

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Children's Television Obligations )  
Of Digital Television Broadcasters ) MM Docket No. 00-167  
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**RESPONSE OF 4KIDS ENTERTAINMENT, INC.  
TO THE OPPOSITION OF THE CHILDREN’S MEDIA POLICY COALITION  
TO VARIOUS PETITIONS FOR RECONSIDERATION**

On March 23, 2005, The Children’s Media Policy Coalition (“CMPC”) filed an Opposition to Various Petitions for Reconsideration of the Commission’s Report and Order in the above-referenced Docket, released November 23, 2004. This response by 4Kids Entertainment, Inc. (“4Kids”) addresses CMPC’s arguments<sup>1</sup> in support of the Commission’s decision to include promotions of television programs or video services (other than promotions of children’s educational and informational programming (“E/I Programming”)) as part of “commercial matter”.

Since 4Kids produces the kids television programs for the 4 hour block of children’s programs broadcast principally on Saturday mornings on the Fox Network and also owns and operates a media buying agency that specializes in buying television advertising time for its clients on children’s television programs, 4Kids is uniquely situated to respond to CMPC’s arguments that the revised definition of “commercial matter” will not adversely affect over-the-air broadcasters (“Broadcasters”).

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<sup>1</sup> Opposition of the Children’s Media Policy Coalition to Petitions for Reconsideration, MM Dkt. No. 00-167 filed March 23, 2005 at 17-20 (“CMPC Opposition”)

Various Petitioners, including Warner Bros., Fox Entertainment Group, Inc. and 4Kids Entertainment, Inc., have argued that the definition of “commercial matter” would cause Broadcasters to promote their non-E/I Programming by using some of their limited commercial inventory and/or by purchasing advertising for such non-E/I Programming in other media. These Petitioners have contended that these likely responses by Broadcasters to the definition of “commercial matter” would lead to reduced advertising revenues if the limited commercial inventory were used by Broadcasters to promote non-E/I Programming and to significant cost increases if the Broadcasters promoted their non-E/I programming by purchasing advertising for their non-E/I Programming in other media. As 4Kids pointed out in its Petition<sup>2</sup>, if Broadcasters who are required to broadcast E/I Programming are further impeded by the Commission’s definition of “commercial matter” from competing with Nickelodeon, Cartoon Network and Disney Channel (collectively “Kids Cable Networks”), the result of the Commission’s action will be to reduce the number of children viewing the E/I Programming on broadcast television, the very opposite of what the Commission is trying to achieve.

CMPC disputes the conclusions of 4Kids and other Petitioners regarding the adverse affect of the definition of “commercial matter” by citing a thirty-one year old FCC Policy statement based on a media landscape that is demonstrably no more. The 1974 FCC Policy statement cited by CMPC found that there was “an inelasticity of demand” for advertising on children’s programs; therefore, “the level of advertising on children’s programs can be reduced substantially without significantly reducing revenues

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<sup>2</sup> Petition for Reconsideration of 4Kids Entertainment, Inc., MM DKT. No. 00-167 filed February 2, 2005 at 4-8 (“4Kids Petition”)

because the price of the remaining time tends to increase”<sup>3</sup>. The 1974 FCC Policy statement cited by CMPC reflects a completely different media reality from that which exists in 2005. In 1974, cable television was still in its infancy. There was no Nickelodeon or Cartoon Network offering children’s television programming for at least twelve hours per day in the case of Nickelodeon and practically twenty four hours a day in the case of Cartoon Network. There was also no internet.

The “inelasticity of demand” for advertising on children’s programs was present due to the limited number of hours of children’s programming on broadcast television when Broadcasters, at most, telecast children’s programs in the early morning, for several hours after school and on weekend mornings. Thus, in 1974, if Broadcasters used some of their commercial inventory to promote their non-E/I programming, Broadcasters could conceivably raise the price of their remaining commercial inventory and not lose revenue because advertisers trying to reach children had no other television media on which to advertise to kids.

In 2005, however, it is manifestly not the case that there is “inelasticity of demand” for advertising on children’s programs. Broadcasters now compete for limited children’s advertising dollars with the two cable networks who are the ratings leaders, Nickelodeon and Cartoon Network. If Broadcasters use their limited commercial inventory to promote their non-E/I Programming, Broadcasters will not be able to pass along to advertisers any price increases on their remaining kids commercial inventory. Advertisers will simply spend more money on Nickelodeon and Cartoon Network (who

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<sup>3</sup> CMPC Opposition at 19

can afford to keep their advertising rates constant) in order to purchase the rating points that they wish to buy to promote their products. Moreover, kids' advertisers have a whole new medium, the internet, to use to advertise their products to children.

CMPC's argument that Broadcasters can promote their E/I Programming as often as they like under the Commission's "commercial matter" definition without adverse consequences to the television ratings of the non-E/I Programming is also not supported by the evidence contained in the Exhibits to the 4Kids Petition. As demonstrated by Exhibits B and C to the 4Kids Petition, the E/I Programming broadcast by broadcasters is at a distinct ratings disadvantage to the non-EI broadcast by the Kids Cable Networks and by the Broadcasters. If Broadcasters cannot promote their non-E/I Programming because of the "commercial matter" definition, Broadcasters will continue to lose the kids audience to the Kids Cable Networks, the destination channels for kids. The Commission's definition of "commercial matter" will then backfire and not achieve the policy goal of having more kids watch the E/I Programming. Rather, kids will continue to migrate to watch the Kids Cable Networks where there is no requirement that E/I Programming be broadcast.

In summary, we urge to the Commission to reject CMPC's arguments with respect to the definition of "commercial matter". These arguments are not grounded in the business realities of the children's television market place of 2005 which differ markedly from the children's television landscape of 1974.

Respectfully submitted,

/s/ Samuel R. Newborn

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