Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

JOINT PROPOSAL OF INDUSTRY AND ADVOCATES ON RECONSIDERATION OF CHILDREN'S TELEVISION RULES

Helgi C. Walker
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Counsel for Viacom Inc. & CBS Corporation

Seth P. Waxman
Wilmer Cutler Pickering Hale and Dorr LLP
2445 M Street, N.W.
Washington, D.C. 20037

Counsel for The Walt Disney Company

Anne Lucey
Senior Vice President, Regulatory Affairs
CBS Corporation
1501 M Street, N.W.
Suite 1100
Washington, D.C. 20005

CBS Corporation

Susan Fox
Vice President, Government Relations
The Walt Disney Company
1150 17th Street, N.W., Suite 400
Washington, D.C. 20036

The Walt Disney Company

DeDe Lea
Executive Vice President, Government Relations
Viacom, Inc.
1501 M Street NW
Suite 1100
Washington DC 20005

Viacom Inc.

Ellen Agress
Fox Entertainment Group, Inc.
1211 Avenue of the Americas
New York, New York 10036

Fox Entertainment Group, Inc.

F. William LeBeau
NBC Universal Inc.
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

NBC Universal Inc. & NBC Telemundo License Co.

Steven Teplitz
Susan A. Mort
Time Warner Inc.
800 Connecticut Avenue, N.W., Suite 800
Washington, D.C. 20006

Time Warner Inc.

Samuel R. Newborn
Executive Vice President, Business Affairs and General Counsel
4Kids Entertainment, Inc.
1414 Avenue of the Americas
New York, New York 10019

4Kids Entertainment, Inc.

Mark Hollinger
Discovery Communications, Inc.
One Discovery Place
Silver Spring, Maryland 20910

Discovery Communications, Inc.

Robert Corn-Revere
Davis, Wright & Tremaine
1500 K Street, N.W., Suite 450
Washington, D.C. 20005-1262

Counsel for The Association of National Advertisers, Inc.

Angela J. Campbell
Institute for Public Representation
600 New Jersey Ave N.W., Suite 312
Washington, D.C. 20001

Counsel for The Office of Communication of the United Church of Christ, Inc., Children Now, the National Parent Teacher Association, the American Academy of Pediatrics, Action Coalition for Media Education, and the American Psychological Association

INTRODUCTION

Viacom Inc., CBS Corporation,[1] The Walt Disney Company, Fox Entertainment Group, Inc., NBC Universal, Time Warner Inc., 4Kids Entertainment, Inc., Discovery Communications, Inc., Association of National Advertisers, Inc., the Office of Communication of the United Church of Christ, Inc., Children Now, the National Parent Teacher Association, the American Academy of Pediatrics, Action Coalition for Media Education, and the American Psychological Association (collectively the "Parties"), hereby jointly propose revisions on reconsideration to the rules governing children's television programming adopted in *Children's Television Obligations of Digital Television*, Report and Order, 19 FCC Rcd 22943 (2004) ("*Order*").

We respectfully urge the Commission, in the exercise of its public interest authority, to expeditiously adopt the Joint Proposal in the pending reconsideration proceeding.

I. THE JOINT PROPOSAL FOR REVISION OF THE RULES

The Parties recommend modifications or clarifications for the following five rules: (1) The Website Rule; (2) The Host-Selling Rule; (3) The Promotions Rule; (4) The Preemption Rule; and (5) The Multicasting Rule. Our Joint Proposal for each rule is discussed below.

A. The Website Rule

1. The *Order*

In paragraph 50 of the *Order*, the Commission explained that, under the new website reference rule, any display of a website address during children's programming "counts" toward the CTA's time limits for commercial matter, unless the website satisfies a four-part test. *See Order*, 19 FCC Rcd at 22961 (¶50). In particular, the Commission stated that it

---

[1] Viacom Inc. and CBS Corporation became independent entities effective January 1, 2006.

> will interpret the CTA commercial time limits to require that, with respect to programs directed to children ages 12 and under, the display of Internet website addresses during program material is permitted as within the CTA limitations only if the website: (1) offers a substantial amount of bona fide program-related or other noncommercial content; (2) is not primarily intended for commercial purposes, including either e-commerce or advertising; (3) the website's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and (4) the page of the website to which viewers are directed by the website address is not used for e-commerce, advertising, or other commercial purposes (e.g., contains no links labeled "store" and no links to another page with commercial material).

2. Joint Proposal

The Parties respectfully propose that the Commission clarify paragraph 50 of the Order to provide that: (1) the requirements of that paragraph apply when Internet addresses are displayed during program material or during promotional material not counted as commercial time; and (2) if an Internet address for a website that does not meet the four-prong test is displayed during a promotion, in addition to counting against the commercial time limits, the promotion will be clearly separated from programming material.

B. The Host-Selling Rule

1. The *Order*

Under the Host-Selling rule adopted in the *Order*, the Commission banned the display of website addresses in children's programs when the website uses characters from the program to sell products or services.

As the Commission explained in paragraph 51 of the *Order*:

> For websites meeting [the four-part test], we will not limit the amount of time that the website address may be displayed during children's programs. In addition, we will permit the commercial portions of websites that comply with these requirements to sell or advertise products associated with the related television program. Because we require that permissible websites clearly separate the

> commercial portions of the site from the site's other content, we believe that children will be adequately protected from program-related merchandise sales. Because of the unique vulnerability of young children to host-selling, however, we will prohibit the display of website addresses in children's programs when the site uses characters from the program to sell products or services. This restriction on websites that use host-selling applies to website addresses displayed both during program material and during commercial material. We do not impose other restrictions at this time on the use of website addresses displayed only during commercials aired in children's programs.

2. Joint Proposal

The Parties jointly recommend that the Commission's new Host-Selling Rule, as stated in the second clause of the fourth sentence and the fifth sentence of Paragraph 51 of the *Order*, be vacated,[2] and that the only restriction on host-selling on websites whose address is displayed on-screen during or adjacent to programming designed for children 12 or younger should be as follows:

> Entities subject to commercial time limits under the Children's Television Act ("CTA") will not display a website address during or adjacent to a program if, at that time, on pages that are primarily devoted to free noncommercial content regarding that specific program or a character appearing in that program: (1) products are sold that feature a character appearing in that program; or (2) a character appearing in that program is used to actively sell products.
>
> To clarify, this rule does not apply to: (1) third-party sites linked from the companies' web pages; (2) on-air third-party advertisements with website references to third-party websites; or (3) pages that are primarily devoted to multiple characters from multiple programs.

[2] In particular, the following language should be struck from paragraph 51: "we will prohibit the display of websites addressed in children's programs when the site uses characters from the programs to sell products or services. This restriction on websites that use host selling applies to website addresses displayed both during program material and during commercial material."

With respect to enforcement of these web-related rules, the Parties propose that the companies certify compliance with the Website Rule and Host-Selling Rule in the same manner that they currently certify compliance with the advertising limits.

C. The Promotions Rule

1. The *Order*

In the *Order*, the Commission revised the definition of "commercial matter" to include "promotions of television programs or video programming services other than children's educational and informational programming."[3] Thus, under the *Order*, all promotions of programming (including promotions of children's programming), except promotions of E/I children's programming, count against the CTA's commercial-matter time limits.

2. Joint Proposal

The Parties hereby respectfully submit for the Commission's consideration a revised definition of "commercial matter." Under the Joint Proposal, "commercial matter" under the CTA should not include promotions for children's or other age-appropriate programming appearing on the same channel, or promotions for children's E/I programming on any channel.

D. The Preemption Rule

1. The *Order*

In the *Order*, the FCC revised its preemption policy to provide that no program can be counted toward the fulfillment of the processing guideline for broadcasters' E/I obligations (three hours of regularly scheduled programming per week)[4] if the program is preempted more than 10

---

[3] *Order*, 19 FCC Rcd at 22974.

[4] *See In re Policies and Rules Concerning Children's Television Programming*, Report and Order, 11 FCC Rcd 10660, 10715-26 (1996).

percent of the time in any calendar quarter.[5] In relevant part, the Commission stated in paragraph 41 of the *Order* that:

> For both analog and digital broadcasters, we will limit the number of preemptions under our processing guideline to no more than 10 percent of core programs in each calendar quarter. Each preemption beyond the 10 percent limit will cause that program not to count as core under the processing guideline, even if the program is rescheduled. We will exempt from this preemption limit preemptions for breaking news.[6]

2. Joint Proposal

The Parties agree that the Commission should not adopt any percentage or other numerical limit on preemptions. Accordingly, we respectfully submit that paragraphs 41-42 of the Commission's *Order*, as well as the reference to "as discussed below" in the second sentence of Paragraph 39,[7] and Note 4 to § 73.671 of the new FCC rules,[8] should be vacated. The Parties

---

5 *Id.* at 22958.

6 *Id.* at 22958 (¶41).

7 Under the Parties' proposal, therefore, paragraph 39 of the Order would be revised as follows:

> For both analog and digital broadcasters, to be considered core programming we will generally require that a preempted core program be rescheduled. In addition, we will consider, in determining whether the rescheduled program counts as a core educational program, the reason for the preemption, the licensee's efforts to promote the rescheduled program, the time when the rescheduled program is broadcast, and~~, as discussed below,~~ the station's level of preemption of core programming. We will continue to exempt from the requirement that core programs be rescheduled core programs preempted for breaking news. Absent clear evidence that broadcasters are abusing this exemption, we intend to rely on broadcasters' journalistic judgment regarding the necessity of interrupting scheduled core programming because of a news alert.

8 *Id.* at Appendix B ("NOTE 4 to §73.671: No more than 10 percent of Core Programs may be preempted in each calendar quarter to qualify as Core Programming.")

agree that the FCC maintain its current practice to ensure, on a case-by-case basis, that broadcasters do not engage in excessive preemptions.

E. The Multicasting Rule

1. The *Order*

In its *Order*, the FCC applied the three-hour processing guideline to all additional free multicast video programming streams. The rule requires extra amounts of E/I programming in "rough[] proportion[] to the additional amount of free video programming [broadcasters] choose to provide."[9] Specifically, the benchmark requires ½ hour, 1 hour, and 1 ½ hours of E/I programming for increments of 1 to 28 hours, 29 to 56 hours, and 57 to 84 hours per week of additional programming respectively.[10] The mandates continue to increase proportionally for additional hours of programming.[11]

In adopting this rule, the Commission, in paragraph 23 of the *Order*, explained that:

> We are concerned that digital broadcasters do not simply replay the same core programming in order to meet our revised processing guideline, particularly if broadcasters offer multiple streams of free video programming and thereby face a higher core programming guideline. We recognize, however, that to some degree children can benefit from repeated viewing of the same core program, as the educational lesson or message is reinforced. Accordingly, we will not prohibit all repeats of core programming by digital broadcasters under our revised guideline, but will require that at least 50 percent of core programming not be repeated during the same week to qualify as core. We will exempt from this requirement any program stream that merely time shifts the entire programming line-up of another program stream. In addition, during the digital transition, we will not count as repeated programming core programs that are aired on both the analog station and a digital program stream.

---

9 *Id.* at 22950 (¶19).

10 *Id.* at 22950-51 (¶19).

11 *Id.* at 22951 (¶19).

2. Joint Proposal

The Parties agree that the Commission's new Multicasting Rule should stand and recommend two clarifications to avoid confusion in its implementation. First, we recommend that the Commission clarify its interpretation of Section (c) of note 3 to Sec. 73.671, which states that for purposes of applying the processing guideline to a digital television licensee "at least 50 percent of core programming cannot be repeated during the same week to qualify as core,"[12] by amending Paragraph 23 of the *Order* to explain that at least 50% of the core programming counted toward meeting the additional programming guideline cannot consist of program episodes that had already aired within the previous seven days on either the station's main program stream or on another of the station's free digital program streams. Second, the Commission should amend Form 398 to collect information necessary to enforce this limit.

II. THIS JOINT PROPOSAL SERVES THE PUBLIC INTEREST

This Joint Proposal furthers the public interest in several ways. First, the Joint Proposal enables the swift and certain implementation of new children's television rules, without needing to await the conclusion of multiple legal challenges to the *Order*. Three separate lawsuits were instituted in two courts of appeal; [13] this litigation has the potential to drag on for years, as the Parties seek judicial review of all of the rules on various grounds. This uncertainty regarding the

---

[12] In its entirety, section (c) of note 3 provides: "For purposes of the guideline described in Note 3, sections a and b, at least 50 percent of core programming cannot be repeated during the same week to qualify as core. This requirement does not apply to any program stream that merely time shifts the entire programming line-up of another program stream and, during the digital transition, to core programs aired on both the analog station and a digital program stream."

[13] *See In re The Walt Disney Co.*, No. 05-4498 (filed D.C. Cir. Oct. 11, 2005); *Viacom Inc., v. FCC*, No. 05-4497 (filed D.C. Cir. Oct. 3, 2005); *Office of Communication of the United Church of Christ, Inc. v. FCC*, No. 05-4189 (filed 6th Cir. Sep. 26, 2005).

status of the rules does not serve the public interest. The adoption of this Joint Proposal will help to bring that litigation to a prompt and clear conclusion, eliminating this uncertainty as well as saving time and agency and party resources that can be devoted to other priorities.

Second, this Joint Proposal clarifies the scope and operation of the new children's television rules, which will promote compliance and enable parties to take appropriate steps to ensure compliance.

III. CONCLUSION

For the foregoing reasons, the Parties encourage the Commission to adopt the Joint Proposal expeditiously.

Respectfully submitted,

/s/ Helgi C. Walker
Helgi C. Walker
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Counsel for Viacom Inc. & CBS Corporation

/s/ Seth P. Waxman
Seth P. Waxman
Wilmer Cutler Pickering Hale and Dorr LLP
2445 M Street, N.W.
Washington, D.C. 20037

Counsel for The Walt Disney Company

/s/ Anne Lucey
Anne Lucey
Senior Vice President, Regulatory Affairs
CBS Corporation
1501 M Street, N.W.
Suite 1100
Washington, D.C. 20005

CBS Corporation

/s/ Susan Fox
Susan Fox
Vice President, Government Relations
The Walt Disney Company
1150 17th Street, N.W., Suite 400
Washington, D.C. 20036

The Walt Disney Company

/s/ DeDe Lea
DeDe Lea
Executive Vice President, Government Relations
Viacom, Inc.
1501 M Street NW
Suite 1100
Washington DC 20005

Viacom Inc.

/s/ Ellen Agress
Ellen Agress
Fox Entertainment Group, Inc.
1211 Avenue of the Americas
New York, New York 10036

Fox Entertainment Group, Inc.

/s/ F. William LeBeau
F. William LeBeau
NBC Universal Inc.
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

NBC Universal Inc. & NBC Telemundo License Co.

/s/ Steven Teplitz
Steven Teplitz
Susan A. Mort
Time Warner Inc.
800 Connecticut Avenue, N.W., Suite 800
Washington, D.C. 20006

Time Warner Inc.

/s/ Samuel R. Newborn
Samuel R. Newborn
Executive Vice President, Business Affairs and General Counsel
4Kids Entertainment, Inc.
1414 Avenue of the Americas
New York, New York 10019

4Kids Entertainment, Inc.

/s/ Mark Hollinger
Mark Hollinger
Discovery Communications, Inc.
One Discovery Place
Silver Spring, Maryland 20910

Discovery Communications, Inc.

/s/ Robert Corn-Revere
Robert Corn-Revere
Davis, Wright & Tremaine
1500 K Street, N.W., Suite 450
Washington, D.C. 20005-1262

Counsel for The Association of National Advertisers, Inc.

/s/ Angela J. Campbell
Angela J. Campbell
Institute for Public Representation
600 New Jersey Ave N.W., Suite 312
Washington, D.C. 20001

Counsel for The Office of Communication of the United Church of Christ, Inc., Children Now, the National Parent Teacher Association, the American Academy of Pediatrics, Action Coalition for Media Education, and the American Psychological Association