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December 21, 2018

VIA ELECTRONIC FILING

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

Re: Children’s Television Programming Rules; MB Docket No. 18-202

Dear Ms. Dortch:

The U.S. Chamber of Commerce (“Chamber”) submits this *ex parte* letter in response to the Commission’s Notice of Proposed Rulemaking in the above-referenced proceeding.¹

The Chamber applauds the Commission’s recognition of the need to update its children’s programming rules to ensure the health and vibrancy of the marketplace and its various participants. The marketplace for children’s video programming has evolved significantly since enactment of the Children’s Television Act in 1990 (“CTA”). In the last few years alone, technological developments have ushered in significant changes in customer viewing habits and the availability of children’s programming. Families and children now are able to watch their favorite content on a host of devices, including smart televisions, tablets, computers, and mobile phones. The rise of Internet-based distribution alternatives has also allowed parents and children to view content through a variety of new outlets that were unimaginable to the drafters of the CTA. These include Netflix, Hulu and Amazon Prime, which have become significant contenders in distributing and creating original children’s programming content, winning both critical recognition and audience market share.

In the *Notice*, the Commission itself noted the significant changes in viewing habits and the array of children’s programming available on non-traditional platforms as justification for a fresh look at its children’s programming regulations.² Recognizing that “there have been dramatic changes” in the way viewers, particularly children, access and consume video programming, the Commission acknowledged the existence of many “outdated requirements” in

¹ *In re Children’s Television Programming Rules*, Notice of Proposed Rulemaking, MB Docket No. 18-202 (rel. July 13, 2018) (hereinafter “*Notice*”).

² *See Notice at* ¶¶ 16-17.

children’s programming.³ As discussed more fully below, the Commission must update or eliminate these outdated requirements to ensure that they do not diminish the availability of, or the ability of providers to offer, programming appealing to families.

In seeking to update the children’s programming rules, a wide range of commenters agreed that the dramatic marketplace changes warrant revisiting many of the existing regulations. For instance, the National Association of Broadcasters (“NAB”) argued that the regulations do not reflect the realities of the modern media marketplace or match today’s video consumption habits of parents and families.⁴ NAB also noted that a principal shortcoming of the regulations is that they force programmers to devote time and effort in satisfying the regulations, leaving fewer resources to invest and develop content appealing to younger viewers. NCTA similarly noted the “significant migration” in children’s viewing habits from traditional linear television to lightly regulated Internet-based distribution alternatives.⁵ According to NCTA, these trends and disparate regulatory treatment of various market participants undermine the ability of traditional networks to attract investment necessary to produce the quality children’s television programming that their viewers expect and enjoy.

With this background in mind, it makes little sense to saddle traditional providers of children’s programming with outdated regulations that hamper their ability to compete, simply because they deliver programming through conventional distribution models. The Chamber firmly supports policies that provide consumers with more choices and options. However, it cannot endorse an environment in which one set of market participants is lightly regulated while another set is subject to a labyrinth of regulatory requirements. Instead of protecting consumers, promoting innovation or facilitating competition, this type of regulatory approach serves only to skew market dynamics by inducing investment flow and driving creative talent to less regulated platforms.

To prevent this outcome, the Commission should update its rules to lessen the regulatory burden on conventional programming providers such as broadcasters, cable programming providers and multichannel video programming distributors. Doing so would recognize the current marketplace realities and provide these entities with much-needed flexibility to meet the needs of younger viewers. It would also free the resources needed by these providers to compete against more lightly regulated distributors, promoting competition and benefiting consumers. While there are a number of regulations warranting update, the Chamber and its members believe that the Commission should focus its immediate efforts in three specific areas.

First, the Commission should update its definition of “core programming” to provide additional flexibility to fulfill children’s programming requirements. These updates should include, among others, expanding the types and lengths of programming, extending the times to air such programming, and allowing the programming to be aired on one or more of a station’s multicast channels. These practical reforms will improve the ability of traditional providers to

³ *Id.* at ¶ 19.

⁴ *See* Comments of the National Association of Broadcasters at pp. 12-13.

⁵ *See* Comments of NCTA at p.3

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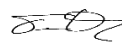
continue to serve the educational and informational needs of families while ensuring that high-quality and suitable programming remains broadly available.

The Commission should also update its website “display” rules, which impact how programmers reach and engage viewers. The current rules hamper the ability of traditional providers to create a full and rich viewing experience for children. In particular, they diminish program networks’ ability to use their online capabilities to enhance the appeal of their child-friendly linear programming at the very time when parents are becoming increasingly confident with online tools and resources. This puts traditional providers at a competitive disadvantage against other market participants, hampering their ability to compete and innovate.

Finally, the Commission should streamline its recordkeeping requirements to make compliance obligations less burdensome for programmers and distributors. These updates should include requiring the submission of such documentation only in the event of a complaint or alternative, reducing the frequency in which providers collect and post required documentation, mandating annual reports rather than quarterly, and extending the deadline for collecting and submitting required documentation. Common sense reforms such as these will benefit competition by leveling the playing field and lessening the regulatory and compliance burden on traditional distributors and programmers.

The market for children’s programming has never been more prolific and the Commission must update its children’s programming rules to reflect current marketplace realities. By modernizing the rules, the Commission will encourage additional competition and innovation by improving the ability of traditional distributors and programmers to adapt their business strategies to address the changing marketplace dynamics and rapidly evolving consumer habits. This will ensure that American families continue to be served by a vibrant and competitive marketplace for children’s programming services.

Sincerely,



Tim Day
Senior Vice President