

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Empowering Parents and Protecting Children) MB Docket No. 09-194
in an Evolving Media Landscape)
)

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

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The National Cable & Telecommunications Association (NCTA)¹ hereby submits its comments in response to the Notice of Inquiry issued by the Commission in the above-captioned proceedings.²

INTRODUCTION AND SUMMARY

We are living in a time of unprecedented choice in quality children’s programming. Much of that quality programming has been developed by the cable industry, which offers a diverse and robust slate of children’s programming options. The industry is providing more ways than ever before for viewers to access the array of programming and other educational content directed toward children in a manner best suited to the needs of individual families.

As the *Notice* recognizes, technological changes not only provide benefits to children, but also may present risks. The cable industry from the beginning has been committed to finding ways to arm parents with tools to minimize these risks and to educate parents about how to take

¹ NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of high-speed Internet service (“broadband”) after investing over \$145 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to over 20 million customers.

² *In re Empowering Parents and Protecting Children in an Evolving Media Landscape*, Notice of Inquiry, 24 FCC Rcd 13171 (2009) (“*Notice*”).

charge of their children's television viewing. As the ways in which children access video programming have evolved and expanded, so, too, have cable's efforts to help parents choose the viewing options appropriate for their family. NCTA's comments in the Child Safe Viewing Act detailed the ways that cable makes those tools widely available to its customers.³

As described below, cable's efforts to educate parents about the means at their disposal to protect their children from unwanted content – and how to find content they desire for their families – have grown over time to also encompass material online. The cable industry will continue to do its part to assist parents, teachers, and children in acquiring media literacy skills needed for the 21st Century.

I. CABLE SERVES CHILDREN BY OFFERING A DIVERSE AND ROBUST SLATE OF QUALITY PROGRAMMING OPTIONS AND CREATIVE PRO-SOCIAL INITIATIVES.

A. Numerous Linear Programming Networks Offer Children's Programming Options.

Cable operators broadly distribute a variety of programming networks dedicated to children and families on a linear basis, including ABC Family, Boomerang, Cartoon Network, Disney Channel, Nickelodeon, Nick Jr. (formerly known as "Noggin"), and PBS KIDS Sprout ("Sprout").⁴ Four of these networks are ranked among the top twenty-five cable networks based on the number of subscribers they reach.⁵ A wide variety of content for children and families is offered by these networks, including educational content appropriate for audiences consisting of

³ See Supplemental Comments of the National Cable & Telecommunications Association at 7-11. See Notice ¶ 10 (noting comments filed in the CSVA proceeding will be incorporated by reference into the record on this NOI). Unless otherwise designated herein, cites to comments and reply comments are to those filed on April 16, 2009, and May 18, 2009, respectively, in response to the *Notice of Inquiry* in MB Docket No. 09-26.

⁴ See NCTA, *Organizations, Cable Networks*, at <http://www.ncta.com/Organizations.aspx?type=orgtyp2&contentId=2907> (last visited Feb. 19, 2010).

⁵ See NCTA, *Industry Data, Top 25 Cable Programming Networks*, at <http://www.ncta.com/StatisticChart.aspx?ID=28> (last visited Feb. 19, 2010) (listing Nickelodeon, Cartoon Network, Disney Channel, and ABC Family).

a range of age groups.⁶ Marketplace incentives – rather than government mandates – have led to the development of a wide range of programming suitable for children.⁷

The *San Francisco Chronicle* recently declared the past decade “a golden age for children’s programming in the important 2- to 6-year-old range” and stated that “[c]ognitive and emotional development, a lack of in-show advertising and an influx of smart, passionate and concerned programmers-as-advocates has created a post-‘Sesame Street’ revolution.”⁸ Especially in the context of preschool programming, “the complexity of the research and level of investment involved in curriculum development have increased.”⁹ As explained by Cyma Zarghami, President of Nickelodeon and the MTV Networks Kids & Family Group, in testimony to Congress last year:

Just as important as what you and your children see when you turn on an episode of [*Dora the Explorer*] is what takes place behind the scenes. Hundreds of hours of research and testing goes into producing our children’s programs. The when,

⁶ See Notice ¶ 25 (seeking comment on educational content being offered to children today and whether “sufficient marketplace incentives exist to create educational content for children” or whether “governmental or industry action [is] needed to increase incentives?”).

⁷ Unlike broadcast stations, which are licensed by the FCC to use scarce spectrum and to which certain content restrictions have been upheld by the courts, cable operators and programmers do not use the public airwaves and generally cannot be subjected to the same content restrictions. See *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 637 (1994) (“the rationale for applying a less rigorous standard of First Amendment scrutiny to broadcast regulation . . . does not apply in the context of cable regulation”).

Moreover, Congress has already addressed the Commission’s responsibilities when it comes to children’s programming on cable television. Under the Children’s Television Act, cable operators are subject to the same commercial limits during children’s television programming as are broadcast licensees. 47 U.S.C. §303a and subsection (d) (“As used in this section, the term ‘commercial television broadcast licensee’ includes a cable operator, as defined in section 602 of the Communications Act of 1934...”). In contrast to its treatment of broadcast stations that are licensed by the Commission, Congress did not impose on cable operators any additional requirement to provide educational and informational children’s programming. Compare *id.*, § 303b (providing that the Commission “shall, in its review of any application for renewal of a commercial or noncommercial television broadcast licensee, consider the extent to which the licensee . . . has served the educational and informational needs of children through the licensee’s overall programming, including programming specifically designed to serve such needs”). The agency would thus lack statutory authority to impose any such requirements on cable. See discussion *infra* at Section III (describing the limitations on the Commission’s authority to regulate cable content).

⁸ Tim Goodman, *Cable, DVRs Change the Game*, S.F. Chron., Jan. 1, 2010, at F1, F6.

⁹ David Goetzl, *A Lot to Learn, Reams of Research Turns Kids TV Into Preschool 101*, Broad. & Cable, Jan. 4, 2007, available at http://www.broadcastingcable.com/article/111039-A_Lot_to_Learn.php?q=preschool.

where, what, how and why behind Dora’s adventures are not accidental – they are born out of the expertise and input of child development experts and educators. Our expert consultants help us every step of the way, to ensure that our curriculum goals are appropriate for our target audience and that viewers understand the educational concepts. Our educational programming is thoroughly tested, and often screened by dozens of children as part of our research process, so that we can make appropriate adjustments before we show it to a wide audience on Nickelodeon or Noggin. It should be no surprise, then, that high quality educational and informational programming is extremely expensive to produce. A single, 30-minute episode of *Dora the Explorer* costs an average of \$650,000. We also engage nearly every day in voluminous research on families and children to help us understand our audience and the challenges they confront in their day-to-day lives.¹⁰

In fact, scores of curriculum-based preschool programs are available on networks distributed by cable companies. To name just a few such programs, the program line-up at Sprout includes more than twenty curriculum-based programs developed for a preschool audience, including *Sesame Street*, *Bob the Builder*, and *Barney and Friends*,¹¹ and, in addition to *Dora the Explorer*, and others, Nickelodeon offers *Team Umizoomi* (a preschool series centered entirely on teaching math to preschoolers).¹² In addition, Disney Channel airs a block of programming, including shows like *Little Einsteins* and *Handy Manny*, which promotes preschoolers’ physical, emotional, and social development.

Cable programmers are not only serving the needs of pre-school children with educational programming. Programming networks are also developing and providing quality

¹⁰ Cyma Zarghami, President of Nickelodeon and the MTV Networks Kids & Family Group, Before the U.S. Senate Committee on Commerce, Science and Transportation, *Rethinking the Children’s Television Act for a Digital Media Age*, July 22, 2009, at 6 (“Zarghami Testimony”), available at http://commerce.senate.gov/public/?a=Files.Serve&File_id=512afa5c-b479-43a1-81f2-1906f4e9b875.

¹¹ See PBS KIDS Sprout, *Press Room, Overview*, at <http://www.sproutonline.com/sprout/pressroom/overview.aspx> (last visited Feb. 19, 2010) (noting that Sprout’s lineup includes “more than 20 different gold-standard, curriculum-based children’s shows which air at various times throughout the day includ[ing]: *Sesame Street*, *Bob the Builder*, *Barney & Friends*, *Thomas & Friends*, *Angelina Ballerina*, *Caillou*, *The Berenstain Bears*, *Dragon Tales*, *Make Way For Noddy*, *Fifi and the Flowertots*, *The Wiggles*, and more”).

¹² See Elizabeth Jensen, *In a Series, Nickelodeon Will Focus On Math*, N.Y. Times, Jan. 11, 2010, at B9; Mike Reynolds, *Nick Counts On New Series For Preschoolers*, Multichannel News, Jan. 11, 2010, available at <http://www.multichannel.com/article/443519-Nick-Counts-On-New-Series-For-Preschoolers.php>.

educational content for children in a wide range of age groups. For example, to provide support to President Obama's Science, Technology, Engineering, and Mathematics (STEM) campaign, Discovery Communications announced last fall that Science Channel will launch a commercial-free science programming block geared towards middle-schoolers on Monday through Saturday afternoons in 2010.¹³ Programming on Nickelodeon and TeenNick appeals to older children, offering content that reflects experiences kids have on a regular basis and dealing with issues that children face as they progress toward adulthood. Numerous programming networks such as History Channel, A&E, C-SPAN, HLN, HBO Family, and Nickelodeon provide a dynamic selection of educational content appropriate for children of a variety of ages.¹⁴ Cable operators make it easy to find this programming by allowing parents to search for children's programming using the electronic program guide.¹⁵

In addition, programming networks have used their expertise to develop educational material for use in classrooms. For example, Ovation TV, in conjunction with Cable in the Classroom ("CIC") and the New York City Department of Education, recently launched a national arts education initiative that includes development of arts-related curriculum units and companion programs for high school students.¹⁶ Discovery Education, a division of Discovery

¹³ See Alex Weprin, *Discovery Launching Major Science Initiative*, Broad. & Cable, Nov. 23, 2009, available at http://www.broadcastingcable.com/article/390219-Discovery_Launching_Major_Science_Initiative.php.

¹⁴ Cable in the Classroom ("CIC") helps identify this programming for use in the classroom or at home by parents. See, e.g., Cable in the Classroom, *Monthly Program Listings*, at http://www.ciconline.org/c/document_library/get_file?folderId=130&name=Program+Listings+Feb_2010_v1.a.pdf (last visited Feb. 19, 2010). This CIC programming can be accessed at school by teachers or at home by parents. See Cable in the Classroom, *Cable Resources for Learning*, at <http://www.ciconline.org/cable-resources> (last visited Feb. 19, 2010).

¹⁵ See *infra* note 49.

¹⁶ See Mike Reynolds, *Ovation TV Goes National with Arts Education Program*, Multichannel News, Jan. 27, 2010, available at http://www.multichannel.com/article/446202-Ovation_TV_Goes_National_With_Arts_Education_Program.php.

Communications, provides an extensive collection of digital resources to schools and parents.¹⁷ Discovery Education recently announced a partnership with the North Carolina Virtual Public School to offer educators and students throughout North Carolina access to more than 100,000 high-quality Discovery Education digital assets, including video clips, images, articles and more, all aligned to state standards.¹⁸ Discovery Education will also be providing content to approximately 60,000 schools as part of Discovery Communications' pledge of \$150 million in resources to support President Obama's STEM initiative.¹⁹

B. Cable Also Offers Many Additional Hours of Children's Programming that Can Be Accessed On Demand, Including Through VOD, DVRs, and Broadband Connections.

In addition to the traditional linear network offerings for children and families, cable also provides an extensive amount of children's programming that can be accessed at any time. Parents and families can access programming that they can customize for their families through cable's video on demand ("VOD") services and digital video recorders (DVRs). Broadband connections also give parents and families access to vast collections of children's programming.

¹⁷ See generally Discovery Education, at <http://discoveryeducation.com/> (last visited Feb. 19, 2010).

¹⁸ See Press Release, Discovery Education, *Discovery Education and the North Carolina Virtual Public School Partner to Provide Services Bringing the Highest Quality Digital Content to Online Students* (Feb. 4, 2010), available at http://www.discoveryeducation.com/aboutus/newsArticle.cfm?news_id=602.

¹⁹ See John Eggerton, *Time Warner Cable Pledges \$100 Million for "Connect a Million Minds" Initiative*, Broad. & Cable, Nov. 23, 2009, available at <http://www.broadcastingcable.com/article/390271-Time-Warner-Cable-Pledges-100-Million-For-Connect-a-Million-Minds-Initiative.php>. Time Warner Cable had already decided to devote 80% of its philanthropy efforts to science and math education before the President's STEM initiative was announced. See Kenneth Chang, *White House Plans Campaign to Promote Science and Math Education*, N.Y. Times, Nov. 23, 2009, A13. However, following announcement of the President's initiative, Time Warner Cable decided to adjust its philanthropic plans to join the President's effort. See *id.* Time Warner Cable has pledged \$100 million in resources to support the President's campaign with PSAs, a website, and community events. See Eggerton, *supra*.

As discussed in the CSVA docket, the ability for parents to select programming for their families on VOD or through DVRs provides a significant parental control tool.²⁰

Cable operators typically offer an extensive amount of children's programming on an on-demand basis that parents can access whenever it is convenient for them. In fact, Nielsen recently reported that kids programming accounts for approximately 28% of total free video on demand content.²¹ For example, Comcast's VOD service includes content from Sprout, Nickelodeon, Disney Channel, Disney XD, Cartoon Network, Boomerang, Nick Jr., and others.²² Additionally, Comcast On Demand features Kids Movies, a video-on-demand programming category that features up to 20 new movie titles every month and other video on demand exclusive programs such as Activity TV, Kids Fun Fitness, and Kids Karaoke.²³ As explained by Diana Kerekes, Vice President of Video Content for Comcast, "Our kids programming is one of our most viewed offerings On Demand and we are excited to continue to grow this category for parents and kids."²⁴

²⁰ See Comments of Adam Thierer, Senior Fellow with The Progress & Freedom Foundation ("PFF Comments") at 26 ("One of the most important developments on the parental controls front in recent years has been the rapid spread of VCRs, DVD players, digital video recorders (DVRs), and video on demand (VOD) services. These technologies give parents the ability to accumulate libraries of preferred programming for their children and determine exactly when it will be viewed. Using these tools, parents can tailor programming to their specific needs and values."); see also *In re Implementation of the Child Safe Viewing Act; Examination of Parental Control Technologies for Video or Audio Programming*, Report, 24 FCC Rcd 11413, ¶ 84 (2009) ("CSVA Report").

²¹ See Patricia McDonough, nielsenwire, *Blog: Television and Beyond: A Kid's Eye View*, December 9, 2009, at <http://blog.nielsen.com/nielsenwire/consumer/television-and-beyond-a-kids-eye-view/> (last visited Feb. 19, 2010).

²² Press Release, Comcast Corp., *Comcast Brings Exclusive Wiggles Content To On Demand; World-Acclaimed Children's Group Joins the Most Comprehensive Kids Programming Available Anytime* (Aug. 11, 2009), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=912>.

²³ See *id.*

²⁴ *Id.* Children's programming on VOD is one of the most popular categories of VOD programming. See Karen Brown, *Win Some, Lose Some, Providers Discover What Content Works — And What Doesn't*, Multichannel News, Aug. 6, 2006 ("Another big area of on-demand success is children's programming."), available at http://www.multichannel.com/article/88412-Win_Some_Lose_Some.php; Matt Stump, *Kids' TV Rules on VOD*, Multichannel News, Mar. 6, 2006 ("The results are in: Children's programming is a hit for video on demand."), available at http://www.multichannel.com/article/80768-Kids_TV_Rules_On_VOD.php.

Similarly, other cable operators offer robust VOD libraries. As of early last year, cable VOD was available in about 43 million homes with digital set-top boxes.²⁵ As Steve Necessary, Cox Communications' Vice President for Video Product Development and Support, explained: "It's now clearly a mainstream part of our product offering. . . . We see usage going up every month."²⁶

Through broadband connections offered by cable operators, parents have access to an even wider array of programming options for their children. Many programming networks provide video content online at their websites. For example, the Cartoon Network and Nick Jr. websites offer both video clips and full length episodes of programs.²⁷ As the Commission noted in the *CSVA Report*, "there are a number of video and audio sites that are walled gardens, providing only family friendly content."²⁸ Last fall, *The New York Times* reported that TV Guide's website lists almost 900 full episodes of children's programs available online, including from Kabillion (kabillion.com/videos/) and Hulu (hulu.com/channels/Family/Kids).²⁹

²⁵ David Lieberman, *Video On Demand Gets An Extra Push at Cable Trade Show*, USA Today, Mar. 31, 2009, available at http://www.usatoday.com/tech/news/2009-03-31-video-on-demand-cable-trade-show_N.htm.

²⁶ *Id.* During 2008, Cox Communications Northern Virginia, History, and CIC partnered to offer nearly 20 hours of American history programming for free to Cox Digital Cable subscribers through Cox's VOD service. The initiative represented the first time a cable system offered CIC programming via VOD to consumers. See Press Release, Cox Communications, *On DEMAND Brings History Lessons Home* (Feb. 28, 2008), available at <http://www2.prnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/02-28-2008/0004764536&EDATE=>.

²⁷ See Cartoon Network, *Cartoon Network Videos*, at http://www.cartoonnetwork.com/video/index.html?hpt=GNav_Txt_Video (last visited Feb. 19, 2010); Nick Jr., *Nick Jr. Video*, at <http://www.nickjr.com/video/> (last visited Feb. 19, 2010).

²⁸ *CSVA Report* ¶ 167 (reporting "[e]xamples of child safe zones include Yahoo! Kids (kids.yahoo.com), PBS Kids (pbskids.org), Nickelodeon (nick.com), Cartoon Network (cartoonnetwork.com), TV Disney.com (home.disney.go.com), and .Kids.US.").

²⁹ See Warren Buckleitner, *Parental Guidance on Web Video for Children*, N.Y. Times, Oct. 8, 2009, at B10.

C. Through Pro-Social Initiatives, Cable Programmers Have Voluntarily Taken Steps to Address Concerns About Advertising in Children’s Programming.

As noted above, quality programming is expensive, and advertising revenues are necessary in order to create quality programming.³⁰ The *Notice* asks several questions about advertising during children’s programming, including whether viewers should be able to block advertising in children’s programs.³¹ As NCTA and other parties explained previously to the Commission, imposing such a requirement raises numerous technical issues and would undermine the economic support for the valuable children’s programming available in the marketplace today.³² Moreover, it is questionable whether such a requirement is necessary. As the Association of National Advertisers explained to the Commission last year, the advertising industry has adopted voluntary guidelines to limit the exposure of children to advertising that might be deemed inappropriate to children under 18.³³ Programming networks also have their own standards and practices that govern the advertising that is appropriate for their programming.

³⁰ See Zarghami Testimony, *supra* note 10, at 6-7.

³¹ See *Notice* ¶ 40.

³² Joint NAB, NCTA and MPAA Reply Comments at 12-13 (explaining the technical and Constitutional issues involved and noting that “because advertisements are a critical source of revenue for the development and distribution of high-quality programming, the unintended consequence of increased blocking of commercials would likely be to limit the audience for advertisements and thereby diminish this vital revenue stream. The Commission should not recommend unnecessary proposals that would unintentionally undermine economic support for television programming”); see also Ass’n of Nat’l Advertisers et al. Reply Comments at 2 (“separately rating advertisements and potentially enabling their deletion from the programming they support will eviscerate the programs’ economic viability while raising serious legal and administrative problems”). Any such mandate to rate commercials would also conflict with the voluntary nature of the ratings system Congress established. Imposing new ratings and blocking requirements would raise serious constitutional issues – issues Congress intentionally sought to avoid by adopting a voluntary scheme. See 47 U.S.C. §303(w)(1) (authorizing the FCC to prescribe “guidelines and recommended procedures” under certain circumstances); *id.*, §303(w)(2) (prescribing steps with respect to any “video programming that has been rated”); Conf. Rpt. 104-458, 104th Cong., 2d Sess. at 195 (“nothing in subsection (b)(1) authorizes, and the conferees do not intend that, the [FCC] require the adoption of the recommended rating system nor that any particular program be rated”).

³³ See Ass’n of Nat’l Advertisers et al. Comments at 6-7.

In addition to these voluntary measures, several children’s programming networks, through a variety of initiatives, have taken significant steps to positively influence, educate, and inform children and families to adopt balanced and healthy lifestyle choices. In fact, in recent weeks, both Nickelodeon and Disney have announced their participation in *Let’s Move*, an initiative with First Lady Michelle Obama to help address childhood obesity. Disney announced that it would produce a series of public service announcements (“PSAs”) featuring the First Lady and leading Disney Channel stars intended to inspire healthier eating habits and physical activity.³⁴ Nickelodeon will offer its resources and research, including child and family-targeted PSAs, and special programming events on its channels and websites.³⁵

Disney’s recent *Let’s Move* announcement continues a long-standing commitment to kids’ health and nutrition. In 2006, Disney announced guidelines aimed at giving parents and children healthier eating options that include limiting the use of the company name and its characters to only those kid-focused products that meet specific nutritional guidelines.³⁶ Moreover, Disney Channels Worldwide has committed to programming that reflects and recognizes that everyone shares a responsibility to encourage kids and families to adopt healthy lifestyles, including dedicating at least one episode of each series currently in production to a

³⁴ The messages will be featured across Disney’s kid and family targeted media platforms, including Disney Channel, Disney XD, Radio Disney, and Disney.com and will begin airing later this year. See Press Release, The Walt Disney Company, *Disney Announces Collaboration with First Lady Michelle Obama to Create a Healthier Generation* (Feb. 9, 2010), available at http://corporate.disney.go.com/news/corporate/2010/2010_0209_healthier_generation.html.

³⁵ See Press Release, Nickelodeon, *Nickelodeon to Participate in First Lady Michelle Obama’s Let’s Move Campaign to Tackle Childhood Obesity* (Feb. 9, 2010), available at http://biz.viacom.com/sites/nickelodeonpress/NICKELODEON/Pages/showpdf.aspx?FileName=First_Lady_Childhood_Obesity_Announcement_Release_Final.pdf&ListName=Corporate_PressReleases&ItemID=76.

³⁶ See Press Release, *supra* note 34.

healthy lifestyle theme.³⁷ In addition, Disney has dedicated over 100 interstitials to encouraging healthier lifestyles.³⁸

Since 2002, Nickelodeon has engaged in a number of award winning pro-social initiatives, which aim to “engage children and help empower them to make a difference in their own lives, for their families and communities, and in the world at large.”³⁹ Nickelodeon’s *Let’s Just Play* campaign is a long-term, multimedia campaign designed to help children make healthy lifestyle choices. A key element of the campaign is the *Worldwide Day of Play*, an entire day committed to the celebration of active play. On that day, Nickelodeon and Nick Jr. and their companion web sites go dark for three hours to reinforce the message to children to turn off their television and go play.⁴⁰ Nickelodeon has committed more than \$30 million and 10% of its programming time to health and wellness messaging.⁴¹ Furthermore, effective January 2009, Nickelodeon voluntarily limited the use of its well-known characters to food packaging that meets “better for you criteria” established by its marketing partners in accordance with governmental dietary guidelines.⁴²

Through its award-winning *Get Animated* initiative launched in 2005, Cartoon Network has worked to educate kids about healthy lifestyle choices and to tackle the important issue of

³⁷ *See id.*

³⁸ The interstitials include *Pass the Plate*, an effort to inform and empower viewers by showing them how kids around the world enjoy and benefit from healthy foods, and *Get’cha Head in the Game*, an interstitial series that inspires kids to follow their dreams through physical activity. *See id.*

³⁹ Zarghami Testimony, *supra* note 10, at 8.

⁴⁰ *See id.* Nickelodeon and its partners also organize and host hundreds of events annually to inspire children to go outside and be active.

⁴¹ *See* Stuart Miller, *Cable’s Class Act*, Multichannel News, Mar. 2, 2008, available at http://www.multichannel.com/article/132281-Cable_s_Class_Act.php?q.

⁴² *See* Ira Teinowitz, *Nickelodeon Limits Food Licensing for SpongeBob, Dora*, Aug. 15, 2007, available at http://www.tvweek.com/news/2007/08/nick_limits_food_licensing_for.php; Zarghami Testimony, *supra* note 10, at 10. Dora the Explorer, SpongeBob SquarePants, and other Nickelodeon characters can be seen on packaging for fruits and vegetables, including carrots, spinach, clementines, tangelos, and oranges. *See* Zarghami Testimony, *supra* note 10, at 10.

recess cuts in schools. Nearly 7,000 elementary schools participated in the third annual *National Recess Week* and campaign kick-off last March. The 2009 *Get Animated* campaign encouraged kids to get active during school, after school, and during the summer through a partnership with 4,100 Boys & Girls Clubs across the country and included a 35-city *Get Animated* Tour featuring physical activities and games created by kids with an iconic red rubber ball.⁴³ These efforts complemented Cartoon Network’s ongoing relationship with the Food & Drug Administration (“FDA”) and an interactive *Spot the Block* campaign driving awareness and understanding of nutritional labels on packaged food;⁴⁴ other Cartoon Network PSAs on physical activity and nutrition; and extensive nutritional guidelines that Cartoon Network first announced in 2007 for its product licensing and custom brand-integrated promotional tie-ins featuring characters from its company-owned, original series targeted to children.⁴⁵

Sprout has demonstrated its ongoing commitment to inspiring preschoolers to make healthy eating choices through its Sprout Diner television programming and online content.⁴⁶ Sprout Diner, which debuted on Sprout in September 2006, features “nutritious and fun recipes

⁴³ See Cartoon Network, *Get Animated*, at <http://www.cartoonnetwork.com/promos/getanimated/index.html> (last visited Feb. 22, 2010).

⁴⁴ See *id.*

⁴⁵ See Cartoon Network, Nutritional Guidelines, available at <http://help.cartoonnetwork.com/ics/support/default.asp?deptID=5458&task=knowledge&questionID=195>.

⁴⁶ See PBS KIDS Sprout, *Sprout Diner*, at <http://www.sproutonline.com/sprout/Originals/SproutDiner.aspx> (last visited Feb. 19, 2010).

inspired by popular preschool characters.”⁴⁷ Sprout also engages in a variety of other pro-social initiatives, including an on-going effort to raise fire prevention awareness.⁴⁸

In short, the cable industry has voluntarily undertaken measures to address significant issues confronting children today. It provides a wide range of educational and quality programming directed to children from pre-school through high school. Parents are familiar with cable programming options for children and have tools, including TV Parental Guidelines and parental controls, to assist them in making the programming choices that they consider appropriate for their children.⁴⁹ And the industry is cognizant of the need to continue to make positive contributions to help address the serious problems confronting children today through public-private partnerships.⁵⁰

⁴⁷ Press Release, PBS KIDS Sprout, *PBS KIDS Sprout Continues Commitment to Inspiring Healthy Eating Habits in Preschoolers* (Feb. 6, 2007) (noting that KidsHealth.org provided nutritional consultation to Sprout for Sprout Diner recipes), available at <http://www.sproutonline.com/sprout/pressroom/release.aspx?id=287cb55c-77eb-433c-87ff-9b9f00e7dbf8>.

⁴⁸ See Press Release, PBS KIDS Sprout, *Sprout Celebrates National Fire Prevention Week with Award-winning Firefighter Dayna Hilton and Sparkles the Fire Safety Dog* (Sept. 22, 2009), available at <http://www.sproutonline.com/sprout/pressroom/release.aspx?id=0a0cd551-fe73-4f0e-acbe-9c8d008f5124>.

⁴⁹ As the Commission reported to Congress in August 2009, in addition to the V-chip, “there is a wide array of parental control technologies for television, including tools offered by MVPDs, as well as VCRs, DVD players, and digital video recorders (“DVRs”), that permit parents to accumulate a library of preferred programming for their children to watch.” *CSVA Report* ¶ 10. Cable operators also provide tools via their interactive program guides and program information tool bars that make it easy for parents to select programming that is suitable for their children. See *CSVA Report* ¶ 60 (“Digital set-top boxes offer a variety of different menu options from which to gain information about a show’s rating and to activate parental controls. . . . In addition, several cable operators offer links on their websites to the websites of third-party rating services.”).

⁵⁰ As the *Notice* suggests, a variety of other governmental and non-governmental groups have significant on-going efforts to address many of these same issues. *Notice* ¶ 39 (noting that the FCC participated in the Task Force on Media and Childhood Obesity (which included representatives from the media, advertising, food, and beverage industries, consumer advocacy groups, healthcare experts, and academics), and noting that the Better Business Bureau’s Children’s Food and Beverage Advertising Initiative was created as a self-regulatory mechanism); *id.* ¶ 55 (identifying efforts by NTIA, the FTC, the Attorney General, and other groups). Members of the cable industry actively participate in several of these efforts as well. See, e.g., Comcast Comments at 8 (noting that Jay Opperman, Comcast’s Director of Online Security, is a member of NTIA’s Online Safety and Technology Working Group); FCC, *Media & Childhood Obesity Task Force Participants*, at <http://www.fcc.gov/obesity/participants.html> (last visited Feb. 19, 2010) (listing several participants from the cable industry).

II. THE CABLE INDUSTRY HAS TAKEN THE LEAD ON EFFORTS TO ENRICH MEDIA USE BY CHILDREN.

As NCTA explained to the Commission in its proceeding implementing the Child Safe Viewing Act last year,

Cable programmers and operators have developed and make available a range of methods that help parents both identify programming that is appropriate (or inappropriate) for their children and enable them to block their children's access to programming that they do not want them to watch. Cable programmers have rated (and encoded) their entertainment programming so parents have information on which to base a decision about whether a program is suitable for their children. Cable operators provide customers the means to block certain programming based on those ratings and a variety of other options. As increasingly more cable customers obtain digital set-top boxes from their cable operator, parents have access to additional features that they can use to limit the programming that their children watch. The industry continues to go to great lengths to educate cable customers about how they can easily take charge of the television viewing in their homes.⁵¹

The cable industry's sustained efforts to educate parents about the tools at their disposal to take charge of their children's television viewing have continued since comments were filed in the Commission's *CSVA Report* proceeding.⁵²

In addition to the variety of measures that we reported to the Commission last year, the cable industry continues to demonstrate its long-standing commitment to educate children and

⁵¹ NCTA Supplemental Comments at 2-3.

⁵² While the industry has made significant strides in increasing awareness of the V-chip and other parental control technologies, not all parents choose to take advantage of those tools. Undoubtedly, as the *Notice* suggests, awareness and usage of these tools vary from household to household. *See Notice* ¶¶ 45-46. The *Notice* asks whether the level of usage of the V-chip correlates to concerns about the TV Parental Guidelines or the operation of the Monitoring Board. *See id.* ¶ 46 (asking whether "parents have doubts about the reliable application of the existing 'TV Parental Guidelines' industry rating system by programmers or other entities and if so, whether those doubts affect parents' interest in using V-chip technology" and whether "improvements in the operation and viability of the industry's Oversight Monitoring Board" would help address these doubts). But there is no evidence that any such doubts explain a lack of usage. It is more likely that parents use a variety of different means to control viewing in their own household. While they may opt not to use the blocking tools at their disposal, this hardly suggests that the system itself is flawed. Even if some lack of familiarity with the ratings system contributes to a lack of V-chip usage, creating a new "uniform rating system that would apply to all platforms" would hardly be a cure. As NCTA previously explained to the Commission, revamping the familiar TV Parental Guidelines system would result in more, not less, confusion. *See NCTA, MPAA, NAB Joint Reply Comments* at 10-11.

families about media use. For several years, the cable industry has worked to raise awareness that media literacy (also known as “digital literacy”) – the ability to find, analyze, evaluate, and create information in a variety of media – is a vital and underserved need in schools.⁵³ As explained in more detail below, the cable industry has recently proposed the groundbreaking Adoption Plus (A+) pilot program, it has continued to play a leadership role in the PointSmart.ClickSafe initiative, and it has reinvigorated the mission of CIC to help improve media literacy among children and their parents.

A. The Cable Industry Recently Proposed A National Public-Private Partnership to Bring Broadband to Millions of Middle School Students in Low-Income Families.

The A+ pilot program is a proposed two-year, public-private partnership designed to promote sustainable broadband adoption for a vitally important-but-vulnerable population – middle school-aged children in low income households that do not currently receive broadband service. The pilot program represents the next step in the cable industry’s longstanding commitment to use cable technologies to improve education in America, with a key element of the program being digital literacy. James P. Steyer, the founder and Chief Executive Officer of Common Sense Media, applauded the A+ Program announcement, noting that cable industry leaders “recognize that kids need digital literacy and media education programs so that they can use broadband in smart, safe ways that will bring real improvements not only to their education but also their economic futures.”⁵⁴

Pursuant to the A+ Program, school districts (or their state equivalent) would be responsible for providing federally funded digital media literacy training to eligible students,

⁵³ See *Cable in the Classroom, CIC Survey Shows Media Literacy a Vital and Underserved Need in Schools*, Nov. 2006, at 1, available at <http://i.ciconline.org/docs/CICmedialitreport11-2006.pdf>.

⁵⁴ John Eggerton, *Genachowski Praises NCTA's Low-Cost Broadband Adoption Proposal*, Multichannel News, Dec. 1, 2009, available at http://www.multichannel.com/article/391328-Genachowski_Praises_NCTA_s_Low_Cost_Broadband_Adoption_Proposal.php.

including online safety and the responsible use of broadband. Such training would have to meet minimum standards established by the federal government and be accessible to all eligible students – including instances where English is a student’s second language. The A+ proposal contemplates that school districts would be eligible for an estimated \$100 million of federal funding required over the two years of the program to defray the cost of providing digital media literacy training and other administrative tasks. Once an eligible student is enrolled in an A+ digital media literacy program, he or she would be eligible to purchase a discounted computer. For any household with a computer and an eligible student enrolled in an A+ digital media literacy program, participating ISPs would provide broadband service at a 50% discount; provide a modem at a 50% discount; provide free installation of broadband service; and provide parental control software and other online safety/security tools.

The goal of the A+ program is to help give millions of students the opportunity to become digital citizens of the 21st Century by driving sustainable broadband adoption and positively and materially affecting educational outcomes. As noted by Chairman Genachowski, “the A+ program offers students the combined support of digital literacy education, discounted computers, and discounted broadband access. This comprehensive approach promises to significantly expand the educational, social, and economic opportunities for our next generation.”⁵⁵

B. With the Point.Smart Click.Safe Effort, the Cable Industry Has Convened Key Players Into An Ecosystem of Shared Responsibility for the Safety of Children Online.

NCTA also has played a central role in highlighting online safety issues. As explained in the Supplemental Comments filed by NCTA in the Child Safe Viewing Act proceeding, in June 2007, NCTA and CIC launched *Cable Puts You in Control: PointSmart.ClickSafe*. – a

⁵⁵ *Id.*

comprehensive initiative to educate consumers and parents about online safety and the appropriate use of the Internet by children.⁵⁶ In July 2009, NCTA joined a coalition of technology companies, child advocacy and parents' groups, educators, and health researchers in the release of the *PointSmart.ClickSafe. Task Force Recommendations for Best Practices for Child Online Safety*, a comprehensive set of recommendations that companies in the Internet industry can adopt as best practices to help keep children safe and smart when online.⁵⁷

The Task Force in addition recognized that while the issue of online safety spans many audiences, stakeholder groups, and jurisdictions, most Internet safety efforts have been fragmented.⁵⁸ Because more coordination at the national level supplemented with adequate resource development is needed, the task force recommended that policymakers consider:

- expanding online safety efforts to emphasize online smarts, through digital media literacy and education programs that empower parents and teachers to prepare kids to navigate the world of online and digital media;
- designating a lead federal agency that would work collaboratively and comprehensively with all major stakeholders in marshaling resources for the improvement of online safety and Internet literacy and would coordinate the activities under diverse federal programs;
- adopting a set of national goals for online safety, including if possible minimum standards for a curriculum on digital literacy, to better educate the nation's diverse children and families about how to manage media;
- ensuring that all digital literacy and online safety programs are funded through competitive grants open to qualified applicants, with periodic review

⁵⁶ See NCTA Supplemental Comments at 13-14.

⁵⁷ See *PointSmart.ClickSafe. Task Force Recommendations for Best Practices for Child Online Safety*, July 2009, at i, available at <http://www.pointsmartreport.org/PointSmartReport.pdf> (“In order to maximize harmonization, the PointSmart.ClickSafe. recommendations for best practices are designed to span all sectors of the Internet industry and are intended to be applied selectively based on a company’s role and the types of services it offers that a child might use or with which he or she might come into contact. Embracing a child-centered perspective, the PointSmart.ClickSafe. best practice recommendations address three separate, but overlapping, categories of children’s online experience – before they go online, during a child’s online activities, and when problems arise – and recommend best practices for each of these stages. In addition, the task force recommendations recognize that a singular focus on safety is insufficient and that children need to learn digital and media literacy skills to help them think more critically about their activities and the online content they consume and, increasingly, create.”).

⁵⁸ *Id.* at i-ii.

and assessment built into the grant process, so that the results from the best programs can be replicated in other communities; and

- supporting digital literacy and online safety efforts by providing funding for: (1) research on the learning potential of digital media; (2) new modes of assessment and evidentiary standards; (3) professional development for teachers; (4) curriculum development and implementation for students; (5) public awareness campaigns for parents and families; and (6) research designed to identify, highlight, and promote best practices and further solutions to improve digital literacy and fortify online safety.⁵⁹

Consistent with these recommendations, last November the cable industry called on the federal government to dedicate significant broadband stimulus funding to create and maintain a national digital media literacy program. Specifically, NCTA asked Congress to direct the agencies managing distribution of broadband stimulus funding to allocate \$500 million during the next two years for the development of digital media education tools. As explained by NCTA President and CEO Kyle McSlarrow:

This issue is about helping our children and families become digitally literate. It's about creating an environment with appropriate tools and resources so that all Internet users can have a truly productive online experience. These tools should be based primarily on the Internet, and should be designed for use by teachers, students, and parents.⁶⁰

C. The Cable Industry and Cable In The Classroom Are Instrumental In Helping to Educate Parents and Teachers about Media Literacy, Both With Respect to Cable Programming and Internet Content.

Since 1989, the cable industry has demonstrated a deep, broad, and consistent commitment to education through CIC, the cable industry's education foundation. CIC's mission is to foster the use of cable content and technology to expand and enhance learning for children and youth nationwide. CIC has become a leading national advocate for media literacy

⁵⁹ See *id.* at ii.

⁶⁰ See Press Release, NCTA, *NCTA Renews Call for Creation of National Digital Media Literacy Program* (Nov. 5, 2009), available at <http://www.ncta.com/ReleaseType/MediaRelease/NCTA-Renews-Call-for-Creation-of-National-Digital-Media-Literacy-Program.aspx>.

education and for the use of technology and media for learning, as well as a valuable resource of educational cable content and services for policymakers, educators, and industry leaders.

Working in partnership with and on behalf of the cable industry, CIC advocates for the visionary, sensible and effective use of media in homes, schools, and communities. CIC works to exercise a national leadership role in advocating the innovative and effective use of broadband in teaching and learning, and for media literacy and Internet safety education; encourage and recognize educational leadership that exemplifies the innovative use of cable services, broadband technology, media literacy, and related services and applications; and represent the cable industry's commitment to education by showcasing the wide variety of cable initiatives in education, and by encouraging cable industry companies to continue their efforts to contribute to learning.

The CIC website includes a collection of free materials, including links to videos, articles, and websites that illustrate the components of media literacy and critical thinking about media.⁶¹ CIC *Media Smart* resources include free materials to help teachers and parents teach media literacy to children, and information related to digital safety and digital ethics.⁶² CIC also offers *Media Literacy 101*, a free online primer for parents and teachers on the key concepts of media literacy.⁶³ The *Media Literacy 101* materials include explanations of five key concepts of media literacy, as well as provide suggestions for ways to talk with and teach kids how to: (1) become active and critical thinkers about media; (2) develop criteria for making decisions about media use; (3) find and identify quality media resources; (4) talk about what media they are consuming and why; and (5) become better able to use media for learning and communicating.

⁶¹ See Cable in the Classroom, *Media Smart*, at <http://www.ciconline.org/media-smart> (last visited Feb. 23, 2010).

⁶² See *id.*

⁶³ See Cable in the Classroom, *Media Literacy 101*, at <http://www.ciconline.org/medialiteracy101> (last visited Feb. 23, 2010).

CIC also furthers its mission through active participation in a number of organizations that focus on media literacy.⁶⁴

Individual members are also very focused on promoting digital literacy. Discovery Education, for example, offers extensive on-line and in-person professional development to educators to ensure they know how to integrate educational technology and digital content into their classrooms.⁶⁵ Discovery Education also supports the Discovery Educator Network, a global community of almost 100,000 educators worldwide passionate about teaching with digital materials.⁶⁶

III. THE STATUTE AND THE FIRST AMENDMENT STRICTLY CONSTRAIN THE FCC'S AUTHORITY TO REGULATE CABLE CONTENT.

As the Commission noted in the *Notice*, it has “varying degrees of statutory authority with respect to different media.”⁶⁷ The *Notice* also acknowledges that government action in this area may raise First Amendment concerns.⁶⁸ As Commissioner McDowell noted, before taking any regulatory action with respect to these issues, the Commission must carefully examine its statutory and constitutional authority.⁶⁹

The Supreme Court has made clear that “cable programmers and cable operators engage in and transmit speech, and they are entitled to the protection of the speech and press provisions

⁶⁴ CIC has many such organizational affiliations, including its membership in the National Association for Media Literacy Education (“NAMLE”). See *Cable in the Classroom, Organizational Affiliations*, at <http://www.ciconline.org/affiliations> (last visited Feb. 19, 2010).

⁶⁵ See generally Discovery Education, at <http://discoveryeducation.com/> (last visited Feb. 23, 2010).

⁶⁶ See Discovery Education, *About the Discovery Educator Network*, at http://community.discoveryeducation.com/about/about_den (last visited Feb. 23, 2010).

⁶⁷ *Notice* ¶ 58.

⁶⁸ *Id.* ¶¶ 9, 58.

⁶⁹ See *Notice*, Separate Statement of Commissioner McDowell.

of the First Amendment.”⁷⁰ And the Court has struck down efforts to regulate certain cable programming content in the interest of protecting children when targeted blocking offered a less restrictive alternative.⁷¹

Because regulating programming content “[i]nvariably raise[s] First Amendment issues,” “Congress has been scrupulously clear when it intends to delegate authority to the FCC to address areas significantly implicating program content.”⁷² And with respect to cable content, Congress has specifically made clear its intent to limit that authority. Section 624(f) of the Communications Act provides that “any Federal agency ... may not impose requirements regarding the provision or content of cable services, except as expressly provided in this title.”⁷³ Thus, the Commission cannot find “ancillary” authority to regulate cable programming content.⁷⁴

In short, the Commission has certain narrowly-defined statutory obligations when it comes to regulating children’s programming on cable television. Any effort to expansively regulate in this area would raise serious jurisdictional and constitutional concerns.

CONCLUSION

The cable industry offers a wide array of quality video programming for children and families and has developed and made available a range of methods to help parents both identify programming that is appropriate for their children and enable them to block their children’s access to programming that they deem inappropriate. The cable industry looks forward to

⁷⁰ *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 636 (1994).

⁷¹ As the Supreme Court explained in *U.S. v. Playboy Entertainment Group*, “[c]able systems have the capacity to block unwanted channels on a household-by-household basis.” 529 U.S. 803, 815 (2000). This leaves to parents, rather than the government, the decision of what constitutionally protected material will be available in their homes. See Comments of the National Cable & Telecommunications Association, MB Docket No. 04-261 (filed Oct. 15, 2004) Att. A (Prof. Geoffrey R. Stone, *The First Amendment Implications of Government Regulation of ‘Violent’ Programming on Cable Television* at 10).

⁷² *MPAA v. FCC*, 309 F.3d 796, 804 (D.C. Cir. 2002) (hereinafter “MPAA”).

⁷³ Section 624(f) grandfathers certain rules that were in effect on the date of enactment.

⁷⁴ *MPAA* at 1804.

continuing to play an important role in ensuring that parents and teachers are aware of the various tools available to help guide children's viewing choices. In particular, the cable industry remains committed to enriching children's media use through efforts to improve media literacy.

Respectfully submitted,

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