

**Statement
Of**

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Chairman
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**Before the United States Senate
Committee on Commerce, Science and Transportation**

**Hearing on
“Rethinking the Children’s Television Act for a
Digital Media Age”**

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Good afternoon Chairman Rockefeller, Ranking Member Hutchison, and Members of the Committee. Thank you for inviting me here today to discuss the Children's Television Act of 1990 and its role in a digital media age.

I applaud Chairman Rockefeller and the Committee for commencing this timely and important inquiry. Mr. Chairman, your commitment to children through such provisions as the E-rate and other initiatives is well-known; the public appreciates it. Moreover, the historic role this Committee has played with respect to children and TV, with contributions from so many of its Members, is an important legacy to build upon for the future.

Since the Children's Television Act ("the Act") was passed in 1990, an array of new choices -- direct broadcast satellite, Internet-based video, mobile services, video offerings from telephone companies, and video games -- have joined broadcast and cable television as a daily reality for millions of American families. Cable has grown substantially since 1990, and of course broadcasting has now gone digital.

Much has changed since 1990, but much abides.

Broadcast television remains an essential medium, uniquely accessible to all Americans. And the core concerns that prompted the Children's Television Act endure, particularly the effect of media on our children

For these reasons, I believe an examination of the Children's Television Act in light of the current marketplace and technologies merits the attention of both this Committee and the Commission, and I look forward to working closely with the Committee as it proceeds on its work in this area.

The Children's Television Act is landmark legislation. It was enacted by Congress in 1990 to serve the dual purposes of promoting educational and informational programming for children and placing limits on commercial advertising to which children are exposed while watching TV.

In order to increase educational and informational content, the Act requires the Commission, when considering a license renewal application from a television broadcaster, to gauge the extent to which the broadcaster has served the educational and informational needs of children. The current FCC guideline for expedited renewals of broadcast licenses is for broadcasters to air at least three hours per week of core educational and informational children's programming. In addition, broadcasters are also required to prepare, place in their public inspection files, and file with the Commission, a quarterly Children's Television Programming Report identifying their core programming and other efforts to comply with their educational programming obligations. Finally, in

order to assist parents in finding educational and informational programming, broadcasters must display an E/I symbol throughout the entire program.

The second key feature of the Act – limiting commercial advertisements to children – applies to both broadcasters and cable operators. The Act requires that commercial television broadcasters and cable operators limit the amount of commercial matter aired during children’s programs to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays.

Congress passed the Act because it believed that television has the power to benefit the media lives of children. The Senate Committee Report at the time noted: “There is a great deal of evidence that television can effectively teach children....Television programming can make an important contribution to education at the national level, because television is accessible to all Americans.... It is well documented that television programming can be an effective way to teach children and to motivate them to learn.” [S. Rep. 101-66, Nov 22, 1990]

Experience has confirmed that educational and informational fare on television can help prepare toddlers for school and can be a powerful complement to the classroom experience. Studies have shown, for example, that programs such as “Sesame Street” enhance attentiveness and perceptual abilities in young children. Children’s television can also have beneficial effects on the social, emotional and physical development of our children.

Despite all of the benefits educational television provides youngsters, Congress determined in 1990 that market forces were not producing a sufficient amount of children’s educational and informational programming on commercial television and that government action was needed. Congress reminded broadcasters of “the public interest responsibility of individual broadcast licensees to serve the child audience” and concluded that “total reliance on marketplace forces is neither sufficient nor justified to protect children from potential exploitation by advertising or commercial practices.” [H.R. REP. 101-385 at 6, 1990 U.S.C.C.A.N. 1605, 1610]. Because broadcast television was the primary – and only freely available -- means for families to receive video content, the programming goals for children were made requirements of broadcast television licensees, which use the public’s airwaves.

In addition, Congress was concerned about excessive advertising to children, particularly since young kids have difficulty distinguishing between programming content and promotional advertising. Provisions addressing this concern extend to cover cable operators in addition to television broadcasters.

As the Committee revisits the Act after almost two decades, two initial points stand out:

First, broadcasting remains an essential medium.

Broadcasting is still the exclusive source of video programming relied upon by millions of households in the country, and it serves as a very significant source for millions of others. The Commission's responsibility to enforce the Act with respect to broadcast licensees remains vital.

Second, much has changed.

For instance:

- Multi-channel video programming has grown dramatically, significantly expanding the programming choices of viewers who can afford pay television. For example, in 1990, broadcast TV represented 77% of total TV viewership, while today it is 41%. In the same period, satellite TV rose from nonexistent to reach 27% of TV households. Overall, pay TV today represents upwards of 83% of all television households. Children are watching more cable and satellite TV now than they did two decades ago, and cable and satellite TV include some high-quality educational and information kids programming, including Sprout, Noggin, and other cable networks.
- The Internet has vastly proliferated, with younger Americans as the leading edge. A recent Nielsen survey reports that kids from two to 11 years of age are spending 63% more time online than they did 5 years ago. Meanwhile, video on the Internet is expected to grow rapidly. For example, a recent report noted that by 2013, global online video will represent 60 percent of consumer Internet traffic – up from 32% this year.
- Video games have become a prevalent entertainment source in millions of homes and a daily reality for millions of kids. According to one study, 65% of American households now play video games, while another found that 97% of teens play video games on a computer, game console, or mobile device.
- Mobile services have increased significantly, with mobile devices becoming more and more commonplace for kids. In 1990, there were only 5.3 million cell phone subscribers in the U.S. Today there are over 270 million. Mobile data of all sorts will likely skyrocket in coming years. One report suggests it will double every year through 2013, jumping 66 times from 2008. Third- and fourth-generation mobile wireless services make video programming available virtually anywhere a wireless signal can reach. Video programming can now be seen on many wireless phones or PDAs. Texting, often with pictures attached, has become a principal pastime of many of America's youth.

These are all elements of the digital revolution we have seen over the last two decades – with digital most recently coming to broadcast television itself. Now, instead of a single channel of programming, a full-power broadcaster can 'multicast' as many as four or five streams. Digital transmission also creates possibilities for interactive

programming that are just beginning to be explored, and that may create its own opportunities and issues.

Twenty years ago, parents worried about one or two TV sets in the house. Today, parents worry not only about the TV in the den, but about the computer in the kitchen, the gaming console in the basement, and the mobile phones in their kids' pockets.

No wonder parents increasingly find themselves playing the digital media equivalent of a "zone defense" across this increasingly wide playing field, facing an array of new challenges not contemplated twenty years ago.

Several of these issues are involved in an examination the FCC is currently conducting as part of a report requested legislatively, initiated by Senator Pryor, due at the end of August. That process, and the one launched by this hearing, together reflect an appropriate and I believe widespread interest in the consequences for children and families of the new digital media landscape.

As Congress and the Commission review this changing landscape, there are a number of issues to explore. These include the amount and quality of educational programming available in the changing marketplace; the ability of parents and others to find educational programming as well as reviews, recommendations and other useful information that can now be provided through digital technology to better inform parental choices; the current extent and nature of advertising on children's programming as well as other programming for which children are in the audience; and an assessment of the new concerns and opportunities presented by the changing digital media world.

As these and other questions are explored, I believe certain goals and values remain constant.

First, the importance of education. It is as essential as ever to ensure that our children have all the tools they need to become valuable members of our economy and democracy. Educational video and other digital content can play a very important role in that. Also, in a digital world, digital media literacy programs can play an important role, assisting children to make wise media decisions as they grow older and more independent.

Second, the importance of protecting children. They are our most cherished, valuable resource. Video content for our nation's children should treat them as such and not as "Little Consumers." Guarding against inappropriate marketing to children is as vital today as it was twenty years ago when Congress limited commercial advertising to kids through the Act.

Third, the importance of empowering parents. Parents should have access to a full range of information and tools in exercising their essential responsibilities. They should easily be able to find those tools, to learn about programming choices, and to take action they deem appropriate. In a digital world, technology can and should be part of the

solution

Fourth, the importance of recognizing the appropriate roles of the government, parents, and the private sector. Government has a vital role to play in helping parents and protecting children, while honoring and abiding by the First Amendment. The private sector has real responsibilities in this area – and, potentially, opportunities. I’m hopeful that the evolving media landscape will produce innovation and new business models to increase the amount of educational programming and content available to all children, and enhance the ability of parents to pick and choose.

To conclude, although the digital media landscape has changed dramatically since the adoption of the Children’s Television Act, the core principles endure. It is appropriate to recognize the economic challenges faced by many broadcasters, especially in the current economic environment. But enforcement of the Children Television Act remains essential, even as it is equally essential that we contemplate a new children’s media policy for the digital age. I commend the Chairman for commencing this crucial and essential examination of children and media in the digital age. I look forward to answering your questions.

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APPENDIX

FCC Implementation of the Children's Television Act of 1990

Educational and Informational Programming. The CTA requires the Commission to consider, during its review of television stations' license renewal applications, whether commercial television licensees have served the educational and informational needs of children through the licensees' overall programming, including programming specifically designed to serve such needs. In 1991, the Commission adopted rules to implement the CTA's educational programming mandate, concluding that "programming that furthers the positive development of the child in any respect, including the child's cognitive/intellectual or emotional/social needs, can contribute to satisfying the licensee's obligation to serve the educational and informational needs of children." At that time, however, the Commission chose not to quantify that obligation.

In 1996, the Commission concluded that its initial regulations implementing the CTA had not been fully effective in prompting broadcasters to increase the amount of educational and informational broadcast television programming available to children. Accordingly, the Commission issued new rules, adopting a definition of "core" children's programming and establishing guidelines for processing broadcasters' renewal applications as they relate to children's programming. Under these guidelines, a broadcaster can receive staff-level approval of the CTA portion of its renewal application if it aired at least three hours per week of core children's programming. Core programming is defined as programming that has as a significant purpose serving the informational and educational needs of children, is at least 30 minutes in length, and is aired on a regularly scheduled, weekly basis between the hours of 7:00 a.m. and 10:00 p.m. Core programming must be identified as such when it is aired and must be listed in children's programming reports in the station's public inspection file. The educational and informational objectives and the target child audience of core programming must be specified in writing in these programming reports.

Additionally, the rules adopted in 1996 provide public access to information about the availability of core programming, including a requirement that children's programming be explicitly identified in information supplied to the publishers of program guides and listings. Broadcasters are also required to prepare, place in their public inspection files, and file with the Commission, a quarterly Children's Television Programming Report identifying their core programming and other efforts to comply with their educational programming obligations.

The advent of digital television promised new opportunities for broadcasters, including high definition TV and multicasting, and the Commission set out to ensure that children would benefit from the additional flexibility and capacity inherent in digital

technology. In a *2004 Order*, the Commission adopted new children's television rules that, among other things, increased the core programming benchmark for digital broadcasters in proportion to the increase in free video programming offered by the broadcaster on multicast channels. For example, a station that provides one 24-hour stream of free video programming in addition to its main programming stream would be required to air an additional three hours of core programming per week to meet the processing guidelines for staff level approval of its renewal application. In order to assist parents in finding educational and informational programming, this Order also required that all core programming carried on commercial and noncommercial broadcast stations display an E/I symbol throughout the entire program.

The *2004 Order* included additional changes and generated substantial controversy. Both children's advocates and members of the broadcast and cable industries filed petitions for reconsideration of and court challenges to the Order. These parties ultimately negotiated a joint proposal to resolve their issues and submitted it to the Commission. After putting the proposal out for public comment, the Commission adopted a *Second Order on Reconsideration and a Second Report and Order*. This *Second Order* affirmed the proportional increase in the weekly, 3-hour core programming benchmark adopted in the *2004 Order*, and clarified restrictions regarding program repeats.

When the Commission adopted the core programming benchmark, it attempted in the definition of core programming to provide licensees with clear guidance regarding what is required, and to be as objective as possible to avoid injecting the Commission unnecessarily into sensitive decisions regarding program content. Nonetheless, when necessary, the Commission must step in. In 2007, the Commission entered into a consent decree with Univision to resolve petitions to deny filed against a number of that broadcaster's then-pending license renewal applications. Petitioners alleged that the stations involved had failed to comply with the children's programming rules because the programs relied on by the stations as "core" did not serve the educational and informational needs of children. This consent decree resulted in a voluntary payment in the amount of \$24 million and a compliance plan to ensure future adherence to the CTA.

Commercial Time Limits. The CTA also set commercial time limits, which protect children from the harmful effects of advertising, while at the same time allowing broadcasters to earn revenue to help support producing quality children's programming. Specifically, the CTA requires that commercial television broadcast licensees and cable operators limit the amount of commercial matter aired during children's programs to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays.

The Commission's 1991 implementing Order incorporated the statutory time limits into the Commission's rules and reaffirmed and clarified the Commission's "separation," "program length commercial," and "host selling" policies. The separation policy aids children in distinguishing advertising from program material by requiring that broadcasters separate the two types of content by use of special measures, sometimes

known as “bumpers.” Under the program length commercial policy, an entire program is counted as commercial time whenever a program associated with a product includes commercials for that product. Similarly, under the host selling policy, the whole program is counted as commercial time whenever program characters or show hosts are used to sell products in commercials during or adjacent to the shows in which the characters or hosts appear.

In 2004, the Commission changed these rules as well to account for the transition to DTV, applying the commercial limits to all digital video programming, whether aired on a free or pay digital stream. The *2004 Order* modified the rules regarding commercial limits in a number of respects, some of which were further modified in 2006 following the joint proposal from industry and advocates. For example, the Commission restricted the display by broadcasters and cable operators of the addresses of Internet websites that contain commercial matter during children’s programs and during promotions that appear in or adjacent to children’s programs.

Finally, the Commission revised the definition of commercial matter to include promotions for any television programs or video programming services other than educational and informational programs or other age-appropriate programming. This was done to ensure that all promotional material aired during commercial blocks will be appropriate for the child viewing audience.

The Commission has worked to enforce these commercial limits. Since 1996, the Commission has issued Notices of Apparent Liability and entered into consent decrees totaling more than \$4.4 million for violations of the commercial time limits and public file requirements.

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