

always distinguish the difference between what is real and what is make-believe. It would be easy to put the burden on parents to ensure what types of programming to which their children are exposed. However, this assumes that each channel has a specific format and allows for no mixed-format programming. That is not reality. The reality is that in an effort to reach multiple-target audiences many stations have a mixed format. Fox is a perfect example of a station that targets children in the morning and adults in the evening. As a result children looking for children's programming may be exposed to adult programming. They don't know that adult programs come on channel 11 but they do know that Batman does.

The second issue I would like to address is the possibility of allowing licensees to provide a "usage" fee or financial donation to facilitate public service goals. I am uncomfortable with this idea for the simple reason that it sounds like a bribe. Instead of holding licensees responsible for meeting their public interest obligation on the airwaves they can simply buy their way out of any type of programming regulation. While this may enhance the media viewing opportunities for our children in school it may leave a media viewing void in our homes. I am concerned that the programming at home could slip to a marketing extravaganza for producers of children's products. If the only goal was to siphon off part of the advertising revenues to meet the public interest goal then licensees would be encouraged to accept more advertising in the form of commercials and programs aimed directly at the children's market. This type of public interest fulfillment would allow broadcasters to bypass any obligation for "educational and informative" programming in America's households.

This is not to say the public would not demand educational television for their

children. However in the two-parent working home who has time to demand it. As parents we rely on PBS, Disney and Nickelodeon to provide the educational programming we want for our children. But without it we easily go the way of the Cartoon Network which has little, if any, educational value for our children. Is it fair to put the burden on broadcasters? Maybe not but it may be fair to ensure a partnership with parents that considers the needs of our children over the greed of the advertisers.

The third issue I would like to address is “self-regulation” by the media. It has been suggested that if you allow the media to self-regulate that quality children’s programming will continue out of market demand. I must disagree. The Children’s Television Act of 1990 is a direct result of the media’s attempt to self-regulate. In the late 70’s and early 80’s the government took a “hands-off” approach to television in an attempt to deregulate the industry. After this deregulation “the quality of children’s programming dropped to an all time low and children’s television quickly became one giant commercial.”³ In response Congress passed the CTA with “two goals in mind: (1) reinstating the commercial restrictions of the 1974 Policy; and (2) tying broadcasters’ license renewal to the quality of its children’s programs.”⁴ In a mere matter of a few years self-regulation failed children’s programming. Broadcasters blamed market pressures and the fight for the almighty advertising dollar instead of lack of self-regulation as the cause of the decline in children’s programming.

³51 SMU L. Rev. 413, *416

⁴51 SMU L. Rev. 413, *416

There are arguments for self-regulation. Proponents of self-regulation argue that it is more efficient, more flexible, has more incentives for compliance and is less costly.⁵ However, I can't help but wonder if you are leaving the wolf to guard the hen house here. The key factor to self-regulation working is industry expertise and motivation.⁶ In this situation greed may override the motivation to self-regulate. Advertising dollars provide a strong incentive to broadcasters and we have to look at what point broadcasters would be willing to forego self-regulation in a bid to earn those precious advertising dollars. In a domino effect other broadcasters competing for those same dollars may be willing to abandon self-regulation. And therein lies the true danger of self-regulation. It relies on the recipient of the benefit to police themselves.

Secondarily, the cost of self-regulation, although less expensive than government regulation, may be prohibitive to broadcasters. Particularly those broadcasters with a smaller market share of view. As a result small broadcasters may not adequately self-regulate. This could lead to several problems: (1) lack of regulation among small broadcasters; (2) attempts by larger broadcasters to "squeeze" out smaller broadcasters by reporting noncompliance to the F.C.C.; or (3) government intervention in self-regulation of noncomplying broadcasters.

Because of these concerns, I urge the Committee to recommend against self-regulation. As we saw in the 1970's and early 1980's self-regulation by the media failed this Nation's children. Children provide a smaller target audience and are the first

⁵51 Fed. Comm. L.J. 711, *718

⁶51 Fed. Comm. L.J. 711, *718

victims of media self-regulation.

Conclusion

For the reasons set out above, I urge the Committee to recommend continued enforcement of the Children's Television Act of 1990 in regards to Digital Television to ensure continued quality educational programming for our children. I believe this can be accomplished through dedicated children's channels but not through usage fees or financial "donations." I strongly recommend that the F.C.C. maintain regulation over the industry by predicating licensing on compliance with the Children's Television Act of 1990. Although the media presents a large and powerful lobbying group, they should not be rewarded for using their power to gain a "bigger" market share at the expense of children.

Jill R. Schmidtke

8418 Foxworth Trail
Powell, Tennessee 37849
(865) 938-0243

RECEIVED

MAR 23 2000

FCC MAIL ROOM

To: William Kennard, Chairman - FCC
From: Alex Waddey
CC: Professor Glenn H. Reynolds
Date: 03/17/00
Re: Comments on Proposed Minimum Public Interest Obligations

Dear Chairman Kennard,

In response to the FCC's request for comment, 65 FR 4211, (December 20, 1999), I want to communicate my view as a law student and as an avid viewer of television. I realize that numerous comments support furthering regulation. At this time, I would like to present a view from the people which opposes mandatory public interest obligations.

Introduction and Background

On December 20, 1999, the Federal Communications Commission issued a notice of inquiry regarding the public interest obligations of broadcasters in the transition from analog to digital television. Broadcasters have a major impact on both children and society as a whole. They are a prime source of news and information and contain the power to shape the way we view the world. Because of their impact, broadcasters have a certain duty to serve the public. However, this role is not something new to the broadcasters. The 1934 Communications Act requires broadcasters to serve the "public interest, convenience and necessity." While the language seems extremely broad, the requirement has evolved into obligations regarding children's programming, politics and

community issues. Specifically, broadcasters must air three hours of children's programming and provide political candidates lower advertising rates.

As technology progresses into the future, the switch from analog to digital television has enhanced the concern of public interest groups. The concern focuses on the public interest requirement of the broadcasters as technology progresses into this age. The concern arises because digital television offers numerous systems over which to broadcast. With the increased systems, proponents of public interest feel that broadcasters are receiving "something for nothing."

Public Interest Obligations are Unnecessary

Since 1934, the FCC has had a duty to protect the interests of the people. The broadcasters have upheld their end of the bargain and have gone above and beyond what has been expected. However, with the onset of digital television, a coalition, the People for Better TV, has formed to try to mandate certain minimum public interest obligations. The coalition claims that broadcasters have not adequately supplied public interest subject matter.

Proponents claim that broadcasters are receiving a \$70 million benefit for free. However, the argument is misguided. The broadcasters are not receiving anything for free. In fact, they are being forced into purchasing \$30 to \$40 million of equipment in order to make the transition.¹

¹ Catalina Camia, *Debate on Rules for Digital Television Continues*, The Dallas Morning News, May 27, 1999.

Furthermore, research gathered by the NAB leads one to realize that broadcasters are not receiving anything for free. Broadcasters are considered one of the largest providers of public service in the nation. Over the past year broadcasters have provided over \$6.8 billion in total public interest stories. The amount is divided among \$4.6 billion in public service announcements and \$2.1 billion raised for charities and other various causes.²

Currently, an evaluation of the hard numbers of community service underestimates the value broadcasters contribute to the community. The numbers are skewed because they omit various other contributions that broadcasters make to the community. Some contributions include, but are not limited to the following: charity events, blood drives and serving on boards and commissions.³

These contributions are overlooked in calculations but play a major role in supporting, educating and assisting with the community. Broadcasters are role models as well as “community cheerleaders.” While they may not be educating the public directly, they are playing a major role in assisting with the further education of the public. Just think about how many times you have seen your local broadcaster supporting “The Race for the Cure” or hosting a “Muscular Dystrophy Telethon.” While merely supporting such causes may not directly educate the people, their support helps to inform the people of certain problems that exist and provides them with a resource and understanding of how they can help out in the community. Their role of getting people in the community to join together in support of those in need, I argue, is much more important than having

² www.nab.org/newsroom/issues/commserv/default.asp

³ *Id.*

them remain isolated in the station. The development of local stories which will be aired make the broadcaster a more passive, distant part of the community, whereas, now they are an active participant. With that said, I want to address more specific areas under regulatory consideration.

Providing Political Candidates with Excess Advertising

The Gore Commission urges that political candidates receive free air time for advertising before elections. The Commission proposes an argument without considering the desire for such material. The People for Better TV argue that there is a “huge gap between what people need and what broadcasters are willing to provide.”⁴ The argument is misplaced. In the 1998 elections, exit polls revealed that eight out of ten voters said there was either an excess of coverage or the amount of coverage was ideal.⁵ Also, broadcasters donated over \$148 million in free air time for candidates, public forums and debates.⁶ Broadcasters even offered \$15 million in free air time to candidates, but as Dennis Wharton, a spokesman for the National Association of Broadcaster, says, “[t]he dirty little secret about free time is that when broadcasters offer it, it is turned down.”⁷ Politicians turn it down because they know that nationally televised debates are not necessarily the best way for them to spend their time.⁸ Debates cost time and energy and

⁴ Kathy Chen, *Regulators Weigh How to Expand Standards for Digital Broadcasting*, WALL ST. J., Dec. 15, 1999, at B4.

⁵ www.nab.org/newsroom/issues/commserv/aya/free_air_times.asp

⁶ Brooks Boliek, *FCC Begins Public Service Work*, 360 *Hollywood Reporter* 47, 4 (1999)

⁷ *Id.*

⁸ www.usatoday.com/news/e98/e1067.htm.

are not the most impressive to the people. The public is often more impressed by personal interaction.⁹

Further, the lack of desire for more political programming is apparent in the ratings. Political debates receive some of the worst ratings among programs aired. Ratings for this year's presidential debates show that all the debates combined have received fewer viewers than some of the lowest rated weekly programs. The WWF "Smackdown," the 91st ranked show of one week, received 7.2 million viewers, and "Buffy the Vampire Slayer," the 93 ranked show, attracted 3.9 million viewers.¹⁰ Wharton, adds, "[w]e don't hear a lot of clamoring from the public for more time for politicians."¹¹

No matter the popularity of political debates, viewers use specialized news channels to find out about such matters. The public primarily turns to stations such as CNN, MSNBC and C-SPAN because this subject matter is the sole mission of these channels. They have the resources available to cover the issues in the most effective, insightful and entertaining manner, and they do not face regulations. If broadcasters were subject to regulation, they would not only be "hamstrung by new, narrow, qualitative, 'one-size-fits-all' public interest obligations"¹² but also by their limited resources.

People may argue that extra information would help the public form a more educated opinion. In response to such an argument, I say be realistic. When elections

⁹ *Id.*

¹⁰ *Id.*

¹¹ Kathy Chen, *Regulators Weigh How to Expand Standards for Digital Broadcasting*, WALL ST. J., Dec. 15, 1999, at B4.

¹² *Varying Versions of Public Interest Heard By Gore Commission*, Public Broad. Report, (1997).

are over, people rejoice - no more arguing or bashing of opponents; no more boring Gore/Bradley debates. I would tend to agree that such programs may further educate the public, but they only do so if people actually watch the programs. No matter how much political content you air, "There will be a slice of the American public who will wake up and say, 'Huh? What happened? My state hasn't even voted yet!'"¹³

Increased Children's Educational Programming - More Harm than Help

The Commission also seeks comment on whether broadcasters should be required to increase the amount of children's educational television. Presently, the Telecommunications Act of 1996 requires broadcasters to ensure that 4% of their programming content consists of educational programming.¹⁴ Broadcasters have strained to met such requirements throughout the analog phase. Such a requirement in the digital phase for each stream would extremely overburden the broadcaster.¹⁵ Andrew Paul, a lobbyist for the Satellite Broadcasting and Communications Association, is concerned as to where broadcasters can find the necessary content that such obligations would require. With a nationwide base of customers, broadcasters cannot use local environmental issues therefore eliminating "a large block of what is available now."¹⁶ A lack mandatory regulation does not mean that broadcasters will ignore public interest TV. As the numbers have shown, broadcasters have voluntarily upheld their end of the bargain and will continue to do so with digital TV. Broadcasters have even considered

¹³ www.usatoday.com/news/e98/e1067.htm

¹⁴ Bill McConnell, *FCC Sets the Price for Digital, Broad. & Cable*, November 23, 1998.

¹⁵ Bill McConnell, *Deciding on Digital Public Interest, Broad. & Cable*, October 12, 1998.

¹⁶ *Id.*

making one stream an entire language teaching channel. Public advocate Gigi Sohn agrees that “[she] can live with the 4% number as long as the FCC is willing to revisit the issue in the future.”¹⁷ Sohn’s request is justifiable, but I believe, in the future, public advocates will see that broadcasters have lived up to their responsibility.

Additional reasons an increase in children’s television is not the answer are the harm caused to the parent/child relationship as well as the harm to the child individually. Children are in school from eight o’clock in the morning to three in the afternoon. Often, extracurricular activities occupy an hour or so after school; then, they have an hour or so of homework. At this time, it is around five o’clock in the afternoon, a time when parents begin to arrive home. My plea to the commission here is not to let parents take the easy way out. Parents should not rely on broadcasters to provide additional educational guidance that their children may need. The growing distance between children and parents would only be furthered by such a decision.

Parents will gain a false sense of security in allowing their kids to watch TV. One study already shows that “parents and kids spend a quarter of their time together watching TV.”¹⁸ This time spent watching TV means less time for talking, interacting and establishing a friendship with one another. Parents may respond that at least they are learning something. It is helpful to their education. However, parents should first consider studies which address this argument.

Studies reveal that the more children watch TV, the more likely they are to underachieve in academics. In addition, researchers notice a connection between the

¹⁷ *Id.*

¹⁸ www.pink-bubble.com/subcategories/media/tvguidance

amount of TV watched by a child and the likelihood of developing attention deficit disorder (ADD) or attention deficit hyperactive disorder (ADHD). The connection is obvious. The rapidly changing TV screens help form a child's brain waves. While parents may believe that more educational TV will benefit children, children who watch more TV have less creative and imaginative skill. A child grows accustomed to the frenetic pace of television whether it be from changing from channel to channel or watching the images on one channel change at a rapid pace.¹⁹ Kids should be outside playing and exercising; instead of inside watching Nickelodeon game shows which have children diving into sundaes and running obstacle courses.

Conclusion

As technology progresses at a rapid pace, the FCC is trying its best to ensure that the public's interests are not being left behind. However, the increased enforcement of public interest obligations is not the way to accomplish that objective. Broadcasters have lived up to their responsibility and will continue to do so on their own. By allowing them to police themselves, they will be able to compete with other mediums while still providing the public with educational programming in the children's arena as well as the political advertising venue. Therefore, additional regulation will merely hamstring the broadcasters. Thank you for your consideration.

Sincerely,
Alex Waddey

¹⁹ www.limitv.org/tvaddadhd.

RECEIVED

MAR 23 2000

FCC MAIL ROOM

March 17, 2000

April M. York
301 Cheshire Drive #86
Knoxville, TN 37919

Federal Communications Commission
445 12th Street
Room TW-A306, SW
Washington, DC 20554

Re: Public Comment in response to the FCC's Notice of Inquiry;
MM Docket No. 99-360; FCC 99-390; 65 FR 4211;
Public Interest Obligations of Television Broadcast Licensees

Dear Commissioners:

I am a graduate student writing in response to the Commission's Notice of Inquiry (FCC 99-390), adopted December 15, 1999. The Notice of Inquiry indicates that the Commission is considering whether it should redefine the public interest obligations of television broadcast licensees in light of the advent of new digital television technology. I believe that the Commission should seize this opportunity to define the contours of broadcasters' public interest obligations and should establish new minimum guidelines to remedy the lack of sex education for adolescents.

SEX EDUCATION IS IN THE PUBLIC'S INTEREST

Every year, approximately three million cases of sexually transmitted diseases (STDs) occur among teenagers,¹ and approximately one million teenagers become pregnant.² Birth rates for unmarried teens rose steadily in the 1980s, increasing 62% from 1980 to 1990 alone, resulting in a rate of 44.8 births per 1,000 women in the 15-19

¹ INSTITUTE OF MEDICINE, THE HIDDEN EPIDEMIC 1 (1997).

² ALAN GUTTMACHER INSTITUTE, SEX AND AMERICA'S TEENAGERS 4 (1994)

age group.³ More than 500,000 teens in this age group gave birth in 1990.⁴ The statistics concerning HIV/AIDS infection and other STDs among this age group were even more disturbing. The Centers for Disease Control (CDC) indicate that the rate of gonorrhea among teens increased almost 50% from 1981 to 1990, with adolescents accounting for 24-30% of the total reported cases in 1990.⁵

Society has responded with a series of locally based sex education programs that contain a variety of diverse curriculums aimed at curtailing the problem.⁶ The good news is that new CDC statistics analyzing youth behavior between 1991 and 1997 show that the percentage of U.S. high school students who have sexual intercourse is decreasing.⁷ Furthermore, the use of condoms among sexually active students has increased dramatically,⁸ and teen pregnancy rates fell four percent in 1997.⁹ While the reduction in the number of diseases and pregnancies is good news, a majority of high school students still engage in sexual intercourse.¹⁰ In fact the number of teens with the AIDS virus increased 65% between 1991 and 1992 alone.¹¹

³ See Stephanie J. Ventura, *Recent Trends in Teen-Age Child Bearing in the United States*, 75 STAT. BULL. 3 (1994).

⁴ *Id.*

⁵ See William Adams, *But Do You Have to Tell My Parents? The Dilemma for Minors Seeking HIV Testing and Treatment*, 27 J. MARSHALL L. REV. 495 (1994) (discussing studies on adolescent HIV/STD rates).

⁶ See *Trends in Sexual Risk Behaviors Among High School Students -- United States 1991-1997*, MORBIDITY & MORTALITY WKLY. REP. (CDC, Atlanta, Ga.), Sept. 18, 1998, 4.

⁷ See *id.* at 2

⁸ See *id.*

⁹ MSNBC, *Teen Pregnancy Rates Plummet* (visited Apr. 29, 1999) <<http://msnbc.com/news/263778.asp>> (United States Department of Health and Human Services reports teenage pregnancy rates to be the lowest since 1973).

¹⁰ See *id.* at 3; see also Bridget Murray, *Debates Over Sex Education May Put Teen Health at Risk*, APA MONITOR, Nov. 1996, at 15 (Statistics from the Alan Guttmacher Institute show that 56% of girls and 65% of boys have reported having sex by the age of 18).

¹¹ See Adams, *supra* note 5, at 499.

Society has an interest in ensuring that all children are armed with accurate information regarding sexual activity.¹² The Institute of Medicine, the World Health Organization, and the Center for Disease Control agree that “sexuality education is the best way to prevent pregnancies and sexually transmitted diseases.”¹³ Those people opposed to sex education believe that “young people who know about sex will have it.”¹⁴ However, research shows that high school students who understand their sexuality tend to delay their first sexual experience and to use birth control when engaging in intercourse.¹⁵ A lack of accurate sexual information can lead to a sex education fueled by the media and peers.¹⁶

The need for sex education becomes evident by examining the common misperceptions shared by teenagers about sex. An interview of high school girls about sexual practices revealed an alarming depth of ignorance regarding sexuality.¹⁷ For example, one girl believed that taking one of her mother’s birth control pills made her permanently infertile.¹⁸ Another girl believed if she “only had sex during the middle of... [her] ...period, then pregnancy was impossible.”¹⁹ Yet another eighteen-year-old woman “thought she could not get pregnant because she believed she was a lesbian. The woman had unprotected sex with a gay male friend, and became pregnant as a result.”²⁰

¹² *Id.*

¹³ Felix E. Gardon, *Talking to Your Kids About Sexuality* (visited Mar. 25, 1999) <<http://www.siecus.org/pubs/pubs0001.html>>.

¹⁴ *See id.*

¹⁵ *See id.*

¹⁶ *See id.* at 379.

¹⁷ *See id.* at 393.

¹⁸ *See id.*

¹⁹ *See id.*

THE GOAL OF SEX EDUCATION

The goal of sex education is to provide the young people of our country with accurate information and various points of view regarding issues of sexuality. By arming young people with knowledge, many undesirable results of relationships can be avoided. For instance, a young man may attempt to use coercion to convince his girlfriend to consent to sex.²¹ This type of coercion involves intimidation by physical aggression or threats to a person's sense of self.²² The classic words in male-female relationships are, "You would if you loved me."²³ Yet, a girl exposed to sexual education would be better able to mitigate such ploys.²⁴ Moreover, she may be likely to discuss the issue of sex with her boyfriend, instead of feeling too embarrassed to talk with him.²⁵ This discussion would allow her to express why she can love him without having sex.²⁶ By equipping teenagers with the tools of reason, teenage sexual issues can be confronted forthrightly, and the ignorance that causes teenage pregnancies and sexual diseases can be stymied.²⁷ Television represents a mechanism capable of reaching all students with an authoritative method of instruction regarding facts about sexual activity that can help reduce teenage pregnancy and sexual diseases.²⁸

²⁰ See Murray, *supra* note 10, at 16.

²¹ See NAOMI WOLF, PROMISCUITIES: THE SECRET STRUGGLE FOR WOMANHOOD, 142 (1997).

²² See *id.*

²³ See SUZETTE H. ELGIN, GENDERSPEAK, 165 (1993).

²⁴ See WOLF, *supra* note 21, at 143.

²⁵ See *id.*

²⁶ See *id.* at 170.

²⁷ See *id.* at 168-71.

²⁸ *Id.*

HOW TELEVISION BROADCASTERS CAN ADDRESS THIS PUBLIC INTEREST

In its Final Report, the Gore Commission recognized that “federal oversight of broadcasting has had two general goals: to foster the commercial development of the industry (and new technology) and to ensure that broadcasting serves the educational and informational needs of the American people.”²⁹ Even with the advent of digital television, broadcasters remain the public trustees of a public resource and continue to have an obligation, first and foremost, to serve the public interest.³⁰ Access to educational programming is an effective means of serving the public interest. The nation’s future strength may well depend upon the access of all members of society to educational resources. No means of communication is as effective an educator as television. Television is still the most watched and most trusted source of information in the United States.³¹ Specifically, children and adolescents spend many hours each week watching television.

Although many shows watched by youth address sexuality issues, few offer any meaningful or informative perspective on sexuality. For example, many of the shows found on the WB Network depict high-school students engaging in sexual activity, but few address the consequences of that activity.³² As a result, viewers are often left with a

²⁹ Final Report, Section II: The Public Interest Standard in Television Broadcasting (Dec. 18, 1998)

³⁰ Telecommunications Act of 1996, Pub. L. No. 104-104 (codified at 47 U.S.C. § 151 et seq.) (Feb. 8, 1996); 47 U.S.C. § 336(a-b) (1999).

³¹ “Deciding the Future of Television,” *The Digital Beat*, Vol. 2, No. 22 (Jan. 2000) (noting that 93% of Americans watch a television program in the course of a week and 69% of Americans view television as the most trusted source of information).

³² An anomaly can be found in a recent episode of “Popular,” which depicted a sixteen year old girl faced with a positive home pregnancy test result after having protected sex with her ex-boyfriend one time. This episode showed a very real perspective on teenage pregnancy including a dream sequence where the girl’s teacher became a Las Vegas lounge singer and sang to her about being a pregnant “dirty ho” and “prom mom on the floor.” By demonstrating one of the risks of sexual intercourse, albeit in a humorous light, the

misconception about sexuality. Television can correct those misperceptions and educate those who may not be fortunate enough to have parents or other educators who will answer their questions and keep them informed. Since television already plays a role in the sexual socialization of children, broadcasters should be required to use that role responsibly.

Proposals for Increased Sex Education Programming

To whom much is given, much is required. As digital television expands broadcasters' capacities to provide programming through multi-casting, broadcasters' public interest obligations should be expanded proportionately. Broadcasters could, through the use of multi-casting, create channels specifically devoted to sex education.³³ While this would be a positive outcome, completely relegating sex education programming to one program stream may create an "educational ghetto" that is not commonly watched by adolescents because of a perception that it is like PBS stations. As a result, broadcasters should be required to meet their public interest obligations on each program stream they utilize.

Requiring programming on popular channels may be necessary to achieve the goal of sex education. However, to avoid placing an unreasonable burden on broadcasters, the form of this programming should be left to the broadcasters' discretion. Thus, a broadcaster may choose to air many types of programming ranging from the

episode broke the traditional mold. Unfortunately, many other shows stop with the scene of the couple engaging in sexual activity and never follow up on the emotional or physical consequences of such action.

traditional “afterschool special,” to a special news or talk program geared toward teenagers and devoted to sexual topics, or sexually explicit public service announcements similar to the “this is your brain; this is your brain on drugs” campaign. When placed strategically to precede or follow other popular shows, these forms of sex education programming may reach the desired audience and provide them with needed information.

First Amendment Concerns

Determining exactly what type of programming would fulfill the goal of sex education may engender dispute and raise First Amendment concerns. However, given the prevalence of teen pregnancy and STDs today, it should not be difficult to demonstrate that such programming serves a compelling governmental interest and is narrowly tailored to achieve that interest. Applying the more common standard used to evaluate content-based regulation in the television industry, such programming is rationally related to an important governmental interest. So long as the FCC does not decide which views adolescents can and cannot hear, this proposal is fully consistent with the First Amendment and indeed promotes First Amendment values by exposing the public to a wide range of views on an issue of public concern.

CONCLUSION

The need for children in America to understand the risks and dangers associated with engaging in sexual activity is obvious. The three million teenagers contracting sexual diseases and one million teenagers getting pregnant every year can be prevented

³³ While this proposal may sound alarming to some, its usefulness in attracting teenagers through a title such as “Sex TV” may prove successful. Such a station may promote a dialogue between parents and

through an effective educational program. This Comment advocates a solution to the problem of dispersed, inefficient, and ineffective sexual education. Society should teach children how to deal with their sexuality. By using educational programming to help teenagers think through situations, the number of sexual diseases and teen pregnancies can be reduced. We must seize the opportunity presented by digital television to fulfill television's potential to serve the public good in this manner.

Sincerely,



April M. York

children about sexual topics.

March 17, 2000

William E. Kennard
Chairman
Federal Communications Commission
445 12th Street SW
Room 8B-201H
Washington, DC 20554

RECEIVED

MAR 23 2000

FCC MAIL ROOM

**Re: Public Interest Obligations of Television Broadcast Licensees
47 CFR Part 73; MM Docket No. 99-360; FCC 99-390**

Chairman Kennard:

In response to the Federal Communications Commission's (FCC) request for public comments, 47 CFR Part 73, of January 26, 2000, I would like to take this opportunity to communicate my views regarding the public interest obligations of television broadcast licensees. As a law student and an active and eager participant in the growing technological marketplace and culture that includes digital television (DTV) technology, I feel compelled to express my view that the public interest obligations of broadcast licensees, particularly those of minimum standards, political discourse, disclosure, and equal access, should be reconsidered in light of the new capabilities and opportunities DTV technology provides. Translating the current obligations of the licensees from the analog to digital format is insufficient because it does not take into account the potential for impact on our society nor the commercial possibilities that exist in the digital future. Any diminution or repeal of the current obligations would result in the unjust neglect of our common "interests, convenience, and necessity" by entities whose overriding purpose is their own enrichment via a domain belonging to the public. With the proper balancing of the public interest and the private concerns of broadcasters, it is possible to formulate a framework of mandatory minimum standards and voluntary, incentive-driven enhanced standards that will allow the public at large and the broadcasters to take full advantage of the advent of the digital age.

Minimum Public Interest Requirements

I have no doubt that the FCC is receiving numerous comments regarding the public interest obligations of broadcast licensees. What concerns me is that the majority are likely from broadcasters and organizations thereof. The ones I have accessed on the internet generally advocate the implementation of a voluntary code of conduct that broadcasters could submit to that would somewhat resemble the public interest obligations that already exist under the current licensure standards applied by the FCC. This type of proposal trumpets the virtues of economic incentives and the civic goodwill of broadcasters in safeguarding the public interest. It is implicit in their contentions that the marketplace and good will of broadcasters are sufficient to achieve the furtherance of fundamental public interests. They cite the First Amendment and Section 326 of the Communications Act as limitations on the regulatory powers of the FCC. The development of the digital bandwidth and the full economic impact of its commercialization are too important to be hindered by excessive regulatory initiatives, or so the argument goes.

To the contrary, I submit that such voluntary incentive-based schemes are, in fact, not sufficient to effectively or properly guarantee the advancement of the substantial public interest in this context. There are numerous broadcasters who are not members of the National Association of Broadcasters or other industry organizations and thus industry-based initiatives would not necessarily affect them. These broadcasters could comply or not as was their preference until license renewal without consequence. With that sort of incomplete ability to self-regulate, it is simply not feasible to allow the broadcasting industry to operate solely of their own recognizance.

That said, a voluntary, incentive-driven scheme of enhanced, aspirational standards would be an appropriate supplement to a set of mandatory minimum public interest requirements administered by the FCC under the authority conferred upon it by Congress in the Communications Act of 1934.¹ Under such an approach, all licensed digital broadcasters would be covered at least with respect to certain “floor” requirements. Moreover, digital broadcasters with genuine public interests at heart would be more than welcome, in fact encouraged and rewarded, to go beyond the barest minimums of compliance. This type of system would encompass the best of both worlds, the market mechanisms and industry inertia, on the one hand, and independent oversight and enforcement on the other. A blend of the two would result in the flexibility desired by the broadcasters to enhance the development of the digital market and the bolstering of the core public interests the broadcasters have long been charged with serving. A “phase-in period” of a year or two might be appropriate to see where the industry seems to be headed and what issues may be important which are not yet apparent. That would prevent an undue burden from falling upon broadcasters considering they would have considerable notice of what will be expected of them upon full implementation of the standards.

Political Discourse

An exciting area in which the expanded capabilities of DTV promise to command great attention and generate much comment is that of the role of broadcasters in promoting political discourse, including that of local, regional, and national politics. This role has been a significant aspect of the public interest obligations of the broadcasting industry since the earliest regulation of the medium. Broadcasters have long been

¹ Notice of Inquiry, In the Matter of Public Interest Obligations of TV Broadcast Licensees, MM Docket No. 99-360, p. 1-2.

required to allocate certain amounts of airtime during certain time periods to political candidates and for debates, issue fora, as well as other events and happenings of political import. From the earliest days of American democracy, it has been widely asserted that the media plays a crucial function in the maintenance of an “informed, participatory, and self-governing citizenry.”² Television has become the primary source of political information and access to public debate. Therefore, the importance of the promotion of political discourse remains, regardless of the technological nature of the system over which it is transmitted. Digital or analog, broadcasters have an continuing obligation to provide access to airtime for political programming and public affairs programming. Given the current state of our stagnant partisan political discourse, I submit that now more than ever, is the public interest in democracy implicated by broadcasting issues, in this case, the transition from analog technology to the digital revolution and DTV licensees obligations.

The need for reform of our political system, made so readily apparent everyday in the commercial media, is well served by the media revolution that is taking place, including but not limited to DTV. The primary blights on our system - the partisan wrangling, the hegemony of the special interests, the campaign finance morass, the need for which could be obviated by enhanced access by and to the common citizen – are entrenched. The untold potential of broadband digital technology is very promising in regard to addressing these problems. It contains the possibility of near universal access of the citizenry to the political arena and of those in the political arena to the citizenry. The expediency of special interest organizations, which purport to give deserving people a more salient voice but result all too often in undue influence for the undeserving, could be countered

² “Making Media Democratic,” Robert McChesney, Boston Review Online, <http://bostonreview.mit.edu/BR23.3/mcchesney.html>

by “virtual access” to legislative and administrative bodies, all with the ease of digital communications. The functionality of political parties in getting a message out and organizing in furtherance of it could be matched by amplifying the messages of individuals who could find themselves “inside” the process by virtue of technological access, all without serving some political machine. The maniacal hoarding of campaign war chests and the improprieties and “influence peddling” that accompany it could be rendered obsolete by enhanced access to the electorate made technologically feasible by digital communications and made available inexpensively pursuant to broadcasters’ public interest obligations.

Substantial reform, first and foremost campaign finance reform, is of the utmost significance to the continued vitality and strength of our democracy. There is great opportunity for societal advancement in the discovery and development of new technologies. We are on the cusp of some of the most remarkable technological feats in human history. It would be a great shame not to take full advantage of the potential they represent. Not only should broadcasters be required to maintain their current political discourse public interest obligations, they should be charged with even greater ones in conjunction with the reform of our wayward system of governance. Ideas, issues, and vision could be the principle political currency, rather than connections, favors, and money. Our “democracy” could finally aspire to be just that, rather than a self-deluding oligarchy.

Equal Access

DTV likewise portends significant opportunities for the advancement of equal access to social, political, economic, and cultural power of broadcast media by all people,