

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

In the Matter of)
)
Implementation of the Child Safe Viewing Act;) MB Docket No. 09-26
Examination of Parental Control Technologies for)
Video or Audio Programming)

REPLY COMMENTS OF TVGUARDIAN, LLC

Respectfully submitted,

TVGuardian, LLC

Alan G. Fishel
Marcia F. Durkin
Arent Fox PLLC
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
(202) 857-6450
Its Attorneys

Dated: May 18, 2009

TABLE OF CONTENTS

I. PARENTS WANT AND NEED ACCESS TO ADVANCED FOUL LANGUAGE FILTERING TECHNOLOGY (“AFLFT”), WHICH GIVES FAMILIES THE BEST OF BOTH WORLDS: THE ABILITY TO WATCH THE SHOWS THEY ENJOY, WITHOUT THE OFFENSIVE LANGUAGE THEY DETEST1

 A. The Tremendous Public Interest Benefits of AFLT.....1

 B. AFLFT is a Necessary Part of the Parental Control Package, as the V-Chip Serves a Separate Role and is By No Means a Substitute for AFLT5

 C. Not surprisingly, Families Very Much Want and Need Access to AFLT7

II. IN LIGHT OF THE DIGITAL TRANSITION, UNLESS ACTION IS TAKEN, FAMILIES WILL BE GREATLY HARMED AS THEY WILL LOSE THEIR ABILITY TO PROTECT THEIR CHILDREN WITH AFLFT8

 A. Consumers’ Ability to Access TVG Today8

 B. Families Will No Longer Have Access to AFLFT Unless the Commission Takes the Necessary Action Here9

III. CONGRESS’ INTENT UNDER THE CHILD SAFE VIEWING ACT IS TO ENSURE THAT FAMILIES HAVE ACCESS TO THE NECESSARY PARNETAL CONTROLS, INCLUDING AFLFT11

SUMMARY

Families who have access to TVGuardian's patented technology ("TVG") can do something that Americans all over the country would like to do today: watch the TV programs and movies they want, while filtering out the offensive words they don't want. "Advanced Foul Language Filtering Technology," ("AFLFT"), such as TVG,

1. Reads the hidden closed captioning already embedded and required by law in most forms of television entertainment; and
2. When the technology encounters a word that the viewer has deemed as objectionable, that captioned phrase is muted and a non-offensive version of the phrase pops up on the screen in closed captioning for all to see.¹

AFLFT, at its core, offers families the best of both worlds – they can still watch the shows they enjoy, without the language they detest. Without access to AFLFT, families have a Hobson's choice: (i) either forego watching the movie or TV show they would like to see, or (ii) be subjected to the foul language that they deem highly offensive. Parents with access to AFLFT can set this technological tool to the filter level of their choice and then just relax and forget about it. Families can watch much more entertainment with a new comfort level, and just enjoy their shows without fear of being subjected to profanity or derogatory racial slurs.

Moreover, AFLFT and the V-Chip are completely different. With just the V-Chip, a family can either watch a great show and be subjected to the foul language within it, or have the entire program blocked. Only AFLFT offers families the option of viewing great programming without the foul language.

There is no question that the public interest strongly favors ensuring that American families have access to AFLFT – as parents unquestionably want the option to receive this technology to protect their children. Millions of families today use TVG's AFLFT in order to watch the shows they enjoy, without hearing the language they detest. In addition, of the nearly 10,000 comments in this proceeding, approximately 95% of those filings, i.e., around 9,500

¹ The non-offensive closed-captioned phrase can be set to pop up only during the mute, or it can be displayed with continuous closed-captions for the hearing impaired.

submissions, were from persons imploring the FCC to ensure that they still have, or be given, access to TVG.

Nevertheless, once the transition to digital TV is completed, without further action by the necessary parties, families that currently have access to AFLFT generally will lose their ability to use the technology and other parents that want AFLFT will be unable to receive it. The good news is that (i) TVGuardian has already created the software necessary to permit families to utilize the technology with digital TV, and (ii) TVG is easy to install inside the cable box, satellite box or IPTV box. It can even be quickly downloaded into boxes already in homes. Moreover, TVGuardian is willing to permit cable operators, satellite providers, and IPTV providers to install TVG without any license fee for those subscribers not using the technology; so long as the provider agrees to offer the technology to its subscribers as a premium feature for those families that do want to use TVG, and share the revenue from it with TVGuardian in an agreed-upon manner.

But despite TVGuardian's efforts to obtain providers' voluntarily cooperation to ensure that TVG will work with digital television, and despite the benefits that providers would receive if they voluntarily cooperate, and notwithstanding the benefits that their customers would receive, providers have continued to refuse to cooperate. They have refused to allow the software to be downloaded into their boxes even though it is easy to do so. When it comes to any parental control technologies, providers take the approach that they will only offer what they are mandated to provide, nothing more and nothing less.

Under the Child Safe Viewing Act (the "Act"), Congress directed the Commission to initiate a proceeding to obtain the information necessary to submit a report to Congress by August 29, 2009 with regard to "advanced blocking technologies." The Commission's report should include a strong recommendation that Congress ensure that providers enable consumers to have access to AFLFT. By doing so, the Commission will not only greatly serve the public interest, it will be acting in a manner consistent with the clear intent of Congress under the Act.

Congress asked the Commission, in preparing its report, to consider advanced blocking technologies that: (1) may be appropriate across a wide variety of distribution platforms,

including wired, wireless, and Internet platforms; (2) may be appropriate across a wide variety of devices capable of transmitting or receiving video or audio programming, including television sets, DVD players, VCRs, cable set top boxes, satellite receivers, and wireless devices; (3) can filter language based upon information in closed captioning; (4) operate independently of ratings pre-assigned by the creator of such video or audio programming; and (5) may be effective in enhancing the ability of a parent to protect his or her child from indecent or objectionable programming, as determined by such parent. AFLFT meets all five of these criteria. And TVG's AFLFT may be the only proven technology in existence that meets all five criteria.

Even the Commission recognizes the relevance of AFLFT to this proceeding, as the Commission specifically requested comment on the TVG technology. The Commission also requested comment in this proceeding on "what role should industry, trade organizations, consumer groups, Government and others play in [the] effort" to encourage the development, deployment and use of advanced blocking technology?" As to AFLFT, the answer to that question is clear: the government should require that cable, satellite and IPTV providers permit families to have access to AFLFT so that the public interest can be served. Only by doing so will families be ensured of having the ability to watch the shows they enjoy, without the language they detest, while still being able to easily follow the story line. This is an important moment in time where the Commission must decide whether to (i) **take a critical step forward**, so that families can be assured of having access to AFLFT to protect their children if they would like to utilize it, or (ii) **a gigantic step backwards**, such that even parents that currently have an AFLFT technology like TVG will soon be unable to use it to filter out the foul language to protect their children.

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

In the Matter of)
)
Implementation of the Child Safe Viewing Act;) MB Docket No. 09-26
Examination of Parental Control Technologies for)
Video or Audio Programming)

REPLY COMMENTS OF TVGUARDIAN, LLC

TVGuardian, by undersigned counsel, hereby submits these reply comments in the above-captioned proceeding. As explained herein, families very much want and need access to advanced foul language filtering technology, such as that provided by TVGuardian. But unless the Commission takes action here, parents will lose their ability to protect their children.

I. Parents Want and Need Access to Advanced Foul Language Filtering Technology, which Gives Families the Best of Both Worlds: the Ability to Watch the Shows they Enjoy, Without the Offensive Language they Detest

A. The Tremendous Public Interest Benefits of AFLFT

Families who have access to TVGuardian’s patented technology (“TVG”) can do something that Americans all over the country would like to do today: watch the TV programs and movies they want, while filtering out the offensive words they don’t want. “Advanced Foul Language Filtering Technology,” (“AFLFT”), such as TVG,

1. Reads the hidden closed captioning already embedded and required by law in most forms of television entertainment; and

2. When the technology encounters a word that the viewer has deemed as objectionable, that captioned phrase is muted and a non-offensive version of the phrase pops up on the screen in closed captioning for all to see.²

For example, when a family sits down to watch TV shows and movies with AFLFT, they have the option of turning countless offensive words and phrases into non-objectionable language, such as

- “Fuck off!” into “Go away!”
- “You’re an asshole” into “You’re a jerk”
- “She’s a bitch” into “She’s a nag.”

The technology not only filters curse words, it also replaces derogatory racial slurs with non-offensive substitutes that are shown on the screen.

AFTFT, at its core, offers families the best of both worlds – they can still watch the shows they enjoy, without the language they detest. There are literally thousands of high quality movies and TV shows that intermittently use what many families believe is “low-quality” – and highly objectionable – language. The movie “E.T.,” for example, is a classic family movie that many parents would like to share with their children. Yet it also contains the words, “shit,” “damn,” “son of a bitch,” and “penis breath.” But with AFLFT, a family can watch “E.T.” and choose not to hear those words, and instead replaces them with non-objectionable words. The same is true with countless other movies and TV shows. In this very important respect, AFLFT greatly benefits the public interest.

In fact, without access to AFLFT, families have a Hobson’s choice: (i) either forego watching the movie or TV show they would like to see, or (ii) be subjected to the foul

² The non-offensive closed-captioned phrase can be set to pop up only during the mute, or it can be displayed with continuous closed-captions for the hearing impaired.

language that they deem highly offensive. Families should no longer have this predicament given that AFLFT can eliminate the need to make that unenviable decision.

Another concern of parents is that the offensive language often comes “out of the blue.” Unlike violence and sex, that are generally limited to an expected range of programs, frequently, without any warning whatsoever, objectionable language will be interjected into a show, often just when parents least expect it. Moreover, foul language pops up in an astonishingly wide range of programs. But families with access to AFLFT do not need to worry about having their children ambushed by words like “bastard,” “asshole” and “fuck,” and then possibly later repeating those words at the dinner table or in school.

In addition, AFLFT benefits the public interest in a manner far greater than a technology that does not replace the objectionable word with a word of similar meaning. Where just muting occurs, a person on screen says, for example, “Motherfucker!” and here’s what it sounds like at home: “Motherf[bleep]!” It is critical to mute the entire captioned phrase and replace the phrase altogether with less objectionable words shown on the screen so that younger children are oblivious to what occurred, and are still protected from the offensive language. Moreover, by replacing the foul language with acceptable phrases, the story is also far easier to follow.³

Thus, parents with access to AFLFT not only have control over what objectionable words, if any, they and their children hear during TV shows and movies, but they can have those

³ The Commission explains the benefits of closed captioning in this way, “Closed captioning provides a critical link to news, entertainment, and information for individuals who are deaf or hard-of-hearing. For individuals whose native language is not English, English language captions improve comprehension and fluency. Captions also help improve literacy skills. You can turn on closed captions through your remote control or on-screen menu.” See FCC Closed Captioning Consumer Facts: <http://www.fcc.gov/cgb/consumerfacts/closedcaption.html> Clearly it is better for those using the closed-captions in connection with learning English, and children trying to improve literacy skills, to learn the phrase “Go Away!” rather than the term “Fuck You”.

phrases replaced with non-objectionable words, which, as described above, has considerable benefits. In addition, with an AFLFT technology like TVG, parents get to decide their level of tolerance for foul language, as they can choose between multiple filter levels ranging from very strict to tolerant, and there is, of course, an “off” setting, which lets content play unfiltered. Parents can even fine-tune the words filtered by turning ON/OFF separate filter subsets, such as Racial/Hate Slurs, Offensive Religious References, Sexual Terms, Rudeness, and Hell and Damn.

Moreover, for parents with access to AFTV, they can set this technological tool to the filter level of their choice and then just relax and forget about it. Families can watch much more entertainment with a new comfort level, and just enjoy their shows without fear of being subjected to profanity or derogatory racial slurs. They know AFTV will take care of the language, and through this technology, their lives have been changed for the better. Indeed, its ease of use is critical to its public interest benefits, because no matter how great a technology is, it is only beneficial if the public knows how to use it.

And AFLFT is helpful to many families at all times of the day that their children are watching television. Even the “Family Hour” on TV is rife with objectionable language. Research by the Parents Television Council (“PTC”) found that foul language during the Family Hour increased by 94.8% between 1998 and 2002 and by more than 109% during the 9:00 p.m. ET/PT time slot.⁴ Words that PTC found were used in programming during the Family Hour include “ass, screwing, bastard, bitch,” and “son of a bitch.” A more recent review by Family First found the following words on four free-to-air channels between 6 pm and 8:30 pm: “bitch,

⁴ Parents Television Council, “The Blue Tube: Foul Language on Prime Time Network TV.”

fuck, ass, piss, bastard,” and “holy fuck.”⁵ As the foregoing further demonstrates, countless families do not just want AFLFT – they need it to protect their children.

Accordingly, with AFLFT, the public interest benefits are tremendous because families get the best of both worlds at virtually all times and avoid having the constant Hobson’s choice of either missing a great show or being subjected to the objectionable language. They also get to avoid the unpleasant, foul-language surprises, and they can easily use the technology at the level of filtering they desire.

Given all of the above facts, it is hardly surprising that the American Family Association, the Parents Television Council and even the Progress & Freedom Foundation recognize the importance of an AFLFT like TVG to American families.

B. AFLFT is a Necessary Part of the Parental Control Package, as the V-Chip Serves a Separate Role and is by No Means a Substitute for AFLFT

AFLFT and the V-Chip type locking and blocking technologies are completely different. AFLFT is like a scalpel whereas the V-Chip is analogous to a sledgehammer. They both have their place in society, and they are both necessary. AFLFT removes the foul language; the V-Chip, and similar type technology used by the pay-TV industry, blocks the entire program. With just the V-Chip type technology, a family can either watch a great show and be subjected to the foul language within it, or have the entire program blocked. Only AFLFT offers the best of both worlds’ option: view the great programming without the foul language.

The V-Chip type technology, conversely, can block an entire inappropriate show (because of, for example, excessive violence or sex). Therefore, the two technologies can go hand-in-hand, and work together to give parents complete control of the programming they watch and the language they and their children hear. It is, however, generally recognized that

⁵ Family First, “Family TV Viewing Saturated with Foul Language,” December 8, 2008

there are numerous issues with the V-Chip type locking and blocking technology that are still being resolved, including whether to require that ratings are based on parents' views rather than the opinions of the programmers, how to ensure that the blocking is not over-inclusive or under-inclusive,⁶ and how to make the V-Chip type locking and blocking simpler to use. But regardless of how these V-Chip issues are resolved, the bottom line is this: the public interest strongly favors families having access to AFLFT, which does what the V-Chip (even if it works as designed) cannot do. That is, let consumers watch the programming they like, without the foul language they hate.

Accordingly, commenters in this proceeding who focus purely on the V-Chip type locking and blocking technologies are ignoring an integral part of parental control technology, and what parents need. And some of these same commenters claim that “education” of consumers is the panacea for parental control technologies.⁷ But, as TVGuardian describes in Section II below, access to its AFLFT will be lost without action here – that is, families will no longer be able to receive the technology without action by the Commission. And one thing is

⁶ For example, the V-Chip currently relies on ratings that may not even block a movie that has potentially fifty or more objectionable words, even though the parent requested blocking of shows with offensive language. Diane Hollenbeck, “What Happens When TV Ratings Are Wrong?” See.

http://www.focusonthefamily.com/entertainment/mediawise/tv_and_todays_family/what_happens_when_tv_ratings_are_wrong.aspx But even if that problem is resolved, the V-Chip still is no substitute for AFLFT, as the V-Chip blocks the entire show whereas AFLFT still allows families to watch the shows they enjoy, just without the language they detest.

⁷ See Supplemental Comments of the National Cable and Television Association.

http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520213692

Joint Comments of the National Association of Broadcasters, National Cable and Television Association, and The Motion Picture Association of America.

http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520213659

Comments of Comcast Corporation.

http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520213656

Comments of DirecTV.

http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520213618

Comments of Cox Communications, Inc.

http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520213697

certain: education regarding content in a program, without access to technology to remove that content, solves nothing. Needless to say, education without options is meaningless.

C. Not Surprisingly, Families Very Much Want and Need Access to AFLFT

There is no question that the public interest strongly favors ensuring that American families have access to AFLFT – as parents unquestionably want the option to receive this technology to protect their children. First, millions of families today use TVG’s AFLFT in order to watch the shows they enjoy, without hearing the language they detest. Hundreds of thousands of customers have accessed the technology through a TVG hardware device they purchased. Millions more have accessed TVG as a built-in feature within DVD players under such brand names as RCA, Sanyo, Magnavox, Memorex and Disney. And tens of thousands of consumers have written to their cable and satellite providers, asking to be given access to this family-friendly technology.⁸

Second, of the nearly 10,000 comments in this proceeding, approximately 95% of those filings (i.e., around 9,500 submissions) were from persons imploring the FCC to ensure that they still have, or be given, access to TVG.⁹

Third, filtering the language from TV shows is of the utmost importance to countless families. A Time Magazine survey revealed that more families are disturbed by foul language on TV than by depictions of sex, nudity, violence or drug usage.¹⁰ Other surveys have revealed that as many as 70% of parents believe there is an overly excessive amount of foul language on television.¹¹ And these results are hardly surprising, given that consumers generally know which

⁸ See Attachment 1, which contains a representative sample of such requests.

⁹ See Attachment 2, which contains a representative sample of such comments.

¹⁰ Time Magazine, March 28, 2005, “Has TV Gone Too Far?”

¹¹ See Attachment 4, Qualtrics Survey commissioned by TVGuardian, LLC in March 2007.

shows will include violence or sex, but are often surprised by the foul language that creeps into the middle of an otherwise family-oriented show.

Co-founder of the Civility Project at Johns Hopkins University has concluded that cursing is "...the precursor to violence." He notes, "Very often, rudeness and cursing are the beginning of an escalation toward violence."¹² AFLFT can help reduce the instances of that escalation, by replacing profanity and hate speech with non-offensive phrases.

In fact, AFLFT will not only greatly benefit families, but it may also reduce the burden on the Commission with respect to the amount of complaints the Commission receives regarding offensive language on television. Consumers who make such complaints are just the types of people most likely to use AFLFT. Once they have access to it, they will have no reason to complain about objectionable language for one simple reason: they won't hear it.

II. In Light of the Digital Transition, Unless Action is Taken, Families will be Greatly Harmed as They Will Lose Their Ability to Protect their Children with AFLFT

A. Consumers' Ability to Access TVG Today

Initially, TVG was sold as an add-on hardware solution, that is, via a small box that consumers could connect between their TV and cable/satellite box or a VCR tuner. Hundreds of thousands of consumers purchased these boxes through Wal-Mart and other outlets. Subsequently, the TVG feature was built into DVD players, VCRs and other devices manufactured by companies such as Sanyo, Magnavox, RCA, Memorex, Polaroid and Disney. Currently, over twelve million DVD players have been sold with TVG access. Accordingly, millions of Americans today are able to use TVG. Unfortunately, as described below, most of those consumers will be unable to continue to enjoy the tremendous benefits of TVG, nor will

¹² P.M. Forni, quoted by Lini Kadaba, "Some Cry Foul, Others 'Bleep On.'" Orlando Sentinel. 31 May, 2000, Pg. E1.

any other U.S. families be able to access this technology, unless the Commission takes action here.

B. Families will No Longer Have Access to TVG Unless the Commission Takes the Necessary Action Here

Once the transition to digital TV is completed, without further action by the necessary parties, families that currently have access to TVG will lose their ability to use the technology, which was designed to work with their analog sets by reading the hidden closed-captioning that is no longer accessible by an external device for digital television through cable, satellite and IPTV. In effect, the government mandated switch to digital TV has, unless further action is taken now, inadvertently undermined foul language filtering technology.

The good news is that (i) TVGuardian has already created the software necessary to permit families to utilize the technology with digital TV and (ii) TVG is easy to install inside the cable box, satellite box or IPTV box. It can even be quickly downloaded to boxes already in homes. Moreover, TVGuardian is willing to permit cable operators, satellite providers, and IPTV providers to install TVG without any license fee for those subscribers not using the technology; so long as the provider agrees to offer the technology to its subscribers as a premium feature for those that do want to use TVG, and share the revenue from it with TVGuardian in an agreed-upon manner.

This should be a win-win-win for providers. First, they will be able to provide their customers with a service that many families want and believe they really need. Second, the providers would be able to charge a reasonable fee for TVG to consumers that demand it, and share in all revenue they receive from this feature with the patent holder of the technology. Third, as common sense indicates, and a study TVGuardian commissioned an independent

organization to conduct revealed,¹³ more customers are likely to purchase premium channels, video-on-demand movies and additional offerings from providers if TVG is available, and the added revenue from such new purchases would go to the provider as well.¹⁴ Indeed, even the American Family Association (“AFA”) recognizes the tremendous benefits to providers, as AFA stated: “Cable and satellite companies should give parents the option of using these parenting tools just because it's good business. This technology will even increase profits for them since filtering out language makes more TV shows and movies OK for family viewing.”¹⁵

Ironically, the National Association of Broadcasters, National Cable & Telecommunications Association, and Motion Picture Association of America claim that governmental intervention is not necessary with regard to parental controls because parent controls are already available, such as TVG. Thus, even these groups clearly recognize the importance of AFLFT. But their members cannot have it both ways, arguing that additional controls are not needed because TVG is available, and then turning around and ensuring its unavailability by refusing to allow the TVG software to be installed inside the cable/satellite/IPTV boxes necessary to keep this technology available after the DTV transition.

That is, despite TVGuardian’s efforts to obtain providers’ voluntarily cooperation to ensure that TVG will work with digital television, and despite the benefits that providers would receive if they voluntarily cooperate, and despite the benefits that their customers would receive, providers have continued to refuse to cooperate. They have refused to allow the software to be downloaded into their boxes even though it is easy to do so. In fact, it has already been tested in one of the latest satellite HD DVR receivers. In that test with a satellite provider, embedding the

¹³ *Id.*

¹⁴ See Attachment 4.

¹⁵ Monica Cole, Director, OneMillionMoms.com, a project of the American Family Association.

technology took only hours and the provider determined that it could be downloaded into homes within two months. Simply put, TVG is a ready-to-go software solution that can be downloaded into virtually any form of media entertainment, and any manufacturer can do it without significant work or expense. Since it uses the already existing closed-captions, the software merely needs to be downloaded into the cable, satellite and IPTV boxes, and it is ready to go to work. Moreover, TVG is only around 5-10k in size, meaning it takes very little memory space and will fit into existing chipsets without adding any hardware costs.

Nevertheless, when it comes to any parental control technologies, providers take the approach that they will only offer what they are mandated to provide, nothing more and nothing less. Accordingly, in order to ensure that the public interest is protected here – and that those families who want to be able to watch the programs they enjoy, without the language they detest, are able to do so – the Commission should strongly recommend in its report (See Section III below) that Congress mandate that providers enable consumers to have access to AFLFT.

III. Congress' Intent Under the Child Safe Viewing Act is To Ensure that Families Have Access to the Necessary Parental Controls, Including AFLFT

Under the Child Safe Viewing Act (the “Act”), Congress directed the Commission to initiate a proceeding to obtain the information necessary to submit a report to Congress by August 29, 2009 with regard to “advanced blocking technologies.”¹⁶ If the Commission’s report includes a strong recommendation that Congress ensure that providers enable consumers to have access to AFLFT, the Commission will not only greatly serve the public interest, it will be acting in a manner consistent with the clear intent of Congress under the Act.

¹⁶ See S.602 [110th] Child Save Viewing Act
<http://www.govtrack.us/congress/billtext.xpd?bill=s110-602>

The Act defines “advanced blocking technologies” as those “technologies that can improve or enhance the ability of a parent to protect his or her child from any indecent or objectionable video or audio programming, as determined by such parent, that is transmitted through the use of wire, wireless, or radio communication.”¹⁷ TVG is a creative, text-book example of an advanced blocking technology, as it enables parents to protect their children from programming that is objectionable as a result of the foul language utilized. In fact, the Commission recognized the relevance of TVG to this proceeding, as the Commission specifically requested comment on the TVG technology.¹⁸ The Commission also requested comment in this proceeding on “what role should industry, trade organizations, consumer groups, Government and others play in [the] effort” to encourage the development, deployment and use of advanced blocking technology?”¹⁹

As to AFLFT, the answer to that question is clear: the government should require that cable, satellite and IPTV providers permit families to have access to AFLFT so that the public interest can be served. Only by doing so, will families be ensured of having the ability to watch the shows they enjoy, without the language they detest. With regard to AFLFT, the report issued by the Commission will almost certainly be determinative of whether the public interest is served, and this tremendously beneficial advanced blocking technology is available to families. This is an important moment in time where the Commission must decide whether to (i) **take a**

¹⁷*Id.*

¹⁸ In paragraph 24 of the NOI, the Commission stated: “Pursuant to Section 2(b)(3) of the Act, we also seek comment on advanced blocking technologies that “can filter language based upon information in closed captioning. This language seems to focus on technology that uses closed captions to identify inappropriate content in television programs. One technology being offered now is TVGuardian, which operates by scanning closed captioning, muting the audio part of the program when offensive phrases appear, and displaying a profanity-free version of the phrase at the bottom of the TV screen.”

¹⁹*Id.*

critical step forward, so that families can be assured of having access to AFLFT to protect their children if they would like to utilize it, or (ii) **a gigantic step backwards**, such that even parents that currently have an AFLFT technology like TVG will soon be unable to use it to filter out the foul language to protect their children.

We think the answer here is crystal clear. **The public interest overwhelmingly favors the Commission placing a strong recommendation in its report to Congress to require providers to include AFLFT so that consumers do not lose access to this valuable technology.** Whether the nine-year-old boy in Idaho and the 77-year-old grandmother in New York, as well as tens of millions of other people, are hearing words like “fuck,” “asshole” and “shit” on television, over their objections, will almost certainly be dependent upon what the Commission does here.

In the NOI, the Commission recognizes that the amount of television watched by children in this country is extraordinarily high. As the Commission stated:

In spite of the increase in the number of other types of media to which children are exposed, television remains the media of choice among children. Children ages 8 to 18 devote about 50 percent of their total media time to television, while younger children devote about two-thirds of their media time to television viewing. Thus, television remains a primary medium of concern in terms of children’s exposure to potentially objectionable content.²⁰

Given the types of objectionable language used on TV today, and the amount of time our youth spends watching television (whether traditional TV or over the Internet) it would be unconscionable if the Commission did not do everything in its power to ensure that parents have access to AFLFT. Parents need this option and the Commission must help make sure they have it.

²⁰ Paragraph 12 of the NOI.

And by taking the action recommended by TVGuardian herein, the Commission will be acting in a manner consistent with Congress' clear intent as well. There is no question that Congress had AFLFT in mind when it adopted the Act. Indeed, Congress asked the Commission, in preparing its report, to consider advanced blocking technologies that:

- (1) may be appropriate across a wide variety of distribution platforms, including wired, wireless, and Internet platforms;
- (2) may be appropriate across a wide variety of devices capable of transmitting or receiving video or audio programming, including television sets, DVD players, VCRs, cable set top boxes, satellite receivers, and wireless devices;
- (3) can filter language based upon information in closed captioning;
- (4) operate independently of ratings pre-assigned by the creator of such video or audio programming; and
- (5) may be effective in enhancing the ability of a parent to protect his or her child from indecent or objectionable programming, as determined by such parent.

As discussed below, AFLFT meets all five of these criteria. And TVG's AFLFT may be the only proven technology in existence that meets all five criteria.

Taking a look at the third criteria first, Congress requested the Commission to consider advanced blocking technologies that "can filter language based upon information in closed captioning."²¹ AFLFT does exactly this, by substituting the offensive language with non-objectionable words of similar meaning in the closed captions, to ensure that the consumer continues to know the story line. A continuous profanity-free closed-caption mode also makes

²¹ See Child Safe Viewing Act at Section 2(b). The Commission also seeks comment on whether closed-captioning works perfectly, and, if not, does that impact the effectiveness of filtering technologies that utilizes it. The answer is closed-captioning works very well, and therefore so does TVG. To the extent that there is an occasional mistake with closed-captioning, and therefore TVG misses a word as well, that is a far better result than we have without any filtering technology at all. Moreover, if closed captioning standards are raised, as is currently being considered by the Commission, TVG can easily be raised to 100% effectiveness. In any event, as the nearly ten thousand commenters stated in this proceeding, they are extremely pleased with the effectiveness of TVG.

this functionality accessible for the deaf and hard-of-hearing community. However, as discussed in Section II above, such advanced technology to filter language requires that AFLFT be incorporated into the cable/satellite/IPTV boxes, so that foul language filtering continues to be technically possible after the DTV transition.

Congress also asked the Commission to consider (in the fourth criteria listed above) technologies that “can operate independently of ratings pre-assigned by the creator of such video or audio programming.” Once again, AFLFT fits the bill. In fact, with TVG, parents can even choose between multiple levels of filtering. And AFLFT avoids one of the biggest challenges facing most forms of parental control technology: the fact that the current ratings system is non-standardized, frequently inaccurate, and assigned by the very people who have an incentive to avoid having their programming blocked.

Congress also requested (in the first and second criteria listed above) that the advanced technologies considered be appropriate across a wide variety of distribution platforms and devices, “including television sets, DVD players, VCRs, cable set top boxes, satellite receivers, and wireless devices.”²² Advanced technology such as TVG can be applied in every platform and device mentioned, and it has already been successfully implemented into a number of those. Specifically, TVG has been embedded in television sets, DVD players, VCRs, and satellite receivers. Wherever closed captioning can be applied, so can AFLFT. But without AFLFT software incorporated within cable/satellite/IPTV boxes in connection with digital TV, these technologies will no longer work.

Congress also had the foresight to recognize the emerging use of the Internet to view TV shows and movies. More and more, families are going directly to the broadcasters’ websites

²² *Id.*

(e.g. ABC, CBS, NBC, FOX) or to a website such as Netflix or Hulu to watch their favorite TV show or movie. Each of these websites controls the distribution of their content by only allowing individuals to view it on their own proprietary Internet video player. The closed-captions required by the foul language filtering technology are present; however, the TVG technology must be made part of each broadcaster’s proprietary video player to work.

In the last criteria listed above, Congress asked the Commission to consider advanced technologies that may be “effective in enhancing the ability of a parent to protect his or her child from indecent or objectionable programming, as determined by such parent.” As described in Section I, TVG is extremely effective in assisting parents in filtering out language that they deem objectionable. In fact, that is exactly why TVG was invented in the first place.

To summarize the above, TVG

Works across a wide variety of platforms	YES
Works across a wide variety of devices	YES
Filters language based upon closed captioning	YES
Operates independently of the ratings system	YES
Helps parents protect their children from indecent of objectionable programming	YES
Works on television	YES
Works on cable and satellite	YES
Works on wireless devices	YES
Works on non-networked devices	YES
Works on content available over the Internet	YES
Works across multiple platforms	YES
Benefits the deaf and hard of hearing	YES

In short, Congress is asking for technologies that go well beyond just the very basic all-or-nothing technologies (i.e., watch the entire show or block the entire show) that have been prevalent in the marketplace for more than ten years now. As the Commission correctly recognizes, Congress’s intent in adopting the Act is to spur the development of the “next generation of parental control technology.” TVG is an integral part of that next generation, as

millions of Americans realize, and as nearly ten thousand commenters have told the Commission.

Finally, Congress also asked the Commission to examine methods of encouraging the development, deployment, and use of advanced blocking technologies “that do not affect the packaging or pricing of a content provider’s offering.”²³ Once again, TVG fits the description. As discussed previously, TVG will be offered to companies without any license fee for those that do not use it, so it will not impact the general packaging or pricing of a content provider’s offering. Only consumers that want the technology will pay for it. Moreover, in two respects it is even easier to encourage parents to use AFLFT than the current V-Chip technology. First, AFLFT is so easy to use for those families that have access to it. Parents set it on day one, and then never have to worry about it again. Second, with a V-Chip type locking and blocking technology there is a concern of under-inclusive or over-inclusive blocking so that parents are either still subjected to foul language and other offensive content, or are missing shows they really want to watch. With AFLFT, many parents always want the filtering on because there are not any shows in which they prefer to hear the profanity.

CONCLUSION

In light of the foregoing, the Commission should act in accordance with TVGuardian’s requests set forth in these Reply Comments.

Respectfully submitted,

TVGuardian, LLC

²³ *Id.*

Alan G. Fishel
Marcia F. Durkin
Arent Fox PLLC
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
(202) 857-6450
Its Attorneys