

**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: Secretary, Federal Communications Commission

REPLY COMMENTS OF THE WALT DISNEY COMPANY

The Walt Disney Company (“Disney”)¹ hereby files Reply Comments in response to the Further Notice of Proposed Rulemaking (“Further Notice”) in the above-captioned proceeding in which the Commission seeks comment on interactivity in children’s television programming.² Disney stated in its Comments in this proceeding that the Commission should refrain from adopting any regulations at this time and that, instead, the Commission should monitor marketplace developments in children’s interactive television and determine what regulation, if any, is necessary only after these services are further developed and implemented. Disney is filing these Reply Comments to stress that none of the arguments or concerns contained in the Comments filed by other parties supports a different approach or the need for regulatory action at this time.

¹ These Reply Comments are submitted on behalf of certain entities controlled by The Walt Disney Company (“Disney”), as listed in its Comments filed April 1, 2005.

² See In the Matter of Children’s Television Obligations 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) (“*Order and Further Notice*”).

Comments filed in this proceeding by the National Association of Broadcasters, Nickelodeon, Time Warner, and EchoStar all argue against regulation of interactivity in children's television programming at this time. The Comments filed by the Children's Media Policy Coalition (together with other interest groups) ("CMPC") take a different approach, arguing for a prohibition of any interactivity with any "commercial matter" during children's television programming. CMPC suggests defining commercial matter as "interactivity with the purpose of selling or promoting a product or service" and also as including "interactions with branded environments."

In these Reply Comments, Disney respectfully disagrees with CMPC's argument that regulation is needed at this time. Indeed, the illustrations of content provided in CMPC's Comments (even if problematic) involve content accessible through commercial websites unrelated to, and not accessible through, children's interactive television at this time. Therefore, Disney's suggested approach that the FCC monitor the development of children's interactive television is not in conflict with CMPC's Comments. Moreover, Disney stresses that CMPC's overly regulatory approach would entangle the FCC unnecessarily in defining commercial content. CMPC's proposed definition of commercial content (including all branded content and promotions of services) would effectively preclude any interactive content for children's television during these early stages of development. CMPC's attempt to impose a blanket prohibition on commercial content in the interactive environment also is inconsistent with the Children's Television Act of 1990, which limits, but does not prohibit, commercial content in children's television programming. Furthermore, Disney submits that such a burdensome and content-based approach is particularly unwise in an area where the FCC's jurisdiction is unclear.

First, as to whether there is a need for regulation at this time, CMPC's Comments are consistent with Disney's requested approach. CMPC's Comments do not describe current children's interactive television applications that are problematic to them. Instead, they describe content on commercial websites or other services that simply *are not accessible through any current interactive children's television application*.³ CMPC also describes hypothetical scenarios and asks the FCC to regulate on that basis; however, these surely are not the type of assumptions that support regulatory action. Disney submits that regulating in response to these unsubstantiated, theoretical concerns is precisely what the FCC should avoid to ensure that regulations, if any, are narrowly tailored to address specific and real concerns.

As Disney described in its Comments, Disney is a leader in providing high-quality, age-appropriate content to children and families. Disney's interactive children's television offerings, however, are in the earliest stages of research and development.⁴ At the current time, Disney's interactive children's television services are not being designed to connect to the worldwide web or to any commercial website. Instead, these services are being designed to allow viewers to connect to a finite amount of additional content, turning the traditional television viewing experience into more of a DVD-like environment. Accordingly, the Commission should not consider implementation of rules restricting interactivity in children's programming, like those suggested by CMPC, until it is capable of better defining the interactive television features it seeks to address and the harms it seeks to remedy.

³ In addition, some of the services described in CMPC's comments include services available through TiVo (clearly outside the FCC's jurisdiction), and one interactive application (in Pizza Hut advertisements) that, according to the trade press article quoted by CMPC, apparently is of general appeal and is not targeted at children.

⁴ Disney has not launched any interactive services except for a subscription video on demand service in limited markets.

Given that the Commission's stated goal is to avoid the placement of "unnecessary barriers in the way of technical developments in this area that may take place,"⁵ Disney submits that its suggested approach is consistent with the Commission's position. Indeed, in recognition of the potential for innovative, enriching interactive television content for kids, the Commission has vowed to encourage, not discourage, such services and has recognized this potential value concluding that "direct links to websites with program-related material could provide beneficial educational and informational content in children's programs."⁶

In contrast, CMPC's approach to prohibit all interactivity to any commercial content, which is defined as including "branded environments," would preclude the development of any interactive content by Disney because Disney's interactive content of course will include a Disney branded environment, with Disney characters and program elements. Disney's audience and viewers expect and demand that our characters be part of any Disney environment. Indeed, the FCC has stated that it expects (and encourages) the development of additional content (that necessarily for Disney by its very nature will contain branded content). Moreover, CMPC's argument that commercial matter should include "interactivity designed with the purpose of selling or promoting a product or service" is overly broad, ill-conceived and would seem to preclude even interactive program-related content to promote the very Disney show that the viewer is watching when he or she clicks into the interactive environment.

⁵ *Order and Further Notice* at ¶ 53.

⁶ *Order and Further Notice* at ¶ 53.

In addition to the definitional problems with CMPC's approach, Disney maintains that the Commission should monitor the marketplace before taking any regulatory action because of the jurisdictional issues the Commission faces in this content-laden area of children's programming interactivity. As described in Disney's opening Comments, to the extent the Commission intends to regulate content other than the original programming (whether located on the Internet or elsewhere), significant jurisdictional questions are raised. Therefore, the Commission should take a more cautious and measured approach of monitoring the marketplace and taking action only if its tentative concerns become reality.

As provided in Disney's Comments, Disney respects the Commission's concerns regarding commercial matter in children's television programming. However, as the Commission considers rules governing interactive services related to children's television programming, Disney urges the Commission to proceed with caution in regulating these evolving services. Specifically, Disney submits that:

- (i) current interactive television services do not involve the potential for harm envisioned by the Commission;
- (ii) it would be premature for the Commission to adopt rules governing interactivity in children's television programming at this time;
- (iii) the specific rules proposed in the Further Notice are premature and problematic; and
- (iv) the Commission should clarify that interactive video on demand and subscription video on demand ("VOD/SVOD") services currently are exempt from children's television regulation, and that further regulation of such services is unnecessary at this time.

Ultimately, Disney suggests that the most reasonable approach is one involving further monitoring and continued dialogue between industry innovators and the Commission and that such an approach would better serve the public interest.

Respectfully submitted,

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