

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

In the Matter of
Children's Television Obligations
Of Digital Television Broadcasters
MM Docket No. 00-167

ORDER EXTENDING EFFECTIVE DATE

Adopted: December 16, 2005

Released: December 16, 2005

By the Commission:

1. On September 9, 2004, the Commission adopted a Report and Order and Further Notice of Proposed Rule Making ("Order") in the above-captioned proceeding. The Order addresses matters related to two areas: the obligation of television licensees to provide educational programming for children and the requirement that television licensees protect children from excessive and inappropriate commercial messages. Some of the rules and policies adopted in the Order apply only to digital broadcasters while others apply to both analog and digital broadcasters as well as cable operators. Most of the rules adopted in the Order are now scheduled to take effect on January 1, 2006.

2. A number of parties have petitioned for Commission reconsideration of the Order. Those reconsideration petitions are now pending before the Commission. On September 26, 2005, Viacom, Inc. ("Viacom"), The Walt Disney Company ("Disney"), NBC Universal, Inc., and NBC Telemundo License Co. filed a Motion for Extension of Effective Date or, in the Alternative, Administrative Stay with the Commission requesting that the Commission stay the rules or delay their effective date until after the Commission acts on the petitions for reconsideration. In addition, in late September and early October, 2005, the Office of Communication of the United Church of Christ ("UCC") and Viacom withdrew their participation in reconsideration petitions and filed separate petitions for judicial review of the Order. UCC filed a petition for review of the Order in the U.S. Court of Appeals for the Sixth Circuit on

1 19 FCC Rcd 22943 (2004).

2 Originally, the rules relating to the display of Internet website addresses in children's programming were scheduled to become effective on February 1, 2005. However, after a number of broadcasters and cable operators expressed concern that they would have difficulty complying with the new website rules by this date, the Commission deferred the effective date of those rules until January 1, 2006, consistent with the effective date of many of the other requirements in the Order. See Order on Reconsideration, 20 FCC Rcd 2055 (2005). On February 3, 2005, the Commission commenced enforcement of the decision to apply the commercial limits and policies to all digital video programming directed to children ages 12 and under, whether that programming is aired on a free or pay digital stream. See Order on Reconsideration, 20 FCC Rcd 2055 (2005). The rules regarding on-air identification of core children's programming became effective September 19, 2005, after approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995. See Public Notice, DA 05-2309 (rel. August 18, 2005). Those rules that are already in effect are not affected by this extension.

September 26, 2005.<sup>3</sup> Viacom filed a petition for review of the *Order* in the U.S. Circuit Court of Appeals for the D.C. Circuit on October 3, 2005.<sup>4</sup> Disney subsequently filed a petition for writ of mandamus with the D.C. Circuit requesting that the Commission be directed to act on the petitions for reconsideration or that the Court stay the rules until the Commission decides the reconsideration petitions. Viacom then also asked the D.C. Circuit to stay the rules until it resolved Viacom's petition for review. On November 16, 2005, the D.C. Circuit transferred both Viacom's petition and Disney's petition to the Sixth Circuit.<sup>5</sup>

3. Representatives of the broadcast and cable industries and public interest groups interested in children's television issues have been meeting in an attempt to resolve their differences regarding the new rules that are the subject of the litigation. Those parties have now informed the Commission that they have reached an agreement on a recommendation to the Commission that, if adopted, would resolve their concerns with the Commission's rules. The parties' recommendation would maintain with modifications most of the rules adopted by the Commission to promote educational programming for children and to protect children from overcommercialization on television. The Commission will, of course, make an independent determination on the appropriate course of action on reconsideration. However, we greatly appreciate a joint recommendation from these previously adverse interests and will give their recommendation serious consideration.<sup>6</sup> The parties have further recommended that the Commission should delay the effective date of the new rules until 60 days after publication in the Federal Register of the Commission's order on reconsideration, a course of action that would give the Commission the time to evaluate the parties' recommendation in the pending reconsideration proceeding and would permit the petitions for judicial review to be held in abeyance and the stay motions now pending before the Sixth Circuit to become moot. In light of that agreement and the issues raised in the pending petitions for reconsideration, we find that the public interest is served by delaying the effective date of the new rules to permit the Commission to act on the petitions for reconsideration and to afford broadcasters and cable operators additional time to come into compliance with the revised children's television requirements, as such requirements may be modified on reconsideration. The effective date is extended until 60 days after publication in the Federal Register of the Commission's order on reconsideration.

4. Accordingly, we are hereby extending the effective date of newly adopted Sections 73.670(b) and (c) and Note 1, Section 73.671 Notes 3 and 4, and Sections 76.225(b) and (c) and Note 1 of the Commission's rules<sup>7</sup> until 60 days after publication in the Federal Register of the Commission's order on reconsideration. We find for good cause that notice and comment are impracticable<sup>8</sup> based on the imminent effective date, the measures that would be required by the industry to comply with the new rules, which may be modified on reconsideration, the broad-based agreement to the extension by children's television advocates and industry representatives, and the fact that we are only temporarily deferring the effective date until we resolve the pending petitions for reconsideration.

---

<sup>3</sup> *Office of Communication of the United Church of Christ, Inc. v. FCC*, No. 05-4189 (6<sup>th</sup> Cir., filed Sept. 26, 2005).

<sup>4</sup> *Viacom, Inc. v. FCC*, No. 05-1387 (D.C. Cir., filed Oct. 3, 2005).

<sup>5</sup> Order, *In re Walt Disney Company*, No. 05-1393 (D.C. Cir. Nov. 16, 2005); Order, *In re Viacom, Inc.*, No. 05-1387 (D.C. Cir. Nov. 16, 2005).

<sup>6</sup> We will seek comment on the parties' recommendation separately.

<sup>7</sup> 47 C.F.R. § 73.670(b) and (c) and Note 1, § 73.671 Notes 3 and 4, and § 76.225(b) and (c) and Note 1.

<sup>8</sup> See 5 U.S.C. § 553(b).

5. Accordingly, IT IS ORDERED that the effective date of 47 C.F.R. Section 73.670(b) and (c) and Note 1, Section 73.671 Notes 3 and 4, and Sections 76.225(b) and (c) and Note 1 as adopted in the *Order* in the above-captioned proceeding ARE EXTENDED until 60 days after publication in the Federal Register of the Commission's order on reconsideration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary