DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

JAN 17 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

TO: The Commission

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

Henry L. Baumann
Jack N. Goodman
Valerie Schulte
Ann W. Zuvekas
COUNSEL

NATIONAL ASSOCIATION OF
BROADCASTERS
1771 N Street, NW
Washington, DC 20036

January 17, 2001

No. of Copies rec'd 0+11
List ABCDE

TABLE OF CONTENTS

Executive Summary i

I. INTRODUCTION 1

II. THERE IS NO DEMONSTRATION OF NEED WHICH WARRANTS CHANGE TO THE AGREED-UPON THREE HOUR RULE 2

III. THE IMPOSITION OF DETAILED PUBLIC INTEREST OBLIGATIONS ON THE NACENT DIGITAL BROADCASTING IS INDEED PREMATURE 4

IV. ANCILLARY AND SUPPLEMENTAL SERVICES ARE NOT SUBJECT TO PUBLIC INTEREST OBLIGATIONS 7

V. THERE IS NO RECORD TO SUPPORT A CHANGE IN PREEMTION POLICIES 8

VI. ALTERING THE DEFINITION OF COMMERCIAL MATTER OR PLACING RESTRICTIONS ON INTERACTIVE TELEVISION POSSIBILITIES IS NOT SUPPORTED BY THE RECORD 10

A. The Commission Should Not Alter Its Definition of Commercial Matter 10

B. The Commission Should Refrain From Promulgating Rules On Digital Television Interactivity 12

VII. THE CURRENT VOLUNTARY RATINGS SYSTEM SHOULD REMAIN UNCHANGED 14

VIII. CONCLUSION 15

EXECUTIVE SUMMARY

The National Association of Broadcasters (NAB) hereby files reply comments in the above-referenced proceeding on children's television obligations in the digital television (DTV) world. As an initial matter, NAB is pleased to announced that its promotional campaign, "*Getting the Word Out: NAB Action Kit on Children's Programming,*" is underway. As we detailed in our initial comments, the Action Kit is a tool broadcasters can use to promote educational and informational programming and build their audiences for "core" programming. The Action Kit represents one example of broadcasters' commitment to community service and to children.

Although NAB asserts that the transition to digital broadcasting does not, in itself, warrant the imposition of additional obligations, NAB does respond specifically to the comments raised by several advocacy groups. First, NAB strongly disputes *CME, et al*'s argument that the needs of children are unmet with the current processing guideline. Neither CME nor the Commission have evidenced any failure on the part of commercial television stations to meet Congress' or the Commission's directives as to children's educational and informational programming. And while NAB fully agrees with Children Now's "conviction" that the path to improved programming in the digital era can be realized through cooperation between the public and private sectors and that broadcasters should be given "breathing room" to develop children's programming, NAB does not support Children Now's conclusion that increased capacity should equal increased programming requirements, be it on a proportional or percentage basis. Simply stated, the Commission can justify new obligations only if existing regulations are inadequate and increased obligations would address these inadequacies.

Second, because the landscape for digital television programming has yet to be defined, it is premature for the Commission to apply a new comprehensive regulatory scheme to a programming paradigm which may or may not occur. NAB strongly urges the Commission to refrain from implementing rules burdening digital interactive television until such service comes into existence and its cable carriage is assured.

Further, CME's "point system" proposal placing a higher value on interactive and locally-produced educational and informational programming is ill-conceived. Neither the Commission, the Children's Television Act (CTA) or the 1996 Telecommunications Act supports the disparate treatment CME proposes for different types of children's educational and informational programming, based on the level of technology a licensee chooses. And the Commission simply has neither the record nor the authority under the CTA or the 1996 Telecommunications Act to adopt a new regulatory scheme that would mandate that broadcasters provide interactive and/or locally-produced "core" programming.

Moreoever, based on the record, it would be arbitrary for the Commission to determine that these types of programming would provide more educational and informational value than traditional "core" programming. Instead, the Commission, should *encourage* broadcasters to explore new technology and means for delivering quality digital broadcast programming, without constraints as to the type and mechanism of such programming. As for CME's proposal that broadcasters devote a percentage of their gross revenue to fund public television or provide datacasting services to local schools, neither CTA nor the Commission's implementing rules envision such a regulatory scheme. The purpose of the CTA is to provide guidance to broadcasters for airing children's educational and informational programming on a broadcaster's *free-over-the-air* channel.

Third, as noted in NAB's initial comments, the Commission itself has determined that subscription services are not broadcasting services subject to Title III broadcasting obligations. While CME attempts to justify additional programming obligations based on potential rollout of ancillary and supplementary services, CME itself asserts that any additional obligations would apply *only* to a broadcaster's primary channel. NAB agrees with the Sesame Workshop that per-channel programming requirements would not further the objectives of the CTA because parents and children may not be able to access such services without advanced equipment/and or subscription fees.

Fourth, there is no record to support a change in preemption policies. From the inception of the three-hour processing guideline, each commercial broadcaster has had to file annually a uniform report detailing its core programming practices for the past year. This policy appears to be working for both the children's audience *and* the greater audiences for live weekend sporting events. The Commission has been achieving the same goal since 1997, with far less "regulation" than what CME proposes, and the factual record before the Commission establishes that preemptions are infrequent and where they occur programs have been rescheduled without reduction of their audiences. And because at this point it is unclear whether and under what circumstances multicast programming is commercially viable and because it is likely that some or many broadcasters will not choose a multicast business model, the Commission should refrain from implementing rules that would eliminate preemptions or require a set "second home" for preempted "core" programs on multicast channels.

Fifth, altering the definition of commercial matter or placing restrictions on interactive television possibilities is not supported by the record. In enacting the CTA, the Senate Report clearly states "[t]he Committee intends that the definition of commercial matter [as used in the

statute] will be consistent with the definition used by the FCC in its former FCC Form 393." Under that definition, program promotions and public service announcements *are not* commercial matter because no compensation is received for their airing. Better promotion of educational and informational programming, by necessity, educates parents and children about the types of quality programming they may chose to watch. And NAB agrees with Viacom that the Commission's policy of exempting "paid PSAs and educational and informational material has helped underwrite quality children's programming." Further, NAB supports the Sesame Workshop's opposition to banning direct links to Internet sites that contain commercials and to counting such links towards commercial limits

NAB strongly urges the Commission to refrain from considering or promulgating rules prohibiting the use of digital television interactivity capability in children's programs. In a digital interactive environment, children could be linked to websites that have scores of educational and informational destinations. NAB reminds the Commission that merchandising can be an important source of funding for educational and informational programming. Accordingly, the Commission should not prematurely adopt restrictions which may inadvertently create a disincentive for the development of interactive educational and informational children's programming. NAB does support Children Now's proposal that the use of links to commercially sponsored sites be conditioned upon a "clear separation between program content and advertising content or non-program website content generally."

Finally, the current voluntary ratings should remain unchanged. By requiring broadcasters to provide content ratings information, the "costs would far exceed their benefits." NAB reminds the Commission that Section 551 of the Telecommunications Act of 1996

provides no authority for Commission to develop ratings system applicable to advertisements and promotions for upcoming television programs and theatrical movies.

Before the
Federal Communications Commission
Washington, D.C. 20554

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

TO: The Commission

REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS

I. INTRODUCTION.

The National Association of Broadcasters (NAB)[1] hereby files reply comments in the above-referenced proceeding on children's television obligations in the digital television (DTV) world.[2] As an initial matter, NAB is pleased to announced that its promotional campaign, "*Getting the Word Out: NAB Action Kit on Children's Programming,*" is underway. As we detailed in our initial comments, the Action Kit is a tool broadcasters can use to promote educational and informational programming and build their audiences for "core" programming.[3] This week, broadcasters throughout the country will receive a copy of this Action Kit, attached

---

[1] NAB is a nonprofit incorporated association of radio and television stations and broadcasting networks. NAB serves and represents the American broadcasting industry.

[2] *Notice of Proposed Rulemaking*, In the Matter of Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167 (released October 5, 2000) (hereinafter *Notice*).

[3] Comments of NAB, *Notice of Proposed Rulemaking*, In the Matter of Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167, December 18, 2000 at 19 (hereinafter NAB Comments).

as Appendix A. The Action Kit represents one example of broadcasters' commitment to community service and to children. NAB urges that the Commission confine itself to encouraging broadcasters to voluntarily and creatively promote their educational and informational children's programming, rather than consider further (and unnecessary) regulatory initiatives in this area.

NAB files brief reply comments because we believe that our initial comments are dispositive of the issues raised by the Commission's *Notice* and are, as well, responsive to the comments of other parties. And although NAB asserts that the transition to digital broadcasting does not, in itself, warrant the imposition of additional obligations, NAB does hereby respond specifically to the comments raised by several advocacy groups.

II. THERE IS NO DEMONSTRATION OF NEED WHICH WARRANTS CHANGE TO THE AGREED-UPON THREE HOUR RULE.

NAB strongly disputes *CME, et al*'s argument that the needs of children are unmet with the current processing guideline.[4] Notably absent from the instant record is any evidence to support the contention that the current processing guideline is inadequate.[5] Neither CME nor the Commission have evidenced any failure on the part of commercial television stations to meet Congress' or the Commission's directives as to children's educational and informational

[4] Comments of CME, *et al.*, *Notice of Proposed Rulemaking*, In the Matter of Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167, December 18, 2000 at 9 (hereinafter CME Comments).

[5] *See* Comments of Named State Broadcasters Associations, *Notice of Proposed Rulemaking*, In the Matter of Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167, December 18, 2000 at 5 (hereinafter State Broadcasters Comments).

programming.[6] NAB agrees that "[t]he Notice does not identify any real-or even imagined-problems that would warrant Commission intervention, or that would justify the broad-ranging solutions that the NPRM proposes."[7] And while NAB fully agrees with Children Now's "conviction" that the path to improved programming in the digital era can be realized through cooperation between the public and private sectors and that broadcasters should be given "breathing room" to develop children's programming,[8] NAB does not support Children Now's conclusion that increased capacity should equal increased programming requirements, be it on a proportional or percentage basis. Children Now Comments at 5-7. The triggering mechanism for increased programming obligations does not lie in the conversion to digital technology. Neither CME nor Children Now offer any evidence that the current processing guideline is inadequate to meet goals of the CTA. Simply stated, the Commission can justify new obligations only if existing regulations are inadequate and increased obligations would address these inadequacies.[9] Absent any record showing a failure on the part of broadcasters "to serve the educational and informational needs of children" as envisioned in the CTA, the Commission must refrain from imposing additional public interest obligations.

---

[6] *See also* Comments of National Broadcasting Company (NBC), *Notice of Proposed Rulemaking*, In the Matter of Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167, December 18, 2000 at 2 (hereinafter NBC Comments).

[7] Comments of National Cable Television Association (NCTA), *Notice of Proposed Rulemaking*, In the Matter of Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167, December 18, 2000 at 2 (hereinafter NCTA Comments).

[8] Comments of Children Now, *Notice of Proposed Rulemaking*, In the Matter of Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167, December 18, 2000 at 4 (hereinafter Children Now Comments).

[9] *See, e.g. ALLTEL Corporation v. FCC*, 838 F.2d 551, 559 (D.C. Cir. 1988) (court found a Commission rule affecting the determination of certain costs of local exchange carriers to be arbitrary and capricious, because the Commission's decision had "no relationship to the underlying regulatory problem.") *See also* NAB Comments at 9-10.

III. THE IMPOSITION OF DETAILED PUBLIC INTEREST OBLIGATIONS ON THE NACENT DIGITAL BROADCASTING IS INDEED PREMATURE.

The application of additional children's television programming obligations to a multicast digital environment remains entirely theoretical at this time. Broadcasters may offer services such as datacasting or specialized channels, in addition to their one free channel. They may offer only a single channel of HDTV. As noted in our initial comments, broadcasters may choose not to multicast their programming streams. NAB Comments at 4. Because the landscape for digital television programming has yet to be defined, it is premature for the Commission to apply a new comprehensive regulatory scheme to a programming paradigm which may or may not occur.[10] CME proposes that the Commission adopt a "point system" whereby the Commission would assign specific values for the amount and type of additional "core" programming aired, for funding for local public television and for providing datacasting for local schools. CME Comments at 9. In particular, CME would assign a higher point value to interactive educational and informational programming than to regular "core" programming. CME Comments at 13. But neither the Commission, the Children's Television Act (CTA) or the 1996 Telecommunications Act suggests such disparate treatment for different types of children's educational and informational programming, based on the level of technology a licensee chooses.

At this point, interactive television technology has not been deployed, nor is it clear what the interactive business model for television may be, much less who will receive it. Without the benefit of cable must-carry, broadcasters have no assurance that their interactive programming will indeed reach their targeted audiences. NAB strongly urges the Commission to refrain from

---

[10] *See* State Broadcasters Comments at 3-4.

implementing rules burdening digital interactive television until such service comes into existence and its cable carriage is assured.

Further, CME's proposal to assign a higher point value to locally produced children's programming is not based on record evidence. CME Comments at 13. Again, absent from the Commission's record, the CTA or the 1996 Telecommunications Act is any indication that speech originating on a local level should be preferable to today's high quality, nationally-syndicated or network children's educational and informational programming. For example, NBC has chosen to target its "core" programming the "historically underserved" segment of young people ages 13 and up. NBC Comments at 3. Viacom, Inc. has teamed with its cable programmer Nickelodeon to produce its "core" programming.[11] On this record, it would be arbitrary for the Commission to determine that these types of programming provide less educational and informational value than locally-produced "core" programming.

Indeed Congress, in adopting the CTA, did not quantify, or intend the Commission to quantify, the children's television programming obligation, but rather intended to afford broadcasters broad discretion in complying with the CTA's programming mandate.[12] Further, as detailed in our initial comments, NAB believes that additional rules requiring specific amounts of specifically defined content-based programming would run afoul of the First Amendment. NAB Comments at 11. The Commission simply does not have the authority to adopt a

---

[11] Comments of Viacom, Inc., *Notice of Proposed Rulemaking*, In the Matter of Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167, December 18, 2000 at 2 (hereinafter Viacom Comments).

[12] *See* Reply Comments of NAB, *Notice of Proposed Rulemaking*, In the Matter of Policies and Rules Concerning Children's Television Programming, MM Docket No. 90-570, February 20, 1991 at 4-5.

regulatory scheme that would mandate that broadcasters provide interactive and/or locally-produced "core" programming.

As a practical matter, not only would CME's proposed "point system" be an administrative burden to the Commission, but it well might stifle development of innovative programming, including children's educational and informational programming. NAB agrees with Viacom that "[d]igital broadcast services offering a counterpart to the rich diversity of cable networks which now cater to individual interests and tastes are unlikely to develop beneath the heavy hand of government regulation, demanding that they attempt to be something which they are not."[13] The Commission, therefore, should *encourage* broadcasters to explore new technology and means for delivering quality digital broadcast programming, without constraints as to the type and mechanism of such programming.

As for CME's proposal that broadcasters devote a percentage of their gross revenue to fund public television or provide datacasting services to local schools, neither CTA nor the Commission's implementing rules envision such a regulatory scheme. The purpose of the CTA is to provide guidance to broadcasters for airing children's educational and informational programming on a broadcaster's *free-over-the-air* channel. NAB agrees with Sesame Workshop that a datacasting requirement "would unreasonably interfere with licensees' ability to utilize this capacity for the desired subscription and data services."[14] Although support of such programs is a laudable goal, the Commission has neither the record nor the authority under the CTA to

---

[13] Comments of Viacom, Inc., *Notice of Proposed Rulemaking*, In the Matter of Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167, December 18, 2000 at 13 (hereinafter Viacom Comments).

[14] Comments of Sesame Workshop, *Notice of Proposed Rulemaking*, In the Matter of Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167, December 18, 2000 at 13 (hereinafter Sesame Workshop Comments).

require broadcasters to provide financial support to public television or to provide datacasting services for public schools. Nor should the Commission adopt any regulatory scheme that would, in effect, force broadcasters to provide such services in lieu of additional programming requirements.

IV. ANCILLARY AND SUPPLEMENTAL SERVICES ARE NOT SUBJECT TO PUBLIC INTEREST OBLIGATIONS.

As noted in NAB's initial comments, the Commission itself has determined that subscription services are not broadcasting services subject to Title III broadcasting obligations. NAB Comments at 17. NAB agrees with Viacom that, because 47 U.S.C. §336(e)(2)(B) requires the Commission collect fees from digital broadcasters offering ancillary and supplementary services and because the fees must "recover for the public" an amount equal to that which would have been recovered if such services had been auctioned pursuant to section 309(j) of the Act, the Commission should not levy a double-taxation by imposing new obligations as well as fees on these services. Viacom Comments at 19. While CME attempts to justify additional programming obligations based on potential rollout of ancillary and supplementary services, CME itself asserts that any additional obligations would apply *only* to a broadcaster's primary channel. CME Comments of 8. Further, NAB agrees with the Sesame Workshop that per-channel programming requirements would not further the objectives of the CTA because parents and children may not be able to access such services without advanced equipment/and or subscription fees. Sesame Workshop Comments at 13.

V. THERE IS NO RECORD TO SUPPORT A CHANGE IN PREEMPTION POLICIES.

From the inception of the three-hour processing guideline, each commercial broadcaster has had to file annually a uniform report detailing its core programming practices for the past year.[15] In addition, each network has submitted its proposed preemption, rescheduling and promotion plans for the *upcoming* year. Through this process, the FCC has ensured that the children's educational and informational programming schedules for the television industry could be subjected to case-by-case scrutiny. Realizing the difficult scheduling situations caused by frequent conflicts (particularly for West Coast affiliates) between the "regularly scheduled" shows and live Saturday sports events, the Commission has allowed some flexibility with regard to preemption and rescheduling of core programming. This policy appears to be working for both the children's audience *and* the greater audiences for live weekend sporting events.

Absent a Commission policy of limited flexibility, broadcasters would be forced to make programming decisions to serve well one segment of its audience to the detriment of another. By affording broadcasters limited flexibility in their preemption and rescheduling policies, the Commission allows them to serve the demands of various audience groups by bringing both exciting live sporting events *and* quality educational programming on a consistent, predictable basis.

CME urges the Commission to set an absolute number of acceptable preemptions per digital channel. CME Comments at 17. But the Commission need not be as rigid as CME urges to protect the presentation of children's core programming. The Commission has been achieving

[15] FCC Form 398.

the same goal, with far less "regulation" than CME proposes, since 1997. The networks have in fact made great efforts to follow the intent of the Commission's rules. Further, NAB agrees with Viacom that the factual record before the Commission establishes that preemptions are infrequent and where they occur programs have been rescheduled without reduction of their audiences. Viacom Comments at 21. As Viacom aptly states, the Mass Media's Bureau's own report on preemptions of children's programs for the 1997 –1998 season, shows that the average preemption rate for CBS, ABC and NBC owned and operated stations was only 4.4%.[16] Assuming that the Commission's estimated preemption rate of 10% is representative of all broadcasters, the present system of limiting the number of preemptions and developing guidelines on reasonable rescheduling and notification for the past three seasons, the networks have enabled stations, parents, and children to retain the continuity and regularity desired by the Commission. And nowhere in the record is there a showing that rescheduled "core" programming leads to smaller audiences.[17] Because (1) preemption levels have been low, (2) the Commission is fully apprised of the networks' preemption schedule and (3) rescheduling of core programming has not led to smaller audiences, a shift in preemption practices is unwarranted.

Further, CME's suggestion that preemptions be eliminated in a multicast environment[18] incorrectly assumes that *all*, or even most, broadcasters will be providing multiple streams of programming when children's shows air. Because at this point it is unclear whether and under

---

[16] See the Effect of Preemption on Children's Educational and Informational Programming, 1997-1998 Season, at 7. Mass Media Bureau, Policy and Rules Division, DA 98-2306 (November, 1998) ("Preemption Report").

[17] In fact, the CBS Report shows that rescheduled 'core" programming shows received higher Neilsen ratings than their regularly-scheduled "core" programming. *See* Viacom Comments at 25-26.

what circumstances multicast programming is commercially viable and because it is likely that some or many broadcasters will not choose a multicast business model, the Commission should refrain from implementing rules that would eliminate preemptions or require a set "second home" for preempted "core" programs. Moreover, as NAB discussed in its initial comments, some multicast programming streams (such as subscription services or financial news) may not further the objectives of the CTA because children will not be in the audience. NAB Comments at 27. NAB agrees with NBC that the Commission can provide clear guidance to broadcasters on the meaning of 'regularly scheduled' core programming by incorporating the present practice into specific guidelines." NBC Comments at 8.

VI. ALTERING THE DEFINITION OF COMMERCIAL MATTER OR PLACING RESTRICTIONS ON INTERACTIVE TELEVISION POSSIBILITIES IS NOT SUPPORTED BY THE RECORD.

NAB supports the Sesame Workshop's opposition to banning direct links to Internet sites that contain commercials and to counting such links towards commercial limits. Sesame Workshop Comments at 22-24. NAB also concurs with Sesame Workshop's "strong disagree[ment] that the Commission change its definition of commercial matter because to do so would discourage the Commission's objective of providing quality, highly-rated educational and informational children's programming." Sesame Workshop at 26. Below, NAB addresses these two topics.

A. The Commission Should Not Alter Its Definition of Commercial Matter.

CME proposes that the Commission alter its definition of commercial matter to include program promotions. CME Comments at 41-42. CME attempts to reason that because program promotions may ultimately increase a stations ratings, such promotions provide indirect

[18] CME Comments at 17.

compensation as a result of increased advertising revenues. *Id.* Such a nexus is, at best, weak. CME cites to no evidence that promotions necessarily or consistently lead to increased advertising rates for "core" programming.

Further, the Senate Report on the CTA states "[t]he Committee intends that the definition of commercial matter [as used in the statute] will be consistent with the definition used by the FCC in its former FCC Form 393."[19] Under that definition, program promotions and public service announcements *are not* commercial matter because no compensation is received for their airing. Moreover, absent from the record is any evidence that the current definition of commercial matter adversely affects children.

As a practical matter, NAB notes that broadcasters obviously have a vested interest in improving the viewership of their "core" programming. But by altering the definition of commercial matter to include promotions of upcoming programs, including educational and informational ones, CME's proposal would work against the Commission's desire to better inform parents and children of "core" shows. *Notice* at 16. Better promotion of educational and informational programming, by necessity, educates parents and children about the types of quality programming they may chose to watch.

Moreover, NAB agrees with Viacom that the Commission's policy of exempting "paid PSAs and educational and informational material has helped underwrite quality children's programming." Viacom Comments at 42. NAB also agrees with the Association of National Advertisers (ANA) and the American Association of Advertising Agencies (AAAA) that a

---

[19] Viacom Comments at 35 *citing* S. Rep. No. 227, 101st Cong., 1st Sess. at 21 (1989). *See also* H.R. Rep.No. 385, 101st Cong., 1st Sess. at 15-16 (1989).

change in definition of commercial matter would be a "further disincentive to the economic viability of children's television programming."[20]

Finally, while we agree with Paxson Communications Corporation that broadcasters be afforded flexibility in meeting their children's programming obligations, NAB does not believe the Commission need quantify the amount of PSAs a broadcaster should air.[21]

B. The Commission Should Refrain From Promulgating Rules On Digital Television Interactivity.

NAB strongly urges the Commission to refrain from considering or promulgating rules prohibiting the use of digital television interactivity capability in children's programs. While CME claims regulation is a necessary to protect children from the "excessive, abusive and unfair practices" of advertisers in an interactive environment, such characterization of advertisers' practices that do not even exist is without merit. CME Comments at 23. Digital interactivity is *yet* to become a reality --thus advertisers are not engaging in inappropriate interactive marketing *because the technology currently does not exist.* Nor is it a logical assumption that broadcasters will, in some manner, misuse digital interactivity. As the current record reflects, commercial broadcasters are only beginning to explore ways in which their websites can "supplement and

---

[20] Comments of ANA/AAAA, *Notice of Proposed Rulemaking*, In the Matter of Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167, December 18, 2000 at 5 (hereinafter ANA/AAAA Comments). NAB agrees with ANA/AAAA's assertion that, "given the financial challenges in developing and producing quality children's programming, new regulatory burdens at this point may actually be counterproductive, both for digital television and children's programming." ANA/AAAA Comments at 1.

[21] Comments of Paxson Communications Corporation, *Notice of Proposed Rulemaking*, In the Matter of Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167, December 18, 2000 at 4, 7 (hereinafter Paxson Comments). As set forth in NAB's 2000 report, the nation's broadcasters provided $8.1 billion in community service in 1998. This figure included $5.6 billion in donated air time for public service announcements and $2.3 billion raised for charities and causes by stations. *See Local Broadcasters, Bringing Community Service Home: A National Report on Local Broadcasters' Community Service* (April 2000).

enhance the entertainment, educational, and informational content of children's television programming." Viacom Comments at 31.[22] And public television's *Dragon Tales*' allows children to "choose from a variety of fun and enriching activities, *each of which ties directly to the main goal of the television program*: to encourage children to pursue and overcome challenges." Sesame Workshop Comments at 24 (emphasis added).

In a digital interactive environment, children could be linked to websites that have scores of educational and informational destinations. And while NAB does not support Sesame Workshop's suggestion that interactivity be limited to "mixed-use" websites,[23] NAB reminds the Commission that merchandising can be an important source of funding for educational and informational programming. *See* Sesame Workshop Comments at 25. Accordingly, the Commission should not prematurely adopt restrictions which may inadvertently create a disincentive for the development of interactive educational and informational children's programming. Digital interactivity must be allowed both breathing room and flexibility in order for its development to begin.

Finally, contrary to CME's assertions, it is not necessary to proscribe a blanket ban against interactive television advertisements. CME Comments at 25. NAB supports Children Now's proposal that the use of links to commercially sponsored sites be conditioned upon a "clear separation between program content and advertising content or non-program website content generally." Children Now Comments at 37. As ANA/AAAA suggests, it would be simple to insert a bumper "*And Now A Word From Our Sponsor*" to alert parents and children

[22] Viacom's Blues Clues, Dora The Explorer, and Kids Pick The President are excellent examples of how broadcasters can utilize their websites to supplement children's educational and informational programming. Viacom Comments at 31.

that by clicking on an icon, they are leaving the "core" programming. ANA/AAAA Comments at 3. And as Sesame Workshop correctly states,

> children capable of activating the link will not be toddlers; rather they will be old enough to distinguish between commercial matter and other programming. Studies show that children between the ages of 6-8 can distinguish advertising from program content.

Sesame Workshop Comments at 24-25, *citing* H.R. Rep. No. 101-385, at 6 (1989). Thus, should the Commission find it necessary to separate program content from interactive links, it is feasible to do.

VII. THE CURRENT VOLUNTARY RATINGS SHOULD REMAIN UNCHANGED.

NAB agrees with the Sesame Workshop that if broadcasters were required to provide content ratings information, the "costs would far exceed their benefits." Sesame Workshop at 20-21.[24] Further, NAB agrees with the Motion Picture Association of America (MPAA) that absent from the record is any evidence to support the proposition that advertisers are airing "unsuitable" advertisements for upcoming television programming and theatrical releases.[25] NAB reminds the Commission that Section 551 of the Telecommunications Act of 1996 provides no authority for Commission to develop ratings system applicable to advertisements

---

[23] Sesame Workshop Comments at 23-25. Were the Commission to adopt such a standard, the result is that the Commission would be forced to determine the status of every website link. This heavy-handed regulation is simply not warranted by the record.

[24] NAB, however, respectfully disagrees with Sesame Workshop's call for mandatory promotion of "core programming. Sesame Workshop at 21. As described in our initial comments and in Section II, it is in the best interests of broadcasters to promote their "core" programming. NAB urges the Commission to refrain from adopting rules that dictate the content of any PSA or promotion.

[25] Comments of MPAA, *Notice of Proposed Rulemaking*, In the Matter of Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167, December 18, 2000 at 19 (hereinafter MPAA Comments).

and promotions for upcoming television programs and theatrical movies.[26] Moreover, as ANA/AAAA correctly states, the Federal Trade Commission has primary jurisdiction to regulate national advertising in all media. ANA/AAAA Comments at 5.

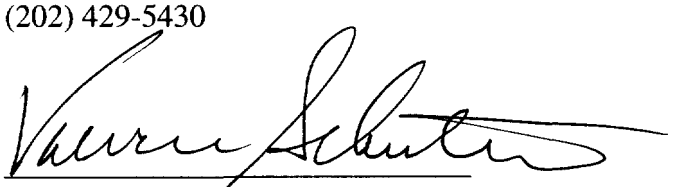
Indeed, CME supports using the voluntary, "current framework of the V-Chip and the existing rating system to ensure that [inappropriate] promotions are not aired during children's television programming." CME Comments at 49. And while CME urges the Commission to "remind" broadcasters of their duties, the Commission does not have the authority to promulgate rules *requiring* broadcasters to insert ratings into its promotions or advertisement. CME Comments at 49; *see* NAB Comments at 24-26.

VIII. CONCLUSION.

For the reasons discussed above, NAB again requests that the Commission delay its examination of children's television obligations of digital television broadcasters until the conversion to digital television is complete.

Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, N.W.
Washington, DC 20036
(202) 429-5430



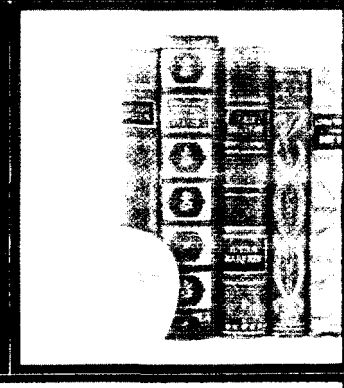
Henry L. Baumann
Jack N. Goodman
Valerie Schulte
Ann W. Zuvekas

January 17, 2001

[26] *See also* MPAA Comments at 4.

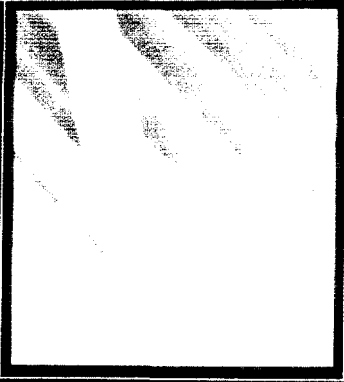
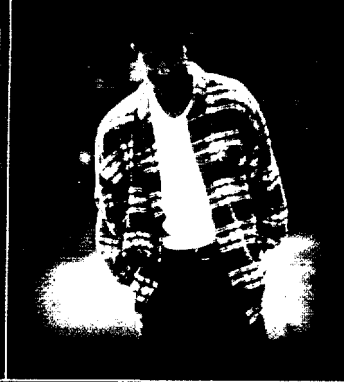
APPENDIX A

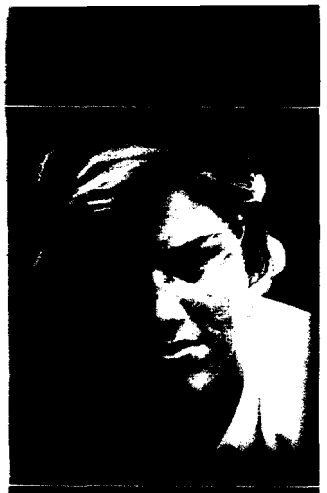
National Association of
NAB
BROADCASTERS®

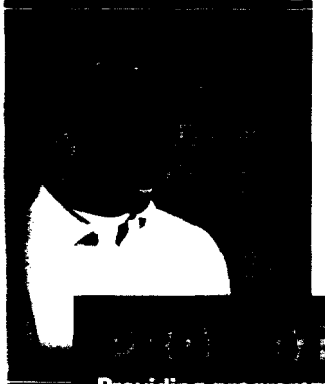


GETTING THE WORD OUT

NAB Action Kit on Children's Educational and Informational Programming





BACKGROUND: THE CHILDREN'S TELEVISION RULES

Overview

The Children's Television Act of 1990 (CTA) established a specific programming obligation for each television licensee to serve the "educational and informational needs" of children through both its overall programming and programming specifically designed for this purpose.

The Federal Communications Commission (FCC) adopted rules implementing the Act in 1991. In 1996, the FCC established new programming rules to strengthen its enforcement of the Act. With those new rules, the FCC adopted new public information requirements, tightened the definition of qualifying programming, and established a three-hours-per-week processing guideline for "specifically designed" educational and informational children's programming.

The Three-Hour Rule

Under the FCC's processing guideline, broadcasters must air three hours of "core" educational and informational children's programming per week (averaged over a six-month period). Stations can satisfy the requirement by airing somewhat less than three hours of core programming, but only if what's on the air demonstrates at least an equivalent level of commitment to educating and informing children.

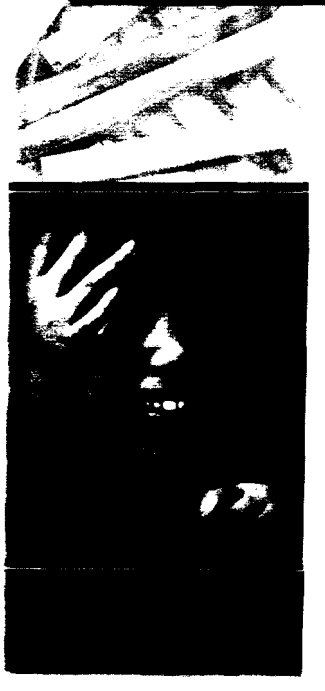
Who's Getting the Word Out?

The WBNS 10 TV Kids News Network is the Columbus, Ohio station's long-running program produced "for kids and by kids." Annual auditions for the program yield a pool of 25 to 30 young reporters and anchors who appear on the air throughout the year with news and information for their peers. Targeted at an early-teen audience, the award-winning weekly program has tackled such topics as gun safety and gang awareness, in addition to entertainment stories and "teen takes" on the news.

How does WBNS 10 TV promote the Kids News Network to make sure the program is reaching the intended audience? In addition to promotions on the WBNS 10 TV web site and the standard notices to local programming guides, one strategy the station has used is to buy ads in high school newspapers in the community. The station also sets up a booth for the show at family-oriented community events throughout the year such as horse shows and the Columbus Marathon. Teen reporters and anchors staff the booth and hand out free promotional items from pencils to zipper pulls while a videotape provides passersby with a better idea of what the program's all about.

[illegible] IDEAS

Providing programming information to local program guides is just the tip of the iceberg. Local broadcasters can undertake a wide range of activities to promote their educational and informational programming for children. Many if not all of the activities below can be undertaken in support of network, syndicated and locally produced programming.



Team up with community partners to produce your own children's programming guides and information. Your station may wish to work with local grocery chains and other family-oriented businesses to produce and distribute flyers or pamphlets highlighting your regularly scheduled educational and informational programming. Maybe your partner or partners will help underwrite the costs of producing the pamphlet. Or in place of a pamphlet, you might want to approach your partners about printing programming information on grocery bags and tray liners. Yet another option is to develop an in-store display.

Have characters and stars from your children's programming appear at community events. Create a portable booth or display that you can set up at family-oriented events such as walk-a-thons, street and county fairs, and community festivals. Get characters or on-air personalities from your station's educational and informational programming to staff the booth, pose for pictures, and hand out prizes and other items. Be sure to have program guides on hand listing all of your station's children's shows and when they air.

Organize essay and video contests. Promote opportunities for children in the community to appear during your station's educational and informational programming. One idea is to organize an essay contest on an educational topic or an

Public Information Initiatives

Local stations must identify specifically designed educational and informational programming at the beginning of the program. Although the FCC is considering implementing a uniform E/I icon, it is currently up to stations how they do this—for example, by using an announcement or an icon on the screen. Broadcasters also must provide information identifying "core" children's programs to publishers of program guides, including an indication of the age group for which the program is intended.

Several networks use the designation "E/I," followed by the target age range in parentheses, as a common designator for core programming that will be furnished to program listing services. In addition, stations are required to publicize the existence and location of their Children's Television Programming Reports. The rules do not specify how stations should do this, but the FCC encourages periodic on-air announcements.

Reporting

Beginning in 2001, stations are required to electronically file their Children's Television Programming Reports (Form 398) on a quarterly basis with the FCC. The World Wide Web Address is: http://www.fcc.gov/mmb/.

For more information, refer to NAB's Legal Department counsel memo on NAB's web site (www.nab.org) or contact the Legal Department at 202-429-5430.

Who's Getting the Word Out?

The WPWR-TV program, "Up and Running," provides Chicago-area youth with fun and informative stories on a different theme every week. Recent programs have included "H2O: All About Water" and "Put It Together," which looked at everything from piecing together dinosaur bones to building bicycles from recycled parts.

WPWR promotes each week's program with 30- and 10-second on-air spots starting four days before the program airs. In addition, the station's promotional staff works closely with the editors of the weekly program guides produced by the major Chicago papers to make sure "Up and Running" gets cover-story treatment from time to time and, at the very least, receives prominent mention in the listings. The WPWR promotional staff also works with the editors of a weekly Kids News section published by The Chicago Tribune to make sure the section's readers know about "Up and Running."

In other promotional activities, the producers of the program generally work with organizations that are featured in "Up and Running"—such as the YMCA or the zoo—to broaden its reach. In thank-you letters and other outreach, they encourage the featured groups to help promote the show in their own newsletters and via bulletin boards, web sites and other communications.

youths are involved in the production of your programs. Or have the guest [illegible] interview during the show with [illegible] of the show? Alternatively, you may want to feature a short program [illegible] your local news every Friday about the weekend's educational and informational offerings for children.

Team up with local youth service organizations to help promote your programming.
Youth-serving organizations such as the Boy and Girl Scouts, 4-H, and Boys and Girls' Clubs are natural partners in making sure that young people in your community are aware of the educational and informational programming on your station. Consider organizing appearances before these and other groups by the characters and hosts from your children's shows. Distribute programming information and schedules to community [illegible] and consider covering the [illegible] of these organizations in your [illegible] programming to build buy-in and [illegible]

Use your station's web site to help build awareness.
Create a prominent place on the station's web site for your educational and informational programming. Include a link to children's programming information on the station's home page, and attract more "eyeballs" to the web site(s) for your children's programs by including interactive "What Do You Think?" surveys and other features.

Encourage people to check out your Children's Television Programming Reports.
As part of its public information requirements, the FCC says that stations must "publicize in an appropriate manner" their Children's Television Programming Reports. That means making sure viewers know that these reports exist, as well as directing them to the location of the reports. The FCC is posting stations' Form 398 Reports on the FCC web site at http://www.fcc.gov/. The FCC encourages periodic on-air announcements about the reports, but stations also can use their web sites and other outreach programs to direct viewers to the FCC site.

Defining Core Programming

Educational and informational programming is defined by the FCC as "any television programming that furthers the educational and informational needs of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs." The core programming that is subject to the FCC's three-hour rule is any programming that meets this definition while also satisfying the following criteria:

- Its "significant purpose" is to serve the educational and informational needs of children 16 and under;
- It airs between the hours of 7:00 a.m. and 10:00 p.m.;
- It is a regularly scheduled weekly program;
- It is at least 30 minutes in length; and
- It is identified on-air at the beginning of the program and in listings provided to publishers of program guides as educational and informational, with a target age group noted.

Preemption Rules

Because core programming has to be regularly scheduled, preemptions can pose a problem for stations in meeting the three-hour threshold. Rather than establishing a general policy on how much preemption is allowed and under what circumstances, in July 1997 the FCC sent individualized letters to ABC, CBS and NBC approving each network's plan for handling preemptions caused by broadcast of live sports. The FCC's approval was based on such considerations as specific rescheduling and notice plans, including prime-time promotion of rescheduled programs.

Beginning in 2001, the FCC Form 398 (Children's Quarterly Report) will have additional reporting requirements, including a Preemption Report. Stations must provide a detailed explanation for each preemption of core programming.

Who's Getting the Word Out?

For teens in the Twin Cities area of Minnesota, KARE-11 TV's "Whatever" is a great source of information and perspective on everything from entertainment and sports to issues in the news. Airing on Saturday and Sunday mornings at 10 o'clock, the program is anchored and reported by teens, with an all-teen editorial board deciding what topics to cover from week to week.

Proof of the popularity of the program among its target audience comes every Spring, when KARE-11 holds annual auditions for spots on the on-air and editorial board teams. During the 2000 auditions, held at the Mall of America in Bloomington, more than 650 area teens tried out for six open positions. According to the station, the auditions have become an important tool for increasing the program's visibility. In addition to promoting the auditions on the air, station staff send letters to theater and speech teachers in local schools encouraging them to get the word out among their students. The station also cross promotes the auditions on its own morning program as a news event.

In other outreach throughout the year, KARE-11 has secured numerous articles in local newspapers about the "Whatever" program, including stories in the youth news section of the Minneapolis Star-Tribune. In addition, participating teens have written articles about their experiences for their school papers, and they regularly appear in the community as MCs for awards dinners and other events.

important issue facing the community. If young people with the number(s) appearing on the air to read from their entries. You might also want to encourage schools to organize video contests, with students producing and submitting documentaries or news features. Be sure to include programming information in all of your efforts to promote the contest.

Create and distribute promotional items.
Trinkets including fridge magnets, pencils and erasers, stickers for the little ones and even t-shirts can go a long way to building and maintaining awareness of your station's educational and informational programming. Include program logos and times where possible and distribute the items at school appearances, community events and through on-air promotions.

Piggyback on existing public service efforts of the station.
Does your station sponsor charity walks and community fund raisers? Send anchors, weather personalities and other on-air talent into local schools to talk with students? If so, take advantage of these and other opportunities to inform parents and young people alike about the station's educational and informational children's programming. Distribute informational materials about your programs and organize appearances by characters and stars from the shows—whatever it takes to let people know what you're putting on the air and when.

Consider alternative publicity outlets.
In addition to the local programming guides, think about other outlets for news and information about your station's educational and informational programming. Many newspapers, for example, have special kids section. In larger markets, there are local or regional parenting magazines. Other outlets for free and paid publicity include school newspapers and community "shoppers." Think about stories in your programming that local papers might want to cover. And develop relationships with key editors and reporters—both on and off the television beat—to make sure your programs get the special attention they deserve.

Work "cross promotions" into news and other programming.
Of course, there are plenty of opportunities on your own station to promote what you're doing in educational and informational programming for children. You might want to produce a news feature, for example, on how

Local television stations throughout the country broadcast a wide variety of educational and informational (E/I) children's programming. Many stations, in fact, go above and beyond the federal requirement that they devote three hours of air time per week to making these programs available to their young viewers.

The challenge facing many stations in trying to build a significant audience for their regularly scheduled E/I programs is alerting both parents and children about these programs. Similarly, the Federal Communications Commission (FCC) would like to see more notice about educational and informational programs getting to this same audience. The federal government requires that stations carry out certain public information activities in connection with E/I programming, but getting the word out is never easy. Local newspapers and programming guides, for example, rarely identify the intended audience for various programs, nor do they tell families which shows are considered educational and informational programming and which are not, even though stations furnish publications this information.

One solution to this problem may be for stations to get creative and try new things. By working with partners in the community and getting the word out in new and different ways, local broadcasters can build audiences for this worthwhile programming while demonstrating their commitment to community service and children.

This action kit includes ideas for promoting your station's educational and informational programming, as well as a "plain English" summary of the federal government's children's television rules. Stations are encouraged to use these materials to step up their local promotional efforts—and to make their children's programs a win-win for everybody!

NAB
BROADCASTERS

National Association of Broadcasters

Attachment A

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.

o Microfilm, microform, certain photographs or videotape.

● Other materials which, for one reason or another, could not be scanned into the ECFS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician at the FCC Reference Information Center, at 445 12th Street, SW, Washington, DC, Room CY-A257. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.

One brochure.