

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

In the Matter of)
)
Status of Children's Television Programming) MB Docket No. 00-167
)

**REPLY COMMENTS OF NBC UNIVERSAL, INC. AND
NBC TELEMUNDO LICENSE CO.**

Margaret L. Tobey
F. William LeBeau
NBC Universal, Inc. and
NBC Telemundo License Co.
1299 Pennsylvania Avenue, NW, 9th Floor
Washington, DC 20004
202.637.4535

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I. INTRODUCTION AND SUMMARY

NBC Universal, Inc., and NBC Telemundo License Co. (collectively, “NBC Telemundo”) jointly submit these reply comments to urge the Commission to reject calls for intrusive and unwarranted changes to its long-settled precedents and policies regarding educational and informational programming designed for children 16 and under (“core programming” or “children’s educational programming”) presented by free, over-the-air television stations. The record in this proceeding establishes that television broadcasters take their responsibilities to children seriously by providing a wealth and diversity of children’s educational programming in compliance with the Children’s Television Act (the “Act”) and the Commission’s regulations. In view of this well-documented record of compliance, further government intervention is unnecessary and inappropriate, particularly as more programming directed to children becomes increasingly available through multicast channels and other platforms and as the overall percentage of U.S. households with children continues to decline.

Moreover, at least one of the proponents of such intervention, the Children’s Media Policy Coalition (the “CMPC”), has based its unfounded criticisms on a survey it concedes is incomplete and that in fact ignores so much regularly scheduled children’s educational programming as to offer no justification for Commission intrusion into the editorial judgments of broadcasters. CMPC also overreaches when it asks the Commission to overturn its settled criteria for determining common ownership of broadcast stations in a misguided effort to revive and expand a proposed ban against all duplication of children’s educational programming on commonly owned same-market stations. The expansion of such a duplication ban – which was stayed by a court order in 2003 before it ever took effect – to any two stations in which a single person or entity holds any ownership interest whether or not attributable not only would ignore long-established Commission thresholds for what constitutes a meaningful ownership interest, but also would conflict with a broad set of policies more recently adopted by the Commission for children’s programming on a single station’s multicast channels.

Other proposals for one-size-fits-all regulatory mandates recall past unwarranted efforts – some more than a decade old – to persuade the Commission to adopt wholesale changes to the Commission’s established interpretation of the Act. Consistent with the Act’s legislative history, the Commission properly concluded a decade ago that educational and informational programming may include programming that furthers a child’s emotional and social – as well as cognitive – development. The Commission also should reject calls demanding that many free, local, over-the-air stations alter their news and local programming schedules on weekdays in order to schedule some core programming. Local stations know better than anyone the demographic make-up and viewing patterns of their

audiences. Their judgments as to the best days of the week and times in which to air core programming within the existing regulatory boundaries of 7:00 a.m. to 10:00 p.m. should not be second-guessed or overruled. In summary, based on the substantial record of service to their young audiences by local television stations, NBC Telemundo submits that the current regulatory scheme is working effectively and therefore asks the Commission to uphold its past precedents in this area, including deference to the good-faith judgment of licensees, and to reject unfounded demands for greater restrictions on over-the-air children's educational programming.

II. TO THE EXTENT THE CONTEXT OF CHILDREN'S PROGRAMMING MANDATES HAVE CHANGED, THE CHANGES FAVOR LESS, NOT MORE, FEDERAL REGULATION OF FREE, OVER-THE-AIR TELEVISION STATIONS

The dramatic increase in programming on various platforms that targets specific audiences and interests also reaches children. Child-focused channels are increasingly accessible to more and more families. Among non-broadcast networks, Discovery Kids, The Learning Channel and a host of networks from Disney, Viacom and Turner offer programming designed for children for all or much of the typical viewing day. Over the past decade, the accessibility of these youth-oriented channels, including PBS Kids Sprout and Noggin, has grown. Other new digital multicast programming channels, including a 24/7 digital multicast channel from ION Media that launched earlier this year, also focus on providing content directed to children. The result has been a cornucopia of children's programming for a variety of age groups during all daytime hours, including non-broadcast networks that are not subject to the specific educational programming mandates applicable to television stations.

While quality, child-friendly programming has been increasing on various platforms, giving families more choices than ever before, the percentage of households with children under 18 has been declining. The changing demographic character of U.S. television audiences must be taken into account when considering demands that the Commission increase the regulatory mandates associated with children's educational programming. The economics of local television broadcasting require local stations to reach a broad sweep of consumers in order to attract the advertisers necessary to underwrite the stations' free, over-the-air programming. In recent years, however, the U.S. population has been shifting away from families with children under 18 years old. According to recent U.S. census analysis, approximately two-thirds of all U.S. households do not include any children 18 years old or younger.¹ The continuing decline in the percentage of households with children significantly affects how and when a station may be able to schedule programming designed to serve a small percentage of total possible viewers while continuing to serve the majority of households, who look to free, over-the-air television for local news, sports and other programming.

Together, these systemic changes since the Act was adopted highlight that calls for more top-down regulation of children's programming must be assessed in light of the wealth of choices now available to the decreasing percentage of families with children under 18 years old.

¹ U.S. Census Bureau, *American Community Survey*, Tables Avg. 1 and Avg. 3 (2007) (available at <http://www.census.gov/population/www/socdemo/hh-fam/cps2006.html>) (last viewed Sept. 25, 2007). For similar data from 2004, see <http://www.census.gov/acs/www/Downloads/2004.ACS.ASEC.Tables.web.xls>.

III. THE SURVEY ON WHICH CMPC BASES ITS COMMENTS SIGNIFICANTLY UNDERCOUNTS THE EXISTING DIVERSITY OF CHILDREN'S EDUCATIONAL PROGRAMMING

Children's educational programming available to the typical American household remains diverse and substantial. As CMPC notes, free, over-the-air local stations broadly are offering at least three hours per week of children's educational programming, as required by the Commission.² However, CMPC ignores the wealth of children's programming available on non-broadcast networks, notwithstanding the availability of non-broadcast programming to six out of seven of the nation's total television households.³

Even if the focus is narrowed to free, over-the-air television programming, the CMPC survey of six top-10 television markets substantially undercounts the amount of children's programming available. Among other deficiencies, the review offered by CMPC, which CMPC correctly concedes was not "exhaustive,"⁴ omits much programming already offered by non-network-affiliated stations and by digital multicast channels.

Every television broadcast station – whether affiliated with a network or not – is generally expected to air at least three hours of regularly scheduled children's educational programming per week.⁵ However, CMPC focuses solely on the children's educational programming available on six commercial broadcast network affiliates even in markets with

² CMPC Comments at 4.

³ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, 21 FCC Rcd 2503, 2506 (¶ 8) (2006) (“[A]pproximately 94.2 million TV households, or almost 86 percent of TV households subscribe to an MVPD service, as compared to 92.3 million, or 85.1 percent as of June 2004.”)

⁴ CMPC Comments at 3-4.

⁵ See 47 C.F.R. § 73.671 (explaining how stations are to serve children's educational and informational needs).

more than a dozen commercial stations.⁶ The result is a survey that dramatically undercounts readily available over-the-air programming. For example, in New York, the survey does not include three hours of children's programming from several independent stations, including WMBC-TV, Newton, New Jersey; WRNN-DT, Kingston, New York; and WLNY-DT, Riverhead, New York. The survey also does not include any of the children's programming available on noncommercial over-the-air stations, which likewise compete for audience among over-the-air households.

The preliminary survey also ignores children's educational programming already available on local stations' multicast channels. Again pursuant to Commission requirements, 24/7 multicast channels must air three hours of children's educational programming per week even if these channels focus entirely on local news or weather information.⁷ At least half such programming must be different from other core programming aired by the station. CMPC refers to these multicast requirements in passing,⁸ but then fails to mention that such programming is already available to interested to families with children. For example, WNBC(TV), New York, New York, regularly schedules nine hours per week of children's

⁶ For example, according to *Broadcasting & Cable Yearbook 2007*, the New York City Designated Market Area (the "New York DMA") has 15 full-service commercial stations. The Los Angeles DMA has 21 full-service commercial stations. The Chicago DMA has 13. The Dallas-Fort Worth DMA has 16. See *Broadcasting & Cable Yearbook 2007* at B-186, B-176, B-147, and B-151, respectively. Many smaller television markets also have more than six stations.

⁷ See 47 C.F.R. § 73.671(e).

⁸ CMPC Comments at 2. See *Children's Television Obligation of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rule Making, 19 FCC Rcd 22943 (2004) ("2004 Order"). The revised guideline took effect in January 2007. *Children's Television Obligations of Digital Television Broadcasters*, Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065 (2006) ("2006 Order").

educational programming – including three each on the station’s 24-hour local multicast channel and a 24-hour weather multicast channel, in addition to the channel carrying three hours of core “qubo” programming supplied by the NBC network. Such multicast programming offers a broad variety of educational programming, ranging from programming directed to preschoolers to weather-related, science-oriented programming aimed at teenagers.

IV. NOTHING IN THE RECORD JUSTIFIES AN EXPANSION OF ONE-SIZE-FITS-ALL RESTRICTIONS ON CHILDREN’S EDUCATIONAL PROGRAMMING

CMPC has failed to establish any sort of rationale for increasing the regulatory burdens imposed on free, local television stations seeking to serve their audiences and to comply with the Commission’s children’s educational programming requirements. A series of legal and practical considerations, along with the systemic undercount of available programming, undermines the CMPC’s claimed rationale for sweeping new regulatory restrictions on local television content.

A. The Commission should not change its established standards as to what constitutes a cognizable ownership interest in order to address the speculative claim that common ownership might reduce diversity in children’s educational programming

CMPC contends that an NBC Telemundo owned-and-operated station and an ION Media-owned station in the same market should not be able to broadcast the same qubo children’s educational programming because NBC Telemundo’s parent has a non-attributable ownership interest in ION Media. CMPC alleges that “[a]s a practical matter, whether ownership exceeds an attributable level makes no difference” and argues that any common ownership interest in multiple stations in a market, no matter how slight, should

require that the stations air different children’s educational programming.⁹ CMPC’s proposal is neither consistent with legal, public policy or practical considerations nor settled Commission precedent regarding what constitutes a meaningful ownership interest.

As a threshold matter, the guideline referenced by CMPC that prohibited both stations in a local duopoly from counting the same children’s educational and information program “toward the three-hour processing guideline set forth in Section 73.671” is not currently in force.¹⁰ The guideline was proposed and justified as a specific part of the relaxation of the Commission’s local television station ownership rule during the Commission’s 2002 Biennial Review.¹¹ In September 2003, in a brief order, the U.S. Court of Appeals for the Third Circuit broadly stayed the *2002 Biennial Review Order*, including “stay[ing] the effective date of the FCC’s new ownership rules” and “order[ing] that the prior ownership rules remain in effect pending resolution of these proceedings.”¹² Subsequently, the Third Circuit reversed the Commission’s changes with respect to the local station ownership rule, among other

⁹ CMPC Comments at 21-22.

¹⁰ *2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13689-90 (2003), (“*2002 Biennial Review Order*”), *reversed and remanded in part, Prometheus Radio Project v. FCC*, 373 F.3d 372 (2004), *cert. denied*, 545 U.S. 1123 (2005).

¹¹ *See id.*

¹² *See Prometheus Radio Project v. FCC*, 2003 U.S. App. LEXIS 18390 at *3 (3d Cir. Sept. 3, 2003). CMPC appears to argue from a partial cite of the initial stay that the new guideline was not part of either stay because it was somehow not part of the Commission’s new rules related to ownership. *See* CMPC Comments at 22. However, because the sole purpose of the *2002 Biennial Review Order* was to address media ownership, and the new guideline introduced a specific burden on duopolies formed under the local ownership rule as part of the Commission’s rationale for adopting the new local station ownership rule, a characterization of the guideline as something distinct from the ownership rules that were the sole focus of the *Order* lacks regulatory coherence.

proposed rule changes, and remanded the matter to the Commission. The Third Circuit added that “[t]he stay currently in effect will continue pending our review of the Commission's action on remand, over which this panel retains jurisdiction.”¹³ Accordingly, the proposed guideline also has been stayed pending the Commission’s ongoing action with respect to the remand of the local television ownership rule. In addition, since these court actions, the Commission has neither re-introduced the guideline – despite further Commission orders that revised substantial portions of rules relating to children’s programming¹⁴ – nor taken steps to implement the guideline in any of the several forms referencing children’s programming that are required to be filed with the Commission – despite substantial changes to the form used specifically to report children’s programming earlier this year.¹⁵

Moreover, the reversal of the underlying ownership rule changes announced by the Third Circuit in *Prometheus Radio* has eliminated the key rationale for the proposed change in the Commission’s processing guidelines. In light of the ongoing stay, the local ownership rule changes that prompted the announcement of the additional guideline have not gone into effect. In the absence of such rule changes, which would have reduced the number of stations in a market necessary to permit a duopoly from nine to five, the sole justification for

¹³ *Prometheus Radio Project v. FCC*, 373 F.3d at 435.

¹⁴ See note 8 *supra*.

¹⁵ See, e.g., *Children’s Television Obligation of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rule Making, 19 FCC Rcd 22943 (2004), *recon. granted in part*, 21 FCC Rcd 11065 (2006); Instructions to FCC Form 397 (available at <http://fjallfoss.fcc.gov/KidVid/public/help/f398inst.faces>). These instructions and the FCC Form 397 were both updated earlier this year with respect to other matters but without any reference to the proposed “duplication ban” guideline.

a new limitation no longer exists, especially in light of the potential constitutional implications of the proposed change.

Even if the new non-duplication guideline had remained in effect, CMPC's proposal to extend that guideline to any sort of common investment in multiple stations contradicts settled Commission policies and precedent. First, the non-duplication guideline was tied to the Commission's local ownership rules. Under Commission ownership rules, however, a party does not obtain a cognizable ownership interest in a station until that party has satisfied the Commission's ownership attribution threshold for that station.¹⁶ To apply the non-duplication guideline to investments or loans that do not trigger the Commission's ownership rules would sever the guideline from the fundamental justification for its adoption.

Second, a sweeping expansion of the guideline to non-attributable interests would contradict long-settled Commission policy as to the meaning and legal significance of attribution. The very purpose of the attribution standard is to establish the threshold at which an investor has significant potential influence over the decisions made by the licensee, including programming decisions. In defending the new "equity-debt plus" attribution standard in a 2001 reconsideration order, the Commission made this very point, noting that attribution does not apply to "all investments in broadcasters in a single market" but "is limited only to those relationships that afford the interest holder the incentive and

¹⁶ *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry; and Reexamination of the Commission's Cross-Interest Policy*, Memorandum Opinion and Order, 16 FCC Rcd 1097, 1100 (¶ 6) (2001) ("The function of our attribution rules is to define which interests will be counted in applying our ownership rules.")

means to exert influence or control over decisions regarding the core operations of broadcast stations.”¹⁷ By the Commission’s own definition, an ownership interest below the attribution threshold is one that does not allow the investor any real impact on the programming chosen by a licensee. And if an investor cannot influence the programming of a licensee, it does not make sense to limit what children’s educational programming is available to that licensee based on a non-attributable investor’s other station interests.¹⁸

Third, the Commission has adopted other policies that are not consistent with CMPC’s proposed guideline. In recent decisions regarding station multicasts – multiple channels of programming on the same local station – the Commission did not adopt a flat-out ban on the duplication of children’s educational programming among a station’s main and multicast streams.¹⁹ Instead, the Commission allowed some duplication among a station’s programming streams as long as at least half of each stream’s required children programming had not aired on another stream during the previous week. The result? A ban has not proven necessary to stimulate the presentation of more diverse children’s programming. Even in the absence of an inflexible duplication ban, many multicast streams feature children’s educational programming that never appears on the station’s main programming stream. For example, as of January 2007, Station WNBC(TV) in New York was

¹⁷ *See id.*

¹⁸ As a practical matter, the threshold advocated by CMPC is far too low for other reasons. Many stations are owned by publicly traded companies. Most companies cannot track share ownership by an individual or particular party until a certain ownership threshold has been reached. However, under CMPC’s standard, even ownership by a single shareholder of a single share each of GE and Disney stock would cause those two distinct companies’ station groups to be commonly owned for purposes of the proposed non-duplication policy.

¹⁹ *See 2006 Order*, 21 FCC Rcd 11065 at ¶ 15-18; *2004 Order*, 19 FCC Rcd at 22952.

providing different children’s educational programming series on three separate programming streams.

Conversely, experience also demonstrates that a ban against duplication by commonly owned stations does not in fact preclude the same children’s educational program from being shown by multiple stations in a market. For example, in New York, WMBC(TV), Newton, New Jersey, and WRNN-DT, Kingston, New York, do not appear to be commonly owned. However, each aired the children’s program “Real Life 101” during the first quarter of 2007.²⁰

With respect to ION Media specifically, the Commission has already rejected claims that NBC Telemundo and ION Media are commonly owned or significantly influence each other’s operations.²¹ NBC Telemundo and its parent company hold only a non-attributable, minority position in ION Media, which in turn has no attributable interest in NBC Telemundo. Because neither NBC Telemundo nor ION Media has an attributable ownership interest in the other’s stations in any market, no combination of NBC Telemundo and ION stations would constitute a duopoly or otherwise trigger the Commission’s 2003 proposed change as to how commonly owned stations’ programming is to be evaluated.

The ban proposed by CMPC would have other substantial negative ramifications as well. In the case of NBC Telemundo and ION Media, the two parties recently formed a joint venture with several well known children’s programming sources to develop a new source of

²⁰ See <http://fjallfoss.fcc.gov/KidVid/public/report/10/query.faces> (query page for past children’s programming reports).

²¹ See *Telemundo Communications Group, Inc. and TN Acquisition Corp. for Consent to the Transfer of Control of Estrella License Corp.*, Memorandum Opinion and Order, 17 FCC Rcd 6958 (2002).

quality children's programming. That brand – qubo – strives to be a safe and healthy place for kids. Among other programming initiatives, qubo offers programming linked to several series of children's books in order to promote literacy. This year, qubo also launched a 24/7 digital multicast channel that features extensive children's programming.²² Qubo also has introduced new website content for both English-language and Spanish-language audiences.²³ In August 2007, qubo announced an unprecedented pledge not to accept national advertising for food that did not meet certain nutritional standards during its programming.²⁴ Last week, NBC Telemundo took that pledge one step further by extending it to local advertising sales during qubo educational programming designed for children 12 and under on any of its owned stations. These positive and innovative efforts in developing a new brand of children's programming would not have been possible if CMPC's proposal had been adopted.

B. The Commission has no basis to reverse its long-settled finding that core programming can serve children through social or emotional lessons.

Since it adopted regulations implementing the Act, the Commission has agreed that programming serving children's social or emotional needs serves the purpose of the statute.²⁵ In 1991, the Commission cited Senator Inouye and the Children's Television Act's

²² Press Release, "Qubo Launches a 24-Hour Digital Broadcast Channel on ION Media Networks Station Group" (released Jan. 8, 2007) (last viewed Sept. 27, 2007).

²³ *See id.*

²⁴ Press Release, "ION Media Networks Pledges to Combat Childhood Obesity" (released Aug. 27, 2007) (last viewed Sept. 27, 2007).

²⁵ *See In the Matter of Policies and Rules Concerning Children's Television Programming; Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 6 FCC Rcd

legislative history in concluding that “programming that furthers the positive development of the child in any respect, including the child’s cognitive/intellectual or emotional/social needs can contribute to satisfying the licensee’s obligation to serve the educational and informational needs of children.”²⁶

In further clarifying the standard in 1996, the Commission again refused to rule that a program must further a child’s cognitive development to count as core programming. The clarification replaced the general language regarding a child’s positive development with more specific language, but did not alter the clear understanding that a qualifying core program could serve children’s emotional or social development rather than their cognitive development.²⁷ Indeed, in the 1996 action, the Commission rejected similar attempts to require that every educational program must further a child’s cognitive/intellectual development, noting that the Commission does not draw a distinction between educational and informational programming that “furthers children’s cognitive and intellectual development” and that “furthers children’s social and emotional development.”²⁸ Later Commission decisions relating to children’s educational programming did not otherwise alter this standard, which remains in effect.²⁹

2111, 2114 (¶ 21) (1991), *recon. granted in part*, Memorandum Opinion and Order, 6 FCC Rcd 5093 (1991).

²⁶ See *id.* (citing 136 Cong. Rec. S10122 (daily ed. July 19, 1990)).

²⁷ See *In the Matter of Policies and Rules Concerning Children’s Television Programming; Revision of Programming Policies for Television Broadcast Stations*, Report and Order, 11 FCC Rcd 10660, 10701 (¶ 87) (1996).

²⁸ See *id.*

²⁹ See 47 C.F.R. § 73.671(c).

Against these past Commission actions, comments in the underlying proceeding do not offer any basis for a re-interpretation of the Act or the appropriate standard. That some children’s programs do not include clear cognitive lessons is not a reason to reject these programs as educational or to re-interpret long-settled agency and industry understandings of the statutory intent.

As for specific programs that are alleged not to offer any sort of educational message, it is essential to remember that the Commission has determined it will review individual episodes of an educational series only as a matter of “last resort.”³⁰

For purposes of determining under this section whether programming has a significant purpose of serving the educational and informational needs of children, the Commission will ordinarily rely on the good faith judgments of the licensee. Commission review of compliance with that element of the definition will be done only as a last resort.

The purpose of this self-imposed restriction is apparent: the First Amendment and prudential considerations underscore that the Commission should be highly deferential to licensee editorial discretion.³¹ In addition, such programs often have multiple educational and informational purposes, which must be expressed in a manner appropriate to their

³⁰ See 47 C.F.R. § 73.671, Note 1.

³¹ In multiple contexts, the Commission has recognized the limits that the Constitution and the First Amendment impose on federal oversight regarding matters of a local television station’s editorial discretion: “Section 326 of the Communications Act and the First Amendment to the Constitution prohibit any Commission action which would improperly interfere with programming decisions of the licensees.” *National Broadcasting Co.*, 14 FCC Rcd 9026, 9031 (1999). Accordingly, licensees must be “accorded a great deal of discretion in the scheduling, selection and presentation of programs and announcements to be aired by their stations.” *Id.* See also *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 105 (1973) (rejecting mandated access requirement on local stations); *Application of KCOP Television, Inc., for Renewal of License of Station KCOP-TV, Los Angeles, California*, 59 F.C.C.2d 1321 (¶ 27) (1976) (preserving “wide discretion” in licensee scheduling of news programming).

targeted age groups within the relevant program's time and that may be less apparent or appealing to other viewers.

As one example, the core focus of long-time children's programmer Scholastic's program, "Dragon," is two-fold: one, it encourages literacy through the program's ties to a series of best-selling children books by Dav Pilkey, and, two, it speaks to issues of social and emotional importance to young children, including being afraid of the dark, wanting a friend, and having the courage to try new things. Voiceover narration during the program underscores the educational purpose of the story by asking questions and reinforcing the problem-solving strategies that Dragon incorporates as he playfully skips through his day. As a program designed to serve four- to eight-year-olds, fundamental social and emotional themes are not too basic and can be important to the development of the program's viewers. That the program is tied to a series of books offers children an incentive to read and may help a child work through a book that he or she might not otherwise be able to understand. Such benefits are entirely consistent with the goals of the policy and the statute, notwithstanding claims that they do not foster a child's cognitive ability.

NBC and qubo also take additional steps to underscore the lessons underlying each specific episode of qubo's educational programming. In materials provided to all NBC affiliates, the NBC Network includes detailed descriptions of each episode of Dragon or other Qubo educational programming. These program descriptions highlight the relevant cognitive, social or emotional lessons of the episode as developed by a longtime expert in childhood education who, in addition to having consulted on more than 1,000 episodes of various children's television programs, continues to work with schools and pre-schools in preparing child development programs. As one example, the two episodes of Dragon

apparently targeted by CMPC during the second quarter this year were intended to teach or reinforce the following to the young viewers of the program:

OSTRICH TO THE RESCUE

Ostrich wishes she could be a superhero and rescue people, too. She tries rescuing Dragon from the long-tongued bug, but Dragon is just playing with his yo-yo. Ostrich tries to rescue Beaver from a stick, but Beaver is just using the stick to scratch his back. None of Ostrich's friends need rescuing, so she tries to rescue herself. But, that isn't fun. Dragon decides to help Ostrich rescue someone. He sticks his hand in the plastic jar and gets stuck. Excited to rescue someone, Ostrich uses butter to pull his hand free from the jar. But, now Dragon's tail is stuck in a tire. Ostrich has trouble getting the tire off Dragon's tail. She slips on some butter, holds the tire and pulls. Ostrich pulls so hard that the tire comes off Dragon's tail. Ostrich realizes she can rescue people just like a superhero.

[Educational Message: Rescuing people from trouble is what superheroes do, but you can help people with your own effort and common sense.]

DRAGON BABY-SITS A FERN

Ostrich asks Dragon to take care of her tropical plant, Fern, who can be a bit fussy. Dragon agrees and Ostrich leaves him with instructions to make sure that Fern gets enough water and sun. Dragon looks for the sunlight, but it hides behind the cloudy sky. He tries to make the clouds go away, but that doesn't work. He then tries to be the sun for Fern, but that becomes difficult, too. Dragon notices that Fern needs water, so he buys a watering can from the store. Watering Fern becomes tricky when Cat tries to chew on it. At night, Dragon lets Fern sleep in his bed and reads it a story. When Ostrich takes Fern back with her in the morning, Dragon misses it. So, Ostrich presents Dragon with a fern of his own. Dragon realizes that taking care of Fern the second time around is much easier.

[Educational Message: Taking care of plants may seem hard at first, but it gets easier and more fun as you keep doing it.]

These descriptions are routinely made available to the public, including being part of many stations' quarterly children's reports. Such descriptions underscore that these programs contain important lessons that are specifically designed to advance the social, emotional or cognitive development of the young children in the age group targeted by the program.

C. The Commission should continue to leave scheduling of core programming to the discretion of the local licensee within the existing regulatory boundaries of 7:00 a.m. to 10:00 p.m.

CMPC also relies on its narrow survey as a basis to demand that the Commission mandate the days of the week on which core programming airs. Again, however, the survey's narrow focus undermines any possible rationale for such unprecedented involvement in a local station's scheduling decisions.

As a practical matter, it should not be surprising that network affiliates tend to air children's educational programming on weekends. If stations receive their programming from a network, the network must find a regularly scheduled block of time for stations in dozens or hundreds of markets that meets each of the following prerequisites: (i) the times are within the time slots made available by local affiliates for network programming; (ii) the times are between 7 a.m. and 10 p.m. local time throughout the year as required by Commission rules; and (iii) the times have a substantial number of children in the relevant age group in the audience. As a further complication, stations also may prefer to air core programming in a single three-hour block, in part to make core programming easier to find and in part due to commercial limits and other regulatory challenges of children's programming. Because children are getting ready or leaving for school by 7 a.m., and local stations tend to want to provide local programming in the afternoons – including much local news between 4 and 8 p.m. – weekends offer the best uniform solution for children's programming from national networks.

Stations that do not receive their children's programming from a network – and thus which were entirely omitted from the CMPC survey – may be more likely to air children's programming on weekdays. As just one example, multiple independent stations in New York

that were not captured in the CMPC survey – including WLNK-DT, Riverhead, New York and WRNN-DT, Kingston, New York – aired weekday children’s educational programming on their primary video channel during the first quarter of this year.³² In addition, CMPC acknowledges that it has not accounted for ION Media, which has affiliates in dozens of markets and which airs its network’s children’s educational programming on Friday afternoons. CMPC justifies the omission of such programming by complaining that ION, like NBC, airs children’s programming from qubo.³³ But if it is the timing of the programming that is critical, the fact that ION airs its programming on weekday afternoons for children who prefer to watch on weekdays should not be summarily dismissed.

Regardless of these specific examples, the Commission should reject the role of a centralized uber-scheduler of hundreds of individual stations’ core programming. As the courts and Commission have noted in other circumstances, localism and individual licensee control of programming are recognized as core strengths of the U.S. broadcast system.³⁴ Even with respect to network-provided programming, individual local stations will adjust the specific times that certain programming may air in light of specific, local considerations.

³² See <http://fjallfoss.fcc.gov/KidVid/public/report/10/query.faces>. WMBC(TV), Newton, New Jersey also aired non-core children programming in Korean Monday through Friday at 8 p.m.

³³ See CMPC Comments at 5 n.17.

³⁴ See *supra* note 30.

V. CONCLUSION

The record in this proceeding demonstrates that television broadcasters take their programming responsibilities to children very seriously and offer a wealth and diversity of educational programming. The proponents of greater governmental intervention in the area of children's educational programming have failed to justify such intrusion into the good faith programming judgments of broadcast licensees. Accordingly, NBC Telemundo respectfully urges the Commission to maintain its well-established policies and precedents setting forth the obligations of television station licensees with respect to children's educational programming.

Respectfully submitted,

/s/ F. William LeBeau

Margaret L. Tobey
F. William LeBeau

NBC Universal, Inc. and NBC Telemundo License Co.
1299 Pennsylvania Avenue, NW, 9th Floor
Washington, DC 20004
202.637.4535

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