

March 26, 2019

VIA ELECTRONIC SUBMISSION

Marlene H. Dortch
Secretary
Federal Communications Commission
44512th Street, SW
Washington, DC 20554

Re: Children's Television Programming Rules, MB Docket No. 18-202; Modernization of Media Regulation Initiative, MB Docket No. 17-105

Dear Ms. Dortch:

On behalf of our organizations **we write to express our support for the Commission's pending Notice of Proposed Rule-making ("NPRM") regarding its so-called "KidVid" regulations.**ⁱ

In light of the significant transformations in the children's video programming marketplace in the decades since the Commission adopted many of the KidVid rules, we believe firmly that this is an area ripe for reform and deregulation. As viewers and investment increasingly flow to less regulated online media platforms, the Commission must act to update its regulations and restore regulatory parity for children's programming.

The significant growth of unregulated platforms in recent years has also upended the initial justification for the KidVid rules under the Children's Television Act 1990 ("CTA"), making the panoply of regulations vulnerable to legal challenge. **We thus urge the Commission to reexamine all of its KidVid regulations, rein in its regulatory overreach, and prevent lasting damage** to the children's programming marketplace and the interests of the parents and children that they serve.

Enacted before the advent of the Internet when children's programming was only a small part of the media marketplace, Congress required through the CTA that broadcasters serve the public interest by providing programming for "the educational and informational needs of children."ⁱⁱ The statute does not prescribe express requirements for how providers of children's programming should serve the public interest. Instead, Congress required the Commission to determine at license renewal the extent to which the licensee "has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs."ⁱⁱⁱ

Requirements for minimum amounts of core programming, onerous reporting obligations, and detailed advertising restrictions on broadcasters has ballooned. Even programming not intended for children is affected. If a network were to air episodes

of "Jonny Quest" late at night for adults, the network may be required to comply with the KidVid regulations even though it could reasonably expect few children to watch the programming. Plus, in the nearly 30 years since CTA's enactment. The rules have spilled over into the digital media marketplace to govern website displays, text, and other online operations of programmers.

Congress did not anticipate—nor desire—such outcomes or outdated rules now governing broadcasters, cable programmers, and multichannel video programming distributors. In light of the Supreme Court's decision in *Red Lion Broadcasting Co. v. FCC* and subsequent precedent holding that broadcasters are entitled to less First Amendment protection due to the scarcity of public airwaves, Congress enacted the CTA with the narrow goal of spurring the availability of more educational children's programming.^{iv} Anticipating First Amendment challenges, the Commission also relied upon *Red Lion's* scarcity rationale in its initial 1996 Order adopting the KidVid rules.^v Over the years, numerous scholars,^{vi} courts,^{vii} and commenters,^{viii} have questioned the rationale of *Red Lion* in light of the vibrant and competitive media marketplace.

The production and consumption of children's programming content has grown exponentially in recent years on Internet-based platforms not subject to the burdens of the KidVid regulations. As children spend more of their viewing time online with tablets, computers, and time-shifted content, children audiences of traditional media have declined significantly in the last few years, yet traditional media remains restrained by disproportionate regulation. The Commission should continue updating its rules to reflect the current marketplace by reforming KidVid rules—for broadcast, cable, and satellite alike. Reducing the burden of regulation will further this Commission's stated interest in supporting regulatory parity to avoid the creation of unnecessary market distortions.^{ix}

We commend the Commission for moving forward with Media Modernization, and urge you to continue weeding out regulations that no longer make sense in today's vibrant and highly competitive marketplace for children's video programming. **We look forward to working constructively with the Commission on a better-balanced regulatory environment for the provision of children's video programming.**

Regards,

Grover Norquist
President
Americans for Tax Reform

Daniel Schneider
Executive Director
American Conservative Union

Brent Wm. Gardner
Chief Government Affairs Officer
Americans for Prosperity

Norm Singleton
President
Campaign for Liberty

Phil Kerpen
President
American Commitment

Andrew F. Quinlan
President
Center for Freedom and Prosperity

Matthew Kandrach
President
Consumer Action
for a Strong Economy

Thomas Schatz
President
Citizens Against Government Waste

Hance Haney
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Katie McAuliffe
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Digital Liberty

Adam Brandon
President
FreedomWorks Foundation

George Landrith
President
Frontiers of Freedom

Carrie Lukas
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Independent Women's Forum

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Tom Giovanetti
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Bartlett Cleland
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Madery Bridge

Pete Sepp
President
National Taxpayers Union

David Williams
President
Taxpayers Protection Alliance

Steve Pociask
President /CEO
The American Consumer Institute
Center for Citizen Research

ⁱ *In re Children's Television Programming Rules*, Notice of Proposed Rulemaking, MB Docket No. 18-202 (rel. July 13, 2018) ("Notice").

ⁱⁱ 47 U.S.C. 303b(a)(2).

ⁱⁱⁱ *Id.*

^{iv} *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 389 (1969) ("Because of the scarcity of radio frequencies, the Government is permitted to put restraints on licensees in favor of others whose views should be expressed on this unique medium. ... [D]ifferences in the characteristics of new media justify differences in the First Amendment standards applied to them."); *see also* H.R. Rep. 101-385, at 8-9 (101th Cong., 1989); S. Rep. No. 101-227, at 27 (101th Cong., 1989).

^v *Revision of Programming Policies for Television Broadcast Stations*, Report and Order, 11 FCC Rcd 10660, 10729 para. 149 (1996).

^{vi} See, e.g., Robert Corn-Revere, “Regulating Media Content in an Age of Abundance,” 27 Sep. Comm. Law. 1 (2010); Thomas W. Hazlett, “The Rationality of U.S. Regulation of the Broadcast Spectrum,” 33 J.L. & Econ. 133, 138 n.15 (1990).

^{vii} See, e.g., *Banzhaf v. FCC*, 405 F.2d 1082, 1100 (D.C. Cir. 1968), *cert. denied sub. nom.*, *Tobacco Inst., Inc. v. FCC*, 396 U.S. 342 (1969) (“[S]ome venerable FCC policies cannot withstand constitutional scrutiny in the light of contemporary understanding of the First Amendment and the modern proliferation of broadcasting outlets.”).

^{viii} See, e.g., Comments of FreedomWorks Foundation, MB Docket No. 18-202, at 2 (Sept. 25, 2018).

^{ix} See Oral Statement of Chairman Ajit Pai, Restoring Internet Freedom, WC Docket No. 17-108, <https://docs.fcc.gov/public/attachments/DOC-348261A2.pdf> (“Our decision today will also return regulatory parity to the Internet economy.”)