FCC MAIL SECTION

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

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In the Matter of	)	MB Docket No. 04-261
	)	
Violent Television Programming	)	
And Its Impact on Children	)	

NOTICE OF INQUIRY

Adopted: July 15, 2004 **Released: July 28, 2004**

By the Commission: Commissioner Copps issuing a statement.

Comment Date: September 15, 2004
Reply Comment Date: October 15, 2004

I. INTRODUCTION

1. We initiate this *Notice of Inquiry* ("*NOI*") to seek comment on issues relating to the presentation of violent programming on television and its impact on children. Violent television programming content has been a matter of private and governmental concern and discussion from at least the early 1950s.[1] Congress' response, in 1996, was adoption of Section 551 of the Telecommunication Act 1996, which resulted in the Commission's implementation of the companion elements of the voluntary television rating system[2] and associated "V-chip" technology in 1998.[3] More recently, the

[1] U.S. Congress, House Committee on Interstate and Foreign Commerce. *Investigation of Radio and Television Programs.* 82nd Cong., 2nd sess. (1952); *National Commission on the Causes and Prevention of Violence* (1969); *Surgeon General's Scientific Advisory Commission on Television and Social Behavior* (1972); Federal Communications Commission, *Report on the Broadcast of Violent, Indecent, and Obscene* Material, 1975 WL 30212 (1975); *Youth Violence; A Report of the Surgeon General* (2001); Federal Trade Commission, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Games Industries* (2000). The FTC has issued several follow-up reports to its original 2000 release, the latest of which was issued on July 8, 2004. *See Marketing Violent Entertainment to Children: A Fourth Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (July 2004).

[2] Section 303(w) of the Communications Act (added by section 551(b)(1) of the 1996 Act) directed the Commission to "[p]rescribe (1) . . . guidelines and recommended procedures for the identification and rating of video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children . . . and (2) with respect to any video programming that has been rated, and in consultation with the television industry, rules requiring distributors of such video programming to transmit such rating to permit parents to block the display of video programming that they have determined is inappropriate for their children." 47 U.S.C. § 303(w). Section 551(e) stated that the provisions codified in section 303(w) would take effect one year after enactment of the 1996 Act, "but only if the Commission determines . . . that distributors of video programming have not, by such date, (A) established voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children, and such rules are acceptable to the Commission; and (B) agreed voluntarily to broadcast signals that contain ratings of such programming." The television industry submitted its TV Parental Guidelines to the Commission in 1997; the Commission found them acceptable, and found that the industry had agreed to broadcast signals containing the

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Commission has received continuing expressions of Congressional concern with respect to violent programming. On March 5, 2004, thirty-nine members of the U.S. House of Representatives, Committee on Energy and Commerce, requested the Commission to begin a "Notice of Inquiry on the issue of excessively violent broadcast television programming and its impact on children."[4] This proceeding is designed to be responsive to these concerns and to update the record on issues related to programmatic violence.[5]

2. Through this proceeding we seek comment and information along the following lines of inquiry. How much violent programming is there, and what are the trends? What are the effects of viewing violent programming on children and other segments of the population? If particular portrayals of violence are more likely to cause deleterious effects than others, what specific kinds of programming should be the focus of any further public policymaking in this area? Should any further public policymaking address all violence or just excessive or gratuitous violence, and how should that be defined? Are the ratings system and the V-chip accomplishing their intended purpose, or are there additional mechanisms that might be developed to control exposure to media violence? Finally, are there legal constraints on either Congress or the Commission to regulate violent programming?

II. DISCUSSION AND REQUEST FOR COMMENT

A. Incidence of Violent Programming

3. We seek specific information concerning how much televised violence there is on broadcast and non-broadcast television and whether the amount of violent programming is increasing or decreasing. The National TV Violence Study, which appears to be of the most extensive content analyses to date, involving the efforts of more than 300 people recording and watching more than 10,000 hours of television programming from 1994 to 1997, indicates that more than half of all television programming contains violence.[6] More specifically, during the period of the study, the proportion of programming with

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ratings. *Implementation of Section 551 of the Telecommunications Act of 1996, Video Programming Ratings*, 13 FCC Rcd 8232 (1998) (*TV Parental Guidelines Order*).

[3] Section 303(x) of the Communications Act (added by Section 551 of the 1996 Act) directed the Commission to "[r]equire, in the case of an apparatus designed to receive television signals that are shipped in interstate commerce or manufactured in the United States and that have a picture screen or 13 inches or greater in size (measured diagonally), that such apparatus be equipped with a feature designed to enable viewers to block display of all programs with a common rating. . . ." The Commission adopted implementing rules in 1998. *Technical Requirements to Enable Blocking of Video Programming Based on Program Ratings*, 13 FCC Rcd 11248 (1998).

[4] Letter from Hon. Joe Barton, Chairman, U.S. House of Representatives Committee on Energy and Commerce, *et al.*, to Hon. Michael K. Powell, Chairman, FCC (Mar. 5, 2004) ("House Commerce Committee Letter"). In addition, the U.S. Senate Committee on Commerce, Science, and Transportation adopted S.161, the "Children's Protection from Violent Programming Act," as part of S. 2056, which the Committee voted to favorably report on March 9, 2004. S.161 would require the Commission to examine the effectiveness of the ratings system and the V-chip and to take certain actions in the event it finds the V-chip ineffective. Recently, the Senate passed S. 2400, "The National Defense Authorization Act for Fiscal Year 2005", which included, *inter alia*, S.161. S.2400 passed the Senate by a unanimous vote of 97-0. After passage, this bill was incorporated, as an amendment, into H.R. 4200. A conference committee has been constituted to resolve the differences between the House and Senate legislation.

[5] The Commission last reviewed the voluntary rating system and V-chip technology in 2000. News Release, *FCC V-Chip Task Force Updates V-Chip Encoding Survey* (2000).

[6] Executive Summary, 3 *National TV Violence Study* 27 (Joel Federman ed.) ("*Third National TV Violence Study Summary*"). This study involved media researchers at four universities and an oversight council, and was funded by
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violence consistently hovered around 60%.[7] During prime time, the proportion rose from 53% to 67% on broadcast networks, and from 54% to 64% on basic (*i.e.*, non-premium) cable channels.[8] In addition, cartoons include an average of approximately one "high-risk" portrayal of violence per cartoon, as categorized by the researchers.[9] There have been more recent reports on television violence. For example, the Parents Television Council ("PTC") conducted a content study finding that on all the television networks combined, violence was 41% more frequent during the 8:00 p.m. Family Hour in 2002 than in 1998 and during the second hour of prime time (9-10:00 p.m.), violence was 134.4% more frequent in 2002 that in 1998.[10]

4. We seek additional information on the frequency of televised violence. The National TV Violence Study reports the results of study during the three-year period 1994-1997. What more recent information, aside from the PTC Study noted above, is available about the incidence of violence on television programming? What are the trends? Are there differences between broadcast and non-broadcast media (*i.e.*, cable and satellite)? Are there differences between premium and non-premium channels on cable or satellite?

B. Effects of Viewing Violent Programming

5. At its core, concern about media violence derives from concern about deleterious effects, particularly on children, that may result from exposure to it. Over the course of several decades, much research has been developed to examine and study these effects. Much of the research within the public health and scientific communities suggests that exposure to media violence can be associated with certain negative effects.[11] Three types of studies have generally been described in the literature; (1) field experiments in which subjects are shown video programming with their short-term post-viewing behavior monitored by researchers; (2) cross-sectional studies involving a survey of a sample of individuals at one point in time and their conduct correlated with the amount and type of their television viewing; and (3) longitudinal studies that survey the same group of individuals at different times over many years to determine the effects of television viewing on subsequent behavior. Through these studies efforts have been made to establish a cause and effect relationship between the viewing of "violent" programming by

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the National Cable Television Association (now the National Cable & Telecommunications Association). The study was not limited to broadcast television, but also included subscription services (including some premium channels).

The UCLA Center for Communication Policy also conducted a content analysis from 1994-1997. *See, e.g.*, UCLA Center for Communication Policy, *1997 TV Violence Report* ("*1997 TV Violence Report*"). The four largest broadcast networks funded this study. The UCLA studies are discussed more below.

[7] *Id.*

[8] *Id.* at 29.

[9] *Id.* at 30-31. Under that study, "high risk" portrayal of violence included a blend of contextual features, defined in the study, that the researchers believed would most encourage aggressive behavior in children under 7. Some of the contextual criteria used in the study included, *inter alia*, the kinds of weapons used by the actors and the graphic nature of the violence being portrayed. *Id.* at 12-13.

[10] *TV Bloodbath: Violence on Prime Time TV, A PTC State of the Television Industry Report* at 4-5, http://www.parentstv.org/ptc/publications/reports/stateindustryviolance/main.asp ("PTC Report") (last visited June 29, 2004).

[11] *See 1997 TV Violence Report* at 7 (The many different media and violence studies point to "a statistically significant connection between watching violence on television and behaving aggressively."). *See also*, Haejung Paik & George Comstock, *Effect of Television Violence on Antisocial Behavior: A Meta-Analysis*, Communication Research 21:4, 516-46 (1994).

"children" and subsequent aggressive behavior on the part of these individuals. Various definitions of violence and various age groups have been involved. Some of the studies also involve the effects of television viewing of all types rather than just violent programming. Some involve the behavior of college-age or older viewers. The researchers have tended to focus on three possible harmful effects: (1) increased antisocial behavior, including imitations of aggression or negative interaction; (2) desensitization to violence; and (3) increased fear of becoming a victim of violence.[12]

6. A year 2000 review of the scientific research on the effects of entertainment media violence on children, which appears as part of the Federal Trade Commission's report on *Marketing Violent Entertainment to Children,* summarized the research as follows:

> A majority of the investigations into the impact of media violence on children find that there is a high *correlation* between exposure to media violence and aggressive and at times violent behavior. In addition, a number of research efforts report that exposure to media violence is correlated with increased acceptance of violent behavior in others, as well as an exaggerated perception of the amount of violence in society. Regarding *causation*, however, the studies appear to be less conclusive. Most researchers and investigators agree that exposure to media violence alone does not cause a child to commit a violent act, and that it is not the sole, or even necessarily the most important, factor contributing to youth aggression, anti-social attitudes, and violence. Although a consensus among researchers exists regarding the empirical relationships, significant differences remain over the interpretation of these associations and their implications for public policy.[13]

A 2001 report from the United States Surgeon General's 2001 *Youth Violence: A Report of the Surgeon General* summarized the research thus:

> In sum, a diverse body of research provides strong evidence that exposure to violence in the media can increase children's aggressive behavior in the short term. Some studies suggest that long-term effects exist, and there are strong theoretical reasons why this is the case. But many questions remain regarding the short- and long-term effects of media violence, especially on violent behavior. Despite considerable advances in research, it is not yet possible to describe accurately how much exposure, of what types, for how long, at what ages, for what types of children, or in what types of settings will predict violent behavior in adolescents and adults.[14]

Research has continued since the completion of these two Reports, including new longitudinal studies buttressing the conclusion that childhood exposure to media violence lasts into adulthood and increases aggressive behavior.[15] In addition, researchers have developed new methods of measuring the impact of exposure to media violence on children, including MRI brain mapping research conducted at the Indiana

[12] *Third National TV Violence Study Summary, supra* note 6, at 5, 7.

[13] Federal Trade Commission, *Marketing Violent Entertainment to Children* (2000), Appendix A (footnotes omitted.)

[14] *Youth Violence: Report of the Surgeon General* (2001), Appendix 4-B.

[15] *See* L. Rowell Huesmann, et. al., *Longitudinal Relations Between Children's Exposure to TV Violence and Their Aggressive and Violent Behavior in Young Adulthood: 1977-1992*, Developmental Psychology, Vol. 39, No. 2, 201-221 (2003).

University School of Medicine and elsewhere.[16] According to testimony given in 2003 before the Senate Committee on Commerce, Science & Transportation, a comprehensive bibliography of research and publications in this field includes 1,945 reports on children and television, approximately 600 of which deal with the issue of TV violence.[17]

7. As indicated above, numerous studies have demonstrated the harmful effects of media violence on children. We seek comment on any additional recent research in the field. We seek additional comment on the debate and how the private sector, members of the public, and academia are continuing to address the net effects of media violence.[18] Is there a correlation between exposure to violence and aggressive behavior? If so, what are the implications? Are there particular harms children suffer as a result of exposure to violent programming? What other factors contribute to observed aggressive behavior? Do depictions of violence in video programming have an identifiably different effect on children or adults than do descriptions of violence in other media, including print? How important is exposure to electronic media violence relative to other sources of exposure; *i.e.*, does watching Wile E. Coyote fall off a cliff in a cartoon have more or less an impact on a child's psyche than reading about Hansel and Gretel forcing a witch into a hot oven in Grimm's fairy tales? Are there countervailing benefits that flow from televised violence? Does the inclusion of violent events in fictional accounts help individuals understand and process actual incidences of violence they may encounter, experience, or learn of? Does violence serve any artistic function that should be considered, or are all depictions of violence necessarily gratuitous?

C. Defining Violent or Excessively or Gratuitously Violent Programming for Public Policy Purposes

8. The above discussion assumes a well established definition of violence in terms of measuring both the amount and effect of violent programming. This is not necessarily the case. There are definitional difficulties because "not all violence is created equal."[19] From a public policy standpoint, is there a need to define all violence, or simply gratuitous or excessive violence?

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[16] *See* Yo Wang, et. al., *Effects of Violent Media on Adolescents With Disruptive Behavior Disorder As Compared to Control Subjects: MRI Activation Patterns in Frontal Lobe*, paper presented a the 88th Scientific Assembly and Annual Meeting of the Radiological Society of North America, December 2002; *see also*, Vincent P. Mathews, et. al., *Brain Activation and Violent Video Games*. This study was also presented at the 2002 Radiological Society of North America annual meeting. *See also*, David Surface, *Imaging Video Violence*, Radiology Today, March 31, 2003 (reporting on the same).

[17] Testimony of Dr. John Murray before the Science, Technology and Space Subcommittee of the Senate Commerce, Science & Transportation Committee. (April 10, 2003). A June 2000, joint public statement by representatives of six public health organizations, including the American Academy of Pediatrics, the American Psychological Association, and the American Medical Association concluded that "Well over 1000 studies – including reports from the Surgeon General's office, the National Institute of Mental Health, and numerous studies conducted by leading figures within our medical and public health organizations – our own members – point overwhelmingly to a causal connection between media violence and aggressive behavior in some children."

[18] We note widely different statements concerning not just the nature and quality, but even the amount, of scholarship in this field. *Compare, e.g.*, American Academy of Pediatrics, *Media Violence*, 108 Pediatrics 1222, 1223 (Nov. 2001) ("[m]ore than 3500 research studies have examined the association between media violence and violent behavior; all but 18 have shown a positive relationship") *with* Edward Donnerstein, *Mass Media Violence: Thoughts on the Debate*, 22 Hofstra L. Rev. 827, 828 (1994) ("There are not three thousand studies on television violence. There are perhaps three thousand studies on television. But there probably are approximately two hundred or two hundred and fifty studies directly related to violence in the media.").

[19] *1997 TV Violence Report*, *supra* note 6, § II.D.1.

9. For the purpose of determining, as a general matter, whether a program contains violence, researchers have used broad definitions. For example, one researcher defined violence as "the overt expression of force intended to hurt or kill" in a content analysis conducted in the 1960s as part of the National Commission on the Causes and Prevention of Violence.[20] The National TV Violence Study defined violence as "any overt depiction of a credible threat of physical force or the actual use of such force intended to physically harm an animate being or group of beings. Violence also includes certain depictions of physically harmful consequences against an animate being or group that occur as a result of unseen violent means."[21] The UCLA Violence Reports defined violence as "the act of, attempt at, physical threat of or the consequences of physical force."[22] As the *1997 TV Violence Report* explains, such broad definitions "include violence, cartoon violence, slapstick violence – anything that involves or immediately threatens physical harms of any sort, intentional or unintentional, self-inflicted or inflicted by someone or something else."[23] We seek comment on whether these definitions are appropriate.

10. At the same time, however, researchers have often attempted to identify the context, or qualitative nature, of a portrayal of violence. The *1997 TV Violence Report* explains:

> While parents, critics and others complain about the problem of violence on television, it is not the mere presence of violence that is the problem. If violence alone was the problem and V-chips or other methods did away with violent scenes or programs, viewers might never see a historical drama like Roots or such outstanding theatrical films as Beauty and the Beast, The Lion King, Forrest Gump and Schindler's List. In many instances, the use of violence may be critical to a story that actually sends an anti-violence message. Some important stories, such as Shakespeare's Hamlet, the history of World War II or the life of Abraham Lincoln, would be impossible to convey accurately without including portrayals of violence.
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> For centuries, violence has been an important element of storytelling, and violent themes have been found in the Bible, The Iliad and The Odyssey, fairy tales, theater, literature, film and, of course, television. Descriptions of violence in the Bible have been important for teaching lessons and establishing a moral code. Lessons of the evils of jealousy and revenge are learned from the story of Cain and Abel. Early fairy tales were filled with violence and gruesomeness designed to frighten children into behaving and to teach them right from wrong. It was only when fairy tales were portrayed on the big screen by Walt Disney and others that the violence contained in the stories was substantially sanitized.[24]

In other words the study suggests, "[t]he issue is not the mere presence of violence but the nature of violence and the context in which it occurs. Context is key to the determination of whether or not violence is appropriate."[25] The National TV Violence Study similarly emphasizes that "the way in which violence is presented helps to determine whether a portrayal might be harmful to viewers."[26]

11. But distinguishing one form of violence from another based on context is a difficult

[20] *See, e.g., id.* § I.B (discussing George Gerbner's work).

[21] *Third National TV Violence Study Summary, supra* note 6, at 18.

[22] *1997 TV Violence Report, supra* note 6, § II.D.1.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Third National TV Violence Study Summary, supra* note 6, at 8.

exercise. Again, in explaining how the researchers involved in the UCLA violence studies determined which programs raised "concerns" about violence, the *1997 TV Violence Report* illustrates the problem:

> No matter how well the definitions were drawn, there would be those who felt that some aspect of violence should or should not have been included. Almost everyone has his or her own definition of violence. People have often attempted to validate or invalidate quantitative research based on how much the scholar's definition resembles their own. Animation for children is a good example of this phenomenon. Consider a cartoon in which a character is hit over the head with a two-by-four, a funny sound effect is heard, the character shakes his head and merrily continues on his way. Some people might consider this the worst type of violence because it is unrealistic, there are no consequences and it might encourage children to imitate it precisely because it shows no consequences. Others feel they watched these cartoons growing up and did not imitate them because they knew these cartoons obviously were not "real." Scholars have had to decide whether to count this type of violence and usually have included it. Anyone who feels this inclusion is silly would reject the entire definition and might ignore the conclusions of the research. The same is true with slapstick humor. Sports programming provides yet another example. Many feel that violent spectator sports or hockey make violence an acceptable or even desirable part of American life. Whether to count unrealistic cartoon violence, slapstick humor or sports within a definition of violence is itself a difficult decision.[27]

We seek comment on these issues.

12. Against the backdrop of these definitional difficulties, what kinds of portrayals of violence are of greatest concern, particularly with respect to children? The National TV Violence Study states that "[i]f the consequences of violence are demonstrated, if violence is shown to be regretted or punished, if its perpetrators are not glamorized, if the act of violence is not seen as justifiable, if in general violence is shown in a negative light, then the portrayal of violence may not create undesirable consequences. But if violence is glamorized, sanitized or made to seem routine, then the message is that it is an acceptable, and perhaps even desirable, course of action."[28] More specifically, the National TV Violence Study indicates that the portrayals that pose the greatest risk for learning aggression contain attractive perpetrators, morally justified reasons for engaging in violence, repeated incidents of violence that appear realistic, violence that is rewarded or unpunished, and violence that does not show harm or pain to a victim or is presented in a humorous context. According to the study, portrayals that pose the greatest risk for desensitization contain repeated incidents of violence or violence presented in a humorous context. Portrayals that pose the greatest risk for audience fear contain attractive victims, violence that appears unjustified, repeated and realistic, and unpunished.[29] In addition, the *1997 TV Violence Report* provides as examples of "inappropriate or improper uses of violence" those "which glorify the act or teach that violence is always the way to resolve conflict."[30] That report further states that "the consequences of violence should be shown and those persons using violence inappropriately should be punished. We would also note that when violence is used realistically, it is more desirable to accurately portray the consequences than to sanitize the violence in a manner designed to make it acceptable." On the other hand, some might argue that a television program such as "The Three Stooges" does not pose a great risk to children even if the violence is presented humorously and without obvious

[27] *1997 TV Violence Report, supra* note 6, § II.D.1.

[28] *Third National TV Violence Study Summary, supra* note 6, at 5. *See also id.* 7-10.

[29] *Id.* at 10.

[30] *1997 TV Violence Report, supra* note 6, at § II.D.1.

consequences. Similarly, some might argue that more graphic violence is potentially more harmful to children than violence in which, for example, a body falls from a gunshot wound but the wounds are not shown. We seek additional comment on the types of portrayals that are of greatest concern, particularly with respect to children.

13. How much televised violence is portrayed in a way that is most likely to harm children? For example, the National TV Violence Study states that 40% of the violent incidents studied were initiated by characters with qualities that make them good role models; 70% of violent scenes do not show penalty or remorse for violence at the time it occurs; roughly half of violent incidents do not show physical harm or pain; at least 40% of violent scenes include humor.[31] The UCLA reports also identify particular shows that raised "concerns" about violence, according to a variety of contextual factors.[32] We seek additional information on what type of programming is potentially the most damaging, and how frequently it occurs.

14. As we consider definitional issues, we also ask commenters to identify with precision the age groups that qualify as "children" when they discuss whether violent programming is harmful to them. Some scholarship suggests that children under the age of seven or eight are especially impressionable because they have difficulty distinguishing between fantasy and reality.[33] We seek additional information on research that evidences and explains the particular age groups that are of concern.

15. Finally, in the context of possible regulation in this area, we note that members of the House Commerce Committee have asked the Commission to examine whether it would be in the public interest for the agency to define "excessively violent programming that is harmful to children," and if so, how we might do so.[34] We also seek comment on how such a standard could be implemented in a manner that is both clear to the industry and practical to administer. We seek comment on these issues to be responsive to the Committee's concerns.

D. TV Parental Guidelines and V-Chip

16. A regulatory system already exists to help parents and viewers control the exposure of children to media violence. The television industry rates programming using the TV Parental Guidelines, and encodes programming accordingly; in addition, the Commission has required that, by January 1, 2000, all television sets manufactured in the United States or shipped in interstate commerce with a picture screen of thirteen inches or larger be equipped with a "V-chip" that can be programmed to block violent, sexual, or other programming that parents believe harmful to their children.[35]

17. We seek comment on the status of the existing rating and V-chip system as tools to help parents and viewers screen out violence. To what extent is programming in fact rated, using both the age-based ratings, and the additional content labels for violence? Are the ratings consistent and accurate? A

[31] *Third National TV Violence Study Summary*, *supra* note 6, at 26.

[32] The *1997 TV Violence Report* states that "[t]he ultimate decision as to whether the program raises concerns depends upon whether the violence is deemed contextually appropriate," which, in turn, was determined by the application of a host of criteria, broken down into approximately fifteen different categories. *1997 TV Violence Report*, *supra* note 6, § II.D.1 (listing and explaining criteria in general) and Appendix B (setting forth "Scene Evaluation Form" programming reviewers used to evaluate portrayals of violence).

[33] *Third National TV Violence Summary*, *supra* note 6, at 11, 30. *See also* American Academy of Pediatrics, *Media Violence*, 108 Pediatrics 1222, 1222-23 (2001).

[34] House Commerce Committee Letter, *supra* note 4.

[35] *See supra* note 3; 47 C.F.R. § 15.120(b).

1998 Kaiser Family Foundation study indicates that, during the first year the ratings system was in use, only 20% of programs that contained violence, sexual material, or adult language actually used the appropriate content label.[36] This same study found that 79% of violent programming is not specifically rated for violence."[37] Moreover, a 2001 Kaiser Family Foundation study indicates that 40% of parents who use the rating system do not believe programs are rated accurately.[38] According to that study, more than half of all parents use the ratings system to decide what programming that their children may watch. In light of these findings, we seek comment on whether the lack of a content rating for violence renders ineffective any technology-based blocking mechanism, built into television sets, designed to limit violent programming.

18. We seek comment on these findings of the Kaiser Family Foundation. Is more recent information available on these issues? To what extent is use being made of the rating system? Do the TV Parental Guidelines now in use give parents sufficient information to make educated programming decisions for their children?

19. We also seek comment on the usefulness of the V-chip. Although as many as 40% of parents have television sets equipped with a V-chip, more than half of them are not aware of it, and two thirds of those who are do not use it.[39] The Kaiser Foundation, in a recent study, has found that parents have not used the V-Chip even after a concerted effort to inform them about it.[40] We seek comment on recent initiatives to educate parents about the V-Chip's availability. What can be done to enhance the usefulness of the V-chip? Are there ways to improve the ratings system?

E. Possible New Regulatory Solution: "Safe Harbor"

20. If the TV Parental Guidelines and V-chip are not adequate to protect children from any identifiable dangers of exposure to media violence, what other mechanisms are available? In their recent letter, members of the House Commerce Committee specifically asked how the Commission "might restrict broadcast of 'excessively violent programming that is harmful to children' during the hours when children are likely to be a substantial part of the viewing audience, so that it might supplement the TV ratings system, such as by creating time of day restrictions and measures that facilitate a consumer's use of the television ratings system."[41] The legislation pending in Congress also involves a "safe harbor" provision and the Senate has adopted language to that effect.[42]

21. A starting point for considering a "safe harbor" solution is our indecency rules. Indecent speech is entitled to constitutional protection, and so cannot be prohibited entirely. However, to protect children, the Commission's rules prohibit the broadcast of indecent speech from 6:00 a.m. to 10:00 p.m.,

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[36] Dale Kunkel, et. al.., *Rating The TV Ratings: One Year Out, An Assessment of the Television Industry's Use of V-Chip Ratings*, (A Henry J. Kaiser Family Foundation Report) (September 1998).

[37] *See id.* at 2.

[38] Kaiser Family Foundation, *Parents & the V-Chip 2001: A Kaiser Family Foundation Survey* (2001) 1-2.

[39] *Id.* at 1. The most popular reasons parents gave for not using their V-chip were that adults were nearby when their children watch television (51%), and that parents trust their children to make their own viewing decisions (25%). *Id.* at 3.

[40] Joel Federman, Ph.D., *Rating Sex and Violence in the Media: Media Ratings and Proposals for Reform*, (A Henry J. Kaiser Family Foundation Report) (November 2002) 10.

[41] House Commerce Committee Letter, *supra* note 4, ¶ 5.

[42] *See* note 4, *supra*.

when children are likely to be a substantial part of the viewing audience. The Commission may fine television and radio stations for broadcasting indecent content during this time period. At other times of the day, during the "safe harbor" of the late night and early morning hours, the Commission permits the broadcast of such speech.[43] Obscene speech on cable and other subscription television services, as well as on broadcast services, is a criminal offense at all hours.[44] Indecency regulation is only applied to broadcast services.[45] Would it be in the public interest to have "safe harbor" restrictions on violent programming content? Should it apply to the broadcast medium only?

22. Alternatively, the Congress or the Commission could tie the application of any "safe harbor" to the television ratings system, as the bill pending before the Senate Commerce Committee does. That bill would declare it "unlawful for any person to distribute to the public any violent video programming not blockable by electronic means specifically on the basis of its violent content when children are reasonably likely to comprise a substantial portion of the audience."[46] The Senate bill would also require the Commission, upon finding in ongoing review that the television ratings system and the V-chip were not accomplishing their intended purposes, to "prohibit the distribution of violent video programming during the hours when children are reasonably likely to comprise a substantial portion of the audience."[47] In other words, the bill would restrict violent programming to a "safe harbor" only if the programming has not been rated violent, or if the Commission finds that the ratings system and V-chip are not accomplishing their intended purpose. The bill does not distinguish between broadcast and non-broadcast media, and specifically notes that "[b]roadcast television, cable television, and video programming are (A) uniquely pervasive presences in the lives of all American children; and (B) readily accessible to all American children."[48] We seek comment on whether the V-Chip is accomplishing its intended purpose, and if not, whether the safe harbor approach represents the least restrictive means to protect children.

F. Statutory and Constitutional Issues

23. We seek to explore here the bounds of permissible action, both regulatory and statutory, in light of the relevant statutory and constitutional constraints. In their recent letter, members of the House Commerce Committee have asked whether the Commission currently has the authority to adopt a "safe harbor" for the broadcast of violent programming, "or whether Congress would need to provide the Commission with statutory authority to do so, and whether Congress could provide the FCC with that

[43] 47 C.F.R. § 73.3999. Title 18 of the U.S. Code criminalizes "obscene, indecent, or profane language by means of radio communication." 18 U.S.C. § 1464. As a result of several judicial and legislative decisions, the Commission has adopted its prohibition on obscenity, and its safe harbor for indecency. *See Industry Guidance On the Commission's Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency*, 16 FCC Rcd 7999, 7999-8001 (2001).

[44] 18 U.S.C. § 1468(a) ("Whoever knowingly utters any obscene language or distributes any obscene matter by means of cable television or subscription services on television, shall be punished by imprisonment for not more than 2 years or by a fine in accordance with this title, or both."). *See also* 47 U.S.C. § 559 ("Whoever transmits over any cable system any matter which is obscene or otherwise unprotected by the Constitution of the United States shall be fined under title 18, United States Code, or imprisoned not more than 2 years, or both.")

[45] By its terms, the criminal code restriction on indecency applies only to "means of radio communication," and therefore not cable communications. 47 U.S.C. § 1464. Likewise, our rules regarding Section 1464 regulate only the "licensee of a radio or television broadcast station." 47 C.F.R. § 73.3999.

[46] S. 2056, *supra* note 4, § 204(a).

[47] *Id.* § 203(b).

[48] *Id.* § 202(2).

authority in a constitutional fashion."[49] Members of the House Commerce Committee has also asked about constitutional limitations on our ability to define the phrase "excessively violent programming that is harmful to children," or to create a "safe harbor" for such programming. If such a mechanism were adopted, should there be an exception for news or other types of unrated programs? Should there be an exception for cultural, historical, or artistic merit?

24. The Communications Act gives the Commission broad authority to regulate the broadcast medium as the public interest requires.[50] In order to grant a radio license, Title III of the Act requires the Commission to determine "whether the public interest, convenience, and necessity will be served by the granting of such application," and to issue a license only upon making an affirmative finding.[51] Title III likewise directs the Commission, "as the public interest, convenience, and necessity requires," to "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act. . . ."[52] However, Section 326 in Title III also states: "Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication."[53] Is the Commission's general public interest authority sufficiently broad to regulate any form of violent programming, in light of Section 326? Does the D.C. Circuit's recent decision in *Motion Picture Association of America v. FCC* ("*MPAA*") suggest that the Commission's public interest authority does not extend to regulation of violent program content?[54]

25. The statutory prohibition against "obscene, indecent, or profane language,"[55] upon which our ban on obscene speech and safe harbor for indecent and profane speech are based,[56] does not implicate Section 326.[57] Given the interest of members of the House Commerce Committee in creating a "safe harbor," and its question whether we currently have the authority to adopt such a mechanism to regulate violence, could the Commission expand its definition of indecency to include violent programming? The Commission has traditionally defined indecency in terms of sexual or excretory organs and activities, but the Supreme Court has concluded that the term indecent "merely refers to nonconformance with accepted standards of morality"[58] and that "neither our prior decisions nor the language or history of § 1464 supports the conclusion that prurient appeal is an essential component of indecent language."[59] Certain commentators go even further and argue that violent programming

[49] House Commerce Committee Letter, *supra* note 4, ¶ 6.

[50] *See FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978) (upholding cross-ownership rules as an exercise of Commission's authority under Section 303(r) of the Communications Act).

[51] 47 U.S.C. § 309(a).

[52] *Id.* § 303(r).

[53] *Id.* § 326.

[54] 309 F.3d 796 (D.C. Cir. 2003). In this case, the court held that the Commission did not have authority under Sections 1, 4(i), and 303(r) of the Act to adopt "video description" rules.

[55] 18 U.S.C. § 1464.

[56] 47 C.F.R. § 73.3999.

[57] *FCC v. Pacifica Foundation*, 438 U.S. 726, 738 (1978) ("§ 326 does not limit the Commission's authority to impose sanctions on licensees who engage in obscene, indecent, or profane broadcasting").

[58] *Id.* at 749.

[59] *Id.* at 741.

qualifies as obscene speech, which is not entitled to any First Amendment protection.[60] In this regard, we note an opinion of the U.S. Court of Appeals for the Seventh Circuit declining to conflate obscenity and violence in the context of a particular ordinance regulating violent video games, yet suggesting that a demonstrated link between exposure to such games and deleterious effects could possibly provide a basis for regulation of violent "pictures."[61] We recognize that an interpretation of indecency or obscenity as encompassing violence would be novel, but we seek to determine the scope of existing standards to regulate violent programming, as members of the House Commerce Committee request.

26. How does Title V of the 1996 Act, entitled "Obscenity and Violence," affect the Commission's general authority in this area? Section 551 directed the Commission to prescribe "guidelines and recommended procedures for the identification and rating of video programming that contains sexual, *violent, or other indecent material* about which parents should be informed before it is displayed to children,"[62] if the television industry itself did not establish "voluntary rules" for rating such programming that were "acceptable to the Commission."[63] Does the reference to "violent or other indecent material" indicate that indecency encompasses violence, or otherwise suggest that Congress intended to empower the agency to regulate violent programming? Was the Commission's authority under this provision at an end once it found the industry guidelines acceptable? In other words, does the statutory scheme suggest that Congress has occupied the field of media violence, such that the Commission cannot act without new legislation?

27. What is the extent of the Commission's current authority over cable television in this area? Title VI of the Act states that "[a]ny Federal agency, State, or franchising authority may not impose requirements regarding the provision or content of cable services, except as provided in this title."[64] As indicated above, transmission of obscene and other speech is "unprotected by the Constitution of the United States" and is a criminal offense.[65] Title VI also states that, "[i]n order to restrict the viewing of programming which is obscene or indecent, upon the request of a subscriber, a cable operator shall provide (by sale or lease) a device by which the subscriber can prohibit the viewing of a particular cable service during periods selected by that subscriber."[66] Title VI further states that "[u]pon request by a cable service subscriber, a cable operator shall, without charge, fully scramble or otherwise fully block the audio and video programming of each channel carrying such programming so that one not a subscriber does not receive it."[67] The Supreme Court has found this latter provision could be a less restrictive means than a "safe harbor" or "time channeling" requirement to protect children from sexually explicit programming.[68] We seek comment on whether the Commission has authority to regulate violent programming on cable television other than as specifically provided in Title VI. Does the Commission have broader statutory authority to regulate violent programming on DBS and other non-broadcast subscription services, which are not covered by Section 544(f), than on cable services?

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[60] *See e.g.*, Kevin W. Saunders, *Regulating the Access of Children to Televised Violence*, 2002 L. Rev. Mich. St. U. Det. C.L. 813, 817 (2002).

[61] *American Amusement Machine Ass'n v. Kendrick*, 244 F.3d 572 (7th Cir. 2001).

[62] 47 U.S.C. § 303(w) (enacted as section 551(b) of the 1996 Act) (emphasis added).

[63] Pub. L. No. 104-104, 110 Stat. 56, § 551(e)(1)(A) (1996).

[64] 47 U.S.C. § 544(f)(1).

[65] *Id.* § 559.

[66] *Id.* § 544(d)(2).

[67] *Id.* § 560.

[68] *See United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803 (2000) (striking down the more restrictive Section 641 of the Act).

28. Assuming the Commission has or is granted statutory authority to regulate violent programming, what constitutional limitations apply? For example, given the definitional issues discussed above, how could Congress or the Commission define some form of violent programming in a way that is not unconstitutionally vague or overbroad?[69] In addition, what standard of constitutional review should apply to broadcast regulation in this area? To non-broadcast? Even if protecting children from some form of violent programming is deemed a sufficiently important government interest,[70] is a "safe harbor" the appropriate and most tailored means to accomplish that public policy?[71] Given the mechanisms available to cable subscribers to block programming under Title VI, could a "safe harbor" constitutionally be applied to cable services? We seek comment on how Congress might legislate and the Commission might regulate in this area, consistent with applicable constitutional principles.

III. POSITIVE IMPACT OF CERTAIN TELEVISION PROGRAMMING

29. We recognize that television programming may have a positive influence on individual behavior, especially educational and informational material directed at children.[72] The literature suggests that consumption of educational television programming correlates positively to children's school preparedness and may also encourage beneficial social skills and behavioral development.[73] Are there recent studies analyzing the pro-social effects of television programming that we should be aware of? What broadcast or non-broadcast services carry such material? How are parents made aware that such programming is available? We seek comment on what actions Congress or the Commission may take to

[69] *See, e.g., NAACP v. Button*, 371 U.S. 415, 433 ("Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.").

[70] The Supreme Court has found that "[i]t is evident beyond the need for elaboration that a State's interest in safeguarding the physical and psychological well-being of a minor is compelling." *New York v. Ferber*, 458 U.S. 747, 756-57 (1982). Lower courts have questioned, however, whether regulating the access of minors to violent media, in the contexts of trading cards and video games, for example, in fact promotes the physical and psychological well-being of minors. *See, e.g., Interactive Digital Software Ass'n v. St. Louis County*, 329 F.3d 954 958-59 (8th Cir. 2003); *Eclipse Enterprises, Inc. v. Gulotta*, 134 F.3d 63, 67-68 (2nd Cir. 1997).

[71] For broadcast precedent, *see FCC v. League of Women Voters*, 468 U.S. 364, 380 (1980) (government regulation of broadcast content will only be upheld if "the restriction is narrowly tailored to further a substantial governmental interest, such as ensuring adequate and balanced coverage of public issues."); *See also, Action for Children's Television v. FCC*, 58 F.3d 654 (D.C. Cir. 1995) (In reviewing the constitutionality of the broadcast indecency provisions, the D.C. Circuit held that a restriction on speech will survive First Amendment scrutiny if the "Government's ends are compelling [and its] means [are] carefully tailored to achieve those ends."). For cable precedent, *see United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803 (2000) (holding that mandatory scrambling of programming required by Section 641 of the Act was not the most narrowly tailored means to protect children from exposure to sexually explicit material.)

[72] *See generally, Policies and Rules Concerning Children's Television Programming and Revision of Programming Policies for Television Broadcast Stations*, 11 FCC Rcd 10660, 10664 (1996).

[73] *See* J.C. Wright and A. Huston, *Effects of Educational Television Viewing of Lower Income Preschoolers on Academic Skills, School Readiness and School Adjustment One to Three Years Later.* University of Kansas (1995) (finding that the viewing of educational programs plays a "positive causal role in [a child's] development of readiness for school" and appears to relate to later success with reading and school adjustment.). *See also*, Coates, Pusser & Goodman. *The Influence of Sesame Street and Mr. Roger's Neighborhood on Children's Social Behavior in Preschool.* Child Development 47, 138-144 (1976) (finding that both programs have positive effects on children's social behavior); A. Huston & J.C. Wright, "*Contributions of Television Toward Meeting the Informational and Educational Needs of Children.*" Annals of the American Academy of Political and Social Science, 557, 9-23 (1998).

encourage more programming choices that have a positive effect on children's development.

IV. ADMINISTRATIVE MATTERS

30. *Ex Parte* Rules. Pursuant to section 1.1204(b)(1) of the Commission's rules, 47 C.F.R. § 1.1204(b)(1), this is an exempt proceeding. *Ex parte* presentations are permitted, and need not be disclosed.

31. Comments and Reply Comments. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties must file comments on or before **September 15, 2004**, and reply comments on or before **October 15, 2004**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). Accessible formats (computer diskettes, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at brian.millin@fcc.gov.

32. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

33. Parties who choose to file by paper must file and original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Best Copy and Printing, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at Suite CY-B402, 445 12th Street, Washington, D.C. 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail, should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

34. Additional Information. For additional information on this proceeding, contact **Ben Golant** at 418-7111.

V. ORDERING CLAUSE

35. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 4(i), 303(g), 303(r), and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 303, and 403 , this Notice of Inquiry **IS ADOPTED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

STATEMENT OF COMMISSIONER MICHAEL J. COPPS

Re: Violent Video Programming

I am pleased that the Commission is launching this proceeding to determine ways that we can tackle violence on the airwaves. It is only unfortunate that it took a request from Members of the House of Representatives for us to consider this important issue. Hundreds of studies over decades document the harmful impact that exposure to graphic and excessive media violence has on the physical and mental health of our children. The US Surgeon General, the American Academy of Pediatrics, the American Psychological Association, the American Medical Association, and virtually every other leading medical and scientific organization that has studied this issue have reached the same conclusion about the harmful impact of media violence. Yet, the Commission today seems to ignore this wealth of scientific data even going so far as to ask in this Notice whether there are benefits of exposure to televised violence by our children.

It is our job and the one asked of us by the House Members to examine how best to address this most pressing problem. I look forward to a full record on these issues and to an expeditious resolution of this proceeding. Wanton violence on the people's airwaves has gone unaddressed for too long. That is why Congress is moving on this on a number of fronts.