

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

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

REPLY COMMENTS OF ACTIVISION BLIZZARD, INC.

Activision Blizzard, Inc. (“AB”), by its attorneys, respectfully submits these reply comments (“Reply Comments”) in the above-captioned proceeding in which the Federal Communications Commission (“FCC” or “Commission”) is seeking comment on the best means to empower parents to take advantage of the benefits of the multitude of digital media platforms available in today’s digital marketplace, while simultaneously protecting children from the purported “risks inherent in use of these platforms.”¹ As an initial matter, AB notes that, of the many comments received in this proceeding, only a small number expressly discuss video games, and none of the comments establish a factual, legal or policy basis for regulation of video games by the FCC or other governmental body. There is broad consensus among commenters addressing video games and issues related thereto that:

- Video games provide a number of important benefits to children and adults alike;
- The video game industry has implemented a number of self-regulatory initiatives that have been, and continue to be, an effective means of educating parents and protecting children’s interests;
- There is insufficient evidence establishing a causal relationship between media violence and violent, aggressive or other negative behaviors in children (including childhood obesity); and

¹ See generally Empowering Parents and Protecting Children in an Evolving Media Landscape, MB Docket No. 09-194, *Notice of Inquiry*, 24 FCC Rcd 13171, 13171-72 ¶ 1 (Oct. 23, 2009).

- The FCC faces significant legal obstacles – from lack of jurisdiction to constitutional challenges – that bar it from imposing regulations on the video game industry.

AB reiterates its position in its initial comments that the factual record (from the lack of conclusive, reliable studies on negative video game effects to the robust and effective self-regulatory efforts of the industry) fails to justify the imposition of any regulations or other mandates on the video game industry. Moreover, the FCC does not have any legal basis upon which to assert jurisdiction over video games (regardless of the manner in which these games are played), and to do so would raise significant constitutional concerns. Indeed, the courts have consistently affirmed that the free speech protections provided by the First Amendment and constitutional protections afforded by the vagueness doctrine under the Due Process Clause preclude government regulation of depictions of violence in video games. In particular, the imposition of a mandatory ratings system would not pass constitutional muster, regardless of whether such ratings system is implemented and managed directly by regulators or through an “independent” third party. In addition to the constitutional infirmities presented by a mandatory ratings system, such a system would be a disservice on parents who have come to rely on the video game industry’s unique, and effective, two-tier rating system that provides age-based ratings as well as content-related information and would likely result in parents getting less information regarding the content and age-appropriateness of games.

Nevertheless, in the interest of assisting the Commission in its fact-gathering role, AB is submitting these Reply Comments to provide the FCC with its views on those comments discussing video games and the lack of any relationship of video games to childhood obesity or violent or aggressive behaviors in children.

I. VIDEO GAMES CAN BE PART OF THE SOLUTION TO CHILDHOOD OBESITY

In its comments, AB demonstrated that, while there is no evidence to support the conclusion that video games cause childhood obesity, there are several studies demonstrating that many video games provide children with the opportunity to increase their levels of physical activity.² Commenters addressing the relationship between childhood obesity and media use (e.g., video games) almost uniformly agree with AB.³ For example, a report submitted to the FCC by the Kaiser Family Foundation concludes that “[c]ontrary to the public perception that media use displaces physical activity, those young people who are the heaviest media users report spending similar amounts of time exercising or being physically active as other young people their age who are not heavy media users (the differences are not statistically significant).”⁴

² See Comments of Activision Blizzard, Inc. at 19-21.

³ In fact, only one commenter appears to assert that video games cause childhood obesity. See Letter from Congressman Joe Baca (D-CA) to Chairman Julius Genachowski at 2 (“Moreover, as the time spent playing video games increases among our nation’s youth, the obesity rate among our children continues to grow as many studies have found. This seems perfectly logical, as spending time with video games will obviously not allow a child to expend the energy that it would take to play outside with friends.”). Despite stating that there are “many studies linking increased video game use to obesity,” Congressman Baca does not identify any studies to support his belief about a purported link between video games and childhood obesity. As AB demonstrated in its Comments, although there has been a tendency to blame video game play for childhood obesity, there are no studies that evidence a causal connection between video game play and obesity in children. See Comments of Activision Blizzard, Inc. at 20. Importantly, in order to make a causal connection between obesity and video game play, it would be necessary to determine with certainty, *inter alia*, that children are, in fact, selecting to play video games in lieu of another physical activity rather than another sedentary activity (e.g., a board game, reading a book, or simply just sitting quietly). *Id.* at 20-21. Indeed, the notion that video games promote childhood obesity or unhealthy lifestyles is outdated given the significant number of titles on the market today that promote physical fitness.

⁴ See Generation M²: Media in the Lives of 8- to 18-Year-Olds, A Kaiser Family Foundation Study at 12 (submitted with Comments of Kaiser Family Foundation).

Not only is there a dearth of evidence linking childhood obesity and video games,⁵ video games can “be a part of the solution to reduce childhood obesity.”⁶ Indeed, as did AB in its initial comments, several commenters point to active video games, such as *Dance Dance Revolution* and those played on Nintendo’s Wii console system, as examples of games that can be used to promote physical fitness. For example, Sesame Street Workshop observes that “[d]igital media can be an ally in supporting children’s healthy development. Recent research has shown how digital games can be a powerful tool in promoting physical fitness, teaching healthy habits, and educating users about disease management and prevention. . . . [S]tudies of the video game ‘*Dance Dance Revolution*’ found that the game reduced children’s sedentary screen time and increased levels of vigorous physical activity. The game has been adopted by several states for their public school fitness programs.”⁷ In short, the record in this proceeding demonstrates that video game players are just as likely to be physically fit or healthy as other children.

⁵ See, e.g., Comments of The Entertainment Software Association at 36 (explaining that “recent research discredits the suggestion that video games contribute to obesity” and providing examples of such research). See also Comments of Food Marketing to Children Workshop at 6 (stating “[o]ne study suggests that playing active videogames on a regular basis may have positive effects on children’s overall physical activity level” but noting that further research on this issue is necessary).

⁶ Comments of Food Marketing to Children Workshop at 6.

⁷ Comments of Sesame Street Workshop at 22. See also Comments of The Entertainment Software Association at 36 (“In addition, there are many games on the market today - such as *Wii Fit Plus*, *My Fitness Coach 2: Exercise and Nutrition*, and *EA Sports Active* - that encourage players to adopt a healthy lifestyle that involves regular exercise. For example, in the video game *Wii Fit plus*, players perform yoga poses to help tone muscles and improve posture, play balance games to develop their sense of balance, engage in strength training workouts to build and tone muscles, and perform aerobic exercises to tone the body. The game measures users’ Body Mass Index, creates a personally-tailored workout program of gradually more-challenging exercises, tracks the user’s progress, and offers encouragement to help the user meet his or her fitness goals. As the Notice itself notes, online games can be successful at promoting healthy food choices and encouraging children to eat better.”); Comments of Food Marketing to Children Workshop at 6 (“The use of active videogames (e.g., Nintendo’s *Wii*, the *Sony Eye Toy*, and *Dance Dance Revolution*) may be promising approaches to convert children’s and adolescents’ sedentary screen time to active screen time.”).

II. NO COMMENTS DEMONSTRATE A CAUSAL CONNECTION BETWEEN VIOLENT OR AGGRESSIVE BEHAVIOR AND VIDEO GAME PLAY

A small number of commenters in this proceeding expressly address the issue of whether there is a connection between video games and violent or aggressive behavior. With one exception, these commenters generally agree with AB that available research simply does not demonstrate that video games cause children to behave violently or aggressively.⁸ For example, the Entertainment Software Association explains that “numerous studies and common sense have debunked the myth that there is any causal link between video games and violent behavior by users of video games. Statistics suggest, for example, that the vast majority of video games do not contain significant violent content. The majority of video games sold in 2009 were rated E

⁸ In his comments, Congressman Baca asserts that “there is a growing argument that can be made for a link between the playing of violent video games and aggressive behavior. Recent studies from the *Pediatrics Journal*, University of Indiana, University of Missouri, and Michigan State University all point to a neurological link between playing violent video games and aggressive behavior in children.” See Letter from Congressman Joe Baca (D-CA) to Chairman Julius Genachowski at 2. Congressman Baca did not identify specifically the studies on which he relied and AB is unable to locate these studies to analyze whether they show a casual connection between video games and violence or merely provide a statistically-insignificant correlation between the two. To the extent Congressman Baca is referring to the recently released study by Craig Anderson, this meta-analysis has been criticized as having “included many studies that do not relate well to serious aggression, an apparently biased sample of unpublished studies, and a ‘best practices’ analysis that appears unreliable and does not consider the impact of unstandardized aggression measures on the inflation of effect size estimates.” See Videogame Violence Researchers Battle (Non-Violently), *avaialble at* <http://gamepolitics.com/2010/03/01/videogame-violence-researchers-battle-non-violently> (quoting research paper by Christopher Ferguson and John Kilburn entitled “Much Ado About Nothing: The Misestimation and Overinterpretation of Violent Video Game. Effects in Eastern and Western Nations: Comment on Anderson et al.”). Moreover, based upon AB’s comprehensive review of the existing studies of the effects of violent video games, it is likely that any studies referenced by Congressman Baca suffer from the flaws described in AB’s comments. See Comments of Activision Blizzard, Inc. at 11-16. As Dr. Christopher Ferguson (a licensed psychologist and well-known researcher on the effects of video game violence on children) explains in his comments, “[w]ell controlled studies, in which factors other than media violence are examined, find that the effects of media violence are negligible in regarding youth violence. . .”. See Comments of Christopher Ferguson at 2. Indeed, “[t]he debate is mixed at best about the effect on minors of viewing or listening to depictions or descriptions [of] violence, sex or other content. Different researchers often look at the same data and reach very different conclusions.” See Comments of Media Coalition at 2. See also Comments of Activision Blizzard, Inc. at 16 (explaining that “it is not good policy to impose regulations on video games in light of the inconclusive results of the effects of video game play on children as well as the inherent challenges and complexities of video game research.”).

(Everyone), E10+ (Everyone 10 and older), or T (Teen); only 17 percent were rated M (Mature).”⁹ The Media Coalition agrees, noting that “[r]esearch that claims there is a connection between the media and antisocial behavior receives most of the public attention, but most studies fail to find such a link.”¹⁰ Indeed, “the causes of violence are myriad and complex. . . . [There are] a matrix of risk factors for violent behavior. Media with violent content is not cited as a factor.”¹¹ As AB and others explained in their comments, every court to have considered research studies of video games has concluded that there is insufficient evidence to establish a specific causal relationship between video game play and violent or other negative behaviors in children.¹²

Not only is there a lack of research evidencing a connection between video games and violent or aggressive behaviors, the record in this proceeding demonstrates that “[c]rime statistics do not support the claims that there is a correlation between violent or sexual content and the commission of crimes. Despite the explosive growth of media, crime statistics have not risen correspondently. In the past decade, the media has grown exponentially, but crime in general and youth crime in particular has declined steadily in much of the country.”¹³ Similarly, a recent study by the U.S. Department of Justice demonstrates that there has been a significant drop in the percentage of children who reported being physically bullied.¹⁴ This finding comes

⁹ Comments of The Entertainment Software Association at 33-34. *See id* at 34-35 (providing overview of research studies).

¹⁰ *See* Comments of Media Coalition at 8.

¹¹ Comments of Media Coalition at 8. *See also* Comments of Activision Blizzard, Inc. at 16-17.

¹² *See* Comments of Activision Blizzard, Inc. at 21. *See also* Comments of The Entertainment Software Association at 5 (“[S]peculative, unscientific pronouncements about the possibility that video game usage may cause antisocial behavior or unhealthy eating habits are just that; as study after study and court after court have found, there is no basis in fact for any such conclusions.”); Comments of Media Coalition at 9 (“In each case where the court examined social science research it ultimately conclude that the social science failed to establish a causal link with violent images and actual anti-social behavior.”).

¹³ Comments of Media Coalition at 9.

¹⁴ *See, e.g.*, Associated Press, US Survey Finds Sharp Drop in Children’s Bullying, *available at* <http://www.cbsnews.com/stories/2010/03/03/ap/national/main6263625.shtml> (Mar. 3, 2010) (discussing a

at a time when video games have become increasingly popular and undermines the assumption that children who play video games are more likely to engage in aggressive behaviors, such as bullying.

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The record in this proceeding clearly evidences the positive benefits of video game play on children's educational, health, social and emotional benefits.¹⁵ Comments in this proceeding demonstrate that, despite the rhetoric, there is a lack of research demonstrating a causal connection between video games and either childhood obesity or violent or aggressive behaviors in children. In short, there is no factual basis supporting any regulation of video games. Accordingly, AB urges the FCC to refrain from taking measures to regulate video games, an area over which it lacks both jurisdiction and expertise.

Respectfully submitted,

/s/ George Rose
George Rose
Phil Terzian
ACTIVISION BLIZZARD, INC.
3100 Ocean Park Boulevard
Santa Monica, California 90405
(310) 255-2000

/s/ Tom W. Davidson
Tom W. Davidson
Karen L. Milne
AKIN GUMP STRAUSS HAUER & FELD LLP
1333 New Hampshire Ave., NW
Washington, D.C. 20036
(202) 887-4000

Counsel for Activision Blizzard, Inc.

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study by the U.S. Department of Justice in which it was determined that “the percentage of children who reported being physically bullied over the past year had declined from nearly 22 percent in 2003 to under 15 percent in 2008”).

¹⁵ See, e.g., Comments of Public Broadcasting Service at 2-3 (stating that (1) “a recent report by two noted experts in children’s media explained that ‘[e]ducators should embrace - not castigate - video games and TV’” and (2) “[n]ew technologies such as video games allow us to reach and engage children who were previously unreachable and motivate them to learn.”).