

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington DC 20554**

In the Matter of )  
 )  
Empowering Parents and Protecting ) MB Docket No. 09-194  
Children in an Evolving Media Landscape )  
 )

To: The Commission

**REPLY COMMENTS OF THE  
THE NATIONAL ASSOCIATION OF BROADCASTERS**

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## **EXECUTIVE SUMMARY**

The National Association of Broadcasters (“NAB”) submits these reply comments in response to the Commission’s Notice of Inquiry (“Notice”) regarding children’s television programming and the evolving electronic media landscape. The broadcast industry is proud of its role in helping to educate America’s children and keeping parents informed and empowered. As the Commission carefully considers the issues raised in this important proceeding, we look forward to continuing our collaboration with the Commission, other industry groups, and advocacy organizations to ensure that parents have the necessary tools to make informed decisions about their families’ media needs and interests.

Consistent with the Commission’s Children’s Agenda for Digital Opportunity, the record in this proceeding demonstrates overwhelming support for media literacy as the most compelling parental empowerment tool in the Commission’s arsenal. Media literacy efforts should involve all stakeholders, teach children and adults how to use technology competently, and include education about digital citizenship. Numerous companies and industries already actively promote media literacy and currently invest substantial resources in this area. NAB supports establishment of a National Digital Literacy Program that includes an Online Digital Literacy Portal and a Digital Literacy Corps, as proposed in the National Broadband Plan. In addition, the Commission should further facilitate federal discussions on a comprehensive media campaign that encompasses all video platforms, including the Internet, wireless, DVDs, gaming, and all television programming providers. Because the relevant industries already recognize the need for media literacy and are engaging in these efforts, there is no need for the Commission to regulate participation.

While Commission facilitation of media literacy efforts would be welcome and likely effective, proposals to expand the Commission’s rules governing educational and informational (“E/I”) programming or the V-chip are unwarranted and unwise. Children can view a wealth of E/I programming on commercial and non-commercial broadcast television; when combined with the numerous educational and information offerings on non-broadcast platforms (multichannel video programming distributors (“MVPDs”), Internet, wireless, and others), this is a “Golden Age” of children’s video programming. Twenty years after enactment of the Children’s Television Act, MVPD penetration has increased by nearly 30 percent, and Internet access—non-existent in 1990—is near-ubiquitous. Meanwhile, there are over 17 million active mobile video users. Given the wide range of educational services and options and the light regulatory touch required by the First Amendment, the Commission would be well served to adhere to its long-standing practice of relying on broadcasters’ good faith judgments regarding programming that serves children’s needs.

Although numerous educational programming options exist on broadcast television and other platforms, it would be beneficial to improve the ways that parents and children may identify that programming. While every broadcast program designated as core programming is labeled “E/I,” broadcast licensees do not exercise

control over whether this information is published in a program guide or displayed in any consistent manner or centralized location. Children and parents could benefit substantially from assistance in locating reliable, age-appropriate educational content. Like the media literacy effort described above, this is an area where the Commission could have a significant, positive impact in empowering parents, without the potentially adverse consequences of new regulation.

Indeed, the record clearly demonstrates that the Commission should not mandate any new ratings systems or technological tools. The TV Parental Guidelines and the V-chip are effective and adequate for the population that relies on them. Thus, there is no basis for such regulation, and the limited proposals from commenters are either unworkable or inconsistent with the First Amendment and Commission precedent.

If the Commission chooses to take action in this proceeding, the Commission should bear in mind the multitude of video platforms from which children consume media. The public interest is not served by broadcast-specific regulation that would be only the tip of the iceberg of digital media. Rather, the Commission should focus its efforts, consistent with its statutory and constitutional authority, across all media platforms to address and reflect the reality of children's media consumption today.

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The National Association of Broadcasters (“NAB”)<sup>1</sup> submits these reply comments in response to the Commission’s *Notice of Inquiry* in the above-captioned proceeding.<sup>2</sup> As discussed in NAB’s comments in this proceeding (“Comments”), broadcasters take very seriously the responsibility to offer educational and informational programming as an integral part of our duty to serve the public interest. For the past twenty years, we have collaborated with Congress, the FCC and children’s advocates to address challenging issues (including the quantitative guidelines for stations’ airing of children’s educational and informational (“E/I”) programming; appropriate displays of Internet website addresses during children’s programming; and limitations on preemptions of children’s programming). Broadcasters also enjoy a special relationship with local television viewers and recognize the responsibility to help families across

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<sup>1</sup> NAB is a trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

<sup>2</sup> *Empowering Parents and Protecting Children in an Evolving Media Landscape*, Notice of Inquiry, 24 FCC Rcd 13171 (2009) (“*Notice*”).

America safely traverse the digital landscape. The broadcast industry is proud of its role in helping to educate the nation's children and keeping parents informed and empowered. As the Commission carefully considers the issues raised in this important proceeding, we look forward to continuing our collaboration with the Commission, other industry groups, and advocacy organizations to ensure that parents have the necessary tools to make informed decisions about their families' media needs and interests.<sup>3</sup>

**I. The Record Demonstrates Overwhelming Support for Media Literacy as the Most Compelling Parental Empowerment Tool**

The record demonstrates that the single most effective way for the Commission to empower parents is to coordinate media literacy efforts among government agencies, non-profit organizations, and distributors on all video platforms, including the Internet, wireless, DVDs, gaming, and all television programming providers. As Chairman Genachowski recently explained, "children are our most precious resource. We must do everything we can to educate and prepare them to thrive in the 21<sup>st</sup> century, and keep them safe. ... [E]mpowering parents is an essential strategy in this area."<sup>4</sup> In particular, the Chairman highlighted digital literacy as one of the "four core pillars" of the

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<sup>3</sup> We note that many of the issues raised in the *Notice* were addressed in detail in NAB's comments and reply comments to the Commission's inquiry in preparation for the Child Safe Viewing Act ("CSVA") Report, and that the Commission intends to incorporate those comments into the record of the instant proceeding. *Notice*, 24 FCC Rcd at 13173 (¶ 10).

<sup>4</sup> Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, "Digital Opportunity: A Broadband Plan for Children and Families," National Museum of American History (delivered Mar. 12, 2010) ("Genachowski Digital Opportunity Speech").

Commission's Children's Agenda for Digital Opportunity.<sup>5</sup> The National Broadband Plan, consistent with the Chairman's Digital Opportunity speech, recommended the establishment of a National Digital Literacy Program with three parts: an Online Digital Literacy Portal; a Digital Literacy Corps; and a push for libraries and other community centers to have more broadband capacity in order to continue to help families become digitally literate.<sup>6</sup>

The vast majority of commenters agree that media literacy is key to helping parents and children navigate safely in the digital world.<sup>7</sup> Media literacy efforts should

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<sup>5</sup> *Id.* at 4 (“Digital literacy doesn’t just mean teaching children basic digital skills like getting online, using software and search—though it means that, and that’s important. It also means teaching kids to think analytically, critically, and creatively, so that they can find relevant information, assess the accuracy and reliability of that information, distinguish fact from opinion, and create and share new content. Related, we also have to teach our children to become media literate so they can evaluate media content and recognize advertising for what it is.”).

<sup>6</sup> See *Connecting America: The National Broadband Plan* at 168, 174-177 (“NBP”). See also Genachowski Digital Opportunity Speech at 6-7.

<sup>7</sup> See, e.g., Comments of the National Association of Broadcasters, MB Docket No. 09-194, at 2-3 (filed Feb. 24, 2010) (“NAB Comments”); Comments of John Palfrey, et al., MB Docket No. 09-194, at 19 (filed Feb. 24, 2010) (“Berkman Comments”) (although various strategies might be considered, “[e]ducational strategies such as media literacy programs and technological tools are perhaps among the most promising approaches that are worth [being] explored in greater detail”); Comments of Action for Media Education, MB Docket No. 09-194, at 2, 7 (filed Jan. 21, 2010) (“AME Comments”) (media literacy can give children the tools to reach and exceed their goals); Comments of the Progress & Freedom Foundation and the Electronic Frontier Foundation, MB Docket No. 09-194, at 47-48 (filed Feb. 24, 2010) (“PFF Comments”) (increased media literacy and education for parents, teachers and children is the more constructive path for the FCC to take; educational efforts such as public service announcements and online resources would be low-cost, constitutionally less restrictive, and long lasting solutions); Comments of AT&T, MB Docket No. 09-194, at 6-7 (filed Feb. 24, 2010) (“AT&T Comments”) (industry initiatives are critical to ensuring and promoting media literacy and online safety among children and their families); Comments of Verizon and Verizon Wireless, MB Docket No. 09-194, at 3 (filed Feb. 24, 2010) (it is critical that children obtain a sufficient level of media literacy so that they are able to participate (continued...))



involve all stakeholders, including distributors on all video platforms as well as schools, parents, teachers, and children.<sup>8</sup> In addition, successful media literacy programs should teach children and adults how to use technology competently, interpret and understand digital content and assess its credibility, and create, research, and communicate with appropriate tools.<sup>9</sup> Consistent with the Commission's focus on civic engagement and digital democracy,<sup>10</sup> such programs should also include education about digital citizenship.<sup>11</sup>

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effectively in the modern economy and take full advantage of the immeasurable benefits that today's dynamic media landscape can provide); Comments of the Entertainment Software Association, MB Docket No. 09-194, at 17 (filed Feb. 24, 2010) ("ESA Comments") (media literacy is a critical component in any program empowering parents in their efforts to protect children in the new media environment); Comments of Family Online Safety Institute, MB Docket No. 09-194, at 24 (filed Feb. 24, 2010) ("FOSI Comments") (students must be taught digital and media literacy); Comments of the Public Broadcasting Service, MB Docket No. 09-194, at 17 (filed Feb. 24, 2010) ("PBS Comments") (children should learn about media literacy as early as possible).

<sup>8</sup> Comments of the Center for Media Literacy, MB Docket No. 09-194, at 5 (filed Jan. 22, 2010) ("CML Comments").

<sup>9</sup> Comments of Common Sense Media, MB Docket No. 09-194, at 5 (filed Feb. 24, 2010) ("CSM Comments") (parents would be well served by a broad public education campaign about harnessing the benefits and protecting children from the negatives of digital media). See also Comments of the National Association for Media Literacy Education and the Media Education Lab at Temple University, MB Docket No. 09-194, at 24-25 (filed Feb. 3, 2010) ("NAMLE Comments").

<sup>10</sup> FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age, *Public Notice*, FCC Rcd., DA 10-100 (rel. Jan. 21, 2010); Comment Sought on Moving Toward a Digital Democracy, *Public Notice*, FCC Rcd., DA 09-2431 (rel. Nov. 17, 2009).

<sup>11</sup> CSM Comments at 6. See also Genachowski Digital Opportunity speech at 7 ("[W]e're going to promote digital citizenship by working together across government, industry, and the non-profit sector to start a national dialogue, identify best practices, develop model norms, and engage in outreach and education to online communities.").

## **A. Numerous Companies and Industries Actively Promote Media Literacy**

The record demonstrates that a wide range of industry sectors fully recognize the importance of media literacy and currently engage in efforts in this regard. For example, as explained in detail in NAB's Comments, the television industry has extensive consumer education experience that includes the 2006 national multi-media "TV Boss" campaign to educate and inform families about how they can monitor and supervise their children's television consumption.<sup>12</sup> NAB also noted that Disney (a broadcast network and cable programmer) recently joined with Common Sense Media to launch a media literacy campaign designed to help kids, teens and parents navigate

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<sup>12</sup> See NAB Comments at 3-4. "TV Boss" was a joint effort of NAB, the National Cable and Telecommunications Association ("NCTA"), the broadcast networks, the Motion Picture Association of America ("MPAA"), the Consumer Electronics Association ("CEA"), the satellite industry and the Ad Council. See Joint Comments of NAB, NCTA and MPAA, MB Docket No. 09-26, at 12-13 (filed Apr. 16, 2009) ("NAB, *et al.*, CSVA Comments"). This campaign included public service announcements ("PSAs") on television and radio, as well as advertisements in print publications and on the Web, highlighting parents' ability to control television programs that enter the home by whatever delivery method they have chosen. Several of the most familiar PSAs showed parents talking to fictional television characters and telling them that programs in which the characters appeared would be blocked because the content was not suitable for their children. Through a concerted industry-wide effort, this "TV Boss" campaign received an extraordinary level of donated media, amassing more than \$340 million from its inception through December 2008. The "TV Boss" campaign included other elements as well. For example, the consumer electronics industry made educational and instructional materials available to parents at retail stores. In addition, the campaign developed a new website – [www.TheTVBoss.org](http://www.TheTVBoss.org) – that provides information on managing media in the home via blocking technologies, program ratings and other means. The campaign also involved outreach to parents' and other advocacy groups with information that could be redistributed to their members.

the Internet and other digital platforms.<sup>13</sup> Earlier this year, Disney also announced the launch of its “Let’s Move” media campaign in collaboration with First Lady Michelle Obama.<sup>14</sup>

In addition, distributors on numerous other video platforms (multichannel video programming distributors (“MVPDs”), Internet service providers (“ISPs”), Internet search engines, gaming, and social networking sites) discussed the critical need for media literacy and their own efforts in this regard. For example, AT&T works with a variety of organizations, including elected officials, to promote online safety education and awareness.<sup>15</sup> The company also maintains an educational website where all consumers can find information regarding online safety.<sup>16</sup> Comcast promotes digital literacy by providing information in new customer welcome kits, over hotlines, through instructional videos on video on demand (“VOD”), on bills, through public service announcements, and online.<sup>17</sup> NCTA’s Cable in the Classroom (“CIC”) program has become a leading national advocate for media literacy education and for the use of

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<sup>13</sup> See NAB Comments at 4. For more information, visit Common Sense with Phineas and Ferb, <http://tv.disney.go.com/disneychannel/commonsense/> (last visited Mar. 24, 2010).

<sup>14</sup> See NAB Comments at 4. See *also*, Children and Family Section, The Walt Disney Co. 2008 Corporate Responsibility Report, <http://disney.go.com/crreport/childrenandfamily/positivedevelopment/kidshealthandnutrition.html> (last visited Mar. 24, 2010).

<sup>15</sup> See AT&T Comments at 3-4.

<sup>16</sup> See *id.* at 4.

<sup>17</sup> See Comments of Comcast Corporation, MB Docket No. 09-194, at 4-5, Exhibit 1 5-6 (filed Feb. 24, 2010). Comcast has also worked with state Attorneys General to advance cyber safety education for parents and kids, and has committed substantial funding to support public awareness as part of CSM’s digital literacy campaign. See *id.* at 9, Exhibit 1 7-8.

technology and media for learning, as well as a valuable resource of educational cable content and services for policy makers, educators, and industry leaders.<sup>18</sup> The wireless industry has undertaken a number of educational efforts, including public service announcements regarding sexting, cyberbullying and online harassment.<sup>19</sup> According to ESA, many video game publishers, console manufacturers, and retailers have launched their own Internet safety websites and media literacy programs, and many also have entered into partnerships with government officials and nongovernmental organizations to promote online child safety.<sup>20</sup> On the Internet application side, Google has worked with industry partners, community stakeholders and law enforcement to protect children, and is a member of the PointSmart ClickSafe Task Force that recently released a report highlighting the need for digital media literacy and online safety education.<sup>21</sup> MySpace, Inc. supports a number of education and outreach activities, including PSAs and partnerships with non-governmental organizations on Internet safety.<sup>22</sup>

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<sup>18</sup> See Comments of National Cable and Telecommunications Association, MB Docket No. 09-194, at 18-19 (filed Feb. 24, 2010) (“NCTA Comments”).

<sup>19</sup> See Comments of CTIA-The Wireless Association, MB Docket No. 09-194, at 42-49 (filed Feb. 24, 2010) (“CTIA Comments”).

<sup>20</sup> See ESA Comments at 17-18.

<sup>21</sup> See Comments of Google Inc., MB Docket No. 09-194, at 6 (filed Feb. 24, 2010). Google has also partnered with iKeep Safe, and together the two entities have launched a nationwide Family Digital Literacy Tour, with components aimed at children, parents, and local volunteers who will educate community members on a going-forward basis. See *id.* at 7-8.

<sup>22</sup> See Comments of MySpace, Inc., MB Docket No. 09-194, at 10-12 (filed Feb. 24, 2010).

**B. In Conjunction With the National Digital Literacy Program Recommended in the National Broadband Plan, the Commission Should Facilitate a Comprehensive Media Literacy Campaign Across Multiple Video Platforms**

The initiatives described above illustrate the creative power and public/private partnerships that media companies and providers on all video platforms can harness to promote positive messages for children and parents, both over-the-air and online. These efforts are consistent with the Commission's Children's Agenda for Digital Opportunity and the NBP's recommendation that Congress fund and establish a National Digital Literacy Program.<sup>23</sup>

Similarly, NAB proposed in its Comments that the Commission facilitate federal discussions on a comprehensive media campaign that encompasses all video platforms, including the Internet, wireless, DVDs, gaming, and all television programming providers.<sup>24</sup> The record demonstrates that various industry sectors already engage in media literacy efforts and would enthusiastically embrace facilitation of such a cross-industry campaign. For example, the cable industry has asked Congress to direct the agencies managing distribution of broadband stimulus funding to allocate \$500 million during the next two years for the development of digital media education tools.<sup>25</sup> AT&T notes that the government, including the FCC, has an important role to play by encouraging further research, development and deployment of parental control technologies, and most importantly, by supporting, funding, sponsoring

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<sup>23</sup> See *supra* pp. 2-3.

<sup>24</sup> See NAB Comments at 3.

<sup>25</sup> See NCTA Comments at 18.

and spearheading educational programs to empower parents, teachers and children regarding online risks and the technologies and tools available to mitigate those risks.<sup>26</sup> Similarly, CTIA urges the Commission to forego proscriptive regulations in favor of “encourag[ing] other stakeholders to help educate parents and children regarding [safe and] responsible mobile device practices.”<sup>27</sup>

Beyond the private industry efforts to educate and empower American parents, NAB supports establishment of the National Digital Literacy Program recommended in the NBP. This program would include an Online Digital Literacy Portal that would allow any child, parent, or teacher with a broadband connection to take courses on digital literacy.<sup>28</sup> It also would include a Digital Literacy Corps, thousands of technically-trained youths and adults deployed to train non-adopters of broadband.<sup>29</sup> The Commission could focus even more specifically on media literacy by reaching out to its federal partners, including the Administration and the Department of Education, to examine the viability of a comprehensive media literacy campaign. As Action for Media Education explains, the “Department of Education and other government or private organizations can play a major role, serving as a catalyst in the effort to provide funding” for media literacy education.<sup>30</sup> Common Sense Media suggests that the FCC’s government partners also should include the Federal Trade Commission and Department of Health

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<sup>26</sup> See AT&T Comments at 7.

<sup>27</sup> See CTIA Comments at 49, 52.

<sup>28</sup> See NBP at 177.

<sup>29</sup> See *id.* at 174.

<sup>30</sup> AME Comments at 8.

and Human Services.<sup>31</sup> As NAB has suggested, the FCC and its government partners might consider creating a media literacy campaign task force.<sup>32</sup> The government can “provide reasonable oversight and support, fund research in th[e] area [of media literacy], and promote educational messages,”<sup>33</sup> as well as “promote and support [ ] public-private partnerships” that support media literacy.<sup>34</sup> In addition, the group could establish an online clearinghouse of digital media literacy resources from industry, advocacy groups, educators and others.<sup>35</sup> This clearinghouse could be established in conjunction with, or as part of, the online resources for parents and children referenced in the Chairman’s Digital Opportunity speech.<sup>36</sup>

Given the wide variety of platforms on which children consume media, as well as the digital literacy efforts already underway across all these platforms, any Commission exploration of additional means for promoting media literacy must encompass all the

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<sup>31</sup> See CSM Comments at 8.

<sup>32</sup> A media literacy task force intended to identify best practices, establish a clearinghouse, and coordinate industry and public-private consumer education efforts should not be confused with calls for a working group that would “oversee” rating, blocking, and filtering efforts. See Comments of the Coalition for Independent Ratings Services (“CFIRS Comments”) at 6. As discussed in Part IV, *infra*, establishment of such a group is unnecessary and would be counter-productive.

<sup>33</sup> FOSI Comments at 27.

<sup>34</sup> CML Comments at 29. See *also* FOSI Comments at 28 (FCC and other agencies should focus efforts on improving digital literacy and promoting the benefits of the Internet through workshops, messaging, and community outreach efforts); NAMLE Comments at 24-25 (FCC should, *inter alia*, encourage media industries to support high-visibility community symposiums to raise awareness about the importance of media literacy and digital learning).

<sup>35</sup> See CSM Comments at 8.

<sup>36</sup> See Genachowski Digital Opportunity Speech at 8 (parents can “[g]et informed by seeking out online resources for parents—before long, we plan to have great online resources for parents and the[ir] kids at the soon-to-be-revamped FCC.gov”).

platforms on which parents and children access educational and entertainment programming. As the Chairman noted recently, content producers and distributors on all platforms already are active in this area.<sup>37</sup> Because the relevant industries already recognize the need for media literacy and are engaging in these efforts, there is no need for the Commission to require any particular participation or place any regulatory pressures for engagement.<sup>38</sup> To that end, broadcasters look forward to leveraging the power of free, over-the-air television to assist in such a comprehensive media literacy campaign.

## **II. Proposals to Expand E/I Programming Regulations Are Unwarranted**

As discussed in NAB's Comments, children can view a wealth of E/I programming on commercial and non-commercial broadcast television.<sup>39</sup> Indeed, the Progress & Freedom Foundation ("PFF") calls today the "Golden Age" of children's video programming.<sup>40</sup> And even beyond core programming, broadcasters' commitment to children is exemplary. Moreover, the record demonstrates that non-broadcast electronic media have dramatically expanded the universe of available educational

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<sup>37</sup> See Genachowski Digital Opportunity Speech at 9.

<sup>38</sup> See CML Comments at 28.

<sup>39</sup> See NAB Comments at 8-12; *Notice*, 24 FCC Rcd at 13179 (¶ 25) (seeking comment on whether there is presently a sufficient amount of educational content available for children). The Commission's rules governing core programming already have been updated to reflect the digital age. See *Children's Television Obligations Of Digital Television Broadcasters*, Second Report and Order and Order on Reconsideration, 21 FCC Rcd 11065 (2006). The television industry's collaboration with the Commission resulted in the establishment of quantified E/I guidelines for each multicast digital channel broadcast free over-the-air; limited the display of Internet Website addresses during children's programming; and revised policies on promotions during children's programming with respect to commercial limits. See NAB Comments at 12-13.

<sup>40</sup> PFF Comments at 32.



content. And, for the most part, this kid-friendly content that serves the public interest has been produced largely outside of regulatory mandates, and is simply a response to consumer demand.<sup>41</sup>

In light of the available range of educational services and options, as well as bedrock First Amendment principles counseling a light regulatory touch in the area of program content, the Commission should adhere to its long-standing practice of relying on broadcasters' "good faith judgments" as to whether programming serves the educational and informational needs of children.<sup>42</sup> Rather than regulatory intervention, the FCC should "take note of how competitive the modern children's media marketplace is, and continue to let the market spur the development of new and innovative ways to educate and entertain children without additional regulation."<sup>43</sup>

**A. Broadcasters Offer a Wealth of Educational Content and Have Demonstrated a Long-Standing Commitment to Children**

As discussed in NAB's Comments, a substantial amount of E/I programming is available to broadcast television viewers.<sup>44</sup> Broadcasters have provided beneficial free

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<sup>41</sup> See *id.* at 34.

<sup>42</sup> 47 C.F.R. § 73.671, Note 1 (2007); see also *Policies and Rules Concerning Children's Television Programming; Revision of Programming Policies for Television Broad. Stations*, Report and Order, 11 FCC Rcd 10660, 10663 (¶ 7) (1996) ("1996 Children's Television Report & Order") (referencing the need to ensure that the children's programming rules are "appropriately tailored to provide flexibility for broadcasters" in order for them to pass constitutional muster); *Policies & Rules Concerning Children's Television Programming*, Notice of Proposed Rulemaking, 10 FCC Rcd 6308, 6341 (¶ 66) (1995) ("1995 Children's Television NPRM") (recognizing that the Commission, in adopting requirements related to broadcast content, must carefully "consider any limitations imposed by the First Amendment of the Constitution").

<sup>43</sup> Comments of Viacom Inc., MB Docket No. 09-194, at 6 (filed Feb. 24, 2010) ("Viacom Comments").

<sup>44</sup> See NAB Comments at 8-11.

over-the-air programming for America's youth since the inception of television, and are today providing more high-quality, diverse E/I programming for children than ever before, amply meeting the needs of young viewers. Just nine months after the transition to digital television, broadcasters are airing over 1,400 multicast channels,<sup>45</sup> which bring additional quality E/I children's programming choices to viewers.

NAB's Comments illustrated the diversity of E/I content available to child audiences through free-over-the-air commercial broadcast stations. Specifically, NAB provided a lengthy list of programs that are available on main and multicast channels in the Washington, D.C., Houston, Texas, and Milwaukee, Wisconsin markets.<sup>46</sup> The data from these markets illustrate how local broadcasters are airing a diverse mix of E/I programming, in both English and in Spanish, on both their main and multicast channels, with programming specifically designed for a wide range of targeted age groups. Further, the majority of broadcasters are offering multicast programming that is different from the E/I programming aired on their main channels. One broadcast network, ION Media Networks ("ION"), dedicates a full-time multicast channel—Qubo—to children's programming.<sup>47</sup> Qubo is the only full-time children's television service that is distributed nationally, for free, over-the-air on a 24/7 basis.<sup>48</sup>

Beyond the diverse mix that is offered by commercial broadcasters, public television stations have also begun to utilize their multicasting capabilities to aim

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<sup>45</sup> Data obtained from Media Access Pro(tm), BIA/Kelsey.

<sup>46</sup> See NAB Comments at 9-11.

<sup>47</sup> See Comments of ION Media Networks, Inc., MB Docket 09-194, at 2-4 (filed Feb. 24, 2010) ("ION Comments"); NAB Comments at 11-12.

<sup>48</sup> See ION Comments at 2-3.

channels at younger audiences. PBS KIDS airs a robust schedule of educational programming, including Sesame Street, Clifford the Big Red Dog, Word Girl, Cyberchase and Dragon Tales. PBS KIDS also features bi-lingual content targeted to underserved communities.<sup>49</sup> Additionally, PBS has a library of online educational resources for children and educators.<sup>50</sup>

Of course, as discussed in NAB's Comments, broadcasters' service to children in their local communities goes well beyond the airing of educational, informational and entertainment programming. From fundraisers to PSAs to community outreach, every day across the nation, television and radio stations are committed to ensuring that they serve child audiences and address issues affecting children and their families.<sup>51</sup>

**B. Non-Broadcast Electronic Media Dramatically Expand the Universe of Educational Programming Available for Children.**

As explained in NAB's Comments, the FCC's children's television rules are predicated on a finding that in 1989, market forces did not sufficiently ensure that commercial broadcast television stations would provide adequate children's educational and informational programming.<sup>52</sup> Today, however, it is clear that broadcasters are serving the needs of children by providing a wide array of high-quality, diverse programming. These efforts are bolstered—to the substantial benefit of the American public—by the educational and informational programming offered by numerous other

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<sup>49</sup> See PBS Comments at 18-19.

<sup>50</sup> See *id.* at 4.

<sup>51</sup> See NAB Comments at 13-14.

<sup>52</sup> See NAB Comments at 15, citing S. Rep. No. 227, 101st Cong., 1st Sess., at 9 (1989).

outlets and programmers in the digital video marketplace. Indeed, PFF notes that families “often find themselves swimming through an ocean of choices available from local broadcasters and multichannel video providers.”<sup>53</sup> One need look no further than the wide variety of commenters in this proceeding to see that the means by which video and audio content is accessed by children has changed dramatically since the Children’s Television Act (“CTA”) was first enacted. Most notably, the Internet did not exist for parents and children in 1990 – today, the Internet access is near-ubiquitous.<sup>54</sup> Meanwhile, there are over 17 million active mobile video users.<sup>55</sup> Even video content viewed on a home television screen has been substantially altered over the past 20 years, with MVPD penetration increasing from 58% in 1990 to 87% of households today.<sup>56</sup>

On all of these platforms, families and children can find educational, kid-friendly programming, because consumers demand it. Indeed, NCTA states that marketplace incentives—rather than government mandates—have led to the development of a wide range of cable programming suitable for children and families.<sup>57</sup> Educational video

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<sup>53</sup> PFF Comments at 34.

<sup>54</sup> See *Notice*, 24 FCC Rcd at 13175 (¶ 13) (noting that in 2006, 93% of children aged 12-17 accessed the Internet).

<sup>55</sup> See NielsenWire, *Americans Using TV and Internet Together 35% More Than a Year Ago* (Mar. 22, 2010), [http://blog.nielsen.com/nielsenwire/online\\_mobile/three-screen-report-q409/](http://blog.nielsen.com/nielsenwire/online_mobile/three-screen-report-q409/).

<sup>56</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd. 542, 546 (¶8) (2009).

<sup>57</sup> See NCTA Comments at 2-3.

content also is available online and on mobile devices.<sup>58</sup> In addition, some broadcast programmers offer substantial Internet content that expands on their broadcast programming. For example, PBS states that it serves as an Internet destination for many children.<sup>59</sup> PBS KIDS offers educational games, videos, and activities directed to children.<sup>60</sup> The pbskids.org website also features tools and information for parents and educators.<sup>61</sup> Similarly, the Sesame Street website features games, videos, and the ability to personalize a child's experience on the webpage.<sup>62</sup>

### **C. The Commission Should Reject Specific Proposals to Modify the E/I Rules**

Notwithstanding the positive record on educational programming compiled in this proceeding (discussed above),<sup>63</sup> and the wide range of content available from numerous sources, several commenters propose specific modifications to the

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<sup>58</sup> For example, Apple's iTunes U offers more than 250,000 free lectures, videos, films and other resources that can be downloaded to computers, iPods and iPhones. See Apple, iTunes U, Learn Anything, Anywhere, Anytime, <http://www.apple.com/education/itunes-u/> (last visited March 24, 2010).

<sup>59</sup> PBS Comments at 19.

<sup>60</sup> See generally, PBS Kids Home Page, <http://pbskids.org/> (last visited Mar. 24, 2010).

<sup>61</sup> See *id.*

<sup>62</sup> See generally, Sesame Street Home Page, <http://www.sesamestreet.org/home> (last visited Mar. 24, 2010).

<sup>63</sup> As discussed in detail in the NAB Comments, the *Notice* specifically seeks comment on a 2008 study by Children NOW, which asserts that there is an imbalance in the types of E/I programming available in the marketplace. *Notice*, 24 FCC Rcd at 13179-80 (¶ 27). Respectfully, broadcasters strongly disagree with the premise that the E/I programming that they make substantial investments in, and air, for the benefit of America's children, is "educationally insufficient." While Children NOW is entitled to its own opinion regarding the relative desirability or quality of particular educational lessons, these subjective opinions cannot provide any legal or empirical basis for Commission action.

Commission's children's television rules.<sup>64</sup> However, regulatory intervention is inappropriate in the absence of a record establishing the existence of a problem, for "a regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist."<sup>65</sup> Here, proposals to modify the E/I rules are solutions in search of a problem, and should not be adopted. Even more specifically, the Commission's authority to adopt rules significantly implicating program content is extremely limited.<sup>66</sup> For a content-based restriction on broadcast speech to pass constitutional muster, it must be "narrowly tailored to further a substantial governmental interest."<sup>67</sup> As demonstrated above, the record does not evidence any need for additional children's programming obligations for broadcasters. Parents have abundant choices across a number of platforms of educational and informational programming specifically designed to meet children's unique needs.

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<sup>64</sup> See, e.g., Comments of Scott Conley, PH.D., MB Docket No. 09-194, at 16-17, 21, 29 (filed Jan. 24, 2010) ("Conley Comments"); Comments of Professor Lili Levi, MB Docket No. 09-194, at 4-12 (filed Jan. 12, 2010) ("Levi Comments"). Several commenters also urge the Commission to "encourage" more E/I content; CSM Comments at 9; Comments of Sonia Livingstone, Director of EU Kids Online, at 2, 4, 10. As discussed above, production and distribution of additional E/I content need not be "encouraged" by the government in this Golden Age of children's television. More importantly, the Commission should not confuse calls to encourage E/I content with a need for regulatory action.

<sup>65</sup> *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) (citation omitted) *cert. denied*, 434 U.S. 829 (1977); see *ALLTEL Corp. v. FCC*, 838 F.2d 551, 560 (D.C. Cir. 1988) (finding that FCC failed to justify adoption of a rule because there was "no showing that [the] abuse" to which the rule was directed actually existed and "no showing that the rule target[ed] companies engaged in [the] abuse").

<sup>66</sup> See, e.g., *MPAA v. FCC*, 309 F.3d 796, 802-03 (D.C. Cir. 2002).

<sup>67</sup> *FCC v. League of Women Voters*, 468 U.S. 364, 380 (1984).

Furthermore, when the Commission first decided to limit its direct scrutiny of the content of children’s programming, it appropriately recognized that the First Amendment dictates a restrained approach in this specific area.<sup>68</sup> The few proposals in the record regarding E/I programming would turn this precedent on its head, requiring the Commission to delve deeply into the content carried by broadcasters. Scott Conley proposes that the quality of E/I programming be “improved” by tying programming to a recognized educational standard.<sup>69</sup> Lili Levi, as part of her proposal for an E/I license fee, suggests that E/I programming be reviewed and rated on a curve for educational quality by rating organizations, presumably to be identified by the government.<sup>70</sup> These proposals would require content-based regulations that are impermissible under the First Amendment and inconsistent with Commission precedent. Related parts of these proposals, while not necessarily violative of the First Amendment, are unfounded.

1. *Proposals to Rank E/I Programming or Tie It to an Established Standard Amount to Content-Based Regulation Inconsistent With the First Amendment*

Content-based regulations—including those in the broadcast context—are subject to heightened review and must be “narrowly tailored to further a substantial

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<sup>68</sup> 1996 *Children’s Television Report & Order*, 11 FCC Rcd at 10663 (¶ 7) (referencing the need to ensure that the children’s programming rules are “appropriately tailored to provide flexibility for broadcasters” in order for them to pass constitutional muster); 1995 *Children’s Television NPRM*, 10 FCC Rcd at 6341 (¶ 66) (recognizing that the Commission, in adopting requirements related to broadcast content, must carefully “consider any limitations imposed by the First Amendment of the Constitution”).

<sup>69</sup> Conley Comments at 20-21. Conley also proposes more than doubling the number of required E/I programming hours per week, which is unnecessary, unwise, and inconsistent with the First Amendment and Commission precedent.

<sup>70</sup> See Levi Comments at 9.

governmental interest” in order to be valid.<sup>71</sup> The “principal inquiry” to be applied in deciding whether a particular regulation is content-based, and thus subject to heightened scrutiny “is whether the government has adopted a regulation of speech because of [agreement or] disagreement with the message it conveys.”<sup>72</sup> “The government’s purpose is the controlling consideration.”<sup>73</sup> Often times, “[t]he purpose, or justification, of a regulation,” and its content-based character, will “be evident on its face.”<sup>74</sup> The fact that a regulation, such as establishing an “educational” standard or affording comparative E/I ranking power to designated groups, fails to ban speech outright does not warrant application of a lower standard of review.<sup>75</sup>

The subjective, content-based nature of a ranking regime or an established “standard” for E/I programming is indisputable. In either case, the government (or its designee) would be scrutinizing the quality or value of a particular program. Although NAB agrees that the government’s interest in ensuring that the needs of child viewers are met may well qualify as a “substantial” one, these proposals could not reasonably be found narrowly tailored to advance the government’s interest in protecting and

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<sup>71</sup> See *League of Women Voters*, 468 U.S. at 380.

<sup>72</sup> *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642 (1994) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).

<sup>73</sup> *Ward*, 491 U.S. at 791.

<sup>74</sup> *Turner Broad. Sys.*, 512 U.S. at 642 (citing *Frisby v. Schultz*, 487 U.S. 474, 481 (1988)).

<sup>75</sup> See, e.g., *United States v. Playboy Entm’t Group, Inc.*, 529 U.S. 803, 826 (2000) (“When the purpose and design of a statute is to regulate speech by reason of its content, special consideration or latitude is not accorded to the Government merely because the law can somehow be described as a burden rather than outright suppression.”).



educating children.<sup>76</sup> The First Amendment thus bars the Commission from adopting these proposals: the Commission is not at liberty to “impose upon [broadcasters] its private notions of what the public ought to hear.”<sup>77</sup>

2. *There Is No Basis to Depart from Commission Precedent by Limiting Broadcasters’ Discretion Regarding the Manner in Which They Serve Children’s Needs.*

Tying core programming to an established standard or selecting a ratings organization to rank acceptable programming would not only conflict with the First Amendment, but would also violate the Commission’s principle that “judgments of the quality of a licensee’s programming, educational or otherwise, are best made by the audience, not by the federal government.”<sup>78</sup> Historically, the Commission has recognized the need for a core programming definition that is “as objective as possible” so that licensees and Commission staff can more easily understand the rules and the Commission can avoid making “sensitive decisions regarding program content.”<sup>79</sup> Neither Conley’s nor Levi’s proposal allows the Commission to retain objectivity or a broadcaster to retain discretion. Although the subjectivity may come at a different stage of the process (for example, at the time the “standard” is established or when the designated ranking organizations are selected), the government’s role in judging

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<sup>76</sup> *Turner Broad. Sys.*, 512 U.S. at 651 (finding that “broadcast licensees must retain abundant discretion over programming choices”); *1996 Children’s Television Report & Order*, 11 FCC Rcd at 10663 (¶ 7) (defending its regulations as being “appropriately tailored to provide flexibility for broadcasters”).

<sup>77</sup> *Turner Broad. Sys.*, 512 U.S. at 650 (citations omitted).

<sup>78</sup> See *1995 Children’s Television NPRM*, 10 FCC Rcd at 6310 (¶ 4).

<sup>79</sup> *1996 Children’s Television Report & Order*, 11 FCC Rcd at 10698 (¶ 80).

content would be contrary to established Commission policy. Congress also has recognized, and the Commission has acknowledged, that broadcasters should be afforded “flexibility in determining how to meet their obligation to children.”<sup>80</sup> Establishment of a standard or use of rankings would eliminate such flexibility.

In addition to these specific proposals, other recommendations that the Commission consider new regulatory approaches to encourage E/I programming, such as creation of a public broadcasting fund supported by a yearly E/I license fee,<sup>81</sup> are unfounded and outside the scope of this proceeding. Broadcasters continue to provide high quality educational and informational programming, and the Commission’s existing rules are adequate and effective. There is simply no basis or need for the Commission to increase its oversight of programming content or fundamentally alter the existing requirements. Certainly, the vast universe of educational and informational video content on multiple platforms cuts against any possible practical or legal justification for intruding on broadcasters’ flexibility and judgment.

### **III. The Commission Should Explore Additional Means for Promoting the Wide Variety of Available E/I Programming and Recognize the Appropriate Limits of E/I Labeling**

While numerous educational programming options exist on broadcast television, non-broadcast television, and other platforms, NAB recognizes that improving the ways to identify that programming would benefit parents and children.<sup>82</sup> Although core

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<sup>80</sup> *Id.* at 10672 (¶ 24) (citing 136 Cong. Rec. S10121 (daily ed. July 19, 1990) (remarks of Sen. Inouye)).

<sup>81</sup> Levi Comments at 4-7.

<sup>82</sup> NAB Comments at 5. All broadcast programming designated as core programming is required to be labeled “E/I.” See 47 C.F.R. § 73.671.

programs are labeled “E/I,” NAB explained in its Comments that broadcast licensees do not exercise control over whether program guide publishers publish E/I information, incorporate such information into electronic programming guides, or display this information in a consistent or even centralized location. Accordingly, as the Berkman Center notes, educational content in digital formats is often “disorganized, decentralized, and difficult to find.”<sup>83</sup> Thus, parents that are interested in accessing E/I programming for a given station or market may have, on occasion, difficulty in easily accessing E/I information. Children and parents thus could benefit substantially from assistance in locating reliable, age-appropriate educational content.<sup>84</sup>

This area, like media literacy, is evidenced in the record as a way for the Commission to have a significant, positive impact in empowering parents, without the potentially adverse consequences of additional regulation. NAB suggests that the Commission work with broadcasters to examine whether additional sourcing of E/I information, such as to the Commission’s website, may be helpful in empowering parents. Indeed, this effort could be considered by the media literacy public-private task force described above.

**A. Selecting Broadcast E/I Programming Through “White Listing” is Technologically Impossible Using V-Chip**

Notwithstanding the Commission’s query and several commenters’ proposals

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<sup>83</sup> Berkman Comments at 5.

<sup>84</sup> See *id.*

regarding utilizing technologies to “white list” E/I programming,<sup>85</sup> such an approach is simply impossible as a technological matter for broadcast programming and the V-chip.<sup>86</sup> As CEA highlighted, “creation of any such [E/I] programming list is fundamentally incompatible with the underlying blocking technology of the V-chip, even in its most evolved form.”<sup>87</sup> While the creation of white lists may be possible for MVPDs, the V-chip system for over-the-air television broadcasting is, fundamentally, a “blocking” technology rather than a “selecting” technology.<sup>88</sup> Blocking technology cannot be adapted to simultaneously highlight certain programs but block others.

If a parent wanted to use the V-chip to affirmatively select programming, the parent would need to block *all* other programming, except those programs designated E/I. Parents would therefore find using the V-chip, as well as any downloadable ratings system, a very cumbersome and impractical way to assure that only E/I programs were received. Attempting to backwards-retrofit a white list capability into a blocking environment is technically unworkable and would not further the Commission’s goal of empowering parents with content information.

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<sup>85</sup> See *Notice*, 24 FCC Rcd at 13179 (¶ 26); Comments of the United States Conference of Catholic Bishops, MB Docket No. 09-194, at 7-8 (filed Feb. 24, 2010).

<sup>86</sup> See NAB Comments at 6.

<sup>87</sup> Comments of Consumer Electronics Association, MB Docket No. 09-194, at 3 (filed Feb. 24, 2010) (“CEA Comments”).

<sup>88</sup> *Id.* at 11.

#### IV. The Commission Should Not Mandate Any New Ratings Systems or Technological Tools

As previously discussed by NAB and other parties,<sup>89</sup> the record simply does not support a one-size-fits-all approach for parental controls. The marketplace has already responded with robust choices for parental control tools and technologies on a variety of content distribution platforms. Beyond television, the record in the instant proceeding and in the CSVA Report reflects that there are numerous parental control solutions available for use on Internet, wireless, gaming and other platforms. This multiplicity of options is a benefit, not a disadvantage.

In particular, the Commission should exercise caution in further mandating the use of specific technological tools or ratings systems. Over-the-air broadcasting is uniquely reliant on advertising to support E/I programming and other quality content. The Commission should be careful to refrain from regulatory actions that could unintentionally harm broadcasters' ability to continue delivering E/I and other quality programming to child audiences.<sup>90</sup> In addition, in light of the significant technological differences between media platforms, and the different approaches parents take in determining what is appropriate for their families, a range of solutions should be available to meet parents' differing needs. Market-based innovation that has created

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<sup>89</sup> See Joint Reply Comments of NAB, NCTA and MPAA, MB Docket No. 09-26, at 15-17 (filed May 18, 2009) ("NAB, *et al.*, CSVA Reply Comments").

<sup>90</sup> See *Petition for Rulemaking Pertaining to Children's Advertising Detector Signal*, Memorandum Opinion and Order, 100 FCC 2d 163 (¶ 9) (1985) (Noting that "ignoring the fundamentally commercial nature of the commercial broadcasting system is done at great risk," including where "reducing the economic base and incentive for children's programs... is likely to result in the curtailment of broadcasters' and cable operators' efforts to program for the child audience.")

multiple parental control technologies and devices should be maintained so that parents have continued flexibility to tailor their families' media consumption as they find appropriate. And as discussed below, while there are differences in the adoption rates of blocking technologies for different electronic media platforms, such differences are only to be expected in light of today's diverse media landscape and the differing characteristics of various media outlets.

**A. The Commission Should Not Impose Additional Ratings Systems or Uniform Ratings Across Platforms**

The TV Parental Guidelines were developed over a decade ago by the television industry, in consultation with children's and other advocacy groups, as a simple-to-use ratings system to help parents manage the TV viewing of their children.<sup>91</sup> Contrary to some commenters' suggestions,<sup>92</sup> industry self-regulation under the TV Parental Guidelines has proven—and continues to be—effective.

As detailed in NAB's Comments, the broadcast and cable television industries are continually trying to make the TV Parental Guidelines even easier and more effective for parents.<sup>93</sup> The Monitoring Board, comprised of experts from the television industry and children's advocacy groups, responds to consumer questions and complaints about the ratings system and works with companies to ensure that the ratings are applied accurately and consistently to television programs. The Monitoring Board's website also invites public comment. This input, along with the active

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<sup>91</sup> NAB, *et al.*, CSVVA Reply Comments at 6.

<sup>92</sup> CSM Comments at 2.

<sup>93</sup> See NAB Comments at 29-30.

involvement of children’s advocacy groups represented on the Monitoring Board, results in meaningful and ongoing improvements in the application of television ratings.<sup>94</sup>

Meanwhile, the industry has been consistently exploring ways to increase parental awareness and understanding of the ratings systems and V-chip.<sup>95</sup> For example, as discussed above, the television industry has extensive consumer education experience, including the 2006 national multi-media “TV Boss” campaign as well as web resources like the TV Parental Guidelines website.<sup>96</sup> And, as noted in the Commission’s CSVA proceeding, the industry has welcomed the participation of children’s advocates in developing and distributing information to parents through their widely-developed networks.<sup>97</sup>

Nevertheless, some commenters advocate sweeping changes to the ratings system and the Monitoring Board.<sup>98</sup> Putting aside the potential unintended consequences for innovation, these suggestions should be recognized as unlawful and unwise and should be rejected.

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<sup>94</sup> NAB, *et al.*, CSVA Reply Comments at 2.

<sup>95</sup> See NAB, *et al.*, CSVA Comments at 9-13.

<sup>96</sup> See *supra* p. 5.

<sup>97</sup> See NAB, *et al.*, CSVA Comments at 11.

<sup>98</sup> See Comments of So We Might See Coalition, MB Docket No. 09-194, at 4 (filed Feb. 24, 2010) (“SWMSC”) (proposing the FCC facilitate development of a new ratings standard that various ratings systems can use and parents can recognize); Comments of Parents Television Council, MB Docket No. 09-194, at 6-8 (filed Feb. 24, 2010) (“PTC Comments”) (urging the FCC to reform the TV Parental Guidelines, particularly composition and operation of the Monitoring Board, and to establish a means by which the public can seek a remedy for ratings issues); CFIRS Comments at 6 (advocating utilization of RRT-05 functionality to expand and enhance the existing ratings).

First and foremost, proposals to mandate the use of a particular ratings system would raise very serious constitutional and legal concerns. As NAB has previously shown, mandated program ratings would violate the First Amendment rights of programmers and distributors.<sup>99</sup> In fact, the courts have invalidated on constitutional grounds past attempts to incorporate voluntary media ratings (including MPAA movie ratings) into laws regulating speech.<sup>100</sup> Attempts to impose mandatory ratings would also exceed the authority Congress granted the FCC in this area. NAB has previously explained that, under the 1996 Telecommunications Act, the Commission cannot mandate the use of, or require changes or additions to, the current program ratings system voluntarily adopted by the television industry.<sup>101</sup>

In addition to these legal and constitutional impediments, the imposition of a uniform (and presumably different) ratings system, or a requirement to carry multiple ratings systems, would have serious practical implementation problems. Although manufacturers have begun building television sets capable of implementing flexible

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<sup>99</sup> See NAB Comments at 30-31; NAB, *et al.*, CSVA Comments at 19-20; NAB, *et al.*, CSVA Reply Comments at 9-10; Joint Reply Comments of NAB, NCTA and MPAA, ET Docket No. 97-206, at 5 (filed Dec. 8, 1997) (explaining that a mandatory system would constitute compelled speech subject to strict scrutiny).

<sup>100</sup> See, e.g., *Entertainment Software Ass'n v. Hatch*, 443 F. Supp. 2d 1065 (D. Minn. 2006); *Swope v. Lubbers*, 560 F. Supp. 1328 (W.D. Mich. 1983); *Engdahl v. City of Kenosha*, 317 F. Supp. 1133 (E.D. Wis. 1970); *MPAA v. Specter*, 315 F. Supp. 824 (E.D. Pa. 1970).

<sup>101</sup> See Reply Comments of NAB, MB Docket No. 04-261, at 10-13 (filed Nov. 5, 2004) (discussing in detail Section 551 of the 1996 Act and the FCC's very limited regulatory role in the television industry's establishment of voluntary ratings). We note that, as discussed below, any mandate requiring broadcasters to rate advertisements would be similarly inconsistent with the First Amendment and the Commission's statutory authority.



ratings, there is an embedded base of more than 150 million V-chip-equipped television sets that can only respond to the current TV Parental Guidelines and the MPAA movie ratings and that cannot be made to work with a different ratings system. To the extent there is concern about the usage levels of the V-chip and the TV Parental Guidelines, changing this system and/or adding additional ratings to programs could well make these tools more, not less, difficult to use, by adding new levels of complexity and creating consumer confusion.

There are also numerous issues associated with suggestions that broadcasters should be required to use the ratings systems of third parties.<sup>102</sup> First, as a practical matter, it is unclear how a third party organization could review in advance the thousands of hours of programming airing each day. Second, complex legal, practical and policy questions would be raised by the process that a government might use to endorse a third-party rating system or systems. Third, once any alternative systems were selected, it would require lengthy development and consensus approval of technical standards and costly modifications to broadcast and cable equipment. Fourth, alternative ratings systems might also cause consumer confusion with a proliferation of ratings information presented to them during each program. Finally, as NAB has previously described, legacy television equipment may not even be able to respond to a third party ratings system.

Importantly, the media literacy task force described in Part I, above—which is intended to identify best practices, establish a clearinghouse, and coordinate industry

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<sup>102</sup> See, e.g., CSM Comments at 3.

and public-private consumer education efforts—should not be confused with calls for a working group that would “oversee” rating, blocking, and filtering efforts.<sup>103</sup> For the reasons described throughout this document, no working group oversight of rating and blocking efforts is necessary. A working group would be most useful in promoting media literacy and serving as a clearinghouse, not second-guessing the efforts of the television industry and the Monitoring Board.

**B. There is No Basis for New V-Chip Regulations or Other Over-the-Air Parental Control Technologies**

The V-chip, in conjunction with the TV Parental Guidelines, is adequate and effective in its current state. Accordingly, there is no basis for the Commission to impose changes to the V-chip regime. Some commenters suggest that additional, advanced parental controls should be required in order to protect vulnerable populations.<sup>104</sup> These types of proposals would impose mandates that would not only serve as barriers to future innovation, but ignore the efficacy and dynamism of the V-chip, household media rules and other technologies. They also are beyond the capability of the V-chip technology. For example, as discussed above, it is technologically impossible to use the V-chip to create a “white list” of selected

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<sup>103</sup> See CFIRS Comments at 5.

<sup>104</sup> See, e.g., SWMSC Comments at 4 (claiming that the low-income population without MVPD service is particularly hurt by the lack of additional parental controls for over-the-air broadcast programming).

programming.<sup>105</sup> Similarly, the V-chip cannot be enabled for Internet viewing of television programs.<sup>106</sup>

Even in its most evolved form—the “downloadable” V-chip—this technology has only basic capabilities.<sup>107</sup> Yet some commenters assume that RRT-05<sup>108</sup> has infinite capacity.<sup>109</sup> As NAB explained in its Comments, while it is true that the ATSC standards (and the Commission’s rules) provide for the ability to download additional ratings systems to DTV sets, this system is not infinite in its scope.<sup>110</sup> Under the current construct, whatever number of additional ratings systems that might be used would all need to fit within a single RRT-05 that would be transmitted by all stations in a market. Given the many unanswered questions about how RRT-05 would be implemented, it is premature for the Commission to impose any requirements relating to ratings to be carried in RRT-05 until the relevant standards bodies have provided technical and operational guidance on its implementation.<sup>111</sup>

It should be noted, as discussed in NAB’s Comments, that lower adoption rates for the V-chip than for other technologies do not necessarily indicate any failure on the part of this technology or the ratings it carries. As a preliminary matter, the *Notice’s*

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<sup>105</sup> See *supra* p. 23.

<sup>106</sup> See SWMSC at 4.

<sup>107</sup> See CEA Comments at 10.

<sup>108</sup> The ATSC reserved RRT-05 for an unspecified alternative U.S. rating system or systems.

<sup>109</sup> See CFIRS Comments at 5; Comments of Wi-LAN Inc., MB Docket No. 09-194, at 8-9 (filed Feb. 24, 2010).

<sup>110</sup> See NAB Comments at 32.

<sup>111</sup> See NAB, *et al.*, CSVA Reply Comments at 14-15. See also CEA Comments at 10-11.

statement regarding difficulty using the V-chip<sup>112</sup> appears somewhat inconsistent with the leading surveys on use of the V-chip and program ratings system by the Kaiser Family Foundation. The 2007 Kaiser report found that more than half (53%) of all parents reported using the TV Parental Guidelines. Almost 90% of those parents found the ratings to be useful, including almost half who found them “very useful.”<sup>113</sup> In addition, parents today use a range of non-technological strategies to oversee their children’s television use, including, for example, watching television with their children, and enjoy greater technological options than ever before for screening video programming.<sup>114</sup> A number of parental control solutions are available from third-party sources as well.<sup>115</sup> Any discussion about the V-chip adoption rate must be within this broader context of the wide variety of tools available to parents to help manage their children’s television viewing. Indeed, given the range of options available to parents today, it is unsurprising that no single tool is used by large majorities of parents.

In addition, numerous other factors may account for differences in adoption rates between the V-chip and other technologies. These include differences between

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<sup>112</sup> *Notice*, 24 FCC Rcd at 13188 n.87.

<sup>113</sup> See NAB Comments at 23. While the 2007 study noted that fewer parents set the V-chip than utilized the program ratings, the study also noted that the vast majority (89%) of parents using the V-chip said they found the V-chip to be useful. Nearly three-quarters (71%) who had used the V-chip found it “very useful.” And among parents who are aware of the V-chip but who have chosen not to use it, 50% report that an adult is usually nearby to monitor their children’s television viewing and 14% say they “trust their kids to make their own decisions.” Thus, parents who choose not to set the V-Chip make this choice for a variety of reasons other than a belief that the technology is too difficult to employ or not effective.

<sup>114</sup> See *id.* at 23-24.

<sup>115</sup> See NAB, *et al.*, CSVA Comments at 15-16.

broadcast content and online content – and the different risks inherent in these platforms. Because a number of potential risks associated with online content are not associated with over-the-air broadcast content, it is reasonable to expect a higher parental adoption rate for online blocking technologies.<sup>116</sup>

**C. There Are Serious Technical and Practical Impediments to Rating and Blocking Broadcast Advertisements**

Proposals to require rating of advertisements<sup>117</sup> are technically unworkable, impractical, and would have the unintended consequence of confusing, rather than helping, parents. As NAB explained in its Comments, rating advertisements within broadcast programming so that the V-chip may block them presents significant technical and operational challenges. Given the thousands of commercials aired in television programming every day, just the sheer volume of content that would need to be rated presents massive logistical issues. Moreover, under current FCC regulations, in order to transmit content ratings for advertisements, the ad would have to be treated as if it were an actual program, resulting in a confusing and unreadable Electronic Program Guide (“EPG”). There also are significant technical and operational challenges at the station level.<sup>118</sup>

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<sup>116</sup> See NAB Comments at 24-25.

<sup>117</sup> See, e.g., SWMSC Comments at 5-6; PTC Comments at 9; CSM Comments at 3. In the *Notice*, the Commission asked whether it is feasible to block advertising content “inappropriate” for children on various platforms. *Notice*, 24 FCC Rcd at 13185-86 (¶ 40).

<sup>118</sup> See NAB Comments at 26-27.

With respect to interactive advertising,<sup>119</sup> NAB previously has explained that interactive digital broadcast television is a “nascent and developing service” that “commercial broadcasters have only begun to explore” as a means to supplement and enhance the entertainment, educational, and informational content of children’s programming.<sup>120</sup> Accordingly, it would be premature for the Commission to engage in any regulation of interactive digital broadcasting at this time.

In addition, NAB agrees with the National Media Providers (“NMP”) that industry self-regulation of advertising is more than adequate and does not warrant regulatory scrutiny.<sup>121</sup> The Children’s Advertising Review Unit (“CARU”) contains detailed provisions to take into consideration special factors affecting advertising viewed by children. This self-regulatory mechanism, which has been expanded in conjunction with the Children’s Food and Beverage Advertising Initiative, works in combination with other industry codes that take into account the particular needs of children. Requiring many thousands of advertisements to be rated because some may be offensive is an overbroad reaction, as very few ads give rise to controversy in this regard.<sup>122</sup> In addition, it has been well established in the record (including comments filed in the

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<sup>119</sup> See Comments of Children’s Media Policy Coalition, MB Docket No. 09-194, at 2-9 (filed Feb. 24, 2010).

<sup>120</sup> Reply Comments of NAB, MB Docket No. 08-90, at 15-16 (filed Nov. 21, 2008).

<sup>121</sup> See Reply Comments of National Media Providers, MB Docket No. 09-194.

<sup>122</sup> Comments of the Association of National Advertisers, Inc., MB Docket No. 09-26, at 6-11 (filed Apr. 16, 2009).

CSVA proceeding) that proposals to rate advertisements exceed the Commission's statutory authority and present a serious Constitutional problem.<sup>123</sup>

Finally, it is worth restating that because advertisements are a critical source of revenue for the development and distribution of high quality programming, the unintended consequence of increased blocking of commercials would likely be to limit the audience for advertisements and thereby diminish this vital revenue stream.<sup>124</sup> The Commission should not recommend impracticable proposals that would unintentionally undermine economic support for television programming, including E/I programming.

**V. Any Action by the Commission to Empower Parents Must Apply Across Video Platforms to Address and Reflect the Reality of Children's Media Consumption Today**

As discussed throughout these Reply Comments, the Commission should encourage development of marketplace technologies to empower parents but should not mandate specific technological tools. Parental control technologies developed in the marketplace are innovative, responsive and widely available. Today, parents are presented with more options than ever before as to how to structure their children's viewing experience. This freedom of choice is a function of a healthy marketplace and should not be unnecessarily interfered with. Flexibility to innovate also is inherent in a marketplace with numerous different technological platforms and services.

As described in NAB's Comments and fully reflected in the record in this proceeding and the CSVA Report, children's media consumption has radically changed

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<sup>123</sup> Reply Comments of Association of National Advertisers, Inc., *et al.*, MB Docket No. 09-26, at 12-15 (filed May 18, 2009).

<sup>124</sup> See NAB Comments at 28-29.

in the 20 years since enactment of the Children’s Television Act. With hundreds of MVPD channels, near-ubiquitous Internet access, vast numbers of mobile devices, and countless online and mobile applications, regulatory requirements applicable solely to television broadcast licensees make little sense in today’s environment. Today, not only are children using new and different platforms to view content, but they are also learning via use of these platforms.<sup>125</sup> Thus, efforts to promote parental empowerment and to protect children – whether focusing on media literacy, technological tools or programming – will serve the public interest most effectively if they include all the video platforms that children routinely access.

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<sup>125</sup> See Comments of Sesame Workshop, MB Docket No. 09-194, at 9-10 (filed Feb. 24, 2010) (noting the finding of one study that preschoolers’ literacy skills increased when Sesame Street content was viewed on parents’ cell phones).



## VI. Conclusion

Broadcasters deeply value our commitment to America's children, and we will continue to create quality programming to serve their needs in the digital age. We urge the Commission to focus on an approach consistent with the proposed National Digital Literacy Program and identified in the record as most effective: a comprehensive media literacy campaign. In this way, the Commission can help empower parents without mandating new ratings systems or technological requirements that could have adverse, unintended consequences. Such a result would not further the Commission's goals. No matter what action the Commission takes in this proceeding, NAB urges the Commission to be mindful of the current digital landscape and the reality of children's multiplatform media consumption today.

Respectfully submitted,



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