases significantly with

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<sup>17</sup>See CTW Comments, Attachment 2 at 20. Other commenters stated that educational programming is especially valuable to minority and low income children because they spend more time watching television and do not have access to as many alternative sources of education. They also stated that the availability of new technologies does not eradicate the need for educational programming on commercial stations because lower income children are less likely to have access to these alternative technologies. See Comments of the Center for Media Education (filed jointly with 19 other parties including Peggy Charren, the American Psychiatric Association, the Consumer Federation of America, the National Education Association, and the National Parent Teacher Association ("CME et al.)) at 22-24; Arthur D. Sheekey ("Sheekey") Comments at 2.

We noted in the NPRM that we were aware as well that some researchers have questioned the "learning gain" of children who watch "Sesame Street." NPRM, 10 FCC Rcd at 6313 n.14 (citing Sorry, Ernie. TV Isn't Teaching, New York Times, November 12, 1994). Nonetheless, we also noted that, based on other studies and evidence, Congress has determined that children benefit in important ways from viewing educational and informational programming. Id. at 6313 n.14.

<sup>18</sup>Endowment Report at 12. According to the Department of Commerce, more homes have television than have indoor plumbing. Id.

<sup>19</sup>Television Audience 1993 at 14, Nielsen Media Research, 1993.

<sup>20</sup>Nielsen Universe Estimates for January 1, 1996, Nielsen Media Research, 1996. This compares to 34 percent of U.S. households not connected to cable. Id.

<sup>21</sup>In this survey, the Bureau of Labor Statistics uses the term "consumer units" rather than consumer households. A consumer unit is defined as members of a household related by blood, marriage, adoption, or other legal arrangement; a single person living alone or sharing a household with others but who is financially independent; or two or more persons living together who share responsibility for at least 2 out of 3 major types of expenses -- food, housing, and other expenses. Students living in university-sponsored housing are also included in the sample as separate consumer units. U.S. Department of Labor, Bureau of Labor Statistics, Consumer Expenditures in 1994, Report 902 (February, 1996), 5.

household income. Thus, while about 75 percent of consumer households with incomes of \$70,000 and over subscribe to cable television, only about 36 percent of consumer households with incomes less than \$5,000 subscribe to cable.<sup>22</sup> Hence, over-the-air broadcasting is an important source of video programs for children and for all members of low income families, including children.

12. Television reaches children earlier and for more hours per day than any other educational influence except perhaps family.<sup>23</sup> Many children watch television before they are exposed to any formal education.<sup>24</sup> Nearly 70 percent of day-care facilities have a television on for several hours each day.<sup>25</sup> By the time most American children begin the first grade, they will have spent the equivalent of three school years in front of the television set.<sup>26</sup>

13. Some have argued that children will not watch educational programming. But there are studies that show that, where educational programming is available, a large percentage of children watch. The Westat study found that the majority of young children in all demographic groups watch "Sesame Street."<sup>27</sup> Another study submitted by CTW suggests that children do not distinguish between educational and non-educational programming, and that they do not find educational programming less appealing.<sup>28</sup> CTW noted that quality programming specifically designed to meet children's educational and informational needs can attract sizeable audiences, as evidenced by "Sesame Street" and "Ghostwriter."<sup>29</sup> In addition, Fox Broadcasting Company, Fox Children's Network ("FCN"), and Fox Affiliates Association

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<sup>22</sup>Bureau of Labor Statistics, Consumer Expenditure Surveys, Table 2, Income Before Taxes, Interview Survey, 1994, 36.

<sup>23</sup>Huston & Wright Comments at 3. One researcher's estimate of the amount of time pre-schoolers spend watching television ranged from 13.3 to 27.8 hours/week. See Anderson, supra n.10, at 12-13.

<sup>24</sup>Senate Report at 5. At peak viewing hours, more than 20 percent of children ages 2 to 5 are watching television. See Appendix D.

<sup>25</sup>Minow and LaMay Comments at 19 (citing "Television Usage in Child Care Centers," Statistical Research, Inc., May 1994).

<sup>26</sup>Minow and LaMay Comments at 18. See also Anderson, supra n.10, at 12-13.

<sup>27</sup>CTW Comments, Attachment 2 at 5. According to CTW, "Sesame Street" is watched by close to 90% of children prior to beginning school, including children from all ethnic groups and socioeconomic strata. Id.

<sup>28</sup>See Shalom M. Fisch, William Yotive, Susan K. McCann, M. Scott Garner, and Lisa Chen, "Science on Saturday Morning: Children's perceptions of science in educational and non-educational cartoons," October 1995, CTW Comments, Attachment 3 at 15.

<sup>29</sup>CTW Comments at 5.

(collectively referred to herein as "Fox") submitted evidence that the educational programs developed by the FCN receive high ratings.<sup>30</sup>

## B. The History of Government Efforts to Promote Children's Educational Television

14. For over 30 years, the Commission has recognized that, as part of their obligation as trustees of the public's airwaves, broadcasters must provide programming that serves the special needs of children. The Commission's efforts to promote programming for children began in 1960 with the statement that children were one of the several groups whose programming needs television licensees must meet to fulfill their community public interest responsibilities.<sup>31</sup> In 1974, the Commission specifically recognized that broadcasters have an obligation to provide children's educational programming:

"We believe . . . that the broadcaster's public service obligation includes a responsibility to provide diversified programming designed to meet the varied needs and interests of the child audience. . . . In this regard, educational or informational programming for children is of particular importance."<sup>32</sup>

The Commission concluded at that time, however, that it was not necessary to prescribe the number of hours of such programming that broadcasters should show per week.<sup>33</sup> Instead, the Commission stated that it expected the industry to take steps voluntarily to increase the amount of educational and informational programming for children.<sup>34</sup>

15. The Commission's 1974 Policy Statement asked broadcasters to make a meaningful effort to provide programs for children, of which a reasonable part should be educational programming, to increase the number of programs aimed at children in specific age groups, and to improve scheduling practices so that children's programming would be aired during both weekends and weekdays.<sup>35</sup> The Commission also adopted policies

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<sup>30</sup>See Fox Reply Comments at 6-7. (Although Fox styled this document "Ex Parte Presentation," it is referred to herein as Reply Comments because it was filed prior to the deadline for reply comments and refers to comments filed by other parties.)

<sup>31</sup>Report and Statement of Policy Re: Commission En Banc Programming Inquiry, 44 FCC 2303 (1960).

<sup>32</sup>Children's Television Report and Policy Statement, 50 FCC 2d 1, 5 (1974), aff'd, Action for Children's Television v. FCC, 564 F.2d 458 (D.C. Cir. 1977) ("1974 Policy Statement").

<sup>33</sup>1974 Policy Statement, 50 FCC 2d at 6.

<sup>34</sup>Id. at 6-7.

<sup>35</sup>Id. at 6-8.

concerning commercialization in children's programming.<sup>36</sup> The Commission stated that it expected the industry to take self-regulatory steps to comply with these guidelines by January 1, 1976.<sup>37</sup> To evaluate the success of this program, the Commission revised its renewal forms to obtain information on commercialization practices and programming designed to serve children and kept the docket open.<sup>38</sup> The United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") affirmed the Commission's decision as a reasonable exercise of its regulatory authority.<sup>39</sup>

16. In 1978, the Commission sought to determine what changes had taken place since 1974, and whether self-regulation had been effective.<sup>40</sup> In 1979, the Commission's Children's Television Task Force ("Task Force") concluded that, although the industry generally had complied with the commercial time limits adopted in 1974, it had not complied with the programming guidelines.<sup>41</sup> The Task Force reported that licensees aired an average of 2.6 hours of "instructional" programs in a composite week in 1977-78, as compared with 2.8 hours during a composite week in 1973-74.<sup>42</sup> The Task Force concluded, therefore, that market forces had failed to ensure that television programming was responsive to the needs and interests of children. The Task Force attributed this failure to the limited ability of the child audience to influence the advertiser-supported television market.<sup>43</sup> Responding to this finding, the Commission released a Notice of Proposed Rule Making in late 1979 that outlined a series of options ranging from relying on noncommercial television for children's programming to adopting mandatory quantitative requirements.<sup>44</sup>

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<sup>36</sup>The Commission stated its expectation that the industry would eliminate "host selling" and product "tie-ins," use separation between programs and commercials during children's programming, and honor the industry's voluntary guidelines to air no more than 12 minutes per hour of advertising on weekday children's programs and 9.5 minutes per hour for weekend programming. Id. at 12-13.

<sup>37</sup>Id. at 19.

<sup>38</sup>Id. at 13-14, 19.

<sup>39</sup>Action for Children's Television v. FCC, 564 F.2d 458 (D.C. Cir. 1977).

<sup>40</sup>Second Notice of Inquiry, Gen. Docket No. 19142, 68 FCC 2d 1344 (1978).

<sup>41</sup>Federal Communications Commission, Television Programming for Children, A Report of the Children's Task Force, Vol. 1, at 3 (1979).

<sup>42</sup>The Amount of Children's Instructional Programming Aired During the 1973-74 and 1977-78 Television Seasons, Dr. Brian F. Fontes, published in Television Programming for Children: A Report of the Children's Television Task Force, Federal Communications Commission, October 1979, vol 3, at 4.

<sup>43</sup>Id., Vol. 1 at 42-44.

<sup>44</sup>Notice of Proposed Rule Making, Docket No. 19142, 75 FCC 2d 138 (1979). As to the latter option, the 1979 Notice proposed to require that all commercial television stations provide five hours per week of educational programming for preschool children (ages two to five) and two and one-half hours per week of educational

17. In 1983, the Commission held an en banc hearing to update the record regarding issues raised in the 1979 Notice of Proposed Rulemaking, and, in 1984, released the Children's Television decision concluding the rulemaking.<sup>45</sup> The Commission concluded that there was no basis on the record before it "to apply a national mandatory quota for children's programming."<sup>46</sup> The Commission explained that it had chosen not to rely on the findings of the 1979 Task Force because the Task Force had not considered the video distribution industry as a whole.<sup>47</sup> After considering the supply of programming available on cable and noncommercial stations, the Commission decided that "there is no national failure of access to children's programming" requiring quantitative or other specific program-related requirements for broadcasters.<sup>48</sup> Nonetheless, the Commission emphasized that broadcasters had a "continuing duty . . . to examine the program needs of the child part of the audience" and chose to rely on this broadly worded obligation and market forces to ensure a sufficient amount of educational programming for children. The D.C. Circuit again affirmed the Commission's decision on appeal as a reasonable exercise of agency discretion.<sup>49</sup>

18. The Commission has no independent information about the amount of children's programming aired following the 1984 Report decision. According to one commenter, however, the three major networks collectively aired more than 11 hours per week (individually about 3.7 hours per week) of children's educational programming in

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programming for school age children (ages six to twelve). The proposal would have required that this programming be scheduled between 8:00 a.m. and 8:00 p.m., Monday through Friday. Id. at 148.

<sup>45</sup>Children's Television Programming and Advertising Practices Report and Order, MM Docket No. 19142, 96 FCC 2d 634 (1984)(1984 Report), aff'd, Action for Children's Television v. FCC, 756 F.2d 899 (D.C. Cir. 1985)(1985 ACT Decision).

<sup>46</sup>1984 Report at 656.

<sup>47</sup>Id. at 644.

<sup>48</sup>Id. at 647, 656.

<sup>49</sup>Action for Children's Television v. FCC 756 F.2d 899 (D.C. Cir. 1985).

1980.<sup>50</sup> NAB states that broadcasters averaged two hours per station in 1990, and 3.6 hours per station in 1993.<sup>51</sup>

19. In 1984, the Commission also repealed the commercial guidelines for children's programming.<sup>52</sup> In 1987, the D.C. Circuit ruled that there was no evidence to support the Commission's decision and remanded it to the Commission for further explanation of its decision to eliminate its "longstanding children's television commercialization guidelines."<sup>53</sup> The court found no reasoned basis for the Commission to alter its policy regarding commercialization.

20. The Commission responded to the remand by issuing a Further Notice of Proposed Rulemaking and Notice of Inquiry seeking comment on the issue of commercialization guidelines for children's television.<sup>54</sup> The Commission took no further action on children's television issues until after Congress enacted the CTA in 1990. The Senate Report on the CTA cited the Commission's 1984 decisions as precipitating factors in the enactment of the CTA.<sup>55</sup>

21. Congress enacted the CTA both to impose limitations on the number of commercials shown during children's programs and to make clear that the FCC could not rely solely on market forces to increase the educational and informational programming available to children on commercial television. While recognizing that commercial television did provide some "meritorious" programming, the Senate Report stated that "when viewed as a

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<sup>50</sup>See "Prepared Remarks of Squire D. Rushnell," June 28, 1994, FCC En Banc Hearing on Children's Television at 2 ("Rushnell Study"). (Squire D. Rushnell is the former Vice President of Children's Television for ABC.) See also NAB En Banc Reply Comments ("The 1990 Children's Television Act: Its Impact on the Amount of Educational and Informational Programming") at 1-2. NAB pointed out several problems it believes exist with the Rushnell Study, and noted that stations affiliated with the networks today air a considerable amount of non-network educational and informational programming for children. On the other hand, the finding of our Task Force that licensees aired about 2.6 hours per week of instructional programming in 1977-78 suggests that 3.7 may be too high.

<sup>51</sup>See NAB En Banc Reply Comments at 1-2. NAB asked commercial television stations to list their children's programming that met the following definition: programming originally produced and broadcast for an audience of children 16 years of age and younger which serves their cognitive/intellectual or social/emotional needs. See NAB En Banc Reply Comments ("The 1990 Children's Television Act: Its Impact on the Amount of Educational and Informational Programming") at 1-2. The NAB study is discussed infra paragraphs 37 and 40.

<sup>52</sup>See Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Logs for Commercial Television Stations, 98 FCC 2d 1076, 1105 (1984), on reconsideration, 104 FCC 2d 357, 370 (1986). In 1981, the Commission reduced its license renewal application to a postcard format and eliminated questions on children's programming. 104 FCC 2d at 370 (1986).

<sup>53</sup>See Action for Children's Television v. FCC, 821 F.2d 741, 750 (D.C. Cir. 1987).

<sup>54</sup>Further Notice of Proposed Rulemaking/Notice of Inquiry, MM Docket No. 83-670, 2 FCC Rcd 6822 (1987).

<sup>55</sup>Senate Report at 4-5.

whole, there is disturbingly little educational of informational programming on commercial television."<sup>56</sup> The Report went on to note:

The same problems with children's programming that the FCC found in 1976 exist today. Market forces have not worked to increase the educational and informational programming available to children on commercial television.<sup>57</sup>

22. In enacting the CTA Congress clearly stated its objective. The Senate Report expressly notes that the "objective of this legislation is to increase the amount of educational and informational broadcast television available to children."<sup>58</sup> Congress sought to accomplish this objective by placing on each and every licensee an obligation to provide educational and informational programming, including programming specifically designed to educate and inform children, and by requiring the FCC to enforce that obligation. This is evident from the plain text of the CTA, which states that the FCC "shall, in its review of any application for renewal of a commercial or noncommercial television broadcast license, consider the extent to which the licensee . . . has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs."<sup>59</sup>

23. The Senate Report explains the statute's language by noting that the CTA explicitly requires the FCC "to consider at the time of license renewal whether the licensee has provided programming specifically designed to meet the educational and informational needs of pre-school and school-age children."<sup>60</sup> On the floor of the House of Representatives, Congressman Lent made the same point: "Of course, TV stations already are required to serve their child audiences. But now, the FCC will be directed to gauge whether TV stations are actually meeting that obligation."<sup>61</sup> The Senate Report emphasized the newly codified obligation of broadcasters to provide children's educational programming:

As part of their public interest obligation, broadcasters can and indeed must be required to render public service to children.

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<sup>56</sup>Senate Report at 7.

<sup>57</sup>Senate Report at 9. See also House Report at 6 (noting the Committee's belief that "the new marketplace for video programming does not obviate the public interest responsibility of individual broadcast licensees to serve the child audience.").

<sup>58</sup>Senate Report at 1.

<sup>59</sup>47 U.S.C. § 303b(a).

<sup>60</sup>Senate Report at 1.

<sup>61</sup>136 Cong. Rec. H8536, 8541 (daily ed. Oct. 1, 1990) (remarks of Rep. Lent).

Children are the bedrock upon which our society rests. See Prince v. Massachusetts, 321 U.S. 158, 168 (1943). As demonstrated elsewhere in this report, children watch a great deal of television, especially before they start school, and are greatly influenced by this medium. Under these circumstances, the broadcaster as a public fiduciary must provide programming specifically designed to serve the informational and educational needs of children.<sup>62</sup>

24. The Senate Report also makes clear that Congress intended "to require broadcasters to provide programming specifically designed for pre-school and school-aged children because of the overwhelming evidence that such programming has the most impact on children's development. . . . Each broadcaster must demonstrate that it has served its child audience with programming which is designed to meet the unique educational and informational needs of children, taking into account the special characteristics of various segments of the child population in order to have their license renewed."<sup>63</sup> Although Congress required each broadcast television licensee to submit a showing to the FCC that it has reasonably met its obligation to provide such programming, the legislative history also notes that Congress intended to allow broadcasters flexibility in determining how to meet their obligation to children.<sup>64</sup> Thus, Congress indicated that the FCC could consider general audience programming in addition to programs specifically designed for children's educational and informational needs.<sup>65</sup>

### C. FCC Proceedings Implementing the CTA

25. The CTA specifies that the Commission "shall" consider, in its review of applications for television license renewal, "the extent to which the licensee . . . has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs."<sup>66</sup> Its purpose, as noted in the Act's title, is "to require the Federal Communications Commission . . . to enforce the obligation of broadcasters to meet the educational and informational needs of the child audience . . . ." The CTA also states that, "[i]n addition to consideration of the licensee's programming," the Commission "may" consider any "special" nonbroadcast efforts by the licensee that enhance the educational and informational value of educational programming, and any "special" efforts by the licensee to produce or support programming

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<sup>62</sup>Senate Report at 16; House Report at 10-11 (language virtually identical to Senate Report).

<sup>63</sup>Senate Report at 23.

<sup>64</sup>See 136 Cong. Rec. S10121 (daily ed. July 19, 1990)(remarks of Senator Inouye).

<sup>65</sup>Senate Report at 3.

<sup>66</sup>47 U.S.C. § 303 b(a).

specifically designed to serve children's educational needs that is broadcast by another station in the licensee's market.<sup>67</sup>

26. In 1991, the Commission adopted regulations to implement the CTA.<sup>68</sup> As the NPRM recounts, these regulations "contain no requirement as to the number of hours of educational and informational programming that stations must broadcast or the time of day during which such programming may be aired."<sup>69</sup> Instead these regulations require "broadcasters to air some amount of standard-length educational and informational programming specifically designed for children 16 years of age and under."<sup>70</sup> The regulations define "educational and informational programming," including programming "specifically designed" to educate and inform children, as "any television programming which furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs."<sup>71</sup> In adopting the 1991 regulations, the Commission imposed certain reporting requirements on broadcasters, but did not consider the need for measures to enhance the ability of parents and the public generally to obtain information on the availability of children's educational programming.

27. In response to concerns expressed by a number of parties that our rules provide insufficient guidance for broadcasters seeking to comply with the CTA, we initiated this proceeding with a Notice of Inquiry ("NOI") in 1993.<sup>72</sup> Based on comments responding to our NOI, as well as comments received in connection with our 1994 en banc hearing on the subject of children's educational television programming,<sup>73</sup> we proposed in the NPRM to make a number of changes to our rules to achieve the goals of the CTA.

28. In response to the NPRM, we received a substantial number of comments from interested parties, including individual broadcasters, broadcast associations, public interest groups, producers of children's programming, educational programming researchers, and elected officials. In addition, we received approximately 20,000 letters and Internet

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<sup>67</sup>47 U.S.C. § 303 b(b).

<sup>68</sup>47 C.F.R. §§ 73.671(a) (commercial stations), 73.672(a) (noncommercial stations).

<sup>69</sup>NPRM, 10 FCC Rcd at 6315.

<sup>70</sup>Id.

<sup>71</sup>47 C.F.R. §§ 73.671 Note (commercial stations), 73.672 Note (noncommercial stations).

<sup>72</sup>Notice of Inquiry, MM Docket No. 83-94, 8 FCC Rcd 1841, 1842 (1993).

<sup>73</sup>See En Banc Hearings on Children's Television in MM Docket No. 93-48, June 28, 1994.

messages from individual members of the public.<sup>74</sup> The information obtained in these comments has enhanced our understanding of the market for children's educational television programming.

#### **D. The Supply of Children's Educational Television Programming**

29. The Economics of Children's Educational Programming. As noted above, in enacting the CTA, Congress found that market forces were not sufficient to ensure that commercial stations would provide children's educational and information programming. Congress concluded that the same problems that the Commission found in 1976 still existed and that market forces had not worked to increase the educational and information programming available to children on commercial television.<sup>75</sup>

30. A number of factors explain the marketplace constraints on providing such programming. Over-the-air commercial broadcast television stations earn their revenues from the sale of advertising time. Revenues received from the sale of advertising depend on the size and the socio-demographic characteristics of the audience reached by the broadcaster's programming.<sup>76</sup> Broadcasters thus have a reduced economic incentive to promote children's programming because children's television audiences are smaller than general audiences.

31. Broadcasters have even less economic incentive to provide educational programs for children. Educational programming generally must be targeted at segments of the child audience.<sup>77</sup> An educational program for children aged 2-5, however, may well be of little interest to children aged 6-11 or children aged 12-17.<sup>78</sup> By contrast, an entertainment program for children is more likely to appeal to a broader range of children.<sup>79</sup> Thus the

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<sup>74</sup>The specific NPRM proposals most frequently addressed in these letters were our proposal to define programming "specifically designed" to meet children's educational and informational needs and our proposal to adopt a quantitative processing guideline or a programming standard.

<sup>75</sup>See Senate Report at 9.

<sup>76</sup>B. Watkins, Improving Educational and Informational Television For Children: When the Marketplace Fails, 5 Yale Law and Policy Rev. 361 (1987).

<sup>77</sup>See CME et al. Comments at 8.

<sup>78</sup>These are the age categories for children used by Nielsen in reporting audience ratings. See Huston & Wright Comments at 4-5.

<sup>79</sup>Nielsen data indicate that children ages 6 to 11 are much more likely to watch general audience or adult-oriented entertainment programs than they are to watch children's programs. Moreover, when asked to name their favorite programs, children ages 10 to 17 were much more likely to include adult-oriented or general audience programs than child-specific shows. The State of Children's Television: An Examination of Quantity, Quality, and Industry Beliefs, conducted by Amy B. Jordan for the Annenberg Public Policy Center of the University of Pennsylvania under the Direction of Kathleen Hall Jamieson, June 17, 1996, citing Nielsen Media Research, March,

market for children's educational television may be segmented by age in ways that do not characterize children's entertainment programming or adult programming. Additionally, the adult audience is much larger than the child audience. There are 59.5 million children in the television audience: 16.0 million children aged 2-5, 22.2 million aged 6-11, and 21.3 million children aged 12-17. Adults aged 18-49 number 122.2 million.<sup>80</sup> Because the adult audience is so much larger than the children's audience, the potential advertising revenues are also much larger and therefore provide broadcasters with an incentive to focus on adult programming rather than children's educational television programming. And within the category of children's programming, broadcasters have an economic incentive to select entertainment programs that appeal to a broader range of children rather than educational programs that appeal to a narrower group.

32. If stations are required to provide some educational programming for children, we believe that the same incentives could cause station owners to prefer to show such programming when relatively few adults would likely be in the audience. For example, it is less costly for broadcasters to show children's educational programs very early in the morning than to show them at later hours because the number of adult viewers lost, and hence the advertising revenues lost, will be relatively low. Hence, as discussed in Section IV and as shown in the charts in Appendix D, it is not surprising that a significant portion of children's programming is currently aired before 7:00 a.m. and that few children's programs are shown in prime time, which draws the largest adult audiences.

33. Furthermore, in the broadcasting marketplace it may be difficult for a small number of parents and others with strong demands for children's educational programming to signal the intensity of their demand for such programming. In other retail markets, consumers can demonstrate the intensity of their preferences by the amount of money they spend, *i.e.*, their dollar "votes." However, broadcasting rating services basically register only one "vote" per viewer.<sup>81</sup> But the signal that matters to the broadcaster is the dollar amount of advertising revenues. Small audiences with little buying power, such as children's educational television audiences, are unlikely to be able to signal the intensity of their demand for such programming in the broadcasting market. Therefore, broadcasters will have little incentive to provide such programming because the small audiences and small resulting advertising revenues means that there will be a substantial cost to them (the so-called "opportunity cost") of forgoing larger revenues from other types of programs not shown.<sup>82</sup>

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<sup>80</sup>See Nielsen Estimated Persons in TV Households, January 1995.

<sup>81</sup>See B. Owen and S. Wildman, Video Economics 97, 148 (1992); R. Noll, M. Peck and J. McGowan, Economic Aspects of Television Regulation 32 (1973).

<sup>82</sup>We recognize that in some instances viewers have been able effectively to communicate their displeasure with certain programs by way of boycotts. But we are unfamiliar with examples where a boycott has been equally effective in convincing broadcasters to provide more programming of a particular type.

34. The combination of all these market forces consequently can create economic disincentives for commercial broadcasters with respect to educational programming. Broadcasters who desire to provide substantial children's educational programming may face economic pressure not to do so because airing a substantial amount of educational programming may place that broadcaster at a competitive disadvantage compared to those who do very little. These and the other factors described above tend to lead to an underprovision of children's educational and informational television programming, as Congress found in the CTA.

35. The amount of educational programming on broadcast television. A number of parties have submitted studies in this proceeding examining the amount of regularly scheduled, standard length educational programming aired on commercial television stations since passage of the CTA. In the NPRM we discussed several studies described below. We concluded that they provided insufficient evidence to permit us to determine whether the CTA and our existing rules had precipitated a significant increase in the amount of children's educational programming aired on commercial television stations.<sup>83</sup> In particular, none of these studies permitted us accurately to determine what amount of programming specifically designed to educate and inform children is currently being aired. Accordingly, we asked parties to provide us with additional information and studies documenting changes in the nature and amount of children's programming. In so doing, we stated our intent to reassess the need for modification of our current children's programming rules "if data were submitted that show that the educational and informational needs of children are being met consistent with the goals of the CTA."<sup>84</sup>

36. Like the studies described in the NPRM, the studies submitted in response to the NPRM (described below) are inconclusive in establishing the exact amount of educational programming that currently is being provided by broadcasters. They arrive at different conclusions on this question in part because they define the programming to be measured and select their samples of broadcast stations in different ways. Despite their deficiencies, however, the studies do allow us to conclude that some broadcasters are providing a very limited amount of programming specifically designed to educate and inform children and that broadcasters vary widely in their understanding of the type of programming that the CTA requires. This evidence, viewed together with the rest of the record, leads us to conclude that it is necessary to take the actions adopted here to achieve the goals of the CTA.

37. We discussed in the NPRM two station surveys performed by the National Association of Broadcasters ("NAB") and the Association of Local Television Stations, Inc. ("ALTV") (formerly the Association of Independent Television Stations) that asserted that the amount of educational programming aired on commercial stations increased since passage of

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<sup>83</sup>NPRM, 10 FCC Rcd at 6318.

<sup>84</sup>Id. at 6320.

the CTA.<sup>85</sup> According to NAB, the average commercial station aired slightly more than 2 hours per week of regularly scheduled, standard-length educational programming for children in the fall of 1990 and 3.6 hours per week of such programming in 1993. In compiling these figures, NAB asked commercial television stations to list their children's programming that met the following definition: "programming originally produced and broadcast for an audience of children 16 years of age and younger which serves their cognitive/intellectual or social/emotional needs."<sup>86</sup> The ALTV survey asserted that the average independent station aired 4.64 hours per week of regularly scheduled, standard-length educational programs in the first quarter of 1994. ALTV did not ask respondents to its survey to report programming conforming to a particular definition. Instead, it asked stations to list all programs broadcast during the first quarter of 1994 that the stations believed satisfied the FCC's requirements to provide programming serving the educational and informational needs of children.<sup>87</sup>

38. We also discussed in the NPRM a study of 48 randomly selected license renewal applications filed in 1992 by stations located in the Midwestern states, which was conducted by Dr. Dale Kunkel of the University of California, Santa Barbara.<sup>88</sup> Dr. Kunkel claimed that commercial stations reported airing on average 3.4 hours per week of regularly scheduled, standard-length programming specifically designed to educate and inform children. In compiling this figure, Dr. Kunkel counted programs that were identified in some fashion in the license renewal applications as "specifically designed" to educate children; he did not impose his own definition of such programming.<sup>89</sup> However, he concludes that his figure is likely to be inflated because it accepts at face value the claims made by stations as to the educational objective of these programs.<sup>90</sup>

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<sup>85</sup>Id. at 6316-6319.

<sup>86</sup>See NAB En Banc Reply Comments ("The 1990 Children's Television Act: Its Impact on the Amount of Educational and Informational Programming") at 1-2. This definition appears to narrow somewhat the Commission's current definition of educational and informational programming as "television programming which furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs." 47 C.F.R. § 73.671 Note.

<sup>87</sup>See ALTV En Banc Reply Comments ("Status Report on Children's Television") at 5.

<sup>88</sup>NPRM, 10 FCC Rcd at 6317.

<sup>89</sup>See Kunkel NOI Comments ("Broadcasters' License Renewal Claims Regarding Children's Television Programming") at 4. His examination was limited to license renewal applications filed by 48 stations located in the midwestern United States.

<sup>90</sup>We also examined the Rushnell Study, which compared the amount of children's educational and informational programming presented by networks in certain years prior and subsequent to enactment of the CTA. NPRM, 10 FCC Rcd at 6317. Among other results, Rushnell's study claimed that the four major networks planned to present a combined weekly average of 9 hours of educational children's programming for the 1994/95 season. See NAB En Banc Reply Comments, Attachment 5.

39. Several parties also submitted studies in response to our request in the NPRM for additional data. Fox submitted a report estimating that Fox affiliated stations are airing on average four hours per week of educational programming during the 1995/1996 season.<sup>91</sup> Fox states, without elaboration, that it used an "extremely conservative" methodology in determining which programs were "bona fide" children's educational programs.<sup>92</sup> NAB and ALTV submitted new studies of the educational programming aired by commercial broadcasters. Dr. Kunkel also submitted a new study.

40. According to the updated survey of 78 stations conducted by ALTV,<sup>93</sup> the average independent television station aired 3.77 hours per week of regularly scheduled, standard length educational programming in the first quarter of 1995.<sup>94</sup> NAB sent survey questionnaires to 937 commercial stations with valid fax numbers and received 559 responses. On this basis, NAB states that in 1994 the average commercial television station aired almost four and one-third hours per week of educational and informational programming specifically designed for children.<sup>95</sup> As in its earlier study, NAB again defined educational and informational programming as "programming originally produced and broadcast for an audience of children 16 years of age and younger which serves their cognitive/intellectual or social/emotional needs."<sup>96</sup> NAB also accepted at face value stations' claims that their reported programming met this definition.<sup>97</sup> NAB's study is not conclusive on the average amount of educational and informational programming broadcasters are now providing because NAB's definition of the studied programming differs from our current definition of educational and informational programming. Nor can we rely on the NAB or ALTV studies to ascertain the range of performance by different broadcasters.<sup>98</sup> At the same time, neither association argues that all of its members are providing exactly the industry average or disputes that there are "outliers" providing very little children's educational programming.

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<sup>91</sup>Fox Reply Comments at 4 & attachments.

<sup>92</sup>Fox Reply Comments at 3.

<sup>93</sup>ALTV reports that it sent its survey to 100 member stations and received 78 "usable responses," but does not describe how it selected the original sample. ALTV Comments, Exhibits at 9.

<sup>94</sup>See ALTV Comments at 12 & Exhibit A.

<sup>95</sup>See NAB Comments at ii.

<sup>96</sup>NAB Comments, Attachment 1 at 2-4.

<sup>97</sup>Id.

<sup>98</sup>We cannot determine the content of NAB's definition or confirm the reliability of NAB's or ALTV's claims or data because neither identified in its survey the specific programs reported by stations as "educational," making it difficult to evaluate the reliability of the survey results.

41. Dr. Kunkel's new study examined 48 randomly selected license renewal applications filed in 1994.<sup>99</sup> Dr. Kunkel asserts that commercial stations on average reported airing the same number of hours of regularly scheduled, standard length programming specifically designed for children as in his earlier study of 1992 renewal applications (3.4 hours per week). Dr. Kunkel characterized as "frivolous" some broadcasters' claims that certain programs are educational.<sup>100</sup> However, even if one accepts at face value the claims of the stations in Dr. Kunkel's study of 1994 renewal applications regarding the amount of regularly scheduled programming they aired that was specifically designed to serve children's educational needs, some stations apparently aired little or no such programming.<sup>101</sup> For example, four stations (8.3 percent) in the Kunkel study did not claim to air any such programming,<sup>102</sup> In addition, eleven stations (23 percent) reported airing one hour or less of such programming per week, sixteen stations (33 percent) reported airing 1.5 hours or less of such programming per week, and twenty-five stations (52 percent) reported airing two hours or less of such programming per week.<sup>103</sup>

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<sup>99</sup>Dr. Kunkel's sample in his new study includes commercial broadcast television stations in the northeastern U.S. They are located in Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. While such a sample cannot be demonstrated to be representative of the entire U.S., the states in Dr. Kunkel's study include a significant percentage (20 percent) of television households in the U.S. TV & Cable Factbook at C-40, No. 63, 1995 Edition.

<sup>100</sup>As examples, Dr. Kunkel points to "America's Funniest Home Videos," "Biker Mice from Mars," "Bugs and Friends," "Mighty Morphin Power Rangers," "Woody Woodpecker," "X-Men," and "Yogi Bear." Kunkel Comments at 1-4 & attachments.

<sup>101</sup>It is possible that stations actually aired such programming but did not report that these programs were regularly scheduled and specifically designed to serve children's educational and informational needs. We cannot rule out this possibility but judge it unlikely given the countervailing incentive for stations to claim as much such programming as possible in order to demonstrate compliance with the Children's Television Act and Commission rules in their license renewal applications. In our 1991 proceeding, we specifically reminded licensees that, while general audience programming can contribute toward meeting the CTA's requirements, the CTA contains the "additional requirement that licensees air some programming 'specifically designed' to serve the educational and informational needs of children." Report and Order, 6 FCC Rcd at 2115. Our rules implementing the 1991 Report and Order require licensees to maintain in their local public inspection files "records demonstrating the extent to which the licensee has responded to the educational and informational needs of children in its overall programming, including programming specifically designed to serve such needs." 47 C.F.R. § 73.3526(a)(8)(iii) (emphasis added). Our standard license renewal form directs licensees to that precise section of our rules; it instructs licensees to provide a summary of, among other things, their "programming response" to the CTA "reflecting the most significant programming related to such needs which the licensee has aired, as described in 47 C.F.R. Section 73.3526(a)(8)(iii)."

<sup>102</sup>In his initial comments (attachment at page 6), Dr. Kunkel stated that five stations reported airing no "specifically designed" programming. In a February 2, 1996 letter to Mass Media Bureau Chief Roy J. Stewart, however, he corrected this number to four stations.

<sup>103</sup>Despite their limited scope, two local studies conducted by the South Florida Preschool PTA ("SFPPTA") also indicate that some stations are airing very little educational programming for children. The first study, submitted in response to our NOI, was conducted in January and February 1993, and focused on educational and informational programming aired by four commercial broadcast stations serving the Miami area. The study defined children's

42. The conclusion that some stations are airing very little educational programming for children is also supported by our experience in implementing the CTA. As the regulations enacted in 1991 provided only that broadcasters were required to provide "some" educational programming,<sup>104</sup> we assessed compliance with this requirement in the renewal cycle that ran from 1991-1994, which comprised the first renewal cycle immediately following enactment of the CTA, by examining the overall children's programming efforts of each licensee to ensure that the licensee broadcast some standard-length programming specifically designed to serve the educational and informational needs of children. Licensees that aired at least one such half-hour program<sup>105</sup> per week received staff-level approval of the CTA portion of their renewal applications.<sup>106</sup>

43. Availability of educational programming on nonbroadcast media. A number of broadcasters submitted comments arguing that the Commission should assess not just the educational programming being provided over-the-air by broadcast stations, but rather the

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programming somewhat more narrowly than do our current regulations and focused on regularly scheduled shows, which were classified "as educational/informational only if their primary intent was to educate, not entertainment shows that contained a social theme." SFPPTA NOI Comments, Attachment ("A Children's Television Act of 1990 Monitoring Report of South Florida Commercial Television Stations") at 5. SFPPTA concluded that the monitored stations were providing 0.5 to 1.5 hours per week of educational and informational programming for children. SFPPTA's second monitoring study of the same stations, conducted in February 1995 in the same manner as the first study, concludes that the stations provided between 1.5 and 2.0 hours per week of children's educational and informational programming. SFPPTA Comments, Attachment ("A Report on Miami Television Stations' Compliance with the Children's Television Act of 1990") at 4 (filed June 23, 1995.) Given their limited scope and narrow definition of the programming being measured we do not rely on these studies as measures of the precise amount of programming being offered, but as additional evidence that some broadcasters are still doing very little to comply with the CTA.

We similarly evaluate the additional local monitoring effort conducted by Linda L. Schwartz, author of the first SFPPTA study. In a letter dated June 13, 1995, Ms. Schwartz reports that the four network affiliates in Mobile, Alabama aired between 1.5 and 3.0 hours of children's educational and informational programming. See Letter from Linda L. Schwartz to FCC (filed June 19, 1995). Ms. Schwartz does not specify, but presumably she conducted this study in the same fashion that she conducted the 1993 SFPPTA study.

<sup>104</sup>NPRM, 10 FCC Rcd. at 6315.

<sup>105</sup>Throughout this Report and Order, when we refer to a half-hour of programming, we do so with a recognition that a half-hour program is typically less than 30 minutes long, to allow for commercials, station identification, etc. See, e.g., Shop Talk (March 22, 1996) citing New York Daily News (new survey from American Association of Advertising Agencies stated that, on average, there are 14 minutes and 43 seconds of nonprogram material in every prime-time hour).

<sup>106</sup>In some cases, it was not clear that broadcasters had provided even one half-hour program per week of programming specifically designed to educate and inform children. In instances where no programming was shown, the staff contacted the stations. If a showing was made that the station had purchased children's educational programming and therefore would be increasing the amount of children's educational programming broadcast in the future, and the licensee's operations otherwise complied with our rules, renewal was granted.

overall availability of educational programming in the video marketplace.<sup>107</sup> We believe, however, that the proper focus in this proceeding should be on the provision of children's educational programming by broadcast stations, not by cable systems and other subscription services such as direct broadcast satellite systems that, in contrast to broadcast service, require the payment of a subscription fee. The CTA itself expressly focuses on broadcast licensees. In enacting this statute, Congress found that, as part of their public interest obligations, "television station operators and licensees should provide programming that serves the special needs of children,"<sup>108</sup> and the Act applies only to television broadcast stations.<sup>109</sup> Thus, the statute focuses on the provision of children's educational programming through broadcasting, a ubiquitous service, which may be the only source of video programming for some families that cannot afford, or do not have access to, cable or other subscription services.<sup>110</sup> While noting an increase in the number of nonbroadcast outlets available for children to receive video programming, the House Report states that "the new marketplace for video programming does not obviate the public interest responsibility of individual broadcast licensees to serve the child audience."<sup>111</sup>

44. Conclusion. We conclude, on the basis of the studies before us that while some broadcasters are providing educational and informational programming as Congress intended, some are not. Congress was dissatisfied with commercial broadcasters' performance in 1990 when, according to NAB, commercial broadcasters were devoting an average of two hours per week of airtime to educational programming, and in the CTA Congress provided that each broadcaster has a duty to serve the educational and informational needs of children through its overall programming, including programming specifically designed to serve children's educational and informational needs. Yet it appears that, six years after the enactment of the CTA, at least some broadcasters are providing less than that amount. Given the Commission's duty to treat similarly situated broadcasters in a similar manner,<sup>112</sup> by approving the performance under the CTA of broadcasters providing very little educational programming we would signal that all broadcasters may provide a minimal amount of such programming. The effect of that would be contrary to our effort to counter the economic disincentive to provide children's programming described above. Moreover, in light of the greater value to advertisers of entertainment programs for adults, those broadcasters providing very little educational programming for children may receive an unfair economic advantage, a

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<sup>107</sup>See, e.g., ABC Comments at 50; CBS Comments at 18; NAB Comments at 14.

<sup>108</sup>47 U.S.C. §§ 303a (emphasis added).

<sup>109</sup>Id. at § 303b(a).

<sup>110</sup>See paragraph 11 supra.

<sup>111</sup>House Report at 6.

<sup>112</sup>Melody Music, Inc. v. FCC, 345 F.2d 730 (D.C. Cir. 1965), recently reiterated in McElroy Electronics Corp. v. FCC, 990 F.2d 1351, 1365 (D.C. Cir. 1993).

result that only exacerbates the economic disincentive to provide children's programming that Congress identified in enacting the CTA. Thus unless we modify our approach to implementing the CTA, broadcasters will be able to provide extremely little educational programming for children. That would be contrary to Congress' intent in enacting the CTA.

45. The record also shows that our definition of programming fulfilling the requirements of the CTA should be modified. As discussed above, all of the studies in the record define educational programming differently. NAB, for example, uses a definition somewhat broader than that we adopt today. In addition, Dr. Kunkel, who did not define it, but relied upon the varying interpretations of those broadcasters whose renewal applications he reviewed, concluded that some broadcasters were attempting to satisfy their CTA obligations with programs that should not be counted as satisfying the requirements of the CTA. By establishing a clear definition of "specifically designed" programming, we will give better guidance and greater incentives for broadcasters' compliance with the CTA.

46. The record in this proceeding also supports the conclusion that parents and others would profit from additional information concerning the educational programming available in their community, a matter to which we now turn.

### III. PUBLIC INFORMATION INITIATIVES

47. We conclude that the market inadequacies that led Congress to pass the Children's Television Act can be addressed, in part, by enhancing parents' knowledge of children's educational programming.<sup>113</sup> One way to encourage licensees to provide such programming is to encourage and enable the public, especially parents, to interact with broadcasters.<sup>114</sup> Easy public access to information permits the Commission to rely more on marketplace forces to achieve the goals of the CTA and facilitates enforcement of the statute by allowing parents, educators, and others to actively monitor a station's performance. As CBS "wholeheartedly" agrees, "judgments of the quality of a licensee's programming, educational or otherwise, are best made by the audience, not the federal government."<sup>115</sup> Thus, our rules should facilitate easy access to information regarding children's educational programming in their community.

48. Commercial television is advertiser supported. As we discuss above, advertisers pay according to audience size, and broadcasters have disincentives to air programs that attract small audiences. Parents can increase the audience of an educational

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<sup>113</sup>See NPRM, 10 FCC Rcd at 6309-10. We note that we use the term "parent" to include guardians, foster parents and others responsible for the care of children.

<sup>114</sup>Id. at 6315-20.

<sup>115</sup>CBS Comments at 6 (citing NPRM, 10 FCC Rcd at 6310).

program by encouraging their children to watch the show, but can only do so if they know in advance when the show will air and that the show is educational. Increasing the audience size for educational programs increases the incentive of broadcasters to air, and producers to supply, more such programs. Access to information can also facilitate viewer campaigns and other community-based efforts to influence stations to air more and better educational programming. In light of the evidence that parents use programming information to select programs for their children to watch,<sup>116</sup> we concluded in the NPRM that the lack of educational programming the CTA was designed to address may be attributable in part to insufficient programming information.<sup>117</sup> In the NPRM we identified several places where information about educational programs could be provided: on-air identifications; program guides and listings; and the station's children's programming reports in its public file.<sup>118</sup>

49. In considering the options to improve the information available regarding educational programming, we seek to maximize the access to such information by the public while minimizing the cost to the licensee. In response to the comments to the NPRM, we have focused on three basic methods to improve the public's access to information: commercial broadcasters should identify core programming at the time those programs are aired in a form that is at the sole discretion of the licensee; they should identify such programs to publishers of program guides; and, as detailed below, they should provide improved access to information to the public through standardized reporting and other

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<sup>116</sup>A number of commenters stated their belief that advance information about educational programs would be useful to parents in selecting programs for their children. See, e.g., ABC Comments at 14. Moreover, we noted in the NPRM that television research indicates generally that programming information could help parents influence the shows viewed by children. NPRM, 10 FCC Rcd at 6310. For example, a recent study examined the impact of viewer advisories on prime time movies and found that viewing among children from 2 to 11 was statistically significantly lower for movies carrying viewer discretion advisories. Id. (citing Hamilton, Marketing Violence: The Impact of Labeling Violent Television Content, Dewitt Wallace Center for Communications and Journalism Working Paper Series, Terry Sanford Institute of Public Policy, Duke University, December 1994).

<sup>117</sup>See NPRM, 10 FCC Rcd at 6309-10.

<sup>118</sup>Id.

means.<sup>119</sup> We note that disclosure requirements of the sort we adopt today promote First Amendment interests by increasing the flow of information to the public.<sup>120</sup>

### On-Air Identification

50. Comments. Public interest groups generally supported identifying "core" programs on the air.<sup>121</sup> For example, the Center for Media Education ("CME et al."), filing jointly with 19 other parties including the American Academy of Pediatrics ("AAP"), the American Psychological Association ("APA"), the American Psychiatric Association, the National Education Foundation, and the National Parent Teacher Association, favored the use of an icon aired at the beginning of the program.<sup>122</sup> The Children's Defense Fund and Black Community Crusade for Children ("CDF and BCCC"), filing jointly, suggested using both an on-air announcement and an icon visible throughout the program and during pre-advertisements.<sup>123</sup> Among broadcasters, ALTV and the National Association of Black Owned

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<sup>119</sup>We will continue to exempt noncommercial television licensees from children's programming reporting requirements, see Memorandum Opinion and Order, 6 FCC Rcd at 5101, and we will also exempt them from the other public information initiatives we adopt today. In light of Congressional intent to avoid unnecessary constraints on broadcasters, and in view of the commitment demonstrated by noncommercial stations in general to serving children, we believe it is inappropriate to impose reporting obligations on such stations. Id. We nonetheless encourage noncommercial stations voluntarily to comport with these initiatives to the extent feasible as a means of providing parents and other members of the public with additional information about the availability of children's educational and informational programming on all broadcast stations.

<sup>120</sup>In Meese v. Keene, 481 U.S. 465 (1987), the Supreme Court upheld the Foreign Agents Registration Act, which required the labeling of films distributed by agents of foreign governments to indicate the agent's identity and the identity of the principal for whom the agent acts. The Court agreed with the lower court that "it could not be gainsaid that this kind of disclosure serves rather than deserves the First Amendment," added that such disclosures "better enable the public to evaluate the import of the propaganda," and added that striking down the disclosure requirement under the First Amendment "[i]ronically" would "withhold[] information from the public." Id. at 477, 480, 481.

<sup>121</sup>See, e.g., Huston & Wright Comments at 3-4; Kunkel Comments at 11-12; Minow and LaMay Comments at 156-57. Dr. Kunkel contended that on-air identification will not deter children from watching, and pointed out that Fox now voluntarily airs an on-screen announcement prior to "Fox Clubhouse" that indicates that the program is endorsed by the NEA. Kunkel Comments at 12.

<sup>122</sup>See AAP Comments at 1-2; APA Comments at 5; CME et al. Comments at 32. AAP would require broadcasters to include in an icon information about the age-appropriateness of the program. See AAP Comments at 1.

<sup>123</sup>CDF and BCCC reported that Australia has implemented an icon requirement. See CDF and BCCC Comments at 11. Australian broadcasters are required to identify preschool educational programs with a "P" and primary school (under age 14) educational programs with a "C." These classifications are aired at or immediately before the start of a program and after each break or, if the program is aired without interruption, at least once every quarter-hour (superimposed on the program if necessary). See Children's Television Standards 1 (1), Television Programming Standards 11, as in force under Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992, § 21(2), as varied by a determination of the Australian Broadcasting Authority (Dec. 15, 1995), under