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FEDERAL COMMUNICATIONS COMMISSION
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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Public Interest Obligations
Of TV Broadcast Licensees

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MM Docket No. 99-360

Comments of

CHILDREN NOW

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March 24, 2000

No. of Copies rec'd at 4
List A B C D E

TABLE OF CONTENTS

I. INTRODUCTION.....	1
A. THE STATE OF THE NATION’S CHILDREN	2
B. CHILDREN & THE ADVISORY COMMITTEE ON THE PUBLIC INTEREST OBLIGATIONS OF DIGITAL TELEVISION BROADCASTERS	4
C. THE FEDERAL COMMUNICATIONS COMMISSION’S NOTICE OF INQUIRY	5
II. DTV’S TECHNOLOGICAL ADVANCES & CHILDREN.....	6
A. ENHANCED AUDIO-VISUAL QUALITY	8
B. MULTICASTING	11
C. MULTIPLEXING – ANCILLARY & SUPPLEMENTARY SERVICES	14
D. DIGITAL VIEWER EXPERIENCE QUALITY (DVEQ) & BANDWIDTH MANAGEMENT	19
III. THE CHILDREN’S TELEVISION ACT	20
A. BACKGROUND.....	20
B. THE CHILDREN’S TELEVISION ACT OF 1990.....	23
C. THE CHILDREN’S TELEVISION ACT—MORE STRINGENT RULES	25
D. THE THREE-HOUR RULE: IS IT LIVING UP TO ITS EXPECTATIONS?	25
E. THE THREE-HOUR RULE: INSIDERS’ REACTIONS.....	27
F. LOCAL OBSERVATIONS RELEVANT TO THE CHILDREN’S TELEVISION ACT	28
G. MANDATING RULES IN A NEW DIGITAL ERA	31
IV. ANALYSES & RECOMMENDATIONS.....	32
A. MINIMUM PUBLIC INTEREST OBLIGATIONS SHOULD BE SPECIFIC	32
B. SERVING THE NATION’S CHILDREN.....	33
1. <i>The Children’s Television Act in Digital</i>	33
a. The Digital Three-Hour Rule for E/I Programming: Proportional Hours Requirement	34
b. The Digital DVEQ Rule for E/I Programming: Proportional DVEQ Requirement.....	35
c. Pay or Play Model	36
d. Diversity of Programming	39
e. Ratings and the V-Chip	42
f. Commercials.....	44
2. <i>Additional Opportunities and Obligations</i>	46
3. <i>Children’s Privacy & Protection on DTV</i>	47
C. DISCLOSURE REQUIREMENTS.....	48
D. DIVERSITY	50
APPENDICES (A-J)	

I. INTRODUCTION

Children Now, in association with the national coalition People for Better TV, hereby submit the following comments in response to the *Notice of Inquiry* (hereinafter, “*Notice*”) in the above-captioned proceeding that was released on December 20, 1999. Children Now commends the Commission for opening this inquiry into the public interest obligations of television broadcast licensees as the revolutionary transition from analog to digital television (“DTV”) technology begins. The implications of this transition and its effects on the American public, particularly America’s children, are unprecedented.

These comments will begin by exploring the particular importance of children’s issues for this FCC inquiry, the Advisory Committee’s recommendations regarding children’s programming in the digital era, and the specific FCC requests that we will address. The second section will examine the DTV technological advances that will impact children most significantly during the transitional period. The third section will assess the Children’s Television Act of 1990 and its impact on current programming. Finally, we present a set of recommendations regarding areas of DTV broadcasting that will affect children. These recommendations are starting points for further research and analysis, and should be considered for future rule-making. Children Now joins People for Better TV in their request for a rule-making proceeding and hearings to determine specifically the public interest obligations of digital broadcasters.¹

These comments benefit from a series of discussions that Children Now has undertaken since the beginning of 2000. This series includes conversations with leading academics, advocates, and industry professionals, regarding their general opinions of

DTV public interest obligations and children.² We will continue this important process with a formalized schedule of interviews and meetings throughout the rule-making process to obtain the highest level of relevant expertise.

A. The State of the Nation's Children

Officials recognize that the meaning of the public interest will change – indeed, must change – in a new communications environment in which viewers rather than programmers choose what to watch and when, and in which viewers may one day even produce and distribute programs themselves. There are few firm points of agreement on how this new communications environment should be structured or whom it should serve . . . But everyone everywhere can agree on one precept: the public interest requires us to put our children first.³

The FCC's *Notice* presents several important areas of inquiry with sub-headings such as "Disclosure Obligations," "Disaster Warnings," "Disabilities," "Diversity," and "Enhancing Political Discourse."⁴ While the obligations regarding children's programming do not have their own category, the FCC does request comments on how digital broadcasters may serve the nation's children.⁵

Considering that America's children currently consume the equivalent of a full-time work week using media that digital television will provide, they may be one of the most vulnerable and needy populations with respect to the digital transition.⁶ First,

¹ See People for Better TV, Petition for Rulemaking and Petition for Notice of Inquiry (filed June 3, 1999) (PBTv Petition); Letter from People for Better TV to William E. Kennard, Chairman, FCC, Nov. 16, 1999 (PBTv Letter).

² Children Now has conducted informal and exploratory conversations with experts such as: Ms. Peggy Charren (Founder, Action for Children's Television), Professor Katharine Heintz-Knowles (children's media consultant), Professor Amy Jordan (Annenberg School for Communications, University of Pennsylvania), Professor Dale Kunkel (University of California, Santa Barbara), Professor Donald Roberts (Stanford University), Ms. Marjorie Tharp (American Academy of Pediatrics), and Dean Ellen Wartella (University of Texas). The comments of these participants have been incorporated into this statement where appropriate.

³ Minow, Newton and Craig LaMay, *Abandoned in the Wasteland: Children, Television, and the First Amendment* 14 (1995).

⁴ See *Notice* at ¶¶ 15, 18, 24, 29, and 34.

⁵ *Id.* at ¶ 12.

⁶ Henry J. Kaiser Family Foundation, *Kids and Media at the New Millennium (Executive Summary)* at 6 (Nov. 1999) ("The average child spends about five and a half hours a day using media (5:29) – more than 38 hours a week.").

broadcast content designed for children is scarce and often of low quality.⁷ Parents continually search for and request more quantities of higher quality programming for their children.⁸ As recently as 1999, the Journal of Broadcasting & Electronic Media published a survey of parents regarding the Children's Television Act of 1996 and the Educational/Informational ("E/I") programming requirements. Although 63% of parents had not heard of the E/I requirements, 82% of parents either "somewhat favored" or "strongly favored" them, and 79% thought that the E/I programming would do "some" or "a lot" of good for children.⁹ Parents and caretakers of America's young people are asking for better content for kids, and more of it.

Further, the ancillary and supplementary services that DTV broadcasters can provide, such as datacasting, paging, or interactivity, raise the specter of privacy and protection concerns that have haunted children's policy in the Internet arena for the past several years.¹⁰ Once again, the enhanced capabilities to inquire, target, and collect data from consumers present unparalleled financial opportunities for businesses and unparalleled risks for the public, especially children. These concerns will be both magnified and immediate if the DTV convergence reaches a critical mass.

Finally, the next decade will host a DTV dialogue between government, broadcasters, federal agencies, business, and the public that is filled with technical

⁷ Center for Media Education, *Digital TV in the Public Interest (op-ed)*, (last visited Nov. 2, 1999) <http://www.cme.org/dtv_in.htm>. See also, Part III.F, *infra* (recent observations regarding local broadcasting from People for Better TV members). [Please note that these comments refer to several leading Internet sites that contain the most current research regarding digital television.].

⁸ See, e.g., Walsh, Ann, et al., *Mothers' Preferences for Regulating Children's Television*, J. of Advertising 23 *passim* (No.3, Vol.27, Sept. 22, 1998).

⁹ J. of Broadcasting & Electronic Media, September 22, 1999.

¹⁰ See Federal Trade Commission, *New Rule Will Protect Privacy of Children Online*, (released Oct. 20, 1999); Children's Advertising Review Unit, *Statements Re: Workshop on Proposed Regulations Implementing the Children Online Privacy Protection Act (July 20, 1999)*, July 30, 1999; Ian Auston, *But*

questions, transition timelines, price points, market penetration, and extraordinary advances. Perhaps the greatest vulnerability for America's children is the risk of being eclipsed amidst the unprecedented technology and endless commercial opportunities. Thus, it is everybody's duty to realize the unprecedented and endless opportunities that we have to make the digital world a better place for children.

B. Children & the Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters

In 1997, Vice President Gore and the Office of the President convened an Advisory Committee to explore the public obligations of digital television broadcasters, which resulted in a comprehensive final report with broad recommendations for the FCC.¹¹ The Committee addressed the concerns of children and children's programming at several points throughout its report, including a history of the Children's Television Act and the public mandate for broadcasters to serve the nation's children.¹² The Advisory Committee made the following specific recommendations: data about children's and educational programming should be included in broadcasters' quarterly disclosures of public interest activities; digital stations must determine or ascertain a community's needs and interests regarding children's programming as part of their minimum public interest requirements; the FCC should reserve the equivalent of one 6 MHz channel in each viewing area from recovered analog spectrum for noncommercial

First, Another Word from our Sponsor, N.Y. Times, Feb. 18, 1999, at D1; Jamie Beckett, *Kids Tell All Online*, S.F. Chron., Sept. 22, 1998, at C1.

¹¹ See Executive Order No. 13038, §2, 62 Fed. Reg. 12,065 (1997).

¹² Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, *Charting the Digital Broadcasting Future: Final Report of the Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters* at §II, *The Public Interest in Children's Educational Programming* (1998) [hereinafter Advisory Committee Report] (discussing the *Children's Television Report and Policy Statement*, 50 FCC 2d 1, 5 (1974) and *Action for Children's Television v. FCC*, 564 F.2d 458, 465 (D.C. Cir. 1977), "It seems to us that the use of television to further the educational and cultural development of

educational programming, including children's education; fee collection from multiplexing should be used to produce and air educational programming that would otherwise not be commercially feasible; broadcasters should datacast educational programming from preschool through higher education and public school information; and broadcasters should have the option of a "pay-or-play" model of public interest obligations where collected monies would be applied to children's programming.¹³

Children Now is encouraged by the Advisory Committee's thoughtfulness regarding how to serve the nation's children in the digital era, and we have analyzed and incorporated some of its recommendations and principles into these comments.

C. The Federal Communications Commission's Notice of Inquiry

The FCC *Notice* invites discussion and proposals addressing "whether and how existing public interest obligations should translate to the digital medium."¹⁴ Specifically, the FCC is requesting comments on how both analog and digital broadcasters must operate consistently in the public interest during this lengthy transition period from analog to digital.¹⁵ Children Now's comments will address the following requests, with a focus on children and children's programming:

- How can broadcasters serve the nation's children in the digital environment?

(*Notice* at ¶12);

- Do a licensee's public interest obligations apply to its ancillary and supplementary services? Should broadcaster activities on ancillary and

America's children bears a direct relationship to the licensee's obligations under the Communications Act to operate in the 'public interest.'").

¹³Advisory Committee Report at §§III.1, III.3, III.4(b) ("The opportunity for digital television to improve student achievement has extraordinarily high stakes for our Nation . . . We put our children at a competitive disadvantage in the global economy if we do not invest wisely in educational resources."), III.4.c, III.5,

¹⁴ *Notice* at ¶10.

¹⁵ *Id.* at ¶8.

supplementary services count toward the public interest obligations? (*Notice* at ¶13);

- What information should be included in the public files of digital broadcasters? Do the FCC's reasons for eliminating the previous ascertainment requirements apply to the proposals for rule-making for the digital era? (*Notice* at ¶16);
- How can broadcasters use the Internet and similar capabilities through DTV to ensure that they are responsive to the needs of the public? (*Notice* at ¶17);
- Should the Commission establish more specific minimum requirements or guidelines regarding television broadcasters' public interest obligations? If so, how should these requirements be defined and communicated to licensees? (*Notice* at ¶22);
- How can broadcasters use "multicasting" and other new technologies associated with DTV to enhance access to the media by all people, particularly people from diverse and underrepresented backgrounds? What other ways could and should the Commission encourage diversity in broadcasting, consistent with relevant constitutional standards? (*Notice* at ¶¶23, 33).

II. DTV'S TECHNOLOGICAL ADVANCES & CHILDREN

In 1997, the federal government allocated an additional 6 MHz bandwidth to every existing broadcaster as part of a giveaway valued at approximately \$70 billion.¹⁶

This authorization was the first step in a comprehensive digital conversion plan, targeted for completion by 2006. Toward that goal, the FCC issued a timetable for digital

¹⁶ Federal Communications Commission, *Digital Television Tower Siting Fact Sheet and Frequently Asked Questions* (last modified June 18, 1998) <<http://www.fcc.gov/mmb/prd/dtv/>> at introduction, Question 25

broadcasting, requiring all stations affiliated with ABC, CBS, NBC, and Fox in the top 10 markets to begin at least one digital broadcast by May 1, 1999. A second deadline was set for markets 11-30 by November 1, 1999.¹⁷ Thus currently, broadcasters have two sets of bandwidth to use: (i) their original analog bandwidth, and (ii) the additional 6 MHz designated for digital conversion. As the transition progresses, the FCC has determined that broadcasters must return the bandwidth currently used for analog broadcasting when the conversion reaches its completion point (i.e., spectrum recovery). Correspondingly, the FCC and Congress have asserted that portions of these returned bandwidths will be designated for public uses such as public safety and police and fire department needs.¹⁸ Although 2006 is the hard deadline originally established by the FCC, the completion point for digital conversion has been debated by broadcasters who have cited numerous time-sensitive obstacles such as tower construction and local zoning. Through a series of FCC inquiries and hearings, a compromise has been reached, setting a modified deadline of 2006 unless one or more of the largest television stations in a market do not begin DTV transmission through no fault of their own or there is less than 85% market penetration.¹⁹ In any case, complete conversion is scheduled to arrive, shepherded by both government and industry.

[hereinafter FCC, *Digital Television Tower*]; People for Better TV, *Here Comes Digital TV* (last visited March 13, 2000) <<http://www.bettertv.org/digital.html>>.

¹⁷ FCC, *Digital Television Tower*, *supra*, at introduction.

¹⁸ FCC, *Digital Television Tower*, *supra*, at introduction, Questions 4-5; Andy Carvin, Corporation for Public Broadcasting, *Digital Television: A New Tool for Education?* (Oct. 30, 1998) (last visited February 22, 2000) <<http://edweb.gsn.org/teled98/speech.html>> [hereinafter Carvin & CPB].

¹⁹ Advisory Committee Report at §I, How Digital Television Will Evolve: The Plan. *See also* FCC, *Digital Television Tower*, *supra*, at introduction, Questions 12-13; Carvin & CPB, *supra*; Robert X. Cringely, Public Broadcasting Service, *Digital TV: A Cringely Crash Course* (last visited Mar. 2, 2000) <<http://www.pbs.org/opb/crashcourse/hdtv/timeline.html>> at § *Digital Broadcast Timeline* [hereinafter Cringely & PBS]; Digital Television: The Site, at § *What is Digital Television? Consumer Information Page* (last visited Mar. 2, 2000) <<http://www.digitaltelevision.com/what.shtml>>; National Association of Broadcasters and PricewaterhouseCoopers LLP, *Digital Television '99: Navigating the Transition in the US* (last visited Mar. 13, 2000) <<http://www.nab.org/Research/Reports/DIGITALTV.htm>> (“The DTV

Over the past few years, the media attention garnered by digital television has focused on DTV's enhanced audio-visual qualities and the high price points of viewer reception equipment.²⁰ While both issues have significant effects on the public, there are several other technological advances that have not reached mainstream consciousness but will impact the public in important ways.

For this comment, Children Now has identified three specific advances that will affect children and children's programming: (1) Enhanced Audio-Visual Quality; (2) Multicasting; (3) Multiplexing – Ancillary & Supplementary Services. Further, these three advances combine to provide an overall digital viewer experience; the variability of this experience due to individualized bandwidth management is a separate and specific area of concern. In this section, Children Now presents each advance along with its opportunities to improve our public obligations to children and its risks that children will be overlooked for technology and business.

A. Enhanced Audio-Visual Quality

Most of the attention surrounding DTV has concerned the leap in audio-visual ("A/V") effects, presenting a television experience unlike any before. Digital broadcasting will provide the clearest pictures with realistic sound, and will eliminate the reception problems commonly associated with analog television.²¹ Whereas previously, analog broadcasts offered a standard NTSC (National Television Systems Committee)

transition will take longer than most people in the industry will publicly admit . . . at least 10 to 12 years – or even longer. This period is much lengthier than the original timetable established by the US Congress.") [hereinafter NAB & PricewaterhouseCoopers LLP].

²⁰ See, e.g., Federal Communications Commission, *Digital Television* (description) (last modified Nov. 2, 1999) < <http://www.fcc.gov/mmb/vsd/files/descrip.html>>; Wendy Tanaka, *The DTV Industry is Growing Slowly*, Philadelphia Inquirer, Feb. 10, 2000 (page unavailable); *A Technophobe's Guide to HDTV*, Daily Variety, April 6, 1998, at A2.

screen with 4-to-3 aspect ratio and 525 lines of 720 pixels that totaled 378,000 pixels per frame, the newer digital technology can present a standard ATSC (Advanced Television Systems Committee) screen with 19-to-9 ratio and up to 1080 lines of 1920 pixels for 2,073,600 pixels per frame.²² This picture is commonly referred to as high-definition television (“HDTV”).²³ Correspondingly, the sound quality of television will also improve dramatically from mono and stereo to 5.1 Dolby Digital surround sound and the digital quality currently found in compact discs.²⁴ Thus, there is a hierarchy of A/V quality, ranging from the existing low-quality analog transmission (NCTE) to middle-quality SDTV digital transmissions to high-end HDTV. While not every broadcast in the digital era will be of the highest possible quality, all broadcasts will be of higher quality than analog transmission.²⁵ The FCC mandate requires some amount of broadcasting in a higher quality format beginning in 1998 and increasing in quantity until complete conversion.

Children Now urges the FCC to be cognizant of the opportunities and risks for children that enhanced A/V capabilities present. First, the higher A/V quality can provide children with greater educational experiences through television. For example,

²¹ See Advisory Committee Report at §I, *A Brief History of Digital Television Technology* (discussing progressive scanning, square pixels, increased frame rates additional lines per frame, different aspect ratios, and sound); Cringely & PBS, *supra*, at § *Ghosts in the Machine*.

²² Advisory Committee Report at §I, *A Brief History of Digital Television Technology*; Cringely & PBS, *supra*, at § *Bandwidth Squeeze*; Pat Denato, *Future of TV's is Here – Digital and High-Definition TVs Will Put Viewers in Control and Provide Better Sound and Quality*, Des Moines Register, May 17, 1999, at 16.

²³ See Allison Ballard, *The Defining Moment of Television: The Conversion to Digital TV Will Cost Networks and Consumers Big Bucks*, Morning Star, Feb. 17, 2000, at 1D, 3D (“One common confusion with the new technology is the terminology. Digital television is a way to transmit television. HDTV, or high-definition television, is one application of digital television.”).

²⁴ Cringely & PBS, *supra*, at § *Digital Sound*; Digital Television: The Site, *supra*, at § *What is Digital Television? Consumer Information Page*.

²⁵ FCC, *Digital Television Tower*, *supra*, at Questions 1-2 (“Standard definition digital TV pictures would be similar in clarity and detail to the best TV pictures being received and displayed today using the current (analog NTSC) broadcast system and TV receivers.”); *A Technophobe's Guide to HDTV*, Daily Variety, April 6, 1998, at A2.

science programs or travelling shows will be able to present people, places, and things through more realistic pictures and sounds than ever before. While it is not yet certain how DTV will ultimately impact education, it is evident that the technology will have a significant and tangible effect with regard to engaging young viewers and encouraging further learning.²⁶ These effects and other enhancements are discussed further at Part II (C-D), *infra*.

Second, broadcasters will have the ability to vary the amount and quality of their programming menu throughout the day – e.g., airing lower A/V quality SDTV multicasting during early morning hours and higher A/V quality HDTV during prime-time.²⁷ The Advisory Committee on Public Interest Obligations of Digital Television Broadcasters (hereinafter, “Advisory Committee”) noted that there are 18 possible formats in HDTV and SDTV.²⁸ While this flexibility may provide more overall quantities of programming, it also risks having a segregation effect – i.e., certain programming receiving priority for high A/V quality (e.g., sports games, prime-time shows) while other programming is relegated to low A/V quality. Higher definition programming will necessarily require higher production costs, and broadcasters will often face the usual business efficiency decisions that rely heavily on viewership ratings and

²⁶ See, e.g., Andy Carvin, *EDWEB: Exploring Technology and School Reform*, (latest revision Jan. 11, 2000) <<http://edweb.gsn.org>>, at § *DTV: Enhanced Television* <<http://edweb.gsn.org/teled98/enhancedtv.html>> (actual demonstrations of educational programs enhanced by DTV).

²⁷ See Part II.B, *infra*.

²⁸ Advisory Committee Report at §I, *A Brief History of Digital Television Technology* (citing FCC discussion that broadcasters have a variety of options and that the market will determine the ultimate decisions, in *In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, *Fifth Report and Order*, *supra*, at 12826-27 [hereinafter *Fifth Report and Order*]).

advertising dollars.²⁹ Children Now urges the FCC to consider the risks and possibilities of excluding children's programming from the highest A/V quality broadcasting.

Third, the enhanced picture and sound will also mean a more realistic viewer experience with regard to images of sex and violence that may be inappropriate for young children.³⁰ Given the long-existing concerns in this area, Children Now urges the FCC to research and analyze the impact of enhanced A/V capabilities on children's consumption of such images.

Finally, more research and analysis is needed regarding the psychological and physical effects of enhanced A/V on viewers, especially children. In December, 1997, an episode of *Pokemon* that aired in Japan induced several hundred cases of photosensitive epileptic seizures.³¹ Most of these cases involved children. More recently, experts have been exploring the effects of new technologies such as virtual reality for their capacity to induce physical illness in consumers.³² As the digital conversion introduces technological advances that make home-viewing a more virtual experience, the FCC should conduct due diligence regarding its public health impact.

B. Multicasting

Unlike traditional analog broadcasting, digital broadcasting uses a binary system of 1's and 0's to transmit high quantities of data in an extraordinarily compact form. This technology is currently used in platforms such as personal computers, compact disc

²⁹ See Advisory Committee Report at §III.4.a ("The startup costs of converting to digital signals are high, and just as significantly, the costs of producing digital programming are 10 to 20 percent higher than those of comparable analog programming.").

³⁰ People for Better TV, *The Dangers of DTV*, (last visited Mar. 13, 2000) <<http://www.bettertv.org/dangers.html>>.

³¹ See *Pokemon and Epilepsy*, Washington Post, Mar. 6, 2000, at A9; Kevin Sullivan, *Japan's Cartoon Violence; TV Networks Criticized After Children's Seizures*, Washington Post, Dec. 19, 1997, at D1; Sheryl Wu Dunn, *TV Cartoon's Flashes Send 700 Japanese Into Seizures*, N.Y. Times, Dec. 18, 1997, at A3.

³² Katie Hafner, *Real Queasiness in Virtual Reality*, N.Y. Times, Nov. 19, 1998, at G1.

players, and the Internet. The benefits of such transmission through the television are manifold, such as picture perfect quality and Internet capabilities.³³

Given the compression power of digital transmission, the additional 6 MHz of bandwidth granted to broadcasters represents more than a simple 100% increase in a station's programming capacity. While the additional bandwidth can provide one channel at the highest A/V quality (i.e., HDTV), it can also sustain several simultaneous channels at lower qualities (e.g., SDTV). This ability to broadcast multiple channels is called "multicasting." Multicasting essentially allows each current broadcaster to become its own mini-network, with an inverse relationship between the quantity of channels and the A/V quality on those channels.³⁴ At present, the common perception is that the additional 6 MHz can sustain up to 4-6 channels of SDTV transmission, thereby increasing the amount of available programming exponentially.³⁵ As the technology develops, the number of possible channels may increase even more.

The power of multicasting requires broadcasters to engage in what the National Association of Broadcasters terms "bandwidth management."³⁶ As previously discussed, broadcasters will have the flexibility to vary the amount and A/V quality of programming throughout the day. For example, local broadcaster WXYZ could design a Monday menu

³³ See Cringely & PBS, *supra*, at §§ MPEG-2 (discussing the MPEG-2 compression scheme for digital transmission), *Ghosts in the Machine*. See also, Carvin & CPB, *supra* (explaining binary compression and associated benefits).

³⁴ See FCC, *Digital Television Tower*, *supra*, at Questions 2-3 ("There is a trade-off between using digital transmission capacity for improved pictures and sound and using it to transmit additional programs."); Center for Media Education, *supra* ("Initially, at least, the latter option [of SDTV multicasting] will be far more practical (given the scarcity of sets capable of displaying HDTV), which means that every local TV station will be able to control a 'mini-network' of its own."); Cringely & PBS, *supra*, at § *Multi-Casting*; Digital Television: The Site, *supra*, at § *SDTV Multicasting*.

³⁵ See, e.g., FCC, *Digital Television Tower*, *supra*, at Question 3; Cringely & PBS, *supra*, at § *Multi-Casting*; Advisory Committee Report at §I, *What is Digital Television?*

³⁶ NAB & PricewaterhouseCoopers LLP, *supra* ("As managers of bandwidth, they may adjust their broadcast product from multiple standard definition channels during the day and late night dayparts to high definition programming designed to reach a broad, mass audience during prime time.").

that airs four SDTV channels from 8 a.m. to 3 p.m., switches to two higher definition channels from 3 p.m. to 8 p.m., and finishes with one HDTV channel for prime-time and late-night programming. Then, WXYZ could change its amounts and quality for the Tuesday.³⁷ Further, WXYZ may choose to hold a special pay-per-view HDTV broadcast for a sporting event, in lieu of its scheduled multicast segment. In any case, digital technology and the bandwidth giveaway have granted broadcasters an enormous amount of power and flexibility, and they must manage the station schedule for optimal performance.

This model of variability raises several serious concerns for children's E/I programming. In addition to the A/V quality concerns raised in Part II.A, *supra*, the overall amount and weekly proportion of children's programming may be threatened. Multicasting capability de-standardizes the amount of programming across broadcasters. Whereas previously there was a relatively constant set of programmable hours for each broadcaster, the new digital regime will host myriad combinations and permutations of hours and A/V quality. Every broadcaster in America can and probably will provide a different combination with different overall hours and quality.³⁸ Thus the previous hard-fought rule for three hours of Educational/Informational children's programming per week may suffer drastically – what was previously three hours of E/I programming per 105 hours of effective weekly broadcasting³⁹ may become three hours per 1000 hours.

³⁷ Advisory Committee Report at §I, *What is Digital Television?* (“Within a single programming day, a broadcaster will have the flexibility to shift back and forth between different DTV modes in different day parts.”).

³⁸ See NAB & PricewaterhouseCoopers LLP, *supra* (“One new benefit of the digital format is the ability to apply compression and vary the mix of digital content, broadcasting one program in high definition (HDTV) or several in standard definition (SDTV). Broadcasters will have a broad range of channel options in their business mix.”). These variations in quality are explored in more detail at Part II (C-D), *infra*.

³⁹ Currently, children's E/I programming must air between 7 a.m. and 10 p.m. which is a 15-hour period for each day. Seven days of 15 programmable hours totals 105 hours per week.

As the Advisory Committee notes, “Applying existing public interest obligations to this variegated universe will not be easy, *and will certainly not entail a simple one-for-one exchange.*”⁴⁰ Given these risks, Children Now believes that it is of utmost importance for the FCC to examine the public interest obligations under the Children’s Television Act, especially the Three-Hour Rule, as they will apply to the digital era. We provide a set of recommendations addressing this requirement at Part IV, *infra*.

C. Multiplexing – Ancillary & Supplementary Services

The FCC *Notice* and the Telecommunications Act of 1996 characterize DTV services such as datacasting, paging, and interactivity as “ancillary and supplementary.”⁴¹ These services may be offered by themselves or in conjunction with broadcast programming, and broadcasters will manage their bandwidth distribution accordingly. The transmittal of DTV programming and ancillary and supplementary services at the same time is termed “multiplexing.”⁴²

DTV’s ancillary and supplementary services are closely related to the futurist concept of “convergence,” whereby the many discrete pieces of technical hardware in use today – such as personal computers, Internet, video gaming consoles, fax/modems, broadcast radio and television, cellular communications, cable – will merge into one platform.⁴³ Convergence raises several new policy concerns with respect to children, many of which have been previously addressed separately within their respective media

⁴⁰ Advisory Committee Report at §III.10 (emphasis added).

⁴¹ *Notice* at ¶13 (“... services other than free, over-the-air services.”); *Fifth Report and Order, supra*, at 12821, ¶30; Advisory Committee Report at §I, *What is Digital Television?*

⁴² *Notice* at ¶10; *Fifth Report and Order, supra*, at 12826, ¶42. See Carvin & CPB, *supra* (“The last – and perhaps most important – difference with digital and analog TV is that DTV will allow you to combine TV signals with other types of digital content.”). Note that broadcasters who transmit multiple programming channels and ancillary and supplementary services at the same time, are multicasting *and* multiplexing.

(e.g., Children's Television Act for television, Children's Online Privacy Protection Act for Internet marketing, parental advisory labels for music). Technological advances toward convergence will necessarily expedite the need and timeline for solutions and applications.⁴⁴ While Children Now urges the FCC to look to those discrete policy solutions for guidance, we also recognize the need to explore new solutions specific to convergence and DTV.

Although the full capacity of ancillary and supplementary services has not been determined, commentators are clearly aware of their enormous potential and opportunities.⁴⁵ Digital technology is currently utilized in personal computers and on the Internet to provide large amounts of data and to interact with users. DTV broadcasters have the capacity to use a portion of their 6 MHz bandwidth to provide similar services, currently characterized broadly as "datacasting" and "interactivity."

Datacasting is providing data via the DTV bitstream.⁴⁶ Any information that can be coded in the binary scheme of 1's and 0's can be transmitted, such as stock quotes, product prices, computer software, closed captioning, database content, weather animation, sports scores, Internet content, interactive educational material, multimedia

⁴³ See Advisory Committee Report at §I, *What is Digital Television?*; Cringely & PBS, *supra*, at § *What's on the TV?* ("The convergence of television and computers is going to take a major step with digital broadcasts.").

⁴⁴ For example, commentators have noted that the issues of violence, pornography, and privacy on the Internet are affecting increasingly larger populations. See, e.g., Paul Van Slambrouck, *New Computer Chip: Useful Tool or Privacy Invasion?*, *The Christian Science Monitor*, Feb. 16, 1999, at 2. If DTV and its convergence narrow the Digital Divide by lowering the entry price points for Internet connection, then those issues affect a far greater population than before and become much more urgent.

⁴⁵ See Cringely & PBS, *supra*, at § *I Want My Enhanced TV* ("Nobody really knows how we'll interact with our televisions in the next few years, but TV is never going to be the same."); NAB & PricewaterhouseCoopers LLP, *supra* ("The concept of data broadcasting is still in its infancy; however, there are a number of entrepreneurial companies ready to exploit the business opportunities offered by a true point-to-multipoint data push model," and "The prevailing DTV Format will be an HDTV Multicasting hybrid – but the Killer App will be datacasting combined with two-way interactivity.").

⁴⁶ *Notice* at ¶3.

games, or illustrated articles.⁴⁷ Selecting personalized data will be a function of user interaction with the television. User interactivity through the television has been attempted previously with costly external network connections, but digital television will “embed interactivity inside the broadcast signal,” resulting in low costs.⁴⁸ Viewers will be able to communicate with the television and with others through the television, creating a more personalized and potentially educational experience.⁴⁹

DTV datacasting and interactivity offer significant opportunities and risks for children. Many digital commentators have envisioned how DTV enhancements may improve television viewing, including programming for children. For example, viewers watching a documentary on dinosaurs could download additional information on certain species or the biography of a scientist on the program.⁵⁰ The PBS website describes possibilities such as watching a lifelike documentary on National Parks in Africa with “amazing clarity” and 5.1 channel sound, followed by personalized news programming that presents your stocks, weather, sports scores, and interest pieces, followed by E/I programming where, “You and your kids play some learning games with Big Bird, replay the sing-along a few times, and then print out a picture for coloring together. Your kids

⁴⁷ See Advisory Committee Report at §§I, *What is Digital Television?* (“... digital code, which is increasingly becoming the common language for all electronic media.”), III.4(c); Cringely & PBS, *supra*, at § *I Want My Enhanced TV*; FCC, *Digital Television Tower*, *supra*, at Question 2; People for Better TV, *The Potential Benefits of DTV*, *supra*. Current television programs that approximate this multiplexing vision include financial shows with the NYSE ticker tape and MTV’s *Total Request Live* with e-mail input from viewers.

⁴⁸ Cringely & PBS, *supra*, at § *The Experiments* (describing experiments in the 1980s conducted by TCI and Time Warner, where subscribers could “shop online, play games with people across town, and do a lot of the things we dreamed an interactive TV should offer.”).

⁴⁹ *But see*, Carvin & CPB, *supra* (describing possible limits with DTV interactivity due to lack of a back channel similar in quality to DTV broadcast; in the interim, Carvin predicts that the Internet will be the user upstream channel and will provide some interactivity, albeit at slower rates than incoming data). *See also*, Advisory Committee Report at §III.4.c (discussing important interactive aspects that combines television broadcasting and the Internet).

⁵⁰ Ballard, *supra*, at 3D.

are learning by doing.”⁵¹ People for Better TV conjectures that DTV may make it possible for “a child in West Virginia to talk to an astronaut aboard a space station.”⁵² Benton Foundation DTV pundit Andy Carvin, formerly of the Corporation for Public Broadcasting, presents detailed examples and actual experiments of enhanced TV applied to education, from PBS documentaries on Henry V and Frank Lloyd Wright supplemented by multimedia content, to a NOVA special where children can construct virtual Stonehenges or pyramids, to a Great Performances program where children can isolate instruments and rearrange music.⁵³ Carvin also identifies the possibilities for teacher professional development through DTV.⁵⁴ Through technological advancements, DTV can expand greatly the educational mission of public television.⁵⁵

Another pivotal opportunity lies in DTV’s ability to affect the Digital Divide.⁵⁶ While the majority of Americans do not currently have Internet connectivity at home, most Americans do have television set. Because DTV can broadcast websites and other multimedia content without high-speed Internet connectivity, DTV is able to bring the Internet to millions of people at home or in institutions such as schools, through the purchase of DTV tuner PC cards, set-top boxes, or digital televisions.⁵⁷ However, the Digital Divide cannot be overcome unilaterally. Although the content provider end of Internet services will be able to send digital data through free broadcast airwaves, end-users still require new hardware to receive. The actual closure of the divide will depend

⁵¹ Cringely & PBS, *supra*, at § *The Many Faces of HDTV*.

⁵² People for Better TV, *The Potential Benefits of DTV*, (last visited Mar. 13, 2000) <<http://www.bettertv.org/benefits.html>>.

⁵³ Carvin & CPB, *supra*.

⁵⁴ *Id.*

⁵⁵ Ballard, *supra*, at 3D.

⁵⁶ For more information regarding the Digital Divide, *see generally*, The Digital Divide Network, (last visited March 23, 2000), <<http://www.DigitalDivideNetwork.org>>.

⁵⁷ Carvin & CPB, *supra*.

on the price points for conversion (i.e., whether it will be financially accessible to a greater population) and overcoming relevant biases.⁵⁸ Nonetheless, as the government and broadcasting industry urge convergence on the DTV platform, a massive conversion may result simply because current television owners will not forego their basic television services as they currently forego the Internet. The externality of making people buy digital televisions to get basic television would be closing the current Internet divide. In any case, DTV's actual effect on the Digital Divide remains to be determined as technology, market economics, politics, and policy continue to develop.

Exclusion from enhancement, personalized commercialization, and invasions of privacy are some of the primary risks for children regarding datacasting and interactivity services. Just as DTV has the opportunity to enhance children's education and close the Digital Divide, there is the converse risk that children's programming will be excluded from higher-end services and that lower-income populations will not receive DTV. Further, as DTV becomes interactive and personalized, companies will collect more information about viewers and can customize integrated advertising and direct marketing within programming. Just as today's Internet marketers can track user movements and purchases, convergence will enable marketers to monitor viewer's program choices and behavior with enhanced information-gathering techniques. This will result in commercials that can address the viewer – especially children – directly and intimately,

⁵⁸ Advisory Committee Report at §I, *Consumer Demand for DTV*. For price point concerns, *see, e.g.*, Joel Brinkley, *HDTV: High in Definition, High in Price*, N.Y. Times, August 20, 1998, at G1; *A Technophobe's Guide to HDTV*, Daily Variety, April 6, 1998, at A2 (describing digital television priced from \$7,000 to \$10,000, and lower quality converter boxes at approximately \$100). For relevant biases, *see, e.g.*, J. Raloff, *Internet Access: A Black-and-White Issue*, Science News, Apr. 18, 1998, at 247.

aggressively urging purchases.⁵⁹ Children Now addresses these risks at Part IV.B(3), *infra*.

Children Now urges the FCC to consider the opportunities for fuller and richer children's education through the affirmative allocation of bandwidth to datacasting and interactivity to children's programming. We also urge the FCC to consider the risks associated with possible exclusion from ancillary and supplementary services, and with personalized commercialization and advertising to young people. Finally, Children Now urges the FCC to monitor the actual effects of the DTV convergence on the current Digital Divide.

D. Digital Viewer Experience Quality (DVEQ) & Bandwidth Management

The upshot of these technological advances is that broadcasters will have a limited amount of bandwidth, but exponentially more power and flexibility than ever before. Technology has made the capacity of the 6 MHz bandwidth seemingly limitless. In the digital era, broadcasters have the phenomenal ability to vary the viewer's experience by allocating A/V quality, datacasting, interactive components, and multiple programming hours, in any combination or permutation that they wish. Overall bandwidth management will be more than simply channels and A/V quality.⁶⁰

Throughout the pre-digital era, the public television viewing experience was mostly standard from channel to channel. Each broadcaster had an identical finite amount of programming hours per week and all broadcasts had the same analog A/V

⁵⁹ People for Better TV, *The Dangers of DTV*, (last visited Mar. 13, 2000) <<http://www.bettertv.org/dangers.html>>; Center for Media Education, *supra*.

⁶⁰ See Carvin & CPB, *supra* ("There's no one single rule for utilizing DTV spectrum – broadcasters will have to figure out for themselves what method is best for them. But there are so many options: if you can take content and convert it to 1's and 0's, you'll be able to send that content through the DTV signal. It's just a matter of figuring out what kinds of content you'd want to transmit.").

quality. With DTV, the experience can range from a program similar to yesterday's analog broadcast to an 16:9, high-definition, multi-casting, surround-sound program enhanced with streaming datacast and interactive participation.⁶¹ To quantify this range, Children Now introduces a variable entitled *Digital Viewer Experience Quality (DVEQ)* that refers to the different types of experiences that are now possible with DTV.

The primary concern with DVEQ and children is the exact same concern we have identified regarding multicasting, multiplexing, and the inverse relationship between quality and quantity – *Will children's programming become segregated at the low end of the quality spectrum?* Given the higher production costs associated with HDTV, datacasting, and interactivity, how much E/I programming will be broadcast in low-definition with nothing else? Will children's E/I programming be afforded the important opportunity to participate in advanced technology for expanded learning experiences, or will those technologies be designated exclusively for high profit margin ventures such as sporting events and pay-per-view events? Children Now urges the FCC to further consider these concerns regarding exclusion in its rule-making process.

III. THE CHILDREN'S TELEVISION ACT

A. Background

Since the 1960's, children's advocates have urged the FCC to protect the public interest of children by mandating a minimum level of educational children's programming. Since then, an ongoing debate has ensued among broadcasters, Congress,

⁶¹ Advisory Committee Report at §I, *What is Digital Television?* ("Because different gradations of HDTV and SDTV picture resolution are possible – there are 18 different transmission formats – a station can mix and match video programming with data services, provided that the various signals fit within the 6 MHz bandwidth."); Cringely & PBS, *supra*, at § *The Many Facts of HDTV*.

the FCC, advocates, and parents about minimal standards for children's educational programming and how such standards should be defined.⁶²

Thirty years of debate about commercial broadcasters' obligation to air children's educational programming demonstrate one certainty. Without stringent requirements mandated by the FCC, broadcasters do not voluntarily serve the needs of children. Self-regulation is not an option to ensure the protection of children's public interest. As the FCC considers policy recommendations for the application of the Children's Television Act in the digital arena, Children Now urges the mandating of specific guidelines. The history of the Children's Television Act demonstrates that, for the most part, unless faced with external pressure, the commercial broadcast industry has largely neglected children's educational programming.⁶³

During the 1970s, the FCC did not mandate specific policy on children's educational television requirements. In 1971, the FCC did initiate a rulemaking on children's television, which yielded voluntary changes in the National Association of Broadcasters' code two years later.⁶⁴ The NAB agreed to: 1) make clear distinctions between children's programs and commercials; 2) prohibit the practice of host-selling; 3) ban ads for drugs and vitamins during children's shows; and 4) proposed self-regulated limits for commercials of 9 minutes per hour on weekdays and 12 minutes per hour on weekends.⁶⁵ These limits, according to the FCC, "struck a balance between the needs of children, who were judged uniquely susceptible to commercial influence, and the needs

⁶² Mark R. Barner, *Sex-Role Stereotyping in FCC-Mandated Children's Educational Television*, 43 *Journal of Broadcasting and Electronic Media* 551 (1999).

⁶³ Dale Kunkel, *Policy and the Future of Children's Television in Children & Television: Images In A Changing Sociocultural World* 273, 276 (Gordon L. Berry et al eds., 1993) [hereinafter Kunkel and Children & Television].

⁶⁴ Advisory Committee Report at §II, *The Public Interest in Children's Educational Programming*.

⁶⁵ *Id.*

of broadcasters, who were dependent upon advertising revenue to maintain the children's program offerings."⁶⁶ Thus, instead of mandating rules, the FCC issued a *1974 Policy Statement* noting that "broadcasters have a special obligation to serve children"⁶⁷ and asked stations to provide a "reasonable amount"⁶⁸ of educational programming.

By the late 1970s, the FCC determined that broadcasters' self-regulation was not working, and, in its 1979 *Children's Television Report*, offered more prescriptive rules.⁶⁹ These rules, however, were never implemented as new commissioners came to Washington in the 1980s. In 1984, led by Commissioner Mark Fowler, the FCC determined that the marketplace alone could adequately respond to children's needs.⁷⁰ Commercial broadcasters no longer had to air educational programming as long as children's needs could be served by other services such as public television, cable, satellite, and videos.

This new policy resulted in a notable decline in children's educational programming, and several studies documented this dramatic decrease.⁷¹ One study, for example, showed that commercial broadcasters did not provide a single children's educational show during a sample week in the greater Los Angeles area.⁷² According to Professor Dale Kunkel at the University of California at Santa Barbara, "Even the relatively small amount of educational programs that had been provided previously on

⁶⁶ Dale Kunkel and Don Roberts, et al. in Mary C. Martin, *Children's Understanding of the Intent of Advertising: A Meta-Analysis*, 16, JOURNAL OF PUBLIC POLICY & MARKETING 205 (1997).

⁶⁷ Benton Foundation, *The Public Interest Standard in Television Broadcasting*, (last modified Jan. 19, 1999) < <http://www.benton.org/PIAC/sec2> >.

⁶⁸ Kunkel and Children & Television, *supra*, at 276.

⁶⁹ Advisory Committee Report at §II, *The Public Interest in Children's Educational Programming*.

⁷⁰ *Id.*

⁷¹ Kunkel and Children & Television, *supra*, at 277.

⁷² *Id.*

commercial television essentially disappeared once the FCC deregulated kids' television."⁷³

During the 1980s, the FCC also ruled that the market place should determine how much commercial content could be included in children's programming. The FCC therefore dropped the limits on the amount of advertising in children's television and relinquished the previously-established ban on "program-length commercials," 30-minute, toy-based programs. Subsequently, advertising on children's programming increased considerably; a study found that children's advertising on the networks in 1990 averaged 10:05 minutes per hour compared to eight minutes in 1983.⁷⁴ Similarly, there was a tremendous increase in "program-length commercials;" for example, profits from the sale of licensed products based on the program, *Teenage Mutant Ninja Turtles*, yielded \$1.1 billion by 1991.⁷⁵

B. The Children's Television Act of 1990

Throughout the 1980s, it became increasingly evident that the FCC could not rely on broadcasters' self-regulation to meet the educational needs of children. Thus, in 1990, Congress passed the Children's Television Act (CTA) which marked a new era for television broadcasters. Under the CTA, "as part of their obligation to serve the public interest, television station operators and licensees should provide programming that serves the special needs of children."⁷⁶ The Children's Television Act also limited advertising during children's programs to 12 minutes per hour on weekdays, 10.5 minutes

⁷³ *Id.*

⁷⁴ Dale Kunkel & Walter Gantz, *Children's Television Advertising in the Multichannel Environment*, 42 J. Comm. 134, 143-144, 147 (1992).

⁷⁵ Kunkel and Children & Television, *supra*, at 278.

⁷⁶ Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000 codified at 47 U.S.C. §101. [hereinafter Children's Television Act of 1990].

per hour on weekends. Finally, the Act mandated that the FCC revisit and re-examine its policy on children's program-length commercials.⁷⁷

In subsequent years, the broad coalition of groups that helped ensure the passage of the CTA – including Action for Children's Television, the National PTA, the National Education Association, and the American Academy of Pediatrics – was often disappointed with how the Act was being implemented. Because there were no specific mandates about quantity of programming, broadcasters aired as little as 30 minutes of educational programs a week. In addition, many programs that stations deemed "FCC-friendly" were "scheduled in pre-dawn time slots when few people were likely to be watching"⁷⁸ or were often preempted by Saturday sports programming. Finally, without qualitative guidelines on what constitutes "educational and informational programming," many networks documented shows such as *The Jetsons* and *Leave It to Beaver* as educational.

Yet when it came to the quantifiable commercial time limits for children's programming, broadcasters made considerable strides in complying with the Act. According to a November 1993 FCC study, 98 percent of stations showed compliance with the commercial limits, up from 95 percent in 1992.⁷⁹ Thus, it appears that setting specific quantifiable requirements under the Children's Television Act is helpful, and arguably essential, in garnering broadcasters' compliance.

⁷⁷ Children's Television Act of 1990, *supra*, §303a ("Except as provided in subsection (c) of this section, the standards prescribed under subsection (a) of this section shall include the requirement that each commercial television broadcast licensee shall limit the duration of advertising in children's television programming to not more than 10.5 minutes per hour on weekends and not more than 12 minute per hour on weekdays.").

⁷⁸ Center for Media Education, *A Field Guide to the Children's Television Act*, (visited Feb 29, 00) <<http://www.cme.org/ctatool/fguide.html>>.

⁷⁹ Christopher Stern, *98% of Stations Under Limit On Kids Ads; FCC Survey on Commercial Time Limit Compliance*, 124 *Broadcasting and Cable* 65 (March 28, 1994).

C. The Children's Television Act—More Stringent Rules

In 1996, the Federal Communications Commission revised the CTA to address the concerns of advocates and parents, by providing more stringent and specific quantifiable rules for children's educational programming. The FCC guidelines require that core programming be designed to educate and inform children ages 16 and under.⁸⁰ Under the FCC's new guidelines, broadcasters are required to: 1) broadcast a minimum of three hours per week of educational and informational television for children; 2) specify in writing the educational and informational objective of a program, as well as its target child audience; 3) air programs between the hours of 7:00am and 10:00pm; 4) ensure that broadcasts are regularly scheduled to assist parents in selecting educational programs for their children; 5) broadcast programs that are at least 30 minutes in length; and 6) identify "E/I" programs (for educational and informational) at the beginning of each program.⁸¹

D. The Three-Hour Rule: Is It Living Up To Its Expectations?

In September 1997, the Three-Hour Rule went into effect, and several improvements to children's programming have been documented. The Annenberg Public Policy Center at the University of Pennsylvania issues an annual report on broadcasters' compliance with the Children's Television Act. The most recent study, *The Three-Hour Rule: Is it Living Up to Expectations?* examined the quantity and quality of broadcasters' second year efforts (1998-99 TV season) at compliance, and found that commercial

⁸⁰ Policies and Rules Concerning Children's Television Programming, Revision, Revision of Programming Policies for Television Broadcast Stations, MM Docket No. 93-48, *Report and Order*, 11 FCC Rcd 10660 (1996) at §IV.84 [hereinafter Policies and Rules Concerning Children's Television Programming, 1996]. ("Accordingly, as proposed in the NPRM, we will require that core programming be specifically designed to meet the educational and informational needs of children ages 16 and under and have educating and informing children as its significant purpose.").

⁸¹ Policies and Rules Concerning Children's Television Programming, 1996, *supra*, at §I(3-5).

broadcasters *are* airing the required three hours of educational programming.⁸² The report found that the Three-Hour Rule has effectively increased the number of programs available to children during hours when they are likely to watch. In addition, 60% of stations offer more than the three-hour minimum of core educational programming. Whereas before the Three-Hour Rule's implementation many of the E/I (educational/informational) programs were aired in pre-dawn hours, the 1998/99 TV season's programs can be found between the hours of 7:00am and 10:00pm.

The report also found that approximately 80% of the E/I programs evaluated in a nationally representative media market are meeting the letter and sometimes the spirit of the law. One third of these programs are even highly educational. The "highly educational" programs come from a variety of sources, including: programs that originally aired on PBS (such as *Magic School Bus*, *Bill Nye*, *The Science Guy* and *New Zoo Revue*); those developed as a result of the Three-Hour Rule (such as *Pepper Ann*, *Popular Mechanics for Kids* and *Brain Stew*); locally-produced programs (such as *UP 'N Running* and *HyperTek*); Spanish language programs (*Pistas de Blue* and *Plaza Sesamo*); religious programs (*Al Denson's Studio 828* and *Quigley's Village*) and those airing in syndication (*Real Life 101* and *Nick News*). These programs tackle a variety of lessons and audiences and are particularly effective at making these lessons relevant to the lives of children.

While they note these and other improvements, the Annenberg reports also show that there is still a need to monitor the progress of the CTA. For instance, over one-fifth of the programs labeled educational and informational in their sample had "little or no

⁸² Kelly L. Schmidt, The Annenberg Public Policy Center of the University of Pennsylvania, *The Three-Hour Rule: Is It Living Up To Expectations?* (1999).

educational value and failed to meet the guidelines set forth by the FCC.”⁸³ While these shows do not deserve the E/I label, they continue to air on commercial broadcast stations (programs such as *NBA Inside Stuff* and *Peer Pressure* have aired in two consecutive TV seasons without any noticeable improvement).

There also still appears to be some confusion at the station level about what constitutes E/I programming. There were several questionable programs identified on the FCC 398 reports that were not validated by the syndicator or network contact; however there is less variation in the way that broadcasters are complying with the children’s television act under the Three-Hour Rule.

The report found that while broadcasters are complying with the Three-Hour Rule, and making an effort to meet the educational needs of children, their efforts warrant improvement. There are still too many programs airing that are not educational and too few highly educational programs available.

E. The Three-Hour Rule: Insiders’ Reactions

In order to evaluate fully the Three-Hour Rule, the Annenberg Public Policy Center also conducted a poll of television industry executives, academics, and advocates.⁸⁴ Most noted an improvement in children’s educational programming, citing more diversity in type of programming, and an increased quantity and quality of shows. Respondents noted that violent and offensive shows disappeared, and the number of programs devoid of educational content decreased by 50 percent. They also reported that

⁸³ Schmidt, *supra*, at 3.

⁸⁴ See Amy B. Jordan, The Annenberg Public Policy Center of the University of Pennsylvania, *The Three-Hour Rule: Insiders’ Reactions* (1999).

the rule resulted in an increased dialogue between “the broadcast industry and the scholarly and academic communities.”⁸⁵

Despite the improvements, more than half of the respondents felt that the educational objectives of the rule were not being fully realized. They found that while children’s programming was less objectionable after implementation of the rule, it nevertheless could not be deemed truly educational, noting that a majority of the programming address social and emotional concerns rather than teaching academic concepts. To address this concern, respondents recommended that broadcasters:

- 1) diversify all aspects of the programs;
- 2) increase promotion and media coverage of children’s programming;
- 3) establish funding sources for new educational programs;
- 4) provide more research to create efficient educational programs that appeal to children;
- 5) create a national public information campaign about educational programming.

F. Local Observations Relevant to the Children’s Television Act

Over the last several months, the broad coalition of organizations known as People for a Better TV (PBTv) have assessed compliance of their local television stations with the guidelines of the CTA by recording children’s programs and examining the public files at their local stations. Comments and observations about local stations’ commitment to children’s programming centered mostly on station compliance with the three-hour requirement and critiques of the types of programs offered to children.

⁸⁵ Jordan, *supra*, at 4.

Overall, local organizations across the country found that most stations comply with the *minimum* required hours with most stations airing only three to four hours of educational programming.⁸⁶ For example, the California chapter of the National Organization for Women stated that KRON, the NBC affiliate in San Francisco, makes, “ONLY the minimal commitment to children’s programming [with] 3 to 3.5 hours per week [and] no programs during the week.” Children Now noted that KPIX, the CBS affiliate in San Francisco, aired less than their self-reported three hours, as their children’s programming was preempted by sports.

Other stations across the country were also shown to have only minimum compliance. The Massachusetts-based Center for Technology & Society evaluated the CBS affiliate in Boston, WBZ, and noted they aired exactly three hours of children’s programming, a drop from 1997 when they aired 6 hours. A Detroit station, WXYZ (ABC) fared slightly better than Boston’s WBZ, with four hours of children’s programming.

While stations claim to be airing three hours a week of E/I programming, they are not consistently labeling shows as such. Many of these programs came up repeatedly in the evaluations including *Pepper Ann*, *Squigglevision*, *Popular Mechanics for Kids*, *Sabrina the Animated Series*, and *Mythic Warriors*. The Christian Communication Council of Detroit observed that some of these programs were identified “specifically to educate and inform children,” thus complying with the “E/I” label requirement, while others were simply identified “for children of all ages.” Children Now noticed similar inconsistency in the programs that they monitored. Three of the four stations reviewed

⁸⁶ The ABC affiliate in Houston, KTRK, aired 4.5 hours of educational programming. The Fox and ABC affiliates in San Francisco, aired 8 hours and 5.5 hours of children’s programming respectively.

had the E/I logo and only two listed the target age group for which the program was designed.

In addition to the inconsistency in identifying E/I programming, there was a perception that programs were not labeled in a way that is convenient for parents. Jim Jones of Child Serve noted the difficulty of planning ahead because most newspapers do not carry the E/I logo and he wrote, “you must be quick and on time to find the designation as the show begins because the ‘E/I’ logo appears only briefly on screen.”

Some organizations questioned the true educational value of programs that were labeled as E/I shows. In a review of WABC’s public files in New York City, the characterization of *101 Dalmatians* and *Sabrina* as E/I programming was deemed “questionable.” Similarly, Children Now noted that at the San Francisco ABC affiliate, KGO, “only two out of five programs [had] a clearly educational intent.” Other organizations remarked on the perceived leniency of labeling programs as educational or informational. For instance, NYU graduate students who visited the public files of the Fox affiliate in New York City said, “Of particular interest in the children’s/educational-programming files are these TV shows listed as ‘programming of interest to children’: *Beverly Hills 90210*, *Party of Five*, and *The Simpsons*.” Child Serve’s Jim Jones notes, “I fail to see how some of these shows can be deemed educational or informational. ... The majority of the shows teach children that it is vital to be cool, outsiders will always be treated poorly and although being yourself is very important, you better be good looking, good at sports or well-dressed because brains still work against you.” The Center for Technology & Society summed up these concerns by saying, “A clever writer could take almost any program on television and laud about its ability to, say, ‘improve social

skills.” They continued by saying their organization “would like to see clear evidence that professionals involved with children’s learning such as librarians, education faculty, and communications faculty are examining and shaping these few shows for their positive effect on children.”

G. Mandating Rules in a New Digital Era

Broadcasting is a business; it would be naive to ignore the fundamental role of the bottom line for broadcasters. Indeed, the history of the Children’s Television Act demonstrates that, when left to regulate themselves, broadcasters will not choose a public interest obligation to our nation’s children over advertising revenues. Even those broadcasters whose personal philosophies might dictate “doing the right thing,” are operating in an intensively competitive sphere. When left to self-regulation, acting on honorable intentions carries too great a business risk for the great majority of those in the industry.

As the Annenberg studies and People for Better TV’s local observations demonstrate, while broadcasters currently are generally complying with the Children’s Television Act, there is still room for considerable improvement. Stringent, quantifiable rules continue to be necessary to ensure that broadcasters meet children’s educational needs. As television moves from an analog to a digital system, Children Now urges the FCC not to rely once again on self-regulation and “good faith” from the broadcasting industry. Rather, fair regulations, defined and enforced by the FCC, can ensure that broadcasters meet their obligation to children in this new digital age.

IV. ANALYSES & RECOMMENDATIONS

Children Now proposes the following recommendations with the hope that public interest service in broadcasting will be continued and enhanced. For all these recommendations, Children Now also advises that the FCC consider careful phasing-in and implementation of standards and obligations over the period of time for transition and conversion from analog to digital.⁸⁷ Each recommendation should have built-in periodic reconsideration, particularly for technological advances, market responses, and any other factors that may impact the overall effectiveness of a recommendation.

A. Minimum Public Interest Obligations Should Be Specific

Along with People for Better TV, members of the Advisory Committee, the Media Access Project, and the Benton Foundation, Children Now believes that minimum public interest standards and obligations must be specific and detailed in order to give them meaning and effect.⁸⁸ Moreover, the conversion to digital is an unprecedented, complex process and necessarily requires specific guidelines during the transition period and afterwards. These requirements and guidelines should be communicated clearly to broadcasters during the license renewal process to ensure compliance and to ease any broadcasters' concerns regarding their status. Children Now supports the Advisory Committee's recommendation of five categories for minimum standards, in addition to the specific recommendations contained in these comments.⁸⁹ Compliance would be facilitated through quarterly reporting as detailed in Part IV.C, *infra*.

⁸⁷ Advisory Committee Report at §III.3 ("Any set of minimum standards should be drafted by the FCC in close conjunction with broadcasters and representatives of the public, and *phased in* over several years beginning with stations' transmission of digital signals." (emphasis added)).

⁸⁸ *Id.*; Notice at ¶21 n.68.

⁸⁹ Advisory Committee Report at §III.3.

B. Serving the Nation's Children

The following recommendations are particular to the FCC's request regarding how to serve nation's children. (*Notice* at ¶12).

1. The Children's Television Act in Digital

Children Now urges the FCC to maintain and enforce *all* of the current requirements of the Children's Television Act in the digital era.⁹⁰ In addition to complying with a proportional Three-Hour Rule described below, broadcasters still must be required to: 1) specify in writing the educational and informational objective of a program, as well as its target child audience; 2) air programs between the hours of 7:00am and 10:00pm; 3) ensure that broadcasts are regularly scheduled to assist parents in selecting educational programs for their children; 4) broadcast programs that are at least 30 minutes in length; and 5) identify "E/I" programs at the beginning of each program.⁹¹ Again, as evidenced from the history of the Children's Television Act, if the FCC does not explicitly state and enforce these rules, broadcasters will not voluntarily meet the educational and informational needs of children in the new digital era.

However, Children Now also recognizes that the digital television landscape is complex, creating difficulties in applying directly the current public interest obligations regarding children. As the Advisory Committee noted,

Analog broadcasters send one signal, usually 24 hours a day. Digital broadcasters may send one or multiple signals, at many different time periods throughout the day. Some of these signals may be programs; others may involve data transmissions or other broadband and telecommunications services. The vast new range of choices inherent in digital television technology makes it impossible to transfer summarily existing public interest obligations to digital television broadcasting. A key mandate for the Advisory

⁹⁰ See *Notice* at ¶4, citing *Fifth Report and Order, supra*, at 12809, 12810-12811, 12830 (1997) ("Likewise, in implementing section 336, the Commission reaffirmed that 'digital broadcasters remain public trustees with a responsibility to serve the public interest,' and state that 'existing public interest requirements continue to apply to all broadcast licensees.'"); *Fifth Report and Order, supra*, at 12830, ¶50.

⁹¹ Policies and Rules Concerning Children's Television Programming, 1996, *supra*, at §I (3-5).

Committee, therefore, has been to suggest how traditional principles of public-interest performance should be applied in the digital era.⁹²

Thus, Children Now recommends that the FCC apply the current Children's Television Act and corresponding FCC rules to digital broadcasters in the following manner:

**a. The Digital Three-Hour Rule for E/I Programming:
Proportional Hours Requirement**

As the Advisory Committee accurately notes, “. . . if broadcasters decide to use their digital real estate for multiple commercial channels (whether or not they are high definition), each generating its own revenue stream, then it is appropriate to consider whether the public interest requires *a different formula*.”⁹³ With respect to multicasting, this argument for reconsideration of particular public interest formulas is strengthened by the fact that although the FCC assesses fees from digital broadcasters who get paid for ancillary or supplementary services, the multicasting feature is free of charge.⁹⁴

First, each digital broadcaster should provide an amount of weekly E/I programming that is *proportional* to the three hours per week requirement currently administered under the Children's Television Act of 1990. This rule transfers the current Three-Hour Rule to digital in a fair and commensurable way, accounting for the increased amount of programming possible through multicasting. Unlike a flat hour rule, it does not penalize broadcasters who choose to program fewer hours than their colleagues. Thus, the obligation of digital broadcasters *is effectively the same as it was during the analog era*.

⁹² Advisory Committee Report at §III.

⁹³ Advisory Committee Report at §III.5 (emphasis added).

⁹⁴ *Id.*

Children Now recommends an application of the traditional Three-Hour Rule that becomes *the Three-Percent Rule*. First, we establish a baseline proportion of three hours per one-hundred and five (105) programmable broadcast hours per week – premised on the current 15 hours per day (between 7 a.m. and 10 p.m.) window for E/I programming for seven days per week. This provides a simple and realistic percentage to apply to expanded hours in the digital era – 3/105 or approximately 3% for administrative simplicity. Once broadcasters have calculated their total digital broadcast hours per week, they should multiple that total by 3% and round up to the closest five-tenths (i.e., 0.5) since half-hour segments are the smallest unit for programming. This will yield a preliminary E/I hours requirement, subject to adjustment by the proportional DVEQ process detailed in Part IV.B(1)(b), *infra*. Children Now has provided a sample case study worksheet in Appendix A.

Broadcasters are currently required to file quarterly reports that detail meeting their E/I requirements, and this calculation and evaluation process will follow the same schedule in the digital era. The amounts and figures required for the Digital Three-Hour Rule will be reported in the quarterly filings, and will determine the broadcaster's E/I requirements for the following quarter. The sample worksheet in Appendix A functions similarly to the disclosure worksheet proposed by the Advisory Committee – it is a simple and minimally burdensome method to assure the public and broadcasters that public interest obligations are being fulfilled.

**b. The Digital DVEQ Rule for E/I Programming:
Proportional DVEQ Requirement**

Second, the rules should also protect against segregation of E/I programming into the lowest DVEQ as determined by A/V quality and multiplexing (e.g., datacasting and

interactive participation). E/I programming must partake of the technological advances in the same proportion that a broadcaster chooses to use them overall. Children Now recommends that with each quarterly report, broadcasters must file a calculation of how their programming hours, *apart from E/I programming*, is distributed with respect to DVEQ (e.g., How many hours are broadcast in HDTV with streaming datacast? How many hours are broadcast in SDTV as part of a four-channel multicast with no multiplexing? How many hours are broadcast in each of the 18 possible formats?). Once this overall DVEQ distribution is computed, broadcasters must apportion their required E/I programming hours accordingly. All calculations must round up to the nearest five-tenths, since half-hour segments will be the smallest unit for programming.

Importantly, this recommendation preserves the broadcasters' flexibility and power to determine their optimal mix of services and bandwidth management. The FCC determined that this flexibility was prudent and declined to mandate a standard amount of services that would rest on "a prior assumptions as to what services viewers would prefer."⁹⁵ However, this recommendation also protects E/I programming against segregation and also promotes use of advanced technologies to enhance the educational experiences of television. Children's E/I programming should participate in the benefits of multiplexing and high-definition A/V as much as broadcasters choose to use these services. Children Now has provided a sample case study worksheet in Appendix A.

c. Pay or Play Model

If the FCC wants to maximize broadcasters' flexibility, they could consider a "Pay or Play" model as a way in which broadcasters could meet their obligation to the digital Three-Hour Rule. Under this model public interest obligations are quantified, and

broadcasters have the choice of meeting these obligations through their own programming or by paying a share of revenues to bypass those obligations.⁹⁶

Should the FCC consider such a model, Children Now urges them to consider it as a means of expanding our recommendation for a digital Three-Hour Rule. Again, under Children Now's proposal for a digital Three-Hour Rule, broadcasters' obligation to E/I programming would increase proportionally to the number of hours they are multi-casting. A "Pay or Play" model would simply increase broadcasters' flexibility in meeting this public interest obligation.

Children Now encourages the FCC to consider a "Pay or Play" approach that is analogous to the trading of "pollution rights" under the Clean Air Act Amendment of 1990. Essentially, the Act successfully reduced sulfur dioxide emissions by giving companies allowances that they could buy, save, or use from other companies.⁹⁷ With its public interest obligation already quantified, the Children's Television Act could serve as an appropriate archetype for the "Pay or Play" model.⁹⁸

The FCC could maximize broadcasters' flexibility, by giving them the option of airing the required hours of E/I programming on their own channels, paying other networks or channels to air these hours for them, or a combination thereof.

As it stands, the 1996 Children's Television Act enables broadcasters to serve children by producing or supporting shows that are then broadcast by another station.⁹⁹

⁹⁵ *Fifth Report and Order, supra*, at 12826, ¶42.

⁹⁶ Advisory Committee Report at §III.10, *New Approaches to Public Interest Obligations in the New Television Environment*.

⁹⁷ Campbell, Angela, *Toward A New Approach to Public Interest Regulation of Digital Broadcasting* (visited March 7, 2000) < <http://www.aspeninst.org/c&s/dbpi11.asj> > at § *Proposal 4: The Pay or Play Option* [hereinafter Campbell].

⁹⁸ *Id.*

⁹⁹ *Id.* ("The Children's Television Act in fact has adopted this approach in permitting broadcast licensees to meet part of their obligation to serve the educational and information needs of children by demonstrating

To date, broadcasters have not taken advantage of this opportunity but the “Pay or Play” model could facilitate their participation. One of the benefits of this model is that it could promote partnerships between commercial broadcasters or commercial and non-commercial broadcasters in a given market.¹⁰⁰ The model also could provide much needed financial support to public broadcasters, who have a strong interest in and commitment to E/I programming.

There are several drawbacks to the “Pay or Play” model that the FCC should take into account if they are to mandate such a policy. Critics contend that under such a model, broadcasters will opt for the least expensive alternative, which will most likely be to air programming on their own stations, which could be of extremely poor quality.¹⁰¹ Critics also argue that this model will relegate public interest programming to public broadcasting, which would result in less exposure for America’s children.¹⁰² Another concern is that commercial broadcasters may not pay public broadcasters enough to be able ameliorate the current public broadcaster funding shortage, which, in the end, could reduce the quality of E/I programming.¹⁰³

Such concerns could be mitigated if the FCC mandates stringent guidelines to a “Pay or Play” model for the Children’s Television Act. The FCC should develop a formula to quantify the economic value of an hour of E/I programming.¹⁰⁴ Such a

‘special efforts to produce or support [children’s educational] programming broadcast in another station in the licensee’s marketplace.’”).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Advisory Committee Report at §III.10, *New Approaches to Public Interest Obligations in the New Television Environment*.

¹⁰³ Campbell, *supra*, at § *Proposal 4: The Pay or Play Option*.

¹⁰⁴ According to proponents of this model, a payout of all public service requirements (not just E/I programming) would be about two percent of broadcasters gross revenues, currently valued at \$26 billion. See Neil Hickey, *Television News Is Moving From the Drab Old Neighborhood to Beachfront Property on the Cyber Sea*, *Columbia Journalism Review* 47 (September/October 1999); Henry Geller,

formula should take into account Children Now's proposed DVEQ (digital viewer experience quality) as a means of quantifying the range of experiences that are now possible with DTV. Thus, the price tag for an hour of E/I programming would vary depending on the level of the DVEQ of the program. As previously stated, broadcasters should apportion their required E/I programming hours according to their overall DVEQ distribution. Such apportionment should mollify some of the concerns about E/I programming quality in a "Pay or Play" model.

The "Pay or Play" model will require more data gathering and monitored enforcement by the FCC to ensure broadcasters' compliance. When broadcasters file their quarterly reports on their E/I obligation, they should be required to report whether they aired these hours themselves or paid another station to fulfill their responsibility. They must disclose the name of the station that aired the hours for them, and the amount that they paid. Again, the payment must be based on the formula previously determined by the FCC, which should include the DVEQ as a variable. The FCC must be prepared to enforce these rules, and to apply fines when necessary to ensure compliance.

d. Diversity of Programming

In order to meet the educational needs of the vast child audience, it is essential that broadcasters provide a range of E/I programming. Children Now urges the FCC to be cognizant of the importance of diversity in children's educational programming, particularly in regards to: 1) the age of the target audience; and 2) the production locale.

i. Target Audience

Age-related differences in children's cognitive abilities influence their ability to comprehend and decipher media messages.¹⁰⁵ Preschool-age and young children often cannot understand media content because it is too conceptual or complex, causing their attention to wane.¹⁰⁶ In order to attract children's attention, broadcasters must create programming that is targeted to different age groups, taking into account the needs and abilities of children of these specific groups.¹⁰⁷ According to Dr. Kelly Schmidt, author of *The Three-Hour Rule: Is It Living 'Up To Expectations?*, minimal E/I programming exists for children under the age of five. Although this trend may represent a reluctance among broadcasters to label programming appropriate for that age group, it also could be that some advertisers feel that preschoolers are not a legitimate market.¹⁰⁸

Our youngest children can benefit tremendously from E/I programming that is developmentally appropriate; it cannot only educate and entertain, but it can prepare children for school, and has even been shown to improve test scores. According to a 1995 University of Kansas study, preschoolers in low-income areas who watched educational children's programming were not only better prepared for school, but actually performed better on verbal and math tests as late as age 7 than would have been expected otherwise. The study also found that preschoolers who only watched adult programs and

¹⁰⁵ Dale Kunkel & Brian Wilcox, *Children and Media Policy*, in *Handbook on Children and Media* (Dorothy and Jerome Singer, eds., forthcoming 2000).

¹⁰⁶ Kunkel & Wilcox, *supra*, at § *Adequacy of Television's Service to Children*.

¹⁰⁷ *Id.*

¹⁰⁸ Schmidt, *supra*, at 11.

entertainment-oriented cartoons did worse on those later tests than would have been anticipated.¹⁰⁹

Under the 1996 Children's Television Act, broadcasters are required to disclose the target age group that their E/I programs serve. Children Now urges the FCC to minimally require the same disclosure of digital broadcasters and to consider the importance of serving all children in the new digital era.

ii. Production Locale

Locally-produced programs provide an important niche for children, as they can educate and inform them about their community, as well as offer ideas of local activities in which to participate. Children Now urges the FCC to consider the benefits that locally-produced shows bring to the children in the communities they serve. Currently, there is a dearth of such types of E/I programming. According to the Annenberg Public Policy Center, only 65 of about 1200 E/I shows were locally produced in 1999; commercial broadcasters generally receive all of their E/I programming from the network with which they are affiliated.¹¹⁰

Most respondents of the Annenberg poll, *The Three-Hour Rule: The Insiders' View*, feel that there is a lack of E/I programs being produced by local stations, and many complained that there is a diminishing cadre of players in the production community. The FCC may want to consider ways of encouraging local broadcasters to produce some of their own E/I programming, as a means of diversifying E/I programming available to children in different communities.

¹⁰⁹ Lawrie Mifflin, *Study Finds Educational TV Lends Preschoolers Even Greater Advantages*, N.Y. Times, May 31, 1995, at B8.

¹¹⁰ Schmidt, *supra*, at 25.

e. Ratings and the V-Chip

In 1997, after great debate between children's advocates and broadcasters, a new voluntary television ratings system was implemented to give parents adequate information about the programs that their children watch. Parents now have a ratings system that includes content-based ratings, instead of age-based ratings only. The new system consists of content descriptors (V, S, L, D) which inform parents about shows that contain high levels of violence, sexual situations, coarse language, and suggestive dialogue, respectively. These ratings are used to rate most types of television shows including dramas, comedies, soap operas, movies, and talk shows. The new system also enhances the ratings for children's programs by adding an indicator for children's shows that include violent material (FV for fantasy violence).

V-Chip technology, when used in conjunction with the TV ratings system, enables parents to block programming they consider inappropriate for their children. During the first fifteen minutes of a program, broadcasters send an electronic identification signal that indicates a program's rating; the V-Chip then receives and processes this signal.¹¹¹ If parents have blocked shows with specific ratings, the V-Chip prevents such shows from appearing on their television screen.

As television moves from an analog to a digital system, Children Now urges the FCC to ensure that the V-Chip and ratings system are available to parents. According to a 1999 poll conducted by the Henry J. Kaiser Family Foundation, more than three fourths of parents (77%) said that if they had a V-Chip at home, they would use it to block out

¹¹¹ Center for Media Education and the Henry J. Kaiser Family Foundation, *What Parents Should Know About the V-Chip* (visited 3/23/00) < <http://www.vchippeducation.org/pages/usingr.html>.>

programming they deemed inappropriate for their children.¹¹² Similarly, six out of ten parents said they are concerned a “great deal” that their children are being exposed to too much sex (66%) or violence (60%).¹¹³ With broadcasters’ new multicasting capability, children will have access to many more channels and programs, potentially exposing them to more violence, sex, crude language and suggestive dialogue. Thus, the ratings and accompanying V-Chip technology should be available so that parents can monitor the shows their children watch in the digital age.

Children Now urges the FCC to consider how the advanced capabilities of digital broadcasting can help to provide ratings information to parents. Currently, the ratings symbol appears in the top upper left-hand corner of the screen during the first fifteen seconds of a television program. In order to determine the rating of a show, parents must either watch the beginning of the program, or check their local TV guide. More than two thirds of parents (67%) report that even when they looked for the rating on their television screen, they frequently missed it.¹¹⁴ Similarly, eight out of ten parents who use the ratings said that the ratings symbol should appear on the screen more often.¹¹⁵ With digital television’s capability to transmit data simultaneous with programming, broadcasters could make ratings (as well as E/I information) available throughout the length of a program. Broadcasters could also use datacasting to provide parents with information as to why a show received a particular rating or is categorized as E/I programming. Using the interactive capabilities that potentially will be available, with a

¹¹² *Campaign To Educate Parents About the V-Chip Announced*, The Henry J. Kaiser Family Foundation Press Release, May 10, 1999 available at <www.kff.org/content/archive/1477/vchip.html>.

¹¹³ *Id.*

¹¹⁴ The Henry J. Kaiser Family Foundation, *Parents, Children and the Television Ratings System*, (May 1988), p. 5.

¹¹⁵ The Henry J. Kaiser Family Foundation, *Parents, Children, and the Television Ratings System*, *supra*, at 8.

click of the mouse, parents could access pertinent program information at any point during the broadcast.

Children Now also asks that the FCC consider using digital television's increased capabilities to augment the current ratings system to provide even more information to parents. The FCC has indicated that it would take "an open, flexible approach to the development of industry standards and regulations that would accommodate the possible development of multiple ratings systems."¹¹⁶

The FCC should consider requiring broadcasters to provide additional content ratings information from independent sources. Eight out of ten voters favor an independent ratings system (84%), and think that developing such a system is important (87%).¹¹⁷ Digital technology should allow for the provision of multiple ratings systems. Such systems could be made available through the V-Chip itself (by using the additional spectrum available) or by providing links to the Internet where such information could be accessed. More research needs to be conducted as to how the V-Chip and TV ratings system can work most effectively for parents in the digital era. Children Now urges the FCC to issue an NOI to further explore this issue and to determine how to maximize content and ratings information for parents.

f. Commercials

As television moves from an analog to a digital system, Children Now urges the FCC to maintain the current regulations about advertising and children's television programming, specifically in regards to time limits and program-commercial separation.

¹¹⁶ 13 FCC Rcd 11248, 11251 (1998).

i. Time Limits

The Children's Television Act of 1990 limited advertising during children's programs to 12 minutes per hour on weekdays, and 10.5 minutes per hour on weekends. Broadcasters have overwhelmingly adhered to this rule, with a 1993 study showing 98% of stations in compliance.¹¹⁸ Children Now urges the FCC to uphold this rule in the digital era, and maintain these limits on advertising during children's programming.

ii. Program-Commercial Separation

Research indicates that by the age of five, most children are able to identify commercials aired during television programs. It is not until age seven or eight, however, that they truly understand the persuasive intent of advertising. In other words, children under seven see advertisements as part of television entertainment, while children seven and older are "coming to terms with the fact that advertisers are 'trying to get people to buy something.'" Thus, Children Now urges the FCC to uphold three current rules which help children to distinguish between commercials and the content of the show:

- 1) *Program length commercials*: Broadcasters cannot "air a program associated with a product in which commercials for that product are aired."¹¹⁹
- 2) *Host-selling*: Program characters or show hosts are not allowed to sell products in commercials during or adjacent to their shows.¹²⁰

¹¹⁷ *FCC Urged to Hold Public Hearings As Group Releases Poll Showing Support for Independent Ratings System for Violence, Sexual Content and Inappropriate Language*, People for Better TV Press Release, July 2, 1999, available at <www.bettertv.org/release0702.html>.

¹¹⁸ Stern, *supra*, at 65.

¹¹⁹ Kunkel & Wilcox, *supra*, at § *Fairness of Television Advertising To Children*.

¹²⁰ *Id.*

- 3) *Bumpers*: Required during children's programs, bumpers are five seconds long and separate programs and commercials. They include messages like, "And now a word from our sponsor."¹²¹

2. Additional Opportunities and Obligations

In addition to applying traditional principles of public-interest performance with appropriate modifications, the Advisory Committee also discussed appropriate additional public interest obligations "given the enhanced opportunities and advantages that broadcasters may receive through digital broadcasting."¹²² Children Now agrees with the principle that "there should be some additional benefit to the public if its grant to broadcasters of the valuable digital television spectrum results in enhanced economic benefits for broadcasters."¹²³ Further, as detailed above at Part II, *supra*, the technological advances of DTV offer exponentially more opportunities to meet children's educational and informational needs. The FCC should ensure that those opportunities for America's children are not overlooked in this pivotal transition.

Comments from the Center for Media Education (hereinafter, "CME") present a set of options that broadcasters may use to satisfy their additional public interest obligations to children. The Advisory Committee laid out a similar model of alternatives in its discussion of multiplexing capabilities and the need for additional benefits to the public.¹²⁴ The CME model is composed of two levels of options, offering broadcasters maximum flexibility and control.¹²⁵ None of the options are mutually exclusive, giving

¹²¹ *Id.*

¹²² Advisory Committee Report at §III; *Fifth Report and Order, supra*, at 12830, ¶50 ("Broadcasters and the public are also on notice that the Commission may adopt new public interest rules for digital television.").

¹²³ Advisory Committee Report at §III.5.

¹²⁴ *Id.*

¹²⁵ See Comments of Center for Media Education at §I (filed March 27, 2000 in MM Docket No. 99-360).

broadcasters the power to combine options and to optimize their bandwidth management. CME suggests that broadcasters may choose to fulfill their obligations by: providing more educational and informational (E/I) programming; paying a fee to a fund that support noncommercial programming; or providing broadband and datacasting services to local schools and libraries. For each of these options, broadcasters have a variety of methods to consider. For example, providing more E/I programming may be accomplished by dedicating an entire channel to E/I programming, dedicating one hour of E/I programming for every 20 hours of multicasting, setting aside a channel for children's programming and dedicating a substantial amount to E/I shows, or setting aside a channel for noncommercial public interest programming and dedicating a substantial amount to E/I shows.¹²⁶

Children Now recommends that the FCC consider additional obligations for digital broadcasters regarding children and children's programming. Further, Children Now recommends that the FCC consider the flexible and effective model proposed by CME as part of its rule-making process.

3. Children's Privacy & Protection on DTV

Convergence through the DTV platform will necessarily bring the current Internet policy issues of invasions of privacy and excessive advertising to the television arena. As detailed above at Parts I.A and II.C, *supra*, it is possible that these policy concerns will quickly affect a much larger population of children if the Digital Divide is narrowed by DTV. Correspondingly, Children Now recommends that the FCC consider additional rule-making to protect children from invasions of privacy and excessive and abusive advertising in the digital era. The Center for Media Education has conducted pioneering

¹²⁶ *Id.*

research and advocacy in these new media policy arenas. Comments submitted by CME detail recommendations for additional safeguards, including: the application of the Children's Online Privacy Protection Act of 1998 (COPPA) and corresponding Federal Trade Commission rules to DTV broadcasters collecting information from children; the application of existing advertising policies and regulations on all programs that are directed toward children twelve (12) and under regardless of what program stream they are on; and a prohibition of all links to advertising or sales during children's programming.¹²⁷

Children Now recommends that the FCC consider the expertise of CME and their proposals for additional privacy and advertising safeguards, in its rule-making process.

C. Disclosure Requirements

Children Now agrees with the principle that effective self-regulation requires broadcasters to disclose adequately their information regarding what they are doing. The current FCC disclosure rules require commercial TV broadcasters to include in their public files separate quarterly reports regarding their non-entertainment programming responsive to community needs and their children's programming.¹²⁸ These data include items such as citizen agreements, records concerning public office candidate broadcasts, employment reports, correspondence with the public, issues/programming lists, records concerning commercial limits in children's programming, and children's programming reports.¹²⁹ Toward the goal of significant and effective disclosures in the digital era, Children Now makes the following recommendations:

¹²⁷ *Id.* at §II.

¹²⁸ 47 C.F.R. §§ 73.3526, 73.3527.

¹²⁹ *Notice* at ¶16 (citing 47 C.F.R. § 73.3526(e)); *see also* In the Matter of Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio

First, Children Now recommends that the current information reporting requirements established for implementing the Children's Television Act continue to apply to all digital broadcasting, including ancillary and supplementary services.

Second, Children Now joins the recommendations of the Advisory Committee and People for Better TV regarding enhanced disclosure requirements for digital broadcasters.¹³⁰ Enhanced reporting is necessary due to the complex and exponentially richer landscape of DTV compared to analog broadcasting. Broadcasters should report on their "public interest programming and activities on a quarterly basis, using standardized check-off forms that reduce administrative burdens and can be easily understood by the public."¹³¹ The enhanced set of data should "include but not be limited to contributions to political discourse, public service announcements, children's and educational programming, local programming, programming that meets the needs of underserved communities, and community-specific activities."¹³²

Third, Children Now recommends that the FCC affirmatively revisit its repeal of previous ascertainment requirements, and explore whether any of the revoked requirements have particular relevance and application to DTV.¹³³ This exploration should consider whether a specific requirement is applicable today as well as whether it will be applicable as the transition to digital television proceeds.

Finally, Children Now joins the Advisory Committee in its recommendation that digital broadcasters take affirmative steps to distribute their public interest obligation data

Stations, MM Docket No. 97-138, *Report and Order*, 13 FCC Rcd 15691 (1998) (*Public File Report and Order*).

¹³⁰ Advisory Committee Report at §III.1; Letter from People for Better TV to William E. Kennard, Chairman, FCC, Nov. 16, 1999; *Notice* at ¶15.

¹³¹ Advisory Committee Report at §§III.1, Appendix A.

¹³² *Id.* at § III.1.

¹³³ *See Notice* at ¶16 n.63.

more widely through channels such as local newspapers, local program guides, and the Internet.¹³⁴ Members of the People for Better TV coalition took considerable effort to obtain public information from broadcasters during the early part of 2000 in order to comment in this proceeding; any measures that facilitate this process would better serve the public and fulfill the true intent of the rule.¹³⁵

D. Diversity

Diversity of programming has long been a cornerstone of the broadcasting industry, from the *Great Lakes Broadcasting Co.* rules in 1929 to the Blue Book policy statement in 1946 to the 1960 Programming Policy Statement, and up to recent national discussions regarding prime-time diversity highlighted by the National Association for the Advancement of Colored People in 1999.¹³⁶ Both the FCC and the Advisory Committee have addressed the importance of diversity in broadcasting with respect to viewpoint, ownership, and employment.¹³⁷ As the FCC notes, many of the Advisory Committee's "recommendations bear on its goal of diversity in broadcasting," with proposals ranging from the capacity of multicasting to better serve underrepresented minorities in content and entrepreneurship to the use of recovered analog spectrum for noncommercial programming directed at underserved segments of the community to "hiring and promotion policies that result in significant representation of minorities and women in the decision-making positions in the broadcast industry."¹³⁸

¹³⁴ Advisory Committee Report at §III.1.

¹³⁵ See, e.g., Part III.F, *supra*; see also comments, observations, and letters filed by People for Better TV members for this FCC proceeding (MM Docket No. 99-360).

¹³⁶ See Advisory Committee Report at §II, *Encouraging Diversity of Programming*; *Great Lakes Broad. Co.*, 3 FRC Ann. Rep. 32 (1929); *Public Service Responsibility of Licensees* (the Blue Book) (1946); *En banc Programming Inquiry*, 44 FCC 2303 (1960); Greg Braxton, *NAACP Will Fight Network TV Lineups*, L.A. Times, July 12, 1999, at A1.

¹³⁷ Notice at ¶¶ 29-33.

¹³⁸ Notice at ¶32 (citing Advisory Committee Report at §III.9).

A consistent theme in the Advisory Committee's final report is that serving diverse interests and promoting diversity in broadcasting is both "good business and good public policy."¹³⁹ The Advisory Committee addresses growing commitments to equal employment opportunities in the digital era, expanded possibilities for diversity of programming due to multicasting and multiplexing (e.g., "narrowcasts"), designated noncommercial educational channels and datacasting to underprivileged and minority communities, and enhanced audio capabilities for increased use of foreign language tracks.¹⁴⁰ Children Now recommends that the FCC consider all of the Advisory Committee's proposals and arguments for promoting diversity in broadcasting in its rule-making process, and supports the FCC in its undertaking of initiatives designed to diversify broadcast ownership and employment.

Children Now also recommends that the FCC consider the effects of DTV convergence on the Digital Divide and diversity, as discussed at Part II.C, *supra*. While the actual closure of the divide will depend primarily on the price points of receiver hardware, the politics of convergence may force the public to purchase and thereby bring a greater population on-line.

Finally, Children Now and its Children and the Media Program have been engaged in issues of diversity and identity formation for several years, and we submit the following research reports to be placed in the record of this proceeding:¹⁴¹

- i. *Fall Colors: How Diverse is the 1999-2000 TV Season's Prime-Time Lineup?* (2000) [Appendix B];

¹³⁹ Advisory Committee Report at §III.9.

¹⁴⁰ See Advisory Committee Report at §§II, *Encouraging Diversity of Programming*, II, *Equal Employment Opportunity*, III.4(b), *The Creation of New Noncommercial, Educational Channels*, III.9, *Diversity in Broadcasting*.

¹⁴¹ All reports are available on-line at <<http://www.childrenandmedia.org>>.

- ii. *Boys to Men: Media Messages About Masculinity (Entertainment Media)* (1999) [Appendix C];
- iii. *Boys to Men: Media Messages About Masculinity (Sports Media)* (1999) [Appendix D];
- iv. *The News Media's Picture of Children: A Five-Year Update and A Focus on Diversity* (1999) [Appendix E];
- v. *A Different World: Native American Children's Perceptions of Race and Class in the Media* (1999) [Appendix F];
- vi. *A Different World: Media Images of Race and Class (conference report)* (1998) [Appendix G];
- vii. *A Different World: Children's Perceptions of Race and Class in the Media* (1998) [Appendix H];
- viii. *Reflections of Girls in the Media (Fourth Annual Children & the Media Conference)* (1997) [Appendix I]; and
- ix. *Reflections of Girls in the Media: A Two-Part Study on Gender and Media – Summary of Key Findings* (1997) [Appendix J].

This body of research presents a comprehensive examination of how America's young people perceive issues of diversity such as race, class, and gender in the broadcast media that they consume. Children speak about the lack of diversity and the unfair representation of minorities in the media. Further, many young people express their desire for more balanced, realistic, and real programming. Concurrently, these reports also provide content analyses of the most popular media among young people, with respect to these diversity issues. While some pictures have improved, there is still much room for greater positive diversity in programming.

Children Now submits this body of research into the record and recommends that the FCC take note of the findings. The voices of America's children should be included in this rule-making process.