

**SEPARATE STATEMENT OF COMMISSIONER HAROLD
FURCHTGOTT-ROTH,
CONCURRING IN PART AND DISSENTING IN PART**

Re: Children's Television Obligations of Digital Television Broadcasters, Notice of Proposed Rulemaking, MM Docket # 99-360 (rel. September 14, 2000)

As I stated at the NOI phase of this proceeding, we have an obligation to “implement[] Section 336's directives regarding the transition from analog to digital broadcast services. The birth of digital television raises discrete issues regarding application of our existing public interest requirements during the transition period and beyond.”¹ Today's Notice of Proposed Rulemaking seeks comment on some of the legitimate issues raised by the transition of broadcasting from analog to digital. However, as I did at the Notice of Inquiry stage, I must dissent from those portions of today's decision that go beyond these transition issues to address new and burdensome proposals for additional regulatory obligations.

Today's NPRM is a missed opportunity. It should read: “Here are the old rules that are no longer necessary for digital broadcasting.” Instead, it reads: “Here are new additional burdensome rules that will discourage and delay digital broadcasting.”

The increased burdens posited in the Notice are both ill timed and technologically misdirected. We are in a critical phase of the transition from analog to digital broadcasting. There are already substantial and costly impediments to the transition – and our ability to achieve the targeted 2006 transition date is by no means certain. It is counterintuitive that the Commission would now consider expanding the regulatory burden imposed on this nascent technology. In addition, the ability of digital broadcasters to supply 4 or perhaps 6 over the air signals will greatly enhance the variety of programming available. Thus multicasting is likely to allow for the provision of more niche programming, such as those shows targeted to children. To the extent that any changes are warranted, it seems that multicasting would actually argue in favor of reducing these regulatory obligations, not increasing them.

Today's NPRM suggests some policies that I find particularly intrusive and contrary to this Commission's purportedly deregulatory philosophy. For example, the Notice suggests the Commission may want to monitor and compare the quality of the audio and visual presentation of core versus children's programming.² Or perhaps broadcasters will be required to provide “additional content ratings information on core programs from independent sources, such as public interest groups that rate educational children's programming . . . through a direct link to the internet where the content ratings information could be assessed.”³ The Notice also suggests a possible requirement that broadcasters do more to promote children's programming during prime time?⁴ Other proposals, such as prohibiting direct Internet links to commercial sites

¹ See Separate Statement of Commissioner Harold Furchtgott-Roth, Concurring in Part and Dissenting in Part, in *Public Interest Obligations of TV Broadcast Licensees, Notice of Inquiry*, 14 FCC Rcd 21633 (1999).

² Order at ¶ 19.

³ Order at ¶ 25.

⁴ Order at ¶ 39.

during children's programming, may raise serious constitutional and policy concerns.⁵ In the end, I fear that a valuable opportunity to explore the opportunities presented by the digital transition may be lost by an NPRM that seems to move the Commission in the wrong direction.

⁵ Order at ¶ 33.