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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Technical Requirements to Enable Blocking of)
Video Programming Based on Program Ratings)
)

ET Docket No. 97-206

REPLY COMMENTS OF AMERICA ONLINE, INC.

America Online, Inc. ("AOL"), by its attorneys, respectfully submits these reply comments in the Notice of Proposed Rulemaking ("NPRM") in the above-captioned docket regarding the Technical Requirements to Enable Blocking of Video Programming Based on Program Ratings.^{1/} For the reasons set forth below, AOL urges the Federal Communications Commission ("FCC" or "Commission") to hold expressly that the video programming blocking requirements under consideration in this docket are wholly inapplicable to new video technologies, including new media delivered over the Internet.

INTRODUCTION

As the world's leading provider of Internet online services,^{2/} AOL provides consumers with original programming and informative content, E-mail and access to the World Wide Web and information databases, electronic magazines and newspapers, and opportunities to participate in online "chat" conferences. Collectively, these services offer consumers an interactive

^{1/} Technical Requirements to Enable Blocking of Video Programming Based on Program Ratings, Notice of Proposed Rulemaking, ET Docket No. 97-206, FCC No. 97-340, released September 26, 1997 ("NPRM").

^{2/} Founded in 1985, AOL serves over 10 million members and provides local dial-up access to consumers for its service in roughly 700 cities worldwide.

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community that enhances learning, personal communication, and productivity. To provide its members with an innovative and high quality product and to create the “AOL experience,” AOL develops interactive features such as news, sports, weather and financial information as well as local informational and independent programming through its AOL Networks and AOL Studios divisions. Some of AOL’s programming services are for distribution on both AOL’s Internet online service and through other media channels.

As an active participant in the development of emerging online and “new media” services, AOL is particularly concerned with any government proposal that would regulate these evolving services, including the proposal set forth in the NPRM to extend the application of program blocking requirements to non-traditional video distribution mechanisms. While AOL recognizes that Section 551 of the 1996 Act sets forth certain basic requirements for “apparatus designed to receive television signals,”^{3/} it urges the FCC to construe this obligation narrowly so as to ensure that the Internet and other such “new media” continue to flourish in an open and free environment, consistent with the First Amendment and sound public policy. As the Supreme Court noted in ACLU v. Reno, “[G]overnmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it.”^{4/}

COMMENTS

Significantly, every party that commented upon the scope of the FCC’s obligations under Section 551 and its application to non-traditional video agrees that the Commission should not expand the so-called “V-chip” ratings scheme to Internet online communications and new video

^{3/} Section 551 (c).

^{4/} 117 S. Ct. 2329, 2351 (1997), ___ U.S. ___.

media.^{5/} These parties correctly recognize the serious harm that could result if program blocking regulations were extended to new interactive digital video media, including Internet online services. First, the subjective judgments that are attendant to the V-chip ratings scheme pose a substantial risk that open and free communication will be chilled, undermining the vibrancy and participatory nature of the Internet as a communications medium. Second, unlike the voluntary ratings and filtering mechanisms now in use and/or being developed for the Internet and online services, the V-chip ratings framework is far less flexible and could actually serve to impede, rather than enhance, parental control of the emerging Internet online medium. These outcomes are directly contrary to clear policies promoting the growth of new services.

Today, while the Internet does not always offer full motion video comparable in speed and quality to that offered by traditional video providers, commenters accurately note that video is becoming a more prevalent feature of interactive digital media.^{6/} Consumers can download “video clips,” receive “streaming video,”^{7/} access web pages with embedded video, and otherwise use and exchange video data. Expanding the V-chip scheme to these new services could

^{5/} See, e.g., Comments of the Electronic Frontier Foundation at 2-3; Comments of Media Access Project and the Center for Democracy and Technology at 12-14; Comments of the American Civil Liberties Union at 5-6; Comments of the Information Technology Industry Council at 12-13; Comments of the Consumer Electronics Manufacturers Association at 19; Comments of the Business Software Alliance at 4-6.

^{6/} See Comments of Media Access Project and the Center for Democracy and Technology at 13.

^{7/} To access (or “play”) “video clips,” consumers typically require specific software to download onto the hard drive of their computer and open the computer file with the video images. Download times can vary, but can be substantial, with a one minute “video clip” taking as long as 45 minutes or more to download at 28.8 modem speeds. With “video streaming,” video is received on a real-time basis so as to avoid the significant wait time associated with downloading. Several different “streaming” products exist today, with future developments likely. See generally, In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Notice of Inquiry, CS Docket 97-141, (rel. June 6, 1997) at ¶¶ 99-107.

substantially undermine the growth of these new applications and thwart Congressional intent “to promote the continued development of the Internet and other interactive computer services and other interactive media.”^{8/}

Indeed, as many commenters explain, there is no evidence whatsoever that Congress intended Section 551 to apply other than to traditional television. For instance, as the Business Software Alliance notes, Congress referred specifically to the “television manufacturing industry.”^{9/} Similarly, the Consumer Electronic Manufacturers Association correctly states that express application of Section 551 to “traditional television transmissions clearly does not apply to graphics, compressed video or other Internet content.”^{10/} In light of the plain language of Section 551, the FCC must not broaden its mandate by applying program blocking obligations to new video media.^{11/}

Finally, in addition to the clear legal basis for the Commission to interpret Section 551 narrowly, it should also be stressed that whatever the status of the television broadcasting and traditional video media and the relative need for a program blocking scheme in those contexts, there is simply no need in the new media and Internet context for such a government-mandated scheme. As the ACLU correctly points out, “[u]nlike television, the Internet provides inexpensive, user controlled access....”^{12/} AOL in particular is committed to fostering parental control and has implemented numerous custom parental controls that enable parents to block

^{8/} 47 U.S.C. Section 230 (b).

^{9/} Comments of the Business Software Alliance at 6, n. 5.

^{10/} Comments of the Consumer Electronic Manufacturers Association at 19.

^{11/} Further, as the ACLU aptly notes, to the extent Congress evinced a point of view regarding blocking and the Internet, Section 552(d)(4)(A) directs the Commission to determine the availability of alternative blocking technology that enables parents to block programs without a ratings system. See Comments of the American Civil Liberties Union at 2.

children's access to chat rooms, block Instant Messages on children's accounts and limit Internet access only to "Kid Approved" sites. In AOL Version 4.0, AOL intends to enhance further these parental controls by adding reminders in key areas such as the "Welcome Screen" and the "Families Channel" to encourage a greater number of parents to use the controls and will provide more access and control options.^{13/} Thus, although protecting children is a worthy goal, the FCC should soundly reject government regulation as the means to attain it with respect to new media such as the Internet online medium.

The FCC should also be mindful of the fact that attempts to restrict or censor Internet online content through a V-chip mechanism would raise serious constitutional questions. In Reno v. ACLU,^{14/} the Supreme Court emphatically rejected the government's asserted interest in protecting minors from certain material as a lawful basis for restricting content, holding that the Internet is entitled to the highest level of protection.^{15/} To the extent the FCC would rely upon the same interest to extend Section 551 requirements to interactive digital content and new video media, its actions would also run afoul of the broad protection afforded such speech under the First Amendment.

^{12/} Comments of the American Civil Liberties Union at 5.

^{13/} In addition, AOL recently participated and helped to sponsor the Internet Online Summit: Focus on Children, a highly publicized event designed to focus on protecting children in cyberspace through the promotion and use of parental control software tools, nationwide public education, and enforcement of existing criminal laws. Participants included a diverse group of leaders from industry, education, family and child advocacy organizations, law enforcement, Congress, and the White House, USA Today, Front Page, Dec. 2, 1997. See also, "Children's Roles Key: Gore At Summit Conference Sets Kids Online Policy," Communications Daily, Dec. 3, 1997, at 3-4.

^{14/} 117 S. Ct. 2329 (1997), ___ U.S. ___.

^{15/} Id. at 2343-44.

CONCLUSION

For these reasons, AOL respectfully requests that the FCC expressly state that the proposed video programming blocking requirements are inapplicable to new media, including new media delivered over the Internet.

Respectfully submitted,

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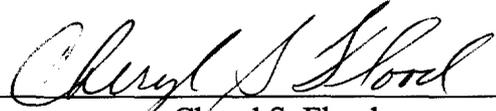
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Dated: December 18, 1997

DCDOCS: 119689.1 (2kcp01!.doc)

CERTIFICATE OF SERVICE

I, Cheryl S. Flood, hereby certify that on this 18th day of December, 1997, I caused a copy of the foregoing "Reply Comments of America Online, Inc." to be sent by messenger (*) or by first class mail, postage prepaid to the following:


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