

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Second Periodic Review of the Commission's)	MB Docket No. 03-15
Rules and Policies Affecting the Conversion)	RM 9832
to Digital Television)	
)	
Children's Television Obligations of Digital)	MM Docket No. 00-167
Television Broadcaster)	

REPLY COMMENTS OF CHILDREN'S MEDIA POLICY COALITION

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The Children’s Media Policy Coalition,¹ by their attorneys, the Institute for Public Representation (“IPR”), hereby submit the following reply comments in response to the proceeding concerning the Children’s Television Obligations of Digital Broadcasters.²

The Coalition first urges the Commission to reject a “wait and see” approach towards updating broadcasters’ public interest obligations and instead act now to give broadcasters notice of pending regulatory changes and to ensure that DTV’s capabilities are used in the most effective manner to enhance children’s programming. Second, in light of DTV’s expanded capabilities, the Coalition opposes Paxson’s proposal to apply only the current three hour guideline of public interest obligations to children and to rely on the voluntary efforts of broadcasters to provide additional service to children. The Commission should instead use digital television to enhance children’s programs and improve the tools that locate this programming.

I. THE COMMISSION SHOULD ACT NOW TO ADOPT MEANINGFUL CHILDREN’S PROGRAMMING POLICIES IN RESPONSE TO THE DEVELOPMENT OF DIGITAL TELEVISION

In its initial comments, the Children’s Media Policy Coalition urged the Commission to promptly adopt public interest requirements for digital broadcasters to ensure that children’s educational and informational programming (“E/I”) needs would be served in the digital broadcasting age, and that children would not be adversely

¹ The Children’s Media Policy Coalition is comprised of Children Now, the Center for Media Education, American Academy of Pediatrics, American Academy of Child and Adolescent Psychiatrists, American Psychological Association, Action Coalition for Media Education, Mediascope, The National Education Association, and The National PTA.

² *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rulemaking, MB Docket No. 03-15, at ¶ 112, (rel. Jan. 27, 2003) (“*Second Periodic Review*”).

affected by the increased interactivity and advertising potential of digital television. Specifically, the Coalition urged the Commission to 1) establish the principle that any increase in channel capacity that broadcasters choose to implement in the form of multicasting should translate to a commensurate increase in the amount of educational programming available to children;³ 2) ensure that children in cable and DBS households also have access to digital broadcast E/I programming;⁴ 3) ensure that parents have access to the information they need to make appropriate viewing choices for their children through greater promotion of E/I programming and by establishing an advisory committee to examine how to improve the ratings system;⁵ and 4) update children's advertising rules and policies to take into account the interactive capabilities of digital television.⁶

Very few other parties specifically addressed the public interest obligations of DTV broadcasters as they relate to children. Instead, some broadcasters argued that the Commission should adopt a "wait and see" approach to determine how broadcasters will use the spectrum.⁷

A. The Commission Should Adopt Guidelines for Foreseeable Digital Technology Applications

Although the Commission cannot foresee all the ways that digital technology will be used, some applications are readily apparent and, thus, the Commission should adopt guiding principles relating to the use of these technologies.

³ See Children's Media Policy Coalition Comments at 2-8.

⁴ See *id.* at 8-14.

⁵ See *id.* at 14-23.

⁶ See *id.* at 24-35.

⁷ Sinclair Comments at 25; Alaska Broadcasting Group Comments at 6; NAB Comments at 2.

For example, some forms of interactive technology will likely be incorporated into the way that digital television is used⁸ and it is quite foreseeable how such interactive technology could be used to both the benefit and detriment of children.⁹ Thus, the Commission should act immediately to ensure that DTV's interactive capabilities benefit rather than harm children. It is not too early to enhance the ability of parents to monitor their children's viewing habits through interactive television or to prohibit children from being targeted through direct, interactive advertisements. Indeed, if the Commission does not quickly adopt policies, some harm is likely to occur or the opportunity to make improvements may be lost.¹⁰

Furthermore, the adoption of DTV-specific public interest standards would not be a burden on broadcasters.¹¹ In fact, the Commission's immediate adoption of explicit public interest principles relating to DTV would actually benefit broadcasters by providing them with notice of the public interest standards to which they will be held.¹² Such notice ensures that broadcasters will not invest in costly business models that they would ultimately have to abandon. No compelling evidence has been presented

⁸ In fact, interactive technology is already proving to be lucrative for broadcasters. A recent report by Morgan Stanley found that having an "interactive TV component to an overall marketing strategy is one of the hottest topics in the media, marketing and wireless industries today." *Mobliss Receives More Than 2.5 Million Text Messages For 'American Idol'*, Business Wire, April 21, 2003.

⁹ See generally Children's Media Policy Coalition Comments.

¹⁰ Moreover, any rules or policies adopted now can always be modified in the future if circumstances change.

¹¹ Alaska Broadcasting Group Comments at 5-6.

¹² Indeed, this is one of the main reasons why the Commission has sought comment in this proceeding. It is better to immediately give clear notice to broadcasters of their responsibilities in the digital age of broadcasting immediately than require them to make costly reforms to remedy a problem that the Commission knew in advance would emerge. See *Second Periodic Review* at ¶ 112.

demonstrating that the adoption of the Coalition's proposals would be unduly burdensome for broadcasters.

Moreover, waiting to adopt public interest obligations would undermine the Commission's goal of providing an ample supply of E/I programming specifically designed for children during the *transition* to digital television.¹³

B. The Commission Should Take a Flexible Approach in Adopting Regulations for Digital Television

While many applications of digital technology are clear, some remain uncertain, and the Commission should tailor its regulations to respond to the different ways that broadcasters will use DTV. The capabilities of DTV require the Commission to take active steps to ensure digital broadcasters' compliance with the spirit and letter of the Children's Television Act ("CTA"). Whether digital broadcasters multicast, use one high definition channel, or a combination, the Commission should take steps to ensure that the purposes of the CTA are not undermined.

The Commission also has a compelling reason to act now to ensure that multicasting does not actually diminish the availability of children's programming. Some commenters have suggested that the Commission allow multicasting digital broadcasters to place all of their children's programming on a single stream.¹⁴ If cable operators choose not to carry this stream, however, the children's programming will be unavailable

¹³ *Children's Television Obligations Of Digital Television Broadcasters*, Notice of Proposed Rulemaking, 15 FCC Rcd 22,946, 22,961 (2000). See also *Public Interest Obligations of TV Broadcast Licensees*, Notice of Inquiry, 14 FCC Rcd 21633, 21,637 (2000) (seeking comment on how "broadcasters can best serve the public interest during and after the transition to digital technology").

¹⁴ See, e.g., Paxson Comments at 38.

to households that subscribe to cable or DBS.¹⁵ The Commission should therefore amend the must carry rules to require carriage of all children's E/I programming to ensure that children's E/I needs are met in the digital age.

II. THE PUBLIC INTEREST OBLIGATIONS ADOPTED BY THE COMMISSION SHOULD TAKE DTV'S ADDED CAPABILITIES INTO ACCOUNT AND SHOULD NOT BE VOLUNTARY

While it is important to act in an expeditious manner in developing public interest obligations for broadcasters, the Commission should adopt policies that reflect the added capabilities that digital technology will bring to television and implement guidelines that translate into a commensurate increase in the amount of E/I programming available to children.¹⁶

A. Voluntary Obligations Have Proven Ineffective In Meeting the Public Interest Needs of Children

The Coalition strongly opposes Paxson's suggestion that any additional public interest obligations imposed on digital broadcasters be voluntary and generalized in nature.¹⁷

Although the Coalition is not opposed to broadcasters taking an active role in their communities and promoting "family-friendly" content, there is little reason to believe broadcasters will meaningfully cater to the special needs of children in their programming, assist parents in monitoring their children's viewing habits, and prevent

¹⁵ About 85% of households receive programming through cable or DBS. *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Ninth Annual Report, 17 FCC Rcd 26,901, 26,903 (2002).

¹⁶ There is no indication that a requirement for more children's programs will be difficult due to the lack of independent producers of this material. *See* Paxson Comments at 34. Indeed, if there is a demand for more quality children's programming, the market will supply more.

¹⁷ *See* Paxson Comments at 33-39.

advertisers from directly targeting and selling products to children absent additional, specific measures from the Commission.

Past experience conclusively demonstrates that nonspecific exhortations for broadcasters to air quality children's television will go unheeded. More than twenty-five years ago, the Commission gave notice to broadcasters that it expected them to make a "meaningful effort" to provide "reasonable amount[s]" of educational programming for different age groups.¹⁸ Broadcasters ignored this heightened expectation.¹⁹

Then in 1991, the Commission adopted rules pursuant to the CTA requiring broadcasters to air "some" educational and informational programming.²⁰ As Congress recognized in passing the CTA, children have developmental needs that television should address, and programming specific to children is required to fulfill these educational needs.²¹ Many broadcasters responded by airing only one-half hour of such programming,²² and oftentimes attempted to characterize programs such as "America's Funniest Home Videos" and "Yogi Bear" as fulfilling their E/I programming requirements.²³ It was this lack of educational and informational programming for

¹⁸ *Petition of Action for Children's Television (Act) for Rulemaking Looking Toward the Elimination of Sponsorship and Commercial Content in Children's Programmin and the Establishment of a Weekly 14-Hour Quota of Children's Television Programs*, Children's Television Report and Policy, 50 FCC 2d 1, 6 (1974).

¹⁹ *2 Television Programming for Children: A Report of the Children's Television Task Force* 18, 23, 25 (Oct. 1979).

²⁰ *Notice of Proposed Rule Making, Policies and Rules Concerning Children's Television Programming and Revision of Programming Policies for Television Broadcast Stations*, Notice of Proposed Rulemaking, 10 FCC Rcd 6308, 6315 (1995).

²¹ *Policies and Rules Concerning Children's Television Programming, Revision of Programming Policies for Television Broadcast Stations*, Report and Order, 11 FCC Rcd 10,660, 10,663-67 (1996) ("1996 CTA Order").

²² *1996 CTA Order* at 10,680 & nn.105, 106.

²³ *Id.* at 10,679 n.100.

children and the failure of market forces to increase this amount that ultimately led the FCC to adopt specific guidelines for core children's programming.²⁴

B. DTV Should be Used to Help Parents Find Appropriate Children's Programming

Instead of reconsidering ineffective voluntary public interest obligations, the Commission should use digital television's capabilities to advance the goals of the CTA in providing E/I programming to children²⁵ and to ensure that the technology provides tools for parents and children to locate these programs.²⁶ To do this, digital technology should be used in the most effective and flexible manner.

The Children's Media Policy Coalition urged the Commission to require that digital television capabilities be used to help find programming that is beneficial for their children while avoiding programming that is inappropriate.²⁷ It appears as though the current V-Chip, in concert with digital technology, can be programmed to do both. Tim Collings has suggested that the Commission consider using the V-Chip's capabilities not only as a filter but also as an indicator of programs that are beneficial to children.²⁸ While still being used to block certain programs, different rating systems could be used to recommend programs for viewing.²⁹ Accordingly, the Commission should require that

²⁴ *Id.* at 10,674-82.

²⁵ E/I programming can be enhanced, for example, by encouraging interactive content that increases a program's educational value. Children's Media Policy Coalition Comments at 7-8.

²⁶ For instance, DTV's interactive capabilities can be used to provide a link from the onscreen E/I icon for additional information about the educational value of the program. Children's Media Policy Coalition Comments at 16.

²⁷ Children's Media Policy Coalition Comments at 14.

²⁸ Tim Collings Comments at 3.

²⁹ *Id.*

