

**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
)	
)	

SECOND FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: March 17, 2006

Released: March 24, 2006

By the Commission: Chairman Martin, Commissioners Copps, Adelstein, and Tate issuing separate statements.

Comment Date: April 24, 2006

Reply Comment Date: May 8, 2006

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.¹ 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. A number of parties have petitioned for Commission reconsideration of the *Order*.² In addition, petitions for judicial review of the *Order* and other requests for relief are pending before the U.S. Court of Appeals for the Sixth Circuit.³

¹ 19 FCC Rcd 22,943 (2004).

² 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.

³ 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 September 26, 2005. *Office of Communication of the United Church of Christ, Inc. v. FCC*, No. 05-4189 (6th Cir., filed Sept. 26, 2005). 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. *Viacom, Inc. v. FCC*, No. 05-1387 (D.C. Cir., filed Oct. 3, 2005). 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

(continued...)

2. On December 16, 2005, the Commission adopted an *Order Extending Effective Date* extending the effective date of most of the rules adopted in the *Order* until 60 days after publication in the Federal Register of an order on reconsideration in this proceeding.⁴ The Commission noted that representatives of the broadcast and cable industries and public interest groups interested in children's television issues had been meeting in an attempt to resolve their differences regarding the new rules that are the subject of the litigation.⁵ The Commission further noted that those parties had informed the Commission that they had reached an agreement on a recommendation to the Commission that, if adopted, would resolve their concerns with the Commission's rules. In light of that agreement and the issues raised in the pending petitions for reconsideration, the Commission found that the public interest would be 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 Commission noted that it would seek comment on the parties' recommendation separately.

3. On February 9, 2006, the broadcast and cable industry representatives and children's television public interest groups involved in negotiations regarding the *Order* filed with the Commission a "Joint Proposal of Industry and Advocates on Reconsideration of Children's Television Rules" ("Joint Proposal"). The Joint Proposal contains a somewhat more detailed discussion of the parties' recommendations regarding modifications of the rules adopted in the *Order*.⁶ A copy of the Joint Proposal is attached hereto.

4. We hereby invite the public to comment on the rules and policies adopted in the *Order* in light of the recommendations reflected in the Joint Proposal. In particular, we seek comment on whether, and to what extent, the Commission should adopt these recommendations for modification of the rules adopted in the *Order* or any alternative modifications. The Commission will consider the Joint Proposal and the comments filed in response to this *Second Further Notice of Proposed Rule Making* together with the petitions for reconsideration previously filed in response to the *Order* in determining what action to take on reconsideration in this proceeding.

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petition to the Sixth Circuit. 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).

⁴ *Order Extending Effective Date*, FCC 05-211, MM Docket No. 00-167 (rel. Dec. 16, 2005). 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.

⁵ In light of the Commission's December 16, 2005 *Order Extending Effective Date*, all of the petitions involved in this litigation as referenced in footnote 3 are currently being held in abeyance by the Sixth Circuit.

⁶ On January 10, 2006, the parties filed with the Commission an executed "Term Sheet For Settlement Agreement and Mutual Release." See Letter to Marlene Dortch, Secretary, Federal Communications Commission from Susan Fox, Vice President, Government Relations, The Walt Disney Company, MM Docket 00-167. The Joint Proposal attached hereto is a more detailed discussion of the parties' recommendation than that contained in the term sheet.

ADMINISTRATIVE MATTERS

5. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

6. *Comment Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

7. *Initial Paperwork Reduction Act Analysis.* This *Second Further Notice of Proposed Rulemaking* (“*Second Further Notice*”) contains proposed information collection requirements subject to the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork burdens, we invite OMB, the general public, and other Federal agencies to take this opportunity to comment on the information collections contained in this *Second Further Notice*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 60 days after publication of this *Second Further Notice of Proposed Rule Making* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might “further reduce the information collection burden on small business concerns with fewer than 25 employees.” In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 Twelfth Street, S.W., Room 1-C823, Washington, DC 20554, or via the Internet to Cathy.Williams@fcc.gov and to Kristy L. LaLonde, OMB Desk Officer, 10234 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to Kristy L. LaLonde@omb.eop.gov, or via fax at 202-395-5167.

8. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act,⁷ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *Second Further Notice of Proposed Rulemaking*. The IRFA is set forth in the Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Second Further Notice*, and they should have a separate and distinct heading designating them as responses to the IRFA.

9. *Additional Information.* For additional information on this proceeding, please contact Kim Matthews, Policy Division, Media Bureau at (202) 418-2154, or Holly Saurer, Policy Division, Media Bureau at (202) 418-7283.

ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 4(i) & (j), 303, 307, 309 and 336 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i) & (j), 303, 307, 309 and 336, this *Second Further Notice of Proposed Rule Making* **IS ADOPTED**.

⁷ See 5 U.S.C. § 603.

11. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Second Further Notice of Proposed Rule Making*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (the “RFA”),⁸ the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact of the policies and rules proposed in this *Second Further Notice of Proposed Rulemaking* (“Notice”) on a substantial number of small entities.⁹ Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice indicated on the first page of this document. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).¹⁰ In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.¹¹

A. Need for, and Objectives of, the Proposed Rules

Our goal in commencing this proceeding is to determine whether, and to what extent, the Commission should adopt proposed recommendations for modification of rules previously adopted by the Commission in the above-captioned proceeding.¹² The rules in the *Order* pertain to 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.

Among other things, the *Order* adopted rules regarding the use of website addresses during children’s programming, revised the definition of commercial matter, placed a limit on the number of preemptions of core children’s programming, and created children’s programming requirements for those multicasting free video programming streams. In this proceeding, we will evaluate proposed modifications to these rules as presented in the attached Joint Proposal. First, the Joint Proposal suggests modifications pertaining to the display of websites during core children’s programming.¹³ Second, the Joint Proposal recommends further revisions to the definition of commercial matter.¹⁴ Third, the Joint Proposal suggests that the Commission lift its numerical limits on children’s programming preemptions.¹⁵ Finally, the Joint Proposal recommends clarifications to the children’s programming requirements for those multicasting free video programming streams.¹⁶

⁸ The RFA, *see* 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁹ *See* 5 U.S.C. § 603.

¹⁰ *See* 5 U.S.C. § 603(a).

¹¹ *See id.*

¹² *Children’s Television Obligations of Digital Television Broadcasters, Report and Order and Further Notice of Proposed Rule Making*, 19 FCC Rcd 22943 (2004) (“*Order*”).

¹³ *See* Joint Proposal at 1-4.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 4-6.

¹⁶ *Id.* at 6-7.

B. Legal Basis

The authority for the action proposed in this rulemaking is contained in Sections 4(i) & (j), 303, 307, 309 and 336 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i) & (j), 303, 307, 309 and 336.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.¹⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁹ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (“SBA”).²⁰

Television Broadcasting. The proposed rules and policies apply to television broadcast licensees, and potential licensees of television service. The SBA defines a television broadcast station as a small business if such station has no more than \$12 million in annual receipts.²¹ Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.”²² According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on October 18, 2005, about 873 of the 1,307 commercial television stations²³ (or about 67 percent) have revenues of \$12 million or less and thus qualify as small entities under the SBA definition. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations²⁴ must be included. Our estimate, therefore, likely overstates the

¹⁷ 5 U.S.C. § 603(b)(3).

¹⁸ 5 U.S.C. § 601(6).

¹⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²⁰ 15 U.S.C. § 632.

²¹ See 13 C.F.R. § 121.201, NAICS Code 515120.

²² *Id.* This category description continues, “These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.” Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

²³ Although we are using BIA’s estimate for purposes of this revenue comparison, the Commission has estimated the number of licensed commercial television stations to be 1,368. See *News Release*, “Broadcast Station Totals as of June 30, 2005” (dated Aug. 29, 2005); see <http://www.fcc.gov/mb/audio/totals/bt050630.html>.

²⁴ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 C.F.R. § 121.103(a)(1).

number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

Cable and Other Program Distribution. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating \$12.5 million or less in revenue annually.²⁵ This category includes, among others, cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, subscription television services and open video systems. According to Census Bureau data for 1997, there were 1,311 firms in this category, total, that had operated for the entire year.²⁶ Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. We note, however, that the rules at issue in this Notice only apply at this time to cable operators, and not other MVPD providers.²⁷

Cable System Operators (Rate Regulation Standard). The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a “small cable company” is one serving fewer than 400,000 subscribers nationwide.²⁸ The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995.²⁹ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies adopted herein.

Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate

²⁵ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517510.

²⁶ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 513220 (issued October 2000).

²⁷ The *Order* under review in this proceeding includes a Further Notice of Proposed Rulemaking and IRFA to determine whether the definition of “commercial matter”, a matter at issue in the proceeding, should apply to Direct Broadcast Satellite service providers. See *Order* at 22967 and Appendix D.

²⁸ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. See *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995).

²⁹ Paul Kagan Associates, Inc., Cable TV Investor, February 29, 1996 (based on figures for December 30, 1995).

exceed \$250,000,000.”³⁰ The Commission has determined that there are 67,700,000 subscribers in the United States.³¹ Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.³² Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450.³³ The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,³⁴ and therefore is unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

While the Joint Proposal proposes certain changes to the reporting requirements, we do not expect these changes to impose significant additional reporting or recordkeeping requirements. We expect the requirements to be the same for large and small entities. We seek comment on whether others perceive a need for less extensive recordkeeping or compliance requirements for small entities.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”³⁵

The proposals in the Notice, as discussed in Section A, would apply equally to large and small entities and may diminish the economic impact of the regulations on all entities. For example, the change proposing that the Commission lift its numerical limits on children’s programming preemptions would, if adopted, provide programmers greater flexibility in the scheduling of children’s programming. In addition, the proposed modifications pertaining to the display of websites during core children’s programming would, if adopted, provide greater flexibility in the regulations pertaining to commercial matter. We welcome comment on modifications of the proposals if such modifications might assist small entities and especially if such are based on evidence of potential differential impact of the regulations. Specifically, we welcome comment as to whether or not small entities would like the Commission to

³⁰ 47 U.S.C. § 543(m)(2).

³¹ See FCC Announces New Subscriber Count for the Definition of Small Cable Operator, Public Notice DA 01-158 (2001).

³² 47 C.F.R. § 76.901(f).

³³ See FCC Announces New Subscriber Count for the Definition of Small Cable Operators, Public Notice, DA 01-0158 (2001).

³⁴ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. See 47 C.F.R. § 76.909(b).

³⁵ 5 U.S.C. §§ 603(c)(1)-(4).

adopt the provisions of the Joint Proposal, adopt different modifications to the rules, or enforce the existing rules.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Commission's Proposals.

None.

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: Children's Television Obligations of Digital Television Broadcasters, MM Docket 00-167

Both Congress and the Commission have taken steps to ensure that television can help to educate and inform children and that broadcasters are mindful of the unique needs and vulnerabilities of children.

Most recently, in 2004, the Commission revised its rules governing children's television to ensure that they reflected changes in technology, such as digital television broadcasts. A number of parties, representing diverse interests, took issue with our revisions to the rules.

Working together, these parties recently reached an agreement and submitted a joint proposal with recommended changes to the rules to the Commission. I am pleased that the children's advocates and the industry have come together to develop recommendations which ensure that the interests of children are well protected. The Commission will consider these proposals carefully.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Children's Television Obligations of Digital Television Broadcasters

In the Children's Television Act, Congress directed the Commission to protect children against excessive advertisements on television and required the Commission to consider during the license renewal process whether a station's programming has served the educational and informational needs of children. This is absolutely vital. Television plays such an enormous role in children's development. The average child will have watched well over 10,000 hours of television and been bombarded with hundreds of thousands of commercials before he or she reaches adulthood. Television has vast and growing powers to educate and inform — or to misinform in sometimes harmful ways.

One important responsibility that we on this Commission have is to make sure, as best we can, that everyone — certainly including the kids — can harvest the full benefits of digital television. I commend those who met to formulate the proposals that are the subject of today's further notice. Groups such as Children Now, the American Psychological Association, the American Academy of Pediatrics, the National PTA, the United Church of Christ, the Action Coalition for Media Education and the Institute for Public Representation at Georgetown University, as well as representatives from broadcast networks and cable channels, worked long and hard to reach these joint recommendations.

The ball is in our court now to move forward as expeditiously as possible to complete this proceeding. I am hopeful we will do just that. But that's not all we need to do. Let's remember that, in the children's TV order adopted in September 2004, we also committed to issuing a report addressing how well the objectives set by Congress in the Children's Television Act are being met. We should all be concerned—even disturbed—when independent reports find that one-fourth of the educational and informational programming served up to our children has little educational value. Likewise, we should all be concerned when a recent study by the Parents Television Council demonstrates that there are nearly eight violent incidents per hour on children's shows — more than during primetime. Think about that one for a moment!

Once again, I point out how much work is left undone regarding the more general public interest obligations of DTV broadcasters. As an initial step, we need promptly to complete our proceeding on disclosure of broadcaster activities. And the Commission is long overdue to address the full range of public interest issues that we teed up six years ago, including, among others, how the digital transition can enhance political discourse, improve access to the media for those with disabilities, and increase localism, diversity and competition on the people's airwaves. I would like to think that this example of discussions and a joint proposal by diverse interested parties that we are talking about today in the children's television item can serve as a model for these other proceedings. We really can't delay any longer in bringing some certainty for both broadcasters and the public. It is not enough for us to address only the mechanics of the DTV transition. More important by far is determining how this transition is to serve the broad interests of American viewers and listeners. With a full complement of Commissioners soon to be aboard, these questions deserve the full attention of the Commission.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
APPROVING**

Re: Children's Television Obligations of Digital Television Broadcasters, Second Further Notice of Proposed Rule Making.

I am pleased that the Commission is seeking comment on a joint proposal filed by the broadcast industry and children advocacy groups to clarify the obligations of broadcasters to provide educational and informational programming intended for children and to protect children from excessive commercialism in these early days of digital television.

The joint proposal is the product of hard work, conscientious negotiations and a strong willingness of the two sides to compromise. I now look forward to the public comments and subsequent FCC examination of the proposed changes to ensure that our rules continue to protect American children from an onslaught of commercials and cross promotional ads.

The Commission's children television rules are a corollary to the public interest obligations of broadcasters to the general audience. If the proposed clarifications prove to be acceptable, I believe this bodes well for Commission action on other challenging items, such as enhanced disclosure requirements, public interest obligations of digital broadcasters and the localism proceeding.

I look forward to working with Chairman Martin, my fellow Commissioners, broadcasters, programmers and public interest groups to address these issues in the near future.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: Children's Television Obligations of Digital Television Broadcasters, Second Further Notice of Proposed Rulemaking (MM Docket 00-167)

Children are one of this country's most valuable assets. It is imperative that we make every effort to nurture and protect them as they develop. Media – and, in particular, television – plays a pervasive role in the lives of Americans today. Nielsen Media Research reports that during the 2004-2005 television seasons, the average household watched television for 8 hours, 11 minutes each day.³⁶ And according to a Kaiser Family Foundation Study, 81 percent of children between the ages of 8 and 18 watch television in a typical day, and 8 to 18 year-olds watch TV on average for 3 hours and 4 minutes a day.³⁷ The American Psychological Association has found that “children under the age of eight lack the cognitive development to understand the persuasive intent of television advertising and are uniquely susceptible to advertising's influence.”³⁸ That is why it is critical that our rules successfully ensure that broadcast television licensees provide educational programming for children and that video programming directed at children is free of excessive and inappropriate commercial messages.

Throughout my career I have advocated private dispute resolution over government intervention. Therefore, I was delighted to discover that one of my very first meetings as an FCC Commissioner would be with ALL of the parties involved in the negotiations – public interest groups advocating on behalf of children as well as broadcasters, cable networks, and those who develop content for children's programming – together in one room. Those individuals worked successfully with each other on a voluntary basis to resolve their respective concerns and develop the *Joint Proposal of Industry and Advocates on Reconsideration of Children's Television Rules* that we have before us today. I look forward to reviewing comments filed in response to the *Joint Proposal* and working with my fellow Commissioners to ensure that our rules strike the appropriate balance.

³⁶ Nielsen Media Research, *Nielsen Reports Americans Watch TV at Record Levels* (press release), Sept. 29, 2005.

³⁷ *Generation M: Media in the Lives of 8-18 Year-olds*, A Kaiser Family Foundation Study, March 2005, at 7.

³⁸ See Press Release, *Television Advertising Leads to Unhealthy Habits in Children; says APA Task Force*, February 23, 2004, available at <http://www.apa.org/releases/childrenads.html>.