

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

In the Matter of)
)
Implementation of the Child Safe Viewing Act;) MB Docket No. 09-26
Examination of Parental Control Technologies for)
Video or Audio Programming)

**JOINT REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS,
THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION, AND
THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.**

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May 18, 2009

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The National Association of Broadcasters (“NAB”), the National Cable & Telecommunications Association (“NCTA”), and the Motion Picture Association of America, Inc. (“MPAA”) (“Joint Commenters”) hereby reply to the comments filed in the above-captioned proceeding.¹

INTRODUCTION AND SUMMARY

The Child Safe Viewing Act instructs the Commission to assess the state of the marketplace for parental control tools and technologies and report to Congress. The record in this proceeding emphatically demonstrates that parents have more options to control their children’s use of media than ever before. These include the TV Parental Guidelines (“Guidelines” or “TV ratings”) and V-chip, which continue to be effective options for parents, as well as a wide array of technology choices for multichannel video programming distributor (“MVPD”) subscribers and users of Internet, mobile, and other content distribution platforms. In

¹ See *In the Matter of Implementation of the Child Safe Viewing Act; Examination of Parental Control Technologies for Video or Audio Programming*, Notice of Inquiry, 24 FCC Rcd. 3342 (2009) (“NOI” or “Notice”).

short, the Commission's report should conclude that Congress' goal of empowering parents is being achieved through innovation in the marketplace. New technology will continue to improve the ability of parents to control their children's media use.

Criticisms of the TV Parental Guidelines by some commenters are unfounded. Indeed the record in this proceeding reflects that the television industry takes seriously suggestions about how to make the Guidelines even easier and more effective for parents. The TV Parental Guidelines Monitoring Board ("Monitoring Board") has worked and will continue to work closely with children's advocacy groups, including members of the Children's Media Policy Coalition, to promote accurate and consistent application of the Guidelines to TV programs. And the industry has taken to heart the need to educate parents about the Guidelines and V-chip, most recently launching a multi-year, \$340 million advertising campaign. As a result, the TV ratings and V-chip have significantly improved parents' ability to access information about and to manage their families' viewing of television, and those tools have only improved over time.

The Commission should reject proposals for mandated changes to the existing ratings system or to impose a new ratings regime. The TV Parental Guidelines were developed as a simple-to-use tool for parents. Adding new content descriptors or an entirely new ratings system would undermine its effectiveness by confusing consumers and complicating efforts to educate parents about the Guidelines. Mandating the use of particular ratings systems or descriptors would also be inconsistent with the First Amendment and would raise a host of technical and administrative challenges for the TV industry and equipment manufacturers. Likewise, technology mandates or cross-platform requirements would stifle investment and innovation and ultimately limit parental control options.

I. THE RECORD DEMONSTRATES THAT A WIDE ARRAY OF PARENTAL CONTROL OPTIONS IS AVAILABLE TO PARENTS TO MANAGE THEIR CHILDREN'S MEDIA USE

Congress directed the Commission to launch this inquiry to examine, among other things, “the existence, availability, and use of parental empowerment tools and initiatives already in the market.”² The record shows that there is a robust marketplace for parental control tools and technologies on a variety of content distribution platforms.

As Joint Commenters and others point out, the TV Parental Guidelines and V-chip are two highly-valued options for parents in controlling what their children watch on television. The Consumer Electronics Association (“CEA”) noted that the V-chip continues to be “an effective tool that allows parents to protect their children from inappropriate or harmful content.”³ TV Watch added that “the television program ratings were created and have proven to be a valuable asset for families, giving them specific information about the content and age appropriateness of television shows.”⁴ As Joint Commenters documented in their initial comments, the overwhelming majority of parents who use the Guidelines and V-chip find them to be useful.⁵

CEA aptly concludes that “the fact that the V-chip is not used at empirically ‘high’ levels has little to no bearing on whether it is an effective tool – or whether parents who seek to use advanced blocking technologies can access and program alternative tools.”⁶ In fact, the record is

² Child Safe Viewing Act of 2007, S. 602, P.L. 110-452, § 2(a)(3), 122 Stat. 5025 (Dec. 2, 2008) (“Child Safe Viewing Act”).

³ Consumer Electronics Association (“CEA”) Comments at 16.

⁴ TV Watch Comments at 1-2; *see also id.* at 1 (citing survey data demonstrating that parents “don’t want government intruding into their living rooms”).

⁵ *See* Joint NAB, NCTA and MPAA Comments at 13-14 (citing survey data from The Henry J. Kaiser Foundation, *Parents, Children & Media: A Kaiser Family Foundation Survey* (June 2007), (“2007 Kaiser Family Foundation Report”) that 89 percent of parents who have used the TV ratings and V-chip find them to be useful); TV Watch Comments at 2 & Att. at 5-6 (reporting survey results on parental use of V-chip and ratings system).

⁶ CEA Comments at 15.

filled with examples of alternative solutions that are available to parents today to control what their children watch on TV. Various MVPDs make robust parental control features available to their customers and use these features to help differentiate their services from their competitors.⁷ Likewise, consumer electronics manufacturers incorporate innovative solutions with retail products,⁸ and other technology vendors provide parents with alternative options.⁹ In addition, the record reflects that there are numerous third party ratings systems and similar resources which parents can use to supplement their viewing decisions.¹⁰ Survey data demonstrates that parents are using these tools and that they are satisfied that they have control over what their children watch on television.¹¹

⁷ See, e.g., Comcast Comments at 2-5, 6-7 (describing Comcast’s parental control tools, including tools to help parents limit access to television and web sites containing video); DISH Network Comments at 8 (“parental controls have become a product differentiator and a ‘must-have’ for any MVPD”); DirecTV Comments at 2 (describing “Locks and Limits” control feature); AT&T Comments at 5-6 (noting blocking features on U-verse set-top boxes); Cox Comments at 6-7 (noting parental control technologies for cable and high-speed Internet users); Verizon Comments at 2 (“providers have substantial incentives to innovate and provide parents with the choices and capabilities that will allow them to control the content to which their children are exposed”).

⁸ See, e.g., CEA Comments at 10-12 (noting the variety of advanced blocking technologies in consumer electronics devices, including child locks, TV channel restrictors, time management technologies, and devices that allow parents to pre-select content for their children); TiVo Comments at 2-4 (explaining that KidZone technology permits parents to read reviews of children’s programming and select individual programs for recording).

⁹ While we are not endorsing any particular technology, and do not opine on whether it is, for example, consistent with copyright law, several companies filed comments promoting assorted technical solutions. See, e.g., CustomPlay, LLC Comments at 1, 3 (explaining capabilities of random access technologies, such as DVD players and video-on-demand services, to “selectively play, skip, or mute portions of a motion picture”); Caption TV, Inc. at 1, 4 (describing system for “selective filtering of objectionable content from an audio or video program ...”); TVGuardian, LLC Comments at 5 (describing “Language Filtering Technology”).

¹⁰ See e.g., Coalition for Independent Ratings Comments at 11; Common Sense Media Comments at 7; Progress and Freedom Foundation Comments at 16-38, 138-142.

¹¹ See 2007 Kaiser Family Foundation Report at 31 (noting that 25 percent of survey respondents have used the parental controls available through their cable or satellite provider); TV Watch Comments, Att. at 5 (83 percent of respondents say they are satisfied with the effectiveness of the V-chip or other blocking tools).

Beyond television, the record in this proceeding reflects that there are numerous parental control solutions available for use on Internet, wireless, gaming, and other platforms.¹² Even advocates of government regulation, such as the Coalition for Independent Ratings, concede that an enormous number of rating, blocking, and filtering solutions exist in the marketplace today.¹³ In short, “[p]arents have been empowered with technologies, strategies, and information that can help them devise and enforce a media plan for their families that is in line with their own needs and values.”¹⁴ This multiplicity of options is a benefit, not a disadvantage. Given the significant technological differences among different platforms, and taking into account that parents have varying sensibilities of what is appropriate for their families, having a range of solutions available is the optimal means of meeting parents’ needs. The market-based innovation that has created this flourishing environment should be maintained so that parents have continued flexibility to tailor their families’ media consumption as they find appropriate. We also note that promoting technological innovation in this manner is the most First Amendment-friendly way to advance the government’s interest in empowering parents.

¹² See, e.g., Microsoft Comments at 5-16 (describing Microsoft’s parental control technologies for a wide range of media platforms used in the home, including computers, entertainment systems, portable media players, and video games); Google Comments at 4-9 (describing Google’s tools to “help ensure all Internet users enjoy a positive and safe online experience”); Verizon Comments at 6-8 (noting filtering service that allows parents to control content that their children can access on mobile handsets, including Internet and V-Cast content); Sprint Comments at 2-3 (explaining that parental controls on Sprint handsets include call, camera, data usage, and content purchase blocking); Entertainment Software Association Comments at 8-14 (detailing ratings system and parental controls used by the gaming industry).

¹³ See Coalition for Independent Ratings Comments at 2 & Att. (listing over 100 web sites that offer parental control technologies); Common Sense Media Comments at 4 (noting the “vast array of different technologies” for blocking and filtering content).

¹⁴ Progress & Freedom Foundation Comments at iii; see also *id.* at 8 (“some households do not utilize parental control technologies because they rely on alternative methods of controlling media content and access in the home, such as household media rules”); Center for Democracy & Technology Comments at 7 (noting that “many families have other parenting strategies to monitor and guide their children’s media use”).

II. THE COMMISSION SHOULD NOT RECOMMEND THE VARIOUS REGULATORY PROPOSALS ADVANCED BY SOME COMMENTERS

Although the clear majority of commenters in this proceeding laud the wide range of management tools currently available to parents and do not favor government intervention, a few regulatory proposals have been made. As discussed in greater detail below, the Commission should not recommend changes to the existing TV Parental Guidelines, or the adoption of new ratings systems for either television or across media platforms. Rather, the Commission's recommendations should reflect the underlying record in this proceeding – that the history of government restraint in this space has allowed innovation to flourish and, as a result, today there are a multitude of solutions available to assist parents in managing their families' media consumption. Given this environment, the regulatory proposals discussed below should not be advanced.

A. Proposals To Recommend Changes To The Current Television Ratings System Should Be Rejected As Unnecessary and Unwise

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. The Joint Commenters are aware that any system can be improved, and we are continually trying to make the Guidelines even easier and more effective for parents. We also regularly explore ways to increase parental awareness and understanding of the Guidelines. We do not believe, however, that the changes to the TV Parental Guidelines and V-chip proposed by some commenters will achieve the intended goals and may in fact have adverse, unintended consequences.

1. Proposals Regarding Oversight and Awareness of the TV Parental Guidelines

Although the TV industry takes seriously suggestions about how to make the Guidelines even more effective, we must respectfully disagree with some of the criticisms noted by a small number of commenters. For example, the Children’s Media Policy Coalition suggests that inaccurate and inconsistent ratings are assigned to TV programs. As Joint Commenters explained in their initial comments, we have worked closely with children’s advocacy groups – including members of the Children’s Media Policy Coalition – to interpret the TV Parental Guidelines consistently and apply them accurately. Those efforts have resulted in meaningful improvements in the application of TV ratings and are ongoing.¹⁵ Further, some perceived discrepancies in application of the ratings may actually reflect differences in editing between two versions of the same program.¹⁶ In such cases, application of different ratings to each version is appropriate given the specific content in each version. These variances reflect the strength and robustness of the current ratings system and should not be viewed as inconsistencies.

The Coalition also faults the Monitoring Board for not providing effective oversight of the current system.¹⁷ However, some of the Coalition’s own members, such as Children Now and the American Academy of Pediatrics, serve on the Board and have been supportive of the Board’s efforts to promote consistent application of ratings across TV channels.¹⁸ The Coalition

¹⁵ See Joint NAB, NCTA, and MPAA Comments at 3, 9-10.

¹⁶ *Id.* at 7. For example, movies and television series may be edited differently depending on whether they are carried on a premium cable, basic cable, or broadcast service. In addition, different versions of the same program may be created to address differences in target audiences or day parts.

¹⁷ See Children’s Media Policy Coalition Comments at 6.

¹⁸ See Joint NAB, NCTA, and MPAA Comments at 9-10 (explaining that the TV Monitoring Board includes representatives from children’s advocacy groups and that the Board works collaboratively with interested parties to improve the ratings system).

also suggests that the Board would benefit from public participation.¹⁹ In fact, the Board's web site already expressly invites public comments and complaints²⁰ and has received more than 115,000 visits and 180,000 page views over the last nine months. The Board has also investigated consumer complaints and worked with programmers to take corrective actions where appropriate.²¹ Regarding the Coalition's suggestion that the Commission work to promote public awareness of the Board,²² Joint Commenters are open to ideas about how to better promote the work of the Board. We note that the Commission *already* provides information about the Board on the FCC's web site and includes a link to the TV Guidelines web site.²³

The Coalition also claims that the existing ratings system suffers from a lack of parental awareness and understanding.²⁴ However, as our initial comments and survey data reflect, the vast majority of parents are aware of the TV Parental Guidelines and the V-chip,²⁵ and those parents that have used these tools find them useful. These advancements are in part attributable to the recent multi-year, \$340 million advertising campaign undertaken by the television industry with the Ad Council and others to help educate parents about the Guidelines and V-chip.²⁶ The

¹⁹ See Children's Media Policy Coalition Comments at 9.

²⁰ See <http://www.tvguidelines.org/contact.htm>. When the TV Parental Guidelines web site was recently updated, information about the Monitoring Board and its role in reviewing complaints was moved to the home page to increase its prominence.

²¹ See Joint NAB, NCTA, and MPAA Comments at 9.

²² See Children's Media Policy Coalition Comments at 9.

²³ See <http://www.fcc.gov/parents/tvratings.html>. Numerous other web sites also provide information about or a link to the TV Parental Guidelines web site. See, e.g., <http://www.pauseparentplay.org/see/index.php#television>; <http://www.televisionwatch.org/HelpForParents/Resources.html>; <http://www.controlyourtv.org/DetailPage.php?PageID=30>; http://www.childrennow.org/issues/media/media_tvratings.html; http://www.pta.org/Documents/TV_Tipsheet.pdf.

²⁴ Children's Media Policy Coalition Comments at 3.

²⁵ See Joint NAB, NCTA, and MPAA Comments at 13-14 (citing 2007 Kaiser Family Foundation Report showing that 81 percent of parents have heard of the TV ratings and 70 percent of parents are aware of the V-chip).

²⁶ See *id.* at 12-13; see also Progress & Freedom Foundation Comments at 18-19; CEA Comments at 17.

record also provides evidence of other industry education initiatives.²⁷ To further build upon these public education initiatives, Joint Commenters will continue our efforts to increase parents' awareness and understanding of the TV ratings and V-chip. We welcome the participation of children's advocates in developing and distributing information to parents through their widely-developed networks.

2. Proposed Changes to the TV Parental Guidelines

Certain commenters also ask the Commission to mandate changes to the ratings system itself. For example, the Coalition for Independent Ratings urges the Commission to add ratings descriptors for use of alcohol, tobacco, and illegal drugs, and this same group and the Children's Media Policy Coalition ask the Commission to add a content descriptor for Educational and Informational ("E/I") programming.²⁸ But Congress did not intend for the Child Safe Viewing Act to impose new obligations on the TV industry; it sought only to have the FCC gather information about parental empowerment tools. In any event, mandated changes to the existing TV ratings system would be unlawful and unworkable.

As an initial matter, government requirements that compel speech because of its content – which would be the effect of any mandated changes to the current voluntary ratings system – raise the highest of First Amendment concerns.²⁹ In our initial comments, we underscored that Congress was sensitive to these First Amendment concerns when it crafted the parental control

²⁷ See Joint NAB, NCTA, and MPAA Comments at 11 n.24 (noting broadcast industry's public education efforts); NCTA Comments at 4-7 (detailing cable industry's public education efforts); MPAA Comments at 5 (describing public education efforts with respect to movie ratings).

²⁸ See Coalition for Independent Ratings Comments at 3 (urging the Commission to add ratings descriptors for use of alcohol, tobacco, and illegal drugs and to signal the presence of E/I programming); Children's Media Policy Coalition Comments at 13-14 (urging the Commission to add an E/I content descriptor to the current ratings system).

²⁹ See *Turner Broadcasting System v. FCC*, 512 U.S. 622 (1994).

provisions of the 1996 Act.³⁰ The Commission's report in this proceeding should reject proposed mandates that would violate the First Amendment rights of programmers and distributors and be contrary to Congressional intent in this area.³¹

In addition to these constitutional hurdles, there would be substantial technical and administrative problems with the proposed mandates. Changing the TV ratings system after more than a dozen years would be no simple task. New content descriptors would require modifications to existing specifications and standards that are relied upon by the television and consumer electronics industries to implement the current ratings system, and would entail costly changes to broadcast and cable networks and equipment. For example, broadcasters and cable programmers would need to modify their encoding equipment to accommodate the addition of new descriptor categories to the existing TV ratings system. New content descriptors would not work with legacy TV sets, which are not equipped to process new descriptors. Cable operators would also face significant obstacles if required to make the many different models of legacy set-top boxes respond to new ratings. Operators would need to include new software in their set-top boxes since existing set-top boxes are not designed to block programs based on these new descriptor categories.

Even if all these operational and technical hurdles could be overcome, requiring the addition of even more content descriptors to the existing system would not accomplish the advocates' intended goals.³² In fact, new content descriptors would not make the current ratings system more user-friendly and would only exacerbate any confusion that parents may have about

³⁰ See Joint NAB, NCTA, and MPAA Comments at 19-20.

³¹ See Progress & Freedom Foundation Comments at 114-117 (explaining that any mandatory ratings requirements would raise profound First Amendment concerns); Joint Comments of Industry & Public Interest Groups at 6-7 (noting First Amendment problems with government mandates).

³² See, e.g., Coalition for Independent Ratings Comments at 3.

the existing system.³³ Consumer confusion would be compounded by the fact that the new descriptors would appear in new programming, but not in the thousands of hours of previously-rated programming that is aired on television.³⁴ And the proponents suggest no way to objectively limit the categories of potentially objectionable material to which new descriptors must be applied. While some parents might wish, for example, to add descriptors to enable blocking of programming containing tobacco, others might want to block programming containing different material they might find objectionable. This is another reason why such a system would be practically unworkable.

With respect to proposals to add a content descriptor for E/I programming to the ratings system, it bears emphasis that, pursuant to the Commission's rules, broadcasters *already* display the E/I icon for the duration of children's programming,³⁵ and widely publicize the schedule for E/I programming.³⁶ Hence, "embed[ding] E/I programming in their program streams for use with the V-Chip,"³⁷ as some advocates propose, is unlikely to provide much additional value to viewers. The V-chip system is, fundamentally, a "blocking" technology rather than a "selecting" technology. As such, if a parent wanted to use the V-chip to affirmatively select E/I programming, the parent would need to block *all* other programming, except those programs

³³ See *id.* at 2 (stating that "many consumers feel both overwhelmed and confused" by the current ratings systems); Children's Media Policy Coalition Comments at 3 (claiming that "the V-chip scheme has suffered from low levels of parental use, awareness, and understanding").

³⁴ To the extent commenters are suggesting that previously-rated programming be re-rated to add new descriptors, this would dramatically increase the burden on the industry.

³⁵ See 47 C.F.R. § 73.671(c)(5); *In the Matter of Children's Television Obligations of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd. 22943 ¶ 46 (2004).

³⁶ 47 C.F.R. § 73.673 ("Each commercial television broadcast station licensee shall provide information identifying programming specifically designed to educate and inform children to publishers of program guides. Such information shall include an indication of the age group for which the program is intended."). Cable operators and other MVPDs also provide tools via their interactive program guides and program information tool bars that enable parents to identify programming that is suitable for their children. See, e.g., NCTA Comments at 10.

³⁷ Children's Media Policy Coalition Comments at 13.

designated E/I. Parents would thus 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.

3. Proposals to Rate Advertisements

Other commenters favor regulations mandating the rating of advertisements.³⁸ It is worth noting that when a particular program is blocked with the V-chip today, it already results in the blocking of any advertising within the relevant program. In addition, advertisers already take voluntary measures to help limit children's exposure to inappropriate advertisements. As the Association of National Advertisers explains, the advertising industry has adopted voluntary guidelines to limit the exposure of children to advertising that might be deemed inappropriate to children under 18.³⁹

The proposed regulations to require the rating of advertisements would also create serious technical and logistical problems. Given the thousands of commercials aired in television programming every day, the sheer volume of content that would need to be rated presents massive logistical issues. Furthermore, to be blocked under the PSIP standard, which is codified in FCC regulations, advertisements would be treated as "programs" with associated content advisories, but this would significantly undermine the usefulness of electronic program guides ("EPGs") built into digital TV sets.⁴⁰ These EPGs list programs on the screen with start and end times; if advertisements were treated as programs under the PSIP standard, then advertisements

³⁸ See Children's Media Policy Coalition Comments at 9-13 (urging the Commission to adopt rules to mandate the rating of commercials and embedded advertising).

³⁹ See Association of National Advertisers Comments at 6-7.

⁴⁰ See DTV Innovations Comments at 2 (explaining that rating commercials creates "a problem ... on consumer receivers when the electronic program guide is displayed. Due to a limited amount of space to display an event title, the introduction of commercials would segment the existing guide into multiple segments rendering it unreadable to the consumer.").

would all be listed, effectively making EPGs unusable. EPGs in cable set-top boxes would experience similar complications if advertisements had to be separately rated as programs.

Finally, we note that any system for rating advertisements (like rating other types of programming) must comport with First Amendment principles.⁴¹ Moreover, 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.⁴² The Commission should not recommend unnecessary proposals that would unintentionally undermine economic support for television programming.

B. Proposals To Mandate Third Party Ratings Systems Or Impose Technology Mandates Raise Significant Legal And Policy Concerns

As numerous commenters point out, the wide array of parental control options available to parents today has developed largely in the absence of government intervention or regulation.⁴³ The Commission should continue its successful policy of playing a constructive role in

⁴¹ See Association of National Advertisers Comments at 11. Requiring the rating of product placements would raise the same set of legal and policy issues. See, e.g., National Media Providers Comments, MB Docket No. 08-90, at 43-63 (filed Sept. 22, 2008) (explaining why Commission regulation of product placement would violate the First Amendment); Time Warner Inc. Reply Comments, MB Docket No. 08-90, at 3-4 (Nov. 21, 2008) (same). Moreover, product placements are the subject of a separate Commission proceeding, which is the appropriate venue for discussion of such issues. See *Sponsorship Identification Rules and Embedded Advertising*, Notice of Inquiry and Notice of Proposed Rulemaking, 23 FCC Rcd. 10682 (2008).

⁴² See NCTA Reply Comments, MB Docket No. 08-90, at 4 (filed Nov. 21, 2008) (“Advertising revenues constitute a major element of the economic formula that enables cable networks to provide high quality programming Proposals that would interfere with programmers’ ability to rely on that economic support will by necessity adversely affect programmers, in turn causing some part of that formula to give way.”); NAB Comments, MB Docket No. 08-90, at 19 (filed Sept. 22, 2008) (“The free over-the-air broadcasting business model is reliant on advertising to survive. If advertising revenue slips, even by a small percentage, the free broadcasting model may be in jeopardy, particularly in today’s highly competitive media marketplace.”).

⁴³ See CEA Comments at 2 (noting “dynamic and adaptive marketplace for parental empowerment technologies”); Progress & Freedom Foundation Comments at iii (noting that “unprecedented abundance of parental control tools” provides evidence that “this is a well-functioning marketplace”); Joint Comments of Industry & Public Interest Groups at 12 (“[T]he Internet has had a broad array of user empowerment tools, and competition to create new and better tools has continued unabated for the past fifteen years. This highly competitive marketplace for user empowerment [on the Internet] sprang up on its own, without any law or mandate.”).

encouraging the development and use of parental control technologies, rather than recommending government mandates that would chill the strong investment and dynamic innovation that is creating new solutions and options for parents.⁴⁴

Any case for government intervention is undercut by the fact that parents are already availing themselves of the independent ratings provided by Common Sense Media and others.⁴⁵ Moreover, partnerships between Common Sense Media and individual companies are increasing consumers' access to this information. For example, "Comcast and Common Sense Media entered into a multi-year commitment to make detailed, age-based information about television shows, movies, websites, video games, and books available to Comcast subscribers."⁴⁶ Time Warner Cable and Cox have similar arrangements with Common Sense Media,⁴⁷ and DirecTV has partnered with Common Sense Media to provide alternative ratings information to its subscribers.⁴⁸

In light of these voluntary partnerships, as well as the widespread availability of third party ratings information through other outlets such as web sites, proposals to mandate transmission of these ratings systems⁴⁹ should be rejected. Mandating additional ratings systems

⁴⁴ See Joint NAB, NCTA, and MPAA Comments at 18; Center for Democracy & Technology Comments at 7 ("The Commission can and should consider ways to educate parents about the availability of the V-chip."); Progress & Freedom Foundation Comments at viii ("the Commission's role in this proceeding should be limited to expanding information and education about existing tools and rating systems; examining new or independent tools . . . ; and encouraging parents to use these tools and methods and to talk to their children about appropriate media use.").

⁴⁵ See Common Sense Media Comments at 7 (noting that Common Sense Media's web site had over 7 million visitors in 2008); see also TiVo Comments at 2-4 (describing KidZone Guides); Progress & Freedom Foundation Comments at 138-142 (describing independent ratings sources).

⁴⁶ Comcast Comments at 6.

⁴⁷ See NCTA Comments at 11-12.

⁴⁸ See DirecTV Comments at 10-11 (noting collaboration with Common Sense Media).

⁴⁹ See Children's Media Policy Coalition Comments at 8 ("Consideration should thus be given to requiring or incentivizing broadcasters' use of the enhanced V-chip capabilities that the Commission has already mandated (footnote continued...)

not only would be inconsistent with the First Amendment, it would also raise the same types of technical and other challenges identified above with respect to mandatory changes to the existing ratings system. There is, moreover, no practical way for a third party organization to review and rate in advance the thousands of hours of programming airing on TV every day.⁵⁰ Further, while it is unclear what type of process the government might use to select a mandated ratings system, at a minimum any such process would be complex, time-consuming, and present numerous complicated legal and policy considerations. Once any alternative systems were selected, it would require lengthy development and consensus approval of technical standards and, as previously explained, costly modifications to broadcast and cable equipment. And as described above, most legacy TV equipment could not even respond to any third party ratings system. There are other potential impediments, as well. For example, an alternative ratings system might require the display of multiple icons at the beginning of the rated program; it would be difficult to accommodate two or more ratings icons without blocking out portions of the program on the TV screen – and also creating substantial consumer confusion.

The Commission should also reject proposals to impose specific technology mandates. For example, TVGuardian argues that the government should require the use of its content filtering technology.⁵¹ As TVGuardian concedes, MVPDs have met with TVGuardian and simply elected not to use its technology.⁵² In effect, TVGuardian is now asking the government to pick technology winners and losers regardless of individual MVPDs' views on any particular

(...footnote continued)

by its own rules.”); Common Sense Media Comments at 6 (“The Commission should support the ability of parents to access third-party ratings – such as those of Common Sense and other independent ratings systems – through newly developed filters and the existing V-chip.”).

⁵⁰ See Joint NAB, NCTA, and MPAA Comments at 19-20.

⁵¹ See TVGuardian Comments at 38, 42-43.

⁵² See *id.* at 5-6.

solution, or the technical feasibility of, commercial viability of or consumer demand for a particular device or concept. The Commission has declined such invitations in the past,⁵³ and should do so now.

Some commenters recommend that the Commission establish a task force to help develop cross-platform ratings, filtering, and blocking standards.⁵⁴ While Joint Commenters welcome the opportunity to discuss parental control options with others, the record demonstrates that there is no demand for a “one-size-fits-all” solution and such an approach would be ill-advised. As the Joint Comments of Industry & Public Interest Groups explains, “[t]he natural market incentive is for one market segment to *differentiate* itself from other market segments by highlighting technological differences or advantage.”⁵⁵ A mandated cross-platform solution “would by necessity have to be reduced to a lowest common denominator in terms of technical capabilities” and “stifle the drive to innovate in the area of child safety and user empowerment technology.”⁵⁶ The Digital Media Association concludes that “[t]he development of multi-platform, multi-media advanced blocking technologies that will integrate multiple ratings systems is an extraordinary undertaking and one which is unlikely to succeed.”⁵⁷ Rather, “the most likely successful models

⁵³ See Joint NAB, NCTA, and MPAA Comments at 22 (noting that the Commission has previously avoided taking steps that would effectively pick technology winners and losers).

⁵⁴ See Common Sense Media Comments at 5; Coalition for Independent Ratings Comments at 7-8.

⁵⁵ Joint Comments of Industry & Public Interest Groups at 10 (emphasis in original).

⁵⁶ *Id.* at 8-9; see also Joint NAB, NCTA, and MPAA Comments at 22 (explaining that a single cross-platform solution “would likely chill investment and innovation in the solutions that are best-suited for specific platforms, force industries to adopt the lowest common technology that would work on all platforms, and ultimately limit options for parents.”); Progress & Freedom Foundation Comments at 111 (“Mandating ‘universal’ controls and ratings across all media platforms could destroy innovation in this space by substituting a government-approved, ‘one-size-fits-all’ standard for today’s ‘let-a-thousand-flowers-bloom’ approach, which offers diverse tools for a diverse citizenry.”); Microsoft Comments at 2 (“applying new government mandates to technologies and services that are rapidly changing – or just developing – is unnecessary, and likely to be detrimental, both to product and service innovation and to innovation in parental control tools”).

⁵⁷ Digital Media Ass’n Comments at 12.

for parental controls will continue to be those developed in the marketplace to suit specific applications and services.”⁵⁸

⁵⁸ *Id.* at 13. Common Sense Media suggests that the Commission expand the definition of “video programming” in the Communications Act to cover Internet video. *See* Common Sense Media Comments at 5. The Commission specifically invited comment on “how [it] should interpret the term ‘video programming’ *for purposes of this proceeding.*” *See* NOI ¶ 8 (emphasis added). Neither the NOI nor the Child Safe Viewing Act says anything about how the Commission should construe the term “video programming” more broadly for purposes of the Communications Act. And for good reason. Any change to the meaning or scope of the term would have implications for a wide range of other provisions in the Communications Act and numerous Commission regulations. It would be contrary to basic principles of administrative law to consider Common Sense Media’s proposal as part of this inquiry. To avoid any confusion, in the instant proceeding, the Commission should instead use a term like “video content” which has no existing regulatory meaning.

CONCLUSION

For the foregoing reasons, the Joint Commenters request that the Commission issue a report in this proceeding consistent with these reply comments and our initial comments.

Respectfully submitted,



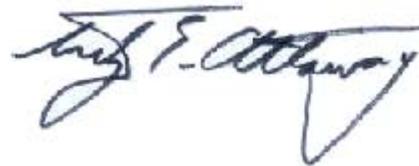
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May 18, 2009