

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS
DISSENTING**

Re: *Children’s Television Programming Rules, Modernization of Media Regulation Initiative*, MB Docket Nos. 18-202 and 17-105, Report and Order and Further Notice of Proposed Rulemaking.

As I begin my sixth month as a Commissioner, this item gave me a good opportunity to reflect on the role. Frequently, I am looking to the horizon of our technological future and trying to set forth rules to drive advancements that will get us there effectively and efficiently. Other times, I study where our rules have generated the right or wrong results, and whether the Commission needs to course-correct or hold wrongdoers accountable. And regardless of whether I’m looking forward or looking back, I am animated to ensure that our policies serve our core mission – protecting the public interest.

What is at stake today? We consider an item that, I believe, would severely curtail obligations placed on broadcasters concerning the amount of free, widely available, educational programming they should air for children.

I start with our guiding statute here, the Children’s Television Act. The CTA is grounded in a number of important truths: that free, over-the-air broadcast television has the potential to reach a vast portion of children in America with high-quality educational content, including children underserved by our educational system and other forms of media; that broadcasters are allowed to use our airwaves, a scarce public resource, for free, and as a result ought to be held to certain standards and have certain obligations; and that requiring broadcasters to air educational and informative children’s programming creates a market for such programming and encourages its production.

This baseline understanding of the table stakes here is as true today as it was when the CTA was passed and signed into law. While it is undeniable that some children have access to a new universe of content, our children’s television regulations, anchored by the CTA, still serve as a critical backstop for parents and children who do not or cannot access additional services, or who value a platform that is the gold-standard in terms of safety and trustworthiness.

I recognize that as times change we often find reason to revisit our rules. But as I have said before, even in modernizing our media landscape, I will look to the clear responsibilities that Congress has assigned to us.¹ In this instance, I certainly take the point of broadcasters and others who argue that the way all of us, including children, consume content is undergoing a period of great change.² And, in this instance, I can understand the steps that we take to remove burdens from noncommercial broadcasters and relieve certain paperwork obligations. And I hear loud and clear the chorus of calls for greater flexibility when it comes to covering breaking news or local events – content that viewers also value from local stations. Unfortunately, today’s item greatly reduces broadcasters’ current, modest obligations to air children’s programming, and does not adequately make the case that the action serves the public interest. For these reasons, I dissent.

¹ *Elimination of Obligation to File Broadcast Mid-Term Report (Form 397) Under Section 73.2080(f)(2); Modernization of Media Regulation Initiative*, MB Docket Nos. 18-23 and 17-105, 34 FCC Rcd 668, 689 (2019) (Concurring Statement of Commissioner Geoffrey Starks).

² *Children’s Television Programming Rules*, MB Docket Nos. 18-202 and 17-105, Report and Order and Further Proposed Notice of Proposed Rulemaking, para. 11 (July 10, 2019).

So why do I think free, over-the-air educational programming remains important? A big reason is that many households, particularly Black, Latino, and Asian households, still rely exclusively on free, over-the-air television or lack access to the broadband connection required to take advantage of internet-based content platforms.³ In fact, year over year, the number of households that rely on over-the-air television has grown.⁴ Additionally, it is indisputable that many millions of Americans still lack access to broadband at home – a painful reality that the Commission is still working to address.⁵ We’re simply not there yet. Low income families are more likely to rely on free over-the-air programming, rather than pay additional fees for cable or other video services, high-speed broadband, or the multiple devices required to support the viewing habits of a family.⁶ Too many of us take effortless and ubiquitous connectivity for granted and may easily dismiss broadcasting as a relic of another age. For me, compelling data simply does not support that perception.

Moreover, not all content is created equal. The Commission has clear statutory authority to require broadcasters to limit commercialization on children’s television and ensure that programming is specifically made to serve children’s age-appropriate educational needs.⁷ While some kids do currently utilize online outlets for children’s programming, as members of Congress and others have recognized, the current landscape for online children’s content is troubling for myriad reasons.⁸ Much of the content online is entertainment driven rather than educational.⁹ Some of this content is commercial in nature and designed to advertise to children instead of educate.¹⁰ Some online outlets allegedly violate privacy laws.¹¹ And, any parent would be frightened by recent revelations showing that some of the content that ends up on these websites is wholly inappropriate for children to the point of being harmful.

³ Nielsen, *The Nielsen Total Audience Report, Q1 2019* at 22 (2019) (stating that 13.3 percent of all families with children rely exclusively on over-the-air television, including 22 percent of Latino families, 17.5 percent of Black families, and 14.5 percent of Asian families).

⁴ *Id.* at 7.

⁵ Pew Research Center, *Mobile Technology and Home Broadband 2019* (June 13, 2019), <https://www.pewinternet.org/2019/06/13/mobile-technology-and-home-broadband-2019/>.

⁶ Common Sense Media, *The Common Sense Census: Media Use by Tweens and Teens* (Nov. 3, 2015), https://www.commonsensemedia.org/sites/default/files/uploads/research/census_executivesummary.pdf (“Children in lower-income families are significantly less likely than their wealthier peers to live in homes with digital technologies.”).

⁷ Children’s Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, 394.

⁸ See Clean Slate for Kids Online Act of 2019, S. 748, 116th Cong. (2019); Children and Media Research Advancement Act, S. 783, 116th Cong. (2019); Press Release, Common Sense Media, Senator Ed Markey to Announce Legislation on Children’s Media at Common Sense Truth About Tech Conference (April 4, 2019), <https://www.commonsensemedia.org/about-us/news/press-releases/senator-ed-markey-to-announce-legislation-on-childrens-media-at-common>.

⁹ Center for Digital Democracy, Campaign for a Commercial-Free Childhood, and the Benton Foundation Comments at 26-29.

¹⁰ *Id.* at 23-25.

Unfortunately, we've seen too many instances of algorithms quickly guiding children from acceptable content to some of the darkest and most disturbing content that the internet has to offer.¹²

The point is this – parents and children must have a truly safe space to rely on for educational content, and the only place, as of now, is through broadcast. While I hope that one day internet platforms can be reliably used to supplement children's educational opportunities, the current digital landscape provides no justification for significantly repealing regulations that ensure the availability of reliable and safe children's educational programming.

I evaluated today's item with these thoughts in mind and, despite what I believe was a real effort by my colleagues to find common ground, particularly Commissioner O'Rielly, I am unable to support today's outcome. In my view, this item will significantly reduce the amount of free, over-the-air children's programming aired by broadcasters. On its face, it may appear that the item retains our old three-hours per week requirement. However, upon a closer look, our new rules will allow broadcasters to air less than one hour of regularly scheduled children's programming per month on their most widely viewed primary stream. One third of a broadcaster's annual hours can be moved to an unpopular multicast stream, and an additional third will not need to be regularly scheduled. What's more, broadcasters are given the new ability to preempt children's programming with an ill-defined category of live, locally produced programming not designed for children and still have that time count towards their core children's programming hours. And all of this is in addition to removing the requirement that each full-time multicast stream air its own three hours of children's programming. In theory, there is nothing in this item that would prevent a broadcaster from reducing the amount of regularly scheduled, 30-minute core programming aired on its primary stream to zero.

And, finally, I am concerned that allowing broadcasters to present the majority of their programming on multicast channels or through short-form programs could significantly harm children and parents with disabilities. Video description and captioning tools are used by deaf, hard of hearing, blind, visually impaired, or DeafBlind children, and by parents and family members with disabilities in order to engage in content with their children and further its educational purpose.¹³ For instance, I heard the story of Marianne, who has a four-year-old grandson who is blind. He lights up when he hears an episode of his favorite educational television show come on that is described. Marianne told me, in particular, that the described episodes are more meaningful and engaging for her grandson and help to expand his language skills. I also heard the story of Dr. Christian Vogler, a deaf parent who relies on captions to watch educational programming with his five-year-old twins and discuss the concepts with them afterwards. While the item recognizes that the allowance of these program formats will likely have an impact on viewers with disabilities as captioning or video description tools are not required for short-form or multicast programming, it dismisses these concerns without proposing to fix this new problem of the Commission's making. This is unacceptable.

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¹¹See Common Sense Media Comments at 10; See also Tony Romm, Elizabeth Dwoskin and Craig Timberg, *YouTube under federal investigation over allegations it violates children's privacy*, The Washington Post (June 19, 2019), https://www.washingtonpost.com/technology/2019/06/19/facing-federal-investigation-youtube-is-consideringbroad-changes-childrens-content/?utm_term=.1e1f99ca5567.

¹² *Letter Re: Request for Investigation into Google's Unfair and Deceptive Practices in Connection with its YouTube Kids App*, Campaign for a Commercial-Free Childhood (May 19, 2015), http://www.commercialfreechildhood.org/sites/default/files/FTC_youtube_update.pdf.

¹³ Litton Comments at 18-25; *Implementation of Video Description of Video Programming*, MM Docket No. 99-339, Report and Order, 15 FCC Rcd 15230, para. 10 (2000); Letter from Blake Reid, Director, Samuelson-Glushko Technology Law & Policy Clinic at Colorado Law, Counsel to Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 18-202 and 17-105, CG Docket No. 05-231 (June 27, 2019).

I hope that one day the vast universe of content available to children through all platforms is educational, age-appropriate, reliable, safe, and accessible. But we simply aren't there yet. I am not against updating our children's programming requirements to stay current with the times. However, we cannot dismantle our children's programming rules without guaranteeing we can maintain our commitment to children's educational needs. Today, we are moving from a system that has inspired and educated countless children to a landscape where quality children's programming may be hard for all children and parents to come by. And we are doing so with little understanding of the impact our actions will have on viewers, or the broader children's programming marketplace. In a sense, we are inexplicably snatching defeat from the jaws of victory and leaving kids, especially the most vulnerable, worse off than how we found them. I dissent.

Although I can't approve this item, I do thank the Media Bureau for its hard work.