

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Children's Television Obligations of Digital Television Broadcasters, Second Order on Reconsideration and Second Report and Order

For decades, the Commission has recognized that broadcasters must serve the programming needs of children as part of their obligations as trustees of the public's airwaves. Today, the Commission takes an important step in fulfilling its obligation to ensure that American children are provided quality educational and informational programming and are protected from the rampant commercialism that seems to dominate television programming.

While digital television is an emerging technology that can be used to educate, inform, and entertain our children in many respects, it could also be used to commercialize and exploit their young, inexperienced minds. So despite my lingering concerns with certain elements of today's Order, I support it because it advances the goals of the Children's Television Act, diminishes the likelihood of protracted litigation, and, most importantly, finalizes much needed rules to protect our children in the digital television age.

In an attempt to establish a certain framework that is supported by all interested parties, we aspired to clarify several standards developed in our *2004 Order*¹. For instance, we appropriately carved out an important exception to the website address display rules for public service announcements. We also removed the limit on preemption of core programming available to broadcasters in favor of a case-by-case determination. While that approach gives broadcasters needed flexibility, we must remain vigilant that preemptions do not significantly interfere with providing regularly scheduled children's programming.

In today's Order, however, two clarifications unnecessarily retreat from laudable standards developed in the *2004 Order*. First, the *2004 Order* firmly maintained FCC's policy against host selling by restricting the display of websites that utilize program-related characters during the airing of the program and accompanying commercials. The language of the new host selling restriction and the third party advertising exceptions in the instant Order, however, are not models of regulatory clarity and certainty. It is unclear why web pages that are "primarily devoted to multiple characters from multiple programs" are categorically exempted from our host selling restrictions. It is my hope that when the day comes for the Commission to interpret and enforce these new rules, we will be guided by the Commission's long-standing recognition that "the trust children place in program characters allows advertisers to take unfair advantage of the relationship between hosts and young children."² The Commission should not retreat to the days when it believed that market forces can best protect children from poor children programming and excessive commercialism. The new capabilities that will be made possible by digital technology should be used to improve the quality of children programming.

Another concern I have with today's order is that it retreats from a bright line rule that treats any promotion of upcoming programs, other than educational or informational programs, as commercial matter. Today's order relaxes this standard so that promotions of any other children's programming that appear on the same channel are not considered to be commercial matter. While this change seriously concerns me, I find some solace in the representation that this relaxed standard will still reduce the

¹ See, In the matter of Children's Television Obligations Of Digital Television Broadcasters, Report and Order and Further Notice of Proposed Rulemaking, MM Docket 00-167, released November 23, 2004 (2004 Order).

² *2006 Order*, at 42, citing, *Children's Television Report and Policy Statement*, 50 FCC 2d 1, 13-14 (1974).

amount of advertising to children on television.³ In these times of excessive commercialism, I would have preferred to retain our definition of commercial matter in the 2006 Order.

Nevertheless, today's order remains a very positive step overall. The concerns I have raised should in no way detract from the praise deservedly given to the Media Bureau staff, the participants in the Joint Proposal and public commenters. The media industry and children's rights advocates were able to come together and produce agreement on issues that concern a serious threat to the well being of all our children. The Joint Proposal is the product of hard work, conscientious negotiations and a strong willingness of the two sides to compromise. I believe this bodes well for Commission action on other challenging items, such as the pending media ownership rules proceeding, enhanced disclosure requirements, public interest obligations of digital broadcasters and the localism proceeding.

I believe today's positive step continues an ongoing process that will ensure our children can exploit the potential of digital television rather than digital television exploiting the potential of our children.

³ *2006 Order*, at 50 (“While the revised rule may not limit program promotions in children’s programming to the same extent as the rule adopted in the 2004 Order, the revision will still reduce the number of interruptions that were permissible under the original rule....”).