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FOR IMMEDIATE RELEASE
September 9, 2004

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FCC ADOPTS CHILDREN'S PROGRAMMING OBLIGATIONS FOR DIGITAL TELEVISION BROADCASTERS

Washington, DC – The Federal Communications Commission (“FCC”) today resolved a number of issues regarding the obligation of television broadcasters to serve children in their audience. The Commission adopted a Report and Order (“Order”) addressing matters related to two areas: the obligation of television broadcast licensees to provide educational and informational programming for children and the requirement that television broadcast licensees protect children from excessive and inappropriate commercial messages. Although some of the rules and policies adopted apply to both analog and digital broadcasters, the Order focuses on the application of children’s television obligations to digital television broadcasting.

The Order addresses how the current three-hour children’s core educational programming processing guideline should apply to a DTV broadcaster that chooses to multicast. The Order increases the amount of the core programming guideline proportionally to the increase in free video programming offered by the broadcaster on multicast channels. The revised guideline provides flexibility to broadcasters that multicast by permitting them the choice whether to air core programming on a single or multiple channels provided that at least three hours per week are shown on their main channel. The Order finds that only programming aired on non-subscription channels qualifies as core programming. The new guidelines will become effective after a one-year phase-in period.

Under current guidelines, to qualify as core educational programming, the programming must be regularly scheduled. The Order concludes that to count under the processing guidelines, a program should not be preempted more than 10% of the time. The Order provides that programs moved to another of a digital station’s programming streams will not be counted as preempted as long as the program airs at the same time and the station provides adequate information about the move on both the original and alternative program stream.

The Order amends the Commission’s rules regarding on-air identification of core programming to require both analog and digital broadcasters to identify this programming by displaying the symbol E/I throughout the program. The Order requires that non commercial educational stations also display the symbol. The Order finds that a common on-air identifier will help parents and other interested parties locate programming for the child audience.

The second major area addressed in the Order is how the existing children's commercial limitations of the Children's Television Act of 1990 ("CTA") should be applied in the digital environment. The Order concludes that the commercial limits apply to all digital programming directed to children ages 12 and under, whether that programming is aired on a free or pay stream.

The Order addresses a practice currently in use by some broadcasters involving the display of Internet website addresses during children's programs, for example, in a crawl at the bottom of the screen. The Order states that for programs directed to children ages 12 and under, the display of Internet website addresses during program material is permitted only if the website offers a substantial amount of bona fide program-related or other noncommercial content, is not primarily intended for commercial purposes, and the page viewers are first directed to on the site is not used at all for commercial purposes and including links to any other page with commercial material. This restriction applies to all broadcasters, both analog and digital, as well as cable operators.

With respect to the appearance of direct, interactive, links to commercial Internet sites in children's programming, the Order does not prohibit such links at this stage in the digital transition as this technology is not yet in use in children's programming. The Order states, however, that the Commission is concerned about the possible use of such direct website links for commercial purposes and warns that broadcasters may not use interactivity or other technological developments in children's programming to circumvent the commercial limits and policies. The item also includes a Further Notice of Proposed Rule Making seeking comment on the use of interactivity in children's programming and on how commercial interactivity should be treated for purposes of the commercial limits and policies.

The Order also addresses other issues related to the definition of commercial matter. The Order finds that promotions for programs that are not educational programming count as commercial matter. The Order states that after the rules are in place, the Commission will periodically review these policies. In addition, the Commission will issue a periodic report regarding broadcaster efforts to provide programming suitable to children in the near future.

Action by the Commission September 9, 2004, by Report and Order (FCC 04-221).
Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein. Separate statements issued by Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein

MM Docket 00-167

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