

**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	)	
	)	
	)	

**REPLY COMMENTS OF TIME WARNER INC.  
IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING**

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Dated: May 2, 2005

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To: The Commission

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IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING**

Time Warner Inc. (“Time Warner”), by its attorneys, submits these reply comments in response to the Commission’s Further Notice of Proposed Rule Making (“FNPRM”) in the above-captioned proceeding.<sup>1</sup> Time Warner submitted initial comments in response to the FNPRM.<sup>2</sup> Time Warner, through its divisions, is involved in the production of motion picture, broadcast television, and MVPD content, the packaging of broadcast and MVPD television programming networks, the retail distribution of cable programming to subscribers, and is the world’s leader in interactive services.<sup>3</sup>

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<sup>1</sup> *In the Matter of Children’s Television Obligations of Digital Television Broadcasters, Further Notice of Proposed Rule Making*, FCC 04-221, MM Docket No. 00-167 (rel. Nov. 23, 2004); 70 Fed. Reg. 63 (Jan. 3, 2005).

<sup>2</sup> Comments of Time Warner Inc. in Response to Further Notice of Proposed Rulemaking, MM Docket No. 00-167 (filed April 1, 2005).

<sup>3</sup> Time Warner’s motion picture and television production studio assets include Warner Bros. Pictures, Warner Bros. Television, New Line Cinema, and Castle Rock Entertainment. The company’s programming networks include Home Box Office and Cinemax, as well as CNN, TNT, TBS, Cartoon Network, and other Turner Broadcasting System cable networks, and the WB Network. Time Warner Cable provides service to approximately 11 million subscribers nationwide. Time Warner’s wholly owned

In its initial comments, Time Warner affirmed its commitment to providing the best in children's content services, including the provision of parental control mechanisms and content disclosures to help parents guide children's media experiences. Time Warner applauded the Commission's initial determination that it is too soon to formulate rules for an interactive functionality that does not yet exist. Time Warner maintained that the Commission's tentative conclusion to craft an opt-in solution for interactive television was premature, given the absence of a means for implementing it. Time Warner also supported the Commission's tentative conclusion to extend the Commission's new children's website rules applicable to cable operators, to Direct Broadcast Satellite service providers.

Time Warner files these brief reply comments in response to the filing of the Children Media Policy Coalition, *et al.*<sup>4</sup> The CMPC Comments support the Commission's tentative conclusion that it should prohibit interactivity with commercial matter during children's programming. In so doing, CMPC proposes a new, even broader definition of the statutory term "commercial matter" which would encompass not only traditional advertisements that might be enhanced by interactivity, but also interactions with branded environments, direct selling to the viewer, and the collection or use of information to target advertisements to children. The CMPC Comments do not support allowing parents to "opt in" to interactivity with commercial matter, but urge a complete prohibition. Time Warner urges the Commission to reject these positions.

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subsidiary America Online, Inc., is the world's leader in interactive services, web brands, Internet technologies and e-commerce services.

<sup>4</sup> Comments of Children's Media Policy Coalition, Free Press, The Campaign for a Commercial-Free Childhood, and Dads and Daughters, filed April 1, 2005 (hereinafter "CMPC Comments").

The Commission has recognized that “direct links to websites with program-related material could provide beneficial educational and informational content in children’s programs” and that limiting the nascent development of interactive television services “could hamper the ability of broadcasters [and cable operators] to experiment with potential uses of interactive capability in children’s programming.”<sup>5</sup> The CMPC appears prematurely willing to sacrifice the development of interactive services altogether in children’s television to bar any and all types of advertising presence. In enacting the Children’s Television Act,<sup>6</sup> however, Congress explicitly acknowledged that television can be beneficial in teaching and inspiring children to learn about the world around them,<sup>7</sup> and that the financial support of advertising assists in the development and availability of children’s programming.<sup>8</sup> Advertising, with appropriate limits and safeguards, could likewise contribute to the development and availability of innovative, educational, and entertaining interactivity in children’s programming. The Commission should refrain from adopting any regulations at this time and instead take a “wait and watch” approach.

The CMPC’s proposals fail to recognize the limits of the relevant statutory scheme and the Commission’s jurisdiction. The Commission does not have unbounded

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<sup>5</sup> See In the Matter of Children’s Television Obligation of Digital Television Broadcasters, *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 00-167, FCC 04-221 (rel. Nov. 23, 2004) ¶ 53 (“*Order and Further Notice*”).

<sup>6</sup> Children’s Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996 (1990).

<sup>7</sup> *Id.* § 101(1) (“it has been clearly demonstrated that television can assist children to learn important skills, values, and behavior, while entertaining them and exciting their curiosity to learn about the world around them”).

<sup>8</sup> *Id.* § 101(3) (“the financial support of advertisers assists in the provision of programming to children”).

discretion to modify the definition of “commercial matter” in the Children’s Television Act and must conform to Congress’ intent. CMPC’s suggestion that the Commission prohibit all branded promotions such as interactive online games<sup>9</sup> seems particularly attenuated. As the CMPC Comments acknowledge, such games “do not pitch a particular product, but rather are designed to increase the user’s familiarity and positive associations with the brand.”<sup>10</sup> To the extent CMPC is challenging the ability to offer advertiser-sponsored interactive content, such commercial sponsorships are important to the development, launch and ongoing support of children’s television programming and can be implemented in a manner consistent with the principles of the Children’s Television Act. Moreover, many interactive online games promote television programming and do not even include advertiser branding or commercial message.

Similarly, the CMPC’s suggestion that the Commission intrude on the Federal Trade Commission’s (“FTC”) jurisdiction to implement the Child Online Privacy Protection Act of 1998 (“COPPA”) is without merit.<sup>11</sup> Were the Commission to expand the definition of “commercial matter” to include the collection or use of viewer information as CMPC advocates, it would exceed COPPA’s protections by barring the collection or use of all viewer information, whether or not personally identifiable.<sup>12</sup> The Commission should adhere to the principle of comity and refrain from adopting regulations that would impinge on the FTC’s role in implementing COPPA.

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<sup>9</sup> CMPC Comments at 14-15.

<sup>10</sup> *Id.* at 14.

<sup>11</sup> *Id.* at 17-19; *see* Children Online Privacy Protection Act of 1998, P. Law 105-277, 15 U.S.C. § 6501 *et seq.* (2004).

<sup>12</sup> COPPA requires website operators to obtain parental consent before collecting personally identifiable information from a child. 15 U.S.C. § 6501 *et seq.*

Time Warner believes that the Internet and the potential it provides for interactivity with television can and will provide valuable educational, informational, and entertainment experiences for children. How this potential will be realized remains unclear. The Commission should not act prematurely in this area, and thereby stifle the development of that which it desires to encourage.

Respectfully submitted,



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Dated: May 2, 2005

*Attorneys for Time Warner Inc.*

**CERTIFICATE OF SERVICE**

I, Bruce D. Sokler, hereby certifies that a true and correct copy of the foregoing Reply Comments of Time Warner Inc. in Response to Further Notice of Proposed Rulemaking was sent this 2nd day of May 2005, by first-class mail, postage prepaid, to the following:

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