

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

In the Matter of	)	
	)	
Service Rules for Advanced Wireless	)	WT Docket No. 07-195
Services in the 2155-2175 MHz Band	)	

**COMMENTS OF THE FAMILY RESEARCH COUNCIL  
ON THE IMPORTANCE OF ESTABLISHING A  
FREE AND FAMILY-FRIENDLY BROADBAND SERVICE**

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## **EXECUTIVE SUMMARY**

As we all know modern communications technologies have provided the United States with innumerable benefits, but these same tools can have a dark and costly side. Online pornography's depiction of degrading forms of human sexuality has become a powerful, destructive force in our society. This evil now attacks our families – adults and children – at an unprecedented rate ruining many lives and relationships. The United States government has a rare opportunity to create a marketplace solution to this problem that will offer choices for individuals and families to protect themselves from internet obscenity. In this proceeding, the Federal Communications Commission (“Commission” or “FCC”) is uniquely positioned to help create a family friendly broadband network that will provide a safe haven for families trying their best to avoid objectionable Internet content.

The Family Research Council (“FRC”) recognizes that these dangers presented by modern technology are multifaceted and that no one solution will provide a magic bullet for all the problems we face. The question is whether we are acting quickly enough to keep pace with the family-destroying changes confronting our technology-driven society. For that reason, FRC encourages the Commission to exercise its statutory authority to satisfy the obligation Congress has given the FCC to protect the “public interest.” In this proceeding, the Commission needs to mandate the use of modern technologies, tools, and an innovative business model to thwart the dangers presented by the Internet's onslaught of pornography.

Exposure of children and parents to online pornography is increasingly unintentional, and the consequences of such accidental and undesired exposure can be catastrophic. Relationships

are altered and families are damaged due to the unrelenting flow of hard core pornography available on the Internet. This is not a fair fight. Busy parents, faced with a multitude of challenges ranging from making ends meet to simply keeping their families together, cannot effectively meet this onslaught unless they have access to more tools and technologies designed to mitigate these threats.

In this proceeding, the Commission has an historic opportunity to take bold action to minimize the power disparity families face. Seeking comment on the establishment of a free and family-friendly nationwide broadband service was the first step. But asking questions alone will not help parents. The Commission must *rapidly* adopt rules to make family-friendly broadband a reality. If a carrier is not interested in providing such service, let it spread pornography elsewhere. There is hardly a lack of outlets for pornography. That is why the 2155-2175 MHz spectrum band should be set aside as a *safe haven* for a clean, broadband experience created by a trusted, network-based filter.

FRC recognizes the significant social, educational, and economic benefits that will accrue to the nation when all Americans have access to free broadband. In fact, the President, the Congress and the Commission have all acknowledged that broadband Internet will provide the country with significant benefits. In achieving that goal, however, the Commission cannot ignore the fact that even the most graphic pornography is always just around the corner on the Internet. The FCC has the authority it needs to support a free service that would include such reasonable protections.

As with the V-Chip, FRC believes that the Commission can work with network providers to find new, reliable ways to protect our society from porn in the digital age. Thus, we urge the Commission to expeditiously use its broad statutory authority under Section 230 of the

Communications Act to require the incorporation of a porn-blocking network-based content filter in the service rules for this spectrum. With access to a free *and* family-friendly nationwide broadband service, acting as a *safe haven*, every family in America will be able to benefit from broadband technologies.

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To the Commission

**COMMENTS OF THE FAMILY RESEARCH COUNCIL**

**I. Introduction**

Ensuring the online safety of our nation’s children, while unlocking the educational power of broadband, should be one of the foremost public policy goals of the Federal Communications Commission (“FCC”). In that spirit, the Family Research Council (“FRC”)<sup>1</sup> respectfully submits these Comments in response to the FCC’s Notice of Proposed Rulemaking (“NPRM”)<sup>2</sup> in the above referenced docket. In the NPRM, the Commission stated that it “seek[s] comment on service rules for licensed fixed and mobile services, including Advanced Wireless Services (AWS), in the 2155-2175 MHz band (AWS-3).”<sup>3</sup> Specifically, the FCC asks whether it should establish rules for the AWS-3 band requiring that the licensee establish a nationwide service that utilizes “mechanisms designed to filter content inappropriate for

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<sup>1</sup> The Family Research Council champions marriage and family as the foundation of civilization, the seedbed of virtue, and the wellspring of society. FRC shapes public debate and formulates public policy that values human life and upholds the institutions of marriage and the family. Believing that God is the author of life, liberty, and the family, FRC promotes the Judeo-Christian worldview as the basis for a just, free, and stable society.

<sup>2</sup> *Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band*, WT Docket No. 07-195, Notice of Proposed Rulemaking, FCC 07-164 (rel. Sept. 19, 2007) (“NPRM”).

<sup>3</sup> *Id.* ¶ 1.

children.”<sup>4</sup> The Commission also asks, “Should we mandate the provision of broadband services with mechanisms designed to filter content inappropriate for children?”<sup>5</sup> Our answer is emphatically “yes.”

The Commission also seeks comment on whether the licensee in the 2155-2175 MHz band should be required to provision a broadband network “free of service charges.”<sup>6</sup> FRC supports such a historic new service and believes that it would help connect all of America’s children and families to the remarkable opportunities of broadband Internet. However, this service also presents new challenges and responsibilities that the Commission must first address. A ubiquitous wireless broadband service that is freely available to any computer user of any age demands a higher level of protection to ensure that children are not exposed to dangerous and obscene content. Thus, combining a free service with a family-friendly filter will dramatically advance the public interest by making broadband both accessible and safe.

Many parties, including FRC, have commented on the need to empower parents, teachers and caregivers with new, more reliable tools to protect our nation’s children when they go online, particularly when using a widely available free service.<sup>7</sup> These comments can be found in previous proceedings regarding the application of M2Z Networks, Inc. (“M2Z”) to build and

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<sup>4</sup> *Id.* ¶ 86.

<sup>5</sup> *Id.* ¶ 90.

<sup>6</sup> *Id.* ¶ 86.

<sup>7</sup> *See, e.g.*, Comments of the Family Research Council, WT Docket Nos. 07-16 and 07-30, at 2 (submitted Aug. 22, 2007) (emphasizing the benefits to families from preventing the “delivery of obscenity through telecommunications devices and electronic media.”); Comments of Most Reverend Paul S. Loverde, WT Docket No. 07-16, at 2 (submitted Mar. 2, 2007) (emphasizing the importance of advancements like M2Z’s network-level filter to protect families from Internet pornography); Comments of Enough is Enough, WT Docket Nos. 07-16 and 07-30, at 1 (submitted Mar. 13, 2007) (“By making a commitment to use highly effective network based filtering, M2Z has found an innovative balance between spurring the rapid adoption of high speed internet service and protecting children and families from on line pornography and sexual predators.”); Comments of Congressman Joseph R. Pitts, WT Docket Nos. 07-16 and 07-30, at 1 (submitted May 24, 2007) (“There continues to be general disgust with the amount of pornography and indecency on the Web.”).

provision a free, fast and family-friendly wireless broadband Internet service in the 2155-2175 MHz band. Accordingly, and consistent with Section 1.425 of the Commission's rules, FRC requests that the Commission fully consider these prior comments in this rulemaking.<sup>8</sup> As demonstrated below, the establishment of a family-friendly service will *safely* facilitate the ability of our families to harness the great educational and social power of the Internet.<sup>9</sup> Whether it is a la carte cable television or providing protections over the more modern medium of the Internet, the FCC should establish a variety of options to empower all Americans by providing them with the means to allow their escape from these offensive materials.

## **II. Online Pornography is a Clear and Present Danger for American Families**

In her separate statement regarding this NPRM, Commissioner Deborah Taylor Tate drew the public's attention to the issues related to the FCC's statutory and public interest obligation to protect our families. She wrote: "I also appreciate the value of a 'family-friendly' provider of broadband services and encourage input as to how the Commission should balance the needs of families in protecting their children with constitutional and statutory requirements."<sup>10</sup> There is no doubt that such a balance can be struck, and Section 230 of the Communications Act provides that framework. However, before tackling questions of statutory power, FRC will first explain the compelling government interest in establishing a nationwide

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<sup>8</sup> See 47 C.F.R. § 1.425 (noting that the Commission "will consider all relevant comments and materials of record before taking final action in a rulemaking proceeding...").

<sup>9</sup> Some parties to this proceeding may claim (directly or indirectly) that protecting kids from the often devastating effects of illicit pornography and other indecent online materials is less important than run-of-the-mill service rules and that the FCC should be wholly unconcerned. This is pure nonsense. Protecting children is a compelling government interest that requires additional diligence, not less. Throughout our society, protecting children has a special place -- from child safety locks on medication all the way to the registration of sexual offenders. It is way past time that we adequately protect children on the Internet as well.

<sup>10</sup> NPRM Statement of Commissioner Deborah Taylor Tate.

marketplace alternative that permits children and families to have a safe Internet experience that operates as soon as the computer is switched “on.”

Before the Internet, significant barriers had to be crossed before a child could enter the world of hardcore sexual images because communities traditionally restricted access to such materials. Now with the Internet, pornography is everywhere including our homes, workplaces, and schools and can be just a mouse click away. Moreover, the challenges faced by families trying to protect their children from pornography today are exacerbated by the aggressive and intrusive use of information technology by the promoters of pornography. Certainly, parents have the responsibility to establish the moral climate within their families, but we all know that this is not a fair fight as pornographers, be they professionals or amateurs, have the resources and technological savvy to stay many steps ahead of families.

Online pornography is a multi-billion dollar industry, generating an estimated \$2.8 billion in revenue in 2006.<sup>11</sup> To make sales, adult sites often rely on marketing techniques that are unconventional and aggressive, at best, and immoral and illegal, at worst. This is done to grab the unwitting online users’ attention and hook him into habitual or addictive behaviors that can be exploited. Because the online pornography industry is highly competitive and has almost no barriers to entry, adult marketers are continually developing new strategies to drive traffic to their sites. The insidious nature of modern pornography is that online marketers have essentially turned their audience into pornographers themselves using new technologies such as YouTube, digital video cameras and cell phones.<sup>12</sup>

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<sup>11</sup> See Joshua Chaffin, “*Porn Industry Suffers Slump in DVD Sales*,” FT.com (Financial Times), published March 9, 2007, at <http://www.ft.com/cms/s/2ca67f30-cdcd-11db-839d-000b5df10621.html> (stating that “[a] new generation of internet porn companies have put ever more free pictures and video on their sites...”).

<sup>12</sup> See [www.iht.com/articles/2006/07/12/business/video.php](http://www.iht.com/articles/2006/07/12/business/video.php)

Pornographic marketing tactics present significant challenges to adults and families alike and include:

1. **Mouse-napping:** Many adult sites utilize a marketing arrangement whereby every time a user clicks through one adult site to get to another one, the first site receives advertising revenue. To increase the number of such click-throughs, some sites use pop-up windows, trapping users in an endless loop of pornography.
2. **Homepage hijacking:** This technique involves planting a javascript command on computers to change the user's default home page to an adult site. A user can change the home page back to its original setting, but when the computer is rebooted, the offensive site generally reappears as the user's home page.
3. **Spam:** Adult websites often send bulk unsolicited emails to Internet users, and these emails may contain language and pictures that are inappropriate for children.
4. **Stealth sites:** These are porn sites that increase traffic by purchasing expired but recognizable domain names, exploiting common misspellings, or using well-known names of companies and organizations, artists, or government-related entities.<sup>13</sup>
5. **Hidden Text:** Some adult site operators include hidden key words in the website code that is picked up by search engines. Some operators include sexually explicit language in the code, but others bury more innocuous key words into the code, such as the brand names of popular toys. Thus, when a child searches for information about one of those toy brands, he or she is directed to the (completely unrelated) adult site.

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<sup>13</sup> For example, whereas [www.whitehouse.gov](http://www.whitehouse.gov) is the official website for the President of the United States, [www.whitehouse.com](http://www.whitehouse.com) existed as an adult pornography site from 1997-2004. See "*whitehouse.com*," Wikipedia, at <http://en.wikipedia.org/wiki/Whitehouse.com> (last visited Apr. 6, 2007).

### ***What Youth Said About Unwanted Exposure to Sexual Material***

Findings of the University of New Hampshire's *Online Victimization of Youth* study

**Girl, 10:** "I was looking for a song on the Internet and a web site just came up. I clicked on it, and it was a site with naked pictures of girls on it.... I just closed it really quick."

**Boy, 12:** "I was going to a... site [about cereal].... It took me to this weird web site. I saw people with half sex changes who looked part male and part female and who were naked. I spelled [the name of the cereal] wrong."

**Boy, 13:** "It was a picture of [cartoon characters]. [They were] naked and you can probably guess the rest."

**Boy, 14:** "For [a] school project...I typed in 'Say no to drugs', and [it] showed naked people using drugs."

**Girl, 14:** "I was just very bored. ...I typed in [my dog's name] and pictures of naked girls just kept popping up. I tried closing the screen and the pop ups kept coming."

**Boy, 14:** "I opened a link. It took me to a site, and there was a pop up [of] a huge orgy, and there were other things. Someone sent me [the] link, and I guess there was a virus on his computer because he didn't mean to send it."

**Boy, 15:** "I was [online], and my friend sent me a link through [an instant message] and told me to click on it. It was pornography with naked pictures of girls on it. I told him that it wasn't funny and to never do that to me again. I think he thought it would be funny if I got in trouble with my parents for looking at it."

Commissioner Tate is not alone in recognizing the value of a family-friendly wireless broadband service. In fact, many of the active parties in WT Dockets 07-16 and 07-30 have called passionately on the FCC to lead in paving the way for a family-friendly broadband alternative. Earlier this year, The Most Reverend Paul S. Loverde, Bishop of the Catholic Diocese of Arlington, explained the debilitating nature of pornography:

I have learned about the breadth of the problems that pornography is causing from counselors at our various Catholic social service agencies, from Catholic school teachers, youth ministers, and religions education teachers, from parents and from my involvement in the Religions Alliance against Pornography. All of these sources have confirmed through incontrovertible evidence that pornography is crippling users of pornography, those who take part in the production of pornography and the families of all those involved in the production, distribution, sale and use of pornography.<sup>14</sup>

Global Helping to Advance Women and Children (Global HAWC)<sup>15</sup> and United Families International<sup>16</sup> shared their expertise with the FCC concerning the "trickle-down" effect of

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<sup>14</sup> See Appendix A.

<sup>15</sup> See Appendix B.

Internet pornography. In its March 21, 2007 letter to the FCC Global HAWC stated: “We are aware that research has shown that many individuals who sexually abuse women and children have become addicted to internet pornography and act out as a result of the images to which they have been exposed.”<sup>17</sup> These groups agree that exposure to Internet pornography now represents a *clear and present danger* to our nation’s families. Unfortunately, with an aggressive pornography industry pushing its agenda, there is a significant likelihood that children will unintentionally access pornography online. In 2006, the University of New Hampshire updated its research and released the report “Online Victimization of Youth: Five Years Later.”<sup>18</sup> This report found that from 2001, when the initial study was conducted, until 2005 there was a 50 percent increase in the online harassment of minors.<sup>19</sup> More shockingly, the proportion of children who were exposed to unwanted sexual material online grew from 25 percent to 34 percent.<sup>20</sup>

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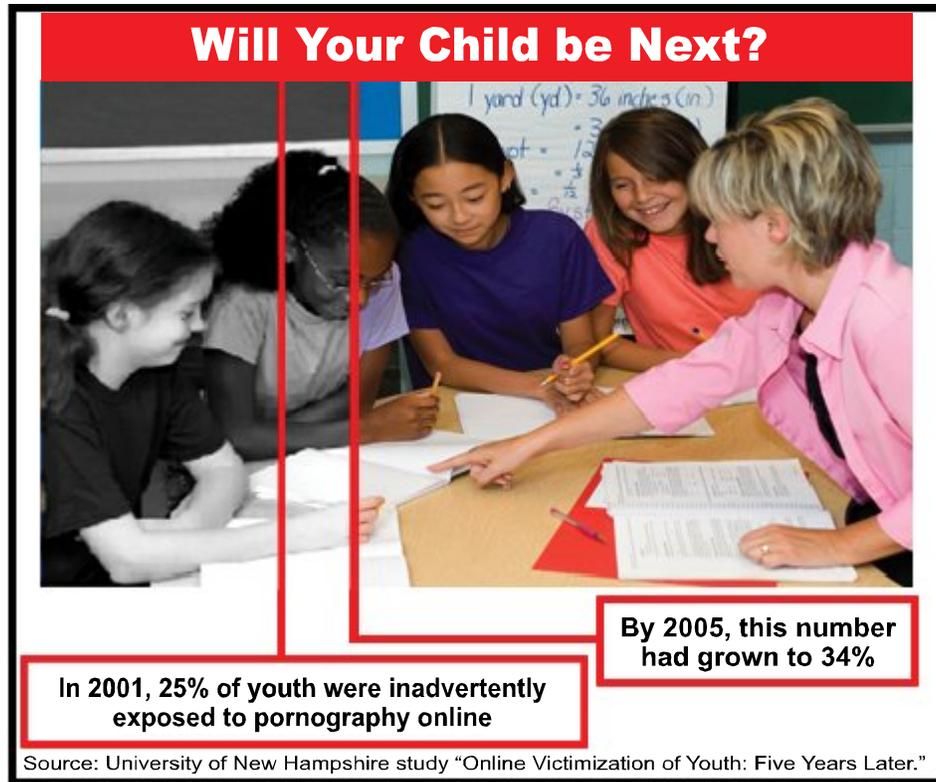
<sup>16</sup> See Appendix C.

<sup>17</sup> See Appendix B.

<sup>18</sup> See Wolak, Janis, Kimberly Mitchell, and David Finkelhor, “*Online Victimization of Youth: Five Years Later*” (2006). This study was funded by the U.S. Congress through a grant to the National Center for Missing and Exploited Children. See also the letter of the Internet Keep Safe Coalition to the FCC dated February 28, 2007, included in this filing as Appendix D.

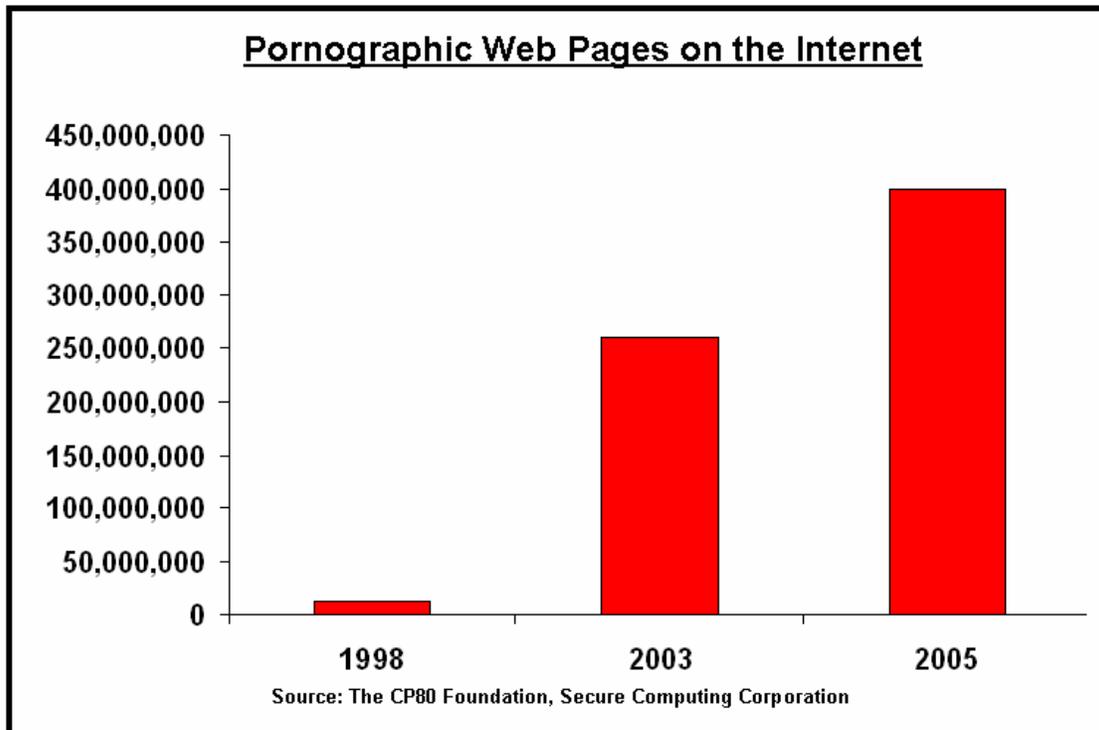
<sup>19</sup> *Id.* at 11.

<sup>20</sup> *Id.* at 29.



### III. Parents Need Better Tools to Fight the Scourge of Online Pornography

Families across America – of all income levels, ethnicities and geographic areas – have grappled with the problems caused by Internet pornography. Though we would be happy to be able to say that the United States has made some headway in arresting porn’s proliferation, in fact, the opposite is true. The number of pornographic websites grows relentlessly – as this table illustrates:



Given these troubling findings, it should come as no shock that our children continue to face increased risks online. Unfortunately, parents do not have the proper tools to help their children.

Today, parents, teachers and caregivers possess a limited arsenal of weapons to combat the infiltration of online pornography into their homes, classrooms and care centers. In a letter to the FCC dated August 6, 2007, the National Center for Missing and Exploited Children (NCMEC) informed the Commission that the use of software-based protective tools and parental controls has not kept pace with the proliferation of online pornography.<sup>21</sup> NCMEC reported the findings of a University of New Hampshire study that only 55 percent of parents use such tools as parental controls, filters and blocking software.<sup>22</sup> NCMEC subsequently pointed out that more advanced network-based filters are superior to these software solutions as the latter can be easily “subverted or disabled.”

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<sup>21</sup> See Appendix E.

<sup>22</sup> See Appendix E.

The CP80 Foundation<sup>23</sup> (CP80) has looked extensively into the reliability of existing personal computer-based software packages. It found that even those parents who have invested the time and money necessary to acquire and configure these tools are not getting the protection for their families that they expect. CP80 found that these existing filters are extremely unreliable and problematic for many reasons. First, they tend to be over- or under-inclusive, causing search results to be dangerous or overly censored. Second, existing home PC-based filters are also very costly, difficult to

### **Staying One Step Ahead**

Just this past summer 16-year-old Tom Wood of Melbourne, Australia, was able to bypass the Australian Government's very own \$84,000,000 Internet pornography filter. What is most shocking is that Tom was able to do this in just over 30 minutes.

Keeping one step ahead of his parents and teachers, Tom's means of disabling the software worked in a way that the toolbar icon – intended to reassure parents that the software was up to date and working well – was not deleted, thus allowing a tech-savvy kid like Tom to view any website he wanted.

In America we must do better – and network-level filtering is the answer. This approach ensures that even the tech-savviest kids remain safe as harmful content never reaches their computers.

Source: *Herald Sun Newspaper*, Australia

configure and maintain, and can eat away precious computer processing power. Most importantly though, they can be easily subverted or circumvented by technologically savvy users, including children, as shown in the box above. This situation is becoming increasingly dire. The FCC must take the opportunity presented by this NPRM to require, as an enforceable condition upon the licensee of the 2155-2175 MHz spectrum band, the provision of a family-friendly broadband service. This, in turn, will produce the right market incentives to ensure that effective solutions are available to parents.

The Commission has been active in creating market incentives for carriers to take actions to protect consumers. For example, the Commission, over the objections of the

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<sup>23</sup> The CP80 Foundation is an organization committed to finding new, more creative and reliable ways to protect children and families from pornography

telecommunications industry, required carriers to allow subscribers to keep their mobile phone numbers when they switch carriers.<sup>24</sup> Recently, the Commission imposed “open access” requirements in the upcoming 700 MHz auction so that consumers can use “any devices” of those spectrum blocks.<sup>25</sup> The Commission should take similar action here. The marketplace has not adequately provided the type of online protections that parents desire and the stakes are much higher here than concerning whether consumers can keep numbers or connect devices.

#### **IV. A Nationwide Service with Network-Level Filtering is the Key to Achieving a Family-Friendly Broadband**

It is imperative that the FCC encourage the industry to do more to equip parents, teachers and caregivers with new, more reliable and user-friendly tools to protect our nation’s children from online pornography. It is FRC’s ardent belief that the FCC should require that the 2155-2175 MHz spectrum band be used for the provision of a nationwide wireless broadband service that filters out pornographic content at the network level. Many advocacy organizations in the child protection and online safety sphere agree with this assertion and have expressed that view previously in the public record, as shown in the box below. These organizations have all discovered what we have discovered: network-level filters can offer real online security.

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<sup>24</sup> See In the Matter of Telephone Number Portability, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking (rel. Nov. 7, 2003).

<sup>25</sup> See Service Rules for the 698-746, 747-762 and 777-792 MHz bands, WT Docket 06-150, Second Report and Order, FCC 07-132 (rel. August 20, 2007).

## **Comments in Support of Network Level Filters in Dockets WT 07-16 & 07-30**

### ***National Center for Missing and Exploited Children:***

“[Network level] filtering is one of the best tools we have to fend off online predators, and prevent inappropriate content from reaching children.”

### ***Senator Orrin Hatch of Utah:***

“Often parents try in vain to protect their youngster from inappropriate content on the Internet by installing software tools on their computers, only to be stymied in their efforts by creative and aggressive engineers providing content over the Internet.”

### ***Global Helping to Advance Women and Children:***

“We see filtering pornographic images as a solution to the plague of pornography which causes so much destruction.”

### ***Senator Sam Brownback of Kansas:***

“...a major nationwide broadband service that is effectively filtered at the network will, for the first time, be available for parents and their children. As such, parents will not have to install their own filters – filters that often prove ineffective when tested by computer-savvy youngsters.”

### ***Internet Keep Safe Coalition:***

“As you know, network level filters are superior to those housed on individual computers as they cannot be easily circumvented by technologically savvy users. This is because indecent content will be blocked...before it ever reaches the user’s computer thus eliminating one of the most common avenues for the online solicitation of minors: indecent websites.”

### ***Bishop Paul S. Loverde, Catholic Diocese of Arlington:***

“In my estimation, the best solutions available to families now are network level filters that block pornographic content before it ever reaches the user’s computer.”

## **V. The Commission Has the Authority to Make Family-Friendly Broadband a Reality**

In response to the concerns of parents, Congress mandated and the FCC implemented the V-Chip program. FRC has noted repeatedly that the V-Chip is an imperfect solution to the TV and cable decency problems faced by families today. In particular, FRC has expressed concerns that the ratings used are subjective and too liberal in what they allow.

That being said, the successes of the V-Chip program can be attributed to a partnership of the key players: congressional leaders, FCC policymakers, consumer electronics manufacturers, broadcasters, and programmers. Congress listened to parents when they demanded help protecting their children from indecent and violent content on television. The FCC found a way

to develop the concept by working with consumer electronics manufacturers, broadcasters and programmers. Other parties then tagged programming so the V-Chips could function.

Unfortunately, the success of the program has been limited, in part, by the lack of parental awareness as to how to set and use the device. The FCC's data reflects this problem. In an April 2007 report the Commission stated that "many parents do not even know if the television sets in their households incorporate [V-Chip] technology and, of those who do, many do not use it."<sup>26</sup> In spite of the gap in parents' understanding of this tool, the V-Chip model has taught us many lessons. With respect to television, we have learned that a user-only model is not a viable solution to protect children. In the case of the V-Chip, the FCC and Congress relied on device manufacturers and programmers to help make the system work; and from that perspective it did. In the context of the Internet, even more is required.

In comparison to TV, the Internet is a much more advanced communications technology. Since the V-Chip program was started in the late 1990s, we have seen online content production and distribution industries explode in terms of popularity and usefulness to consumers. Unfortunately, the pernicious and intrusive uses of the Internet have also increased exponentially. This is troubling to parents because, unlike television, the Internet is a two-way medium. Today, anyone with a cell phone and a broadband connection has the ability to become an amateur videographer – or worse an amateur pornographer. FRC and the many families it works with are alarmed by the ever-escalating human degradation of online pornography and the increasing sophistication of porn site operators' marketing techniques. In short, thanks to the Internet's interactive nature, we are witnessing the explosive growth of a small but troubling

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<sup>26</sup> See FCC Report, "Violent Television Programming and Its Impact on Children," April 25, 2007 at ¶ 29.

population of pornographers and those addicted to their products who network with each other. This was not possible with obscenity presented in magazine format.<sup>27</sup>

FRC believes that there needs to be a long-term, multi-pronged campaign to protect families, adults, and children from online porn. In initiating this NPRM, the Commission may well have opened up a new front in the battle against the pornography industry – but only if it shows some degree of regulatory foresight. Network-based filters, such as those that are currently used widely and effectively by corporations across the nation, could afford families a high degree of protection from pornographic websites. Unfortunately, current network providers are unwilling to deploy this type of protection. Therefore, FRC believes that the Commission should promulgate service rules for the 2155-2175 MHz spectrum band that require the licensee to build a nationwide wireless broadband system that includes a network-based filter for pornographic and obscene content. Such rules would give families a desperately needed tool – a broadband network that is set to “safe” from Day One and remains so.

Similar to the V-Chip example, Congress has, with great foresight, already granted the Commission the authority to take this action. Section 230 of the Communications Act made it the policy of United States to encourage the development and utilization of *blocking and filtering* technologies that give parents the tools they need to protect their families. FRC believes that the requirement of a network level filter in this band would be a highly effective way to fulfill that mandate.

Section 230 of the Communications Act states that: “It is the policy of the United States to remove disincentives for the development and utilization of *blocking and filtering* technologies that empower parents to restrict their children’s access to objectionable or

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<sup>27</sup> For an excellent discussion of this, see Jason Baysee, “Not Your Father’s Pornography,” First Things (January 2008): 15-18.

inappropriate online material.”<sup>28</sup> One clear barrier to the deployment of network-based filtering technology is that national carriers have had no clear incentive to establish such protections. The Commission can use this rulemaking to create a regulatory incentive by mandating that, in at least the 2155-2175 MHz band, the licensee provide a family-friendly broadband service tier. Even more compelling would be the requirement that such a tier be provided free of charge to consumers in order to have a positive incentive for consumers to use such a network and establish a high benchmark for other carriers to provide similar services on other networks. The statutory framework of Section 230 of the Act gives the FCC with the authority to do this.

Aside from the FCC’s public interest responsibility to mandate the availability of a family-friendly broadband service using the public airwaves, there is a strong economic rationale for using this fallow spectrum to establish a new competitive paradigm for connecting families to the Internet. By mandating this service, the FCC will, for the first time in the broadband age, encourage a race to quality by creating the necessary market structure for family friendly access services. Such action would stand in sharp contrast to the FCC’s approach to licensing of broadband markets to date -- where the Commission has let incumbent broadband providers engage in a race to the bottom.

Bold action by the Commission has been proven to have significant and positive market repercussions. Last summer, the Commission finalized “open access” rules for the upcoming 700 MHz auction to address a particular market failure. In response to the mere adoption of such rules (and well before the auction), Verizon Wireless announced last month that it would voluntarily apply such restrictions on itself. The Commission should recognize that it can have a

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<sup>28</sup> 47 U.S.C. § 230(b)(4).

similar impact on the market failure that has resulted in a complete lack of *private* network-based filtering solutions.

Moreover, Section 230 also explains that it is the policy of the United States to “encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services.”<sup>29</sup> Establishing service rules in the 2155-2175 MHz band that require network-level filtering will encourage the development of these technologies and respond to the call of the many parties that want the development of a safer Internet option for children.<sup>30</sup>

Additionally, in light of the fact that the broadband service in the 2155-2175 MHz band should be free to enable as many users as possible to access it, establishing protections for children would be both prudent and has precedent. The Court in *Pacifica* noted that the Commission’s authority to regulate indecent broadcast material is justified by considerations that are, perhaps, more applicable to wireless broadband. Like broadcast TV, wireless broadband travels through the air and, thus, has “a uniquely pervasive presence in the lives of all Americans.”<sup>31</sup> However, unlike TV, broadband wireless has the added dimension of *mobility* that can make monitoring by parents difficult or impossible. *Pacifica* was concerned about indecent material “presented over the airwaves confront[ing] the citizen, not only in public, but also in the privacy of their own home, where the individual’s right to be left alone plainly

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<sup>29</sup> 47 U.S.C. § 230(b)(3).

<sup>30</sup> See, e.g., Comments of the National PTA, WT Docket Nos. 07-16 and 07-30, at 2 (submitted March 1, 2007) (naming “the risk that children will be exposed to indecent material” as a major barrier to Internet access for American families); Comments of United Families International, WT Docket Nos. 07-16 and 07-30, at 1–2 (submitted Mar. 16, 2007) (supporting access to clean wireless broadband for American families); Comments of Family Watch International, WT Docket No. 07-16 and 07-30, at 2 (submitted March 23, 2007) (“This provision for ‘clean’ Internet access will provide families with all the many benefits of the Internet while eliminating some of the potential harmful impacts.”).

<sup>31</sup> *Federal Communication Commission v. Pacifica Foundation*, 438 U.S. 726, 748 (1978).

outweighs the First Amendment rights of an intruder.”<sup>32</sup> As explained above, the pornography industry has made a science of “intruding” on our families rather than coming in by invitation. A filtered network, therefore, is consistent with the spirit and intent of the *Pacifica* case and, in fact, will help deal with an even more compelling public policy problem.

In this NPRM the Commission has the opportunity to simultaneously satisfy a variety of public interest and statutory obligations. By establishing a clear pro-family mandate for the use of this spectrum, the Commission will pave the way for American adults and children to take full advantage of broadband Internet’s potential for research, learning, and entertainment. It is a potential that that is now marred by the ubiquitous risk presented by the availability of the most vile forms of obscenity.<sup>33</sup>

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<sup>32</sup> 438 U.S. at 748

<sup>33</sup> We also note one additional benefit: persons suffering from addiction to pornography could subscribe to the proposed network as a safe way to use the Internet while avoiding websites that would cause them to relapse. This is a substantial body of people who will need access to telecommunications services.

## **VI. Conclusion – Now Is the Time for Action**

There is now a surfeit of evidence before the FCC to prove that the scourge of online pornography represents a clear and present danger to America's families. This threat must be addressed in order to *safely* unlock the beneficial potential of broadband Internet. Accordingly, for the reasons stated above, the FCC should promulgate service rules for the 2155-2175 MHz spectrum band that require the licensee of that spectrum to provide wireless broadband service that incorporates network-level filtering to block pornographic content.

Respectfully submitted,

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