

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
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Children's Television Obligations)
of Digital Television Broadcasters) MM Docket No. 00-167
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)

REPLY COMMENTS
of
PEOPLE FOR BETTER TV

On behalf of its steering committee and members, People for Better TV hereby submits Reply Comments in response to the Federal Communications Commission's ("Commission" or "FCC") Notice of Proposed Rulemaking, *In the Matter of Children's Television Obligations of Digital Television Broadcasters*, MM Docket No. 00-167 (rel. Oct. 5, 2000). As we noted in our Comments to this proceeding, People for Better TV is a national broad-based coalition established in 1998 to ensure that television broadcasters are responsive to local community needs. People for Better TV represents over 150 community groups and our steering committee includes the following organizations: Children NOW, Civil Rights Forum on Communications Policy, Communications Workers of America, Consumer Federation of America, League of United Latin American Citizens, National Association of the Deaf, National Organization for Women, National Urban League, Project on Media Ownership and the U.S. Catholic Conference.¹

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¹ See People for Better TV Comments at App. A for a complete list of member organizations.

Like our Comments, People for Better TV's Reply Comments will be brief as we generally support the Comments and Reply Comments of our steering group member, Children Now, and refer the Commission to those extensive submissions in this docket. In response to the Comments that have been filed in this proceeding, People for Better TV would like to emphasize only two issues: 1) that the Commission should act now to regulate children's programming in the digital age; 2) that the Commission has both the statutory and constitutional authority to adopt rules for children's programming on digital television.

I. To Protect Children, the Commission Should Adopt Standards for Children's Programming Now During the Transition to Digital Television

People for Better TV shares the views of all of the children's advocacy organizations that have filed in this proceeding, who argue that the Commission should take immediate action to establish certain policies that protect children in the digital age. *See* Children Now Comments, CME, *et al.* Comments, and Sesame Workshop Comments. In contrast, several broadcasters maintain that Commission action in this proceeding would be premature. According to these Commenters, regulation of children's digital programming at this stage would stifle innovation, prevent experimentation, and ultimately result in fewer quality programming services for children.²

As both People for Better TV and UCC, *et al.* maintained in their Comments and Reply Comments to the Commission's Notice of Inquiry on the public interest obligations of digital broadcasters, *In the Matter of Public Interest Obligations of TV Broadcast Licensees*, MM Docket No. 99-360, 14 FCC Rcd 21633 (1999) (NOI), immediate action is needed to create certainty for broadcasters, viewers, and the Commission and to prevent the entrenchment of

business practices that fail to serve children’s interests. Regulatory certainty allows broadcasters to move forward more quickly by providing them with guidance on how to use the spectrum they have been given.³ Digital broadcasters can plan for the future without worrying that their business models will be made obsolete by future FCC regulation.

Adopting regulations now also benefits the Commission and the public. The Commission would have more difficulty regulating broadcasters once their business models become entrenched. Indeed, the Commission’s past experience in regulating children’s programming demonstrates the need for early intervention. *See, e.g., ACT v. FCC*, 821 F.2d 741, 745 (D.C. Cir. 1987) (“[t]he FCC’s regulation of children’s television was founded on the premise that the television marketplace does not function adequately when children make up the audience.”). The public benefits from early regulation because it allows them to evaluate more easily broadcasters’ conduct from an early stage. Facilitating citizen review also aids the Commission because the agency relies on the public to monitor broadcaster behavior.⁴ As noted in the numerous letters that we submitted from viewers around the country, the public can better assess their local stations’ compliance if broadcasters must adhere to clear standards.

Moreover, as UCC, *et al.* noted in their NOI Comments, the Commission has sufficient knowledge of how broadcasters will use their spectrum to develop a fair and flexible regulatory scheme.⁵ More specifically, DTV broadcasters will provide at least one free channel comparable to the one on which the public has come to rely, as well as some enhanced television services,

² *See e.g.*, NAB Comments at 3; Sinclair Comments at 1-2.

³ *See* UCC, *et al.* NOI Comments at 4-5.

⁴ As the Commission noted in *Deregulation of Radio*, “[w]e expect and encourage the public to keep the Commission informed as to how well the marketplace is performing. Based upon complaints from the public, we will monitor market performance.” 73 FCC 2d 457, 535 (1979).

either in HDTV or multicast as SDTV.⁶ The interactive potential of DTV will enable broadcasters to target advertisements and insert hyper-links into programming and ads so that viewers can directly purchase products. Finally, DTV allows for a broad range of datacasting services similar to Internet capabilities.⁷ In sum, DTV licensees will use the spectrum to provide some combination of HDTV, SDTV multicasts, and Internet or other data services. Based on this knowledge of broadcasters' future business plans, the Commission can and should reasonably craft a regulatory scheme that serves children's needs.

II. The Commission has the Authority to Regulate Children's Programming on Digital Television.

The Commission has both statutory and constitutional authority to adopt children's programming rules for digital broadcasters. Thus, the Commission should disregard the claims of some Commenters that it cannot take action unless it finds problems with adherence to its existing rules.⁸ As Children Now notes in its Reply Comments in this proceeding, the Commission has the authority under the Administrative Procedure Act (APA) to adopt rules now that will serve children in the digital age. The APA affords the Commission the discretion to make predictive judgments in rulemaking proceedings. *See, e.g., Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965, 971 (D.C. Cir. 1999) (“[A]n agency’s predictive judgment regarding a matter within its sphere of expertise is entitled to ‘particularly deferential’ review.”)(citations

⁵ *See* UCC, *et al.* NOI Comments at 5-6.

⁶ *Id.* citing *Fifth Report and Order*, 12 FCC Rcd at 12820, and *Digital Television '99: Navigating the Transition in the US*. <<http://www.nab.org/Research/Reports/DIGITALTV.htm>> (last visited Mar. 17, 2000).

⁷ *Id.* citing Richard V. Ducey, *Internet +DTV Broadcasting = UN-TV*, <<http://www.nab.org/research/Reports/DTV-Internet.asp>> (last visited Mar. 9, 2000).

⁸ *See, e.g.*, NAB Comments at 8-9; Viacom Comments at 15-16.

omitted). Moreover, the Commission can base its findings on the extensive record provided in this proceeding by Commenters such as Children Now and CME, *et al.*

In addition, adopting rules for digital television that serve children’s educational needs and protect them from overcommercialization and invasions of privacy would not infringe on the First Amendment rights of broadcasters. Some broadcasters have attacked the Commission’s proposals by suggesting that the three-hour guideline, and consequently any extension of the policy, unconstitutionally limits broadcasters’ editorial discretion.⁹ Other Commenters argue that the demise of the scarcity rationale limits the Commission’s authority to adopt public interest obligations.¹⁰ Both of these claims are unfounded. Indeed, the Supreme Court’s has consistently reaffirmed the Commission’s authority “to place limited content restraints, and impose certain affirmative obligations, on broadcast licensees.” *Turner Broadcasting v. FCC*, 512 U.S. 622, 638 (1994). Moreover, in adopting and implementing the Children’s Television Act, both Congress and the Commission have recognized the importance of serving the child audience.¹¹ Thus, the Commission should adopt the proposals set forth by Children Now to adapt the current children’s programming rules to digital television in a manner that affords broadcasters editorial flexibility while ensuring that children’s needs are met.

Conclusion

In these brief Reply Comments, People for Better TV reiterates its support for the Comments and Reply Comments submitted by People for Better TV steering committee

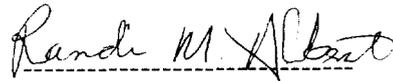
⁹ See, e.g., NAB Comments at 11-16.

¹⁰ See, e.g., Named State Broadcasters Associations Comments at 8-9.

¹¹ See, S. Rep. No. 227, 101st Cong., 1st Sess. 16 (1989), and *In the Matter of Policies and Rules Concerning Children’s Television Programming: Revision of Programming Policies for Television Broadcast Stations*, MM Docket No. 93-48, 11 FCC Rcd 10660, 10729-30 (addressing the constitutionality of children’s programming guidelines).

member, Children Now. We urge the Commission to rely on the extensive record created by child advocacy organizations in this proceeding and take immediate action to adopt rules to protect children in the digital age. The Commission should also consider the numerous letters People for Better TV submitted from viewers across the nation describing their interest in quality children's television programming. The Commission has both the statutory and constitutional authority to act now to ensure that children's programming needs are well-served by digital broadcasters.

Respectfully submitted,

A handwritten signature in cursive script that reads "Randi M. Albert". The signature is written in black ink and is positioned above a horizontal dashed line.

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