



CORPORATION FOR PUBLIC BROADCASTING

901 E Street NW
Washington, DC 20004-2006
(202) 879-9600

Memorandum

TO: CPB Board of Directors
FROM: Paul E. Symczak *RES*
DATE: January 23, 1991
SUBJECT: Supplemental Regulatory Materials

The attached memorandum and proposed resolution are relevant to item number 16, Tab F of the agenda for today's Board meeting.



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Memorandum

TO: CPB Board of Directors

FROM: Paul E. Symczak *PS*
Pamela J. Brown *PSD*

DATE: January 23, 1991

SUBJECT: Authority to Participate in Proceedings
Involving Children's Television Programming

As you are aware, it is the long-standing practice of CPB Management to obtain Board authorization on policy positions before representing CPB on those issues in a regulatory agency or court. In accordance with this practice, Management is requesting the Board's authority to participate in certain proceedings concerning children's television programming, particularly the pending FCC rule making concerning the Children's Television Act of 1990 (the "Act").

As explained in the Regulatory Update/Annual Review dated December 21, 1990, the Senate and the House reached a compromise on their companion children's television bills shortly before the close of the 101st Congress. The Senate passed the compromise legislation on September 24, 1990 and the House passed it on October 1, 1990 (H.R.1677). The Children's Television Act of 1990 became law automatically on October 18, 1990 after President Bush let his deadline pass for vetoing or signing the legislation.

The Act:

(1) limits the time devoted to commercial matter in conjunction with children's programming on cable and commercial broadcast television to not more than 12 minutes per hour on weekdays and 10-1/2 minutes per hour on weekends, and requires the FCC to conduct a rule making to prescribe the standards for implementing these limits;

(2) during the license renewal process, requires the FCC to consider whether television broadcast licensees have complied with the commercial matter limits and have "served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs";

(3) requires the FCC to complete its pending proceeding concerning the issue of how to define and treat "program-length commercials"; and,

(4) establishes a National Endowment for Children's Educational Television and authorizes to be appropriated \$2,000,000 for fiscal year 1991 and \$4,000,000 for fiscal year 1992, for projects which must be made available exclusively to noncommercial television for two years before being distributed by cable and commercial broadcast television. The law gives the Secretary of Commerce flexibility in distributing the grants directly or contracting with CPB for the purpose of making grants for the production of educational television programming for children.

Since the Act requires FCC action within 30 days and implementation within 180 days, on November 8, 1990 the FCC initiated a new rule making and consolidated it with the pending FCC proceeding concerning program-length commercials. Comments are due on January 30, 1991 and reply comments are due on February 20, 1991.

The FCC has proposed the rule amendments that it believes are necessary to implement the Act. It also requests comments on a variety of issues, including but not limited to the following: whether "children" should be defined as 12 years of age or younger for the purposes of the limits on commercial matter, as well as for the programming requirements; the definitions of "commercial matter" and "program"; the penalties for exceeding the limits on commercial matter or failing to meet the programming requirements; the record-keeping requirements necessary for enforcement of the Act; whether broadcasters should be required to target their programs to particular segments of the child audience; the definition of "educational and informational" programming and the standards for assessing the needs of children in this regard; the definition of "program-length commercials"; and the use of interactive toys in conjunction with children's programs.

With respect to the application of the Act to noncommercial television broadcast licensees, the FCC expressly acknowledges that the Act and the legislative history are ambiguous. Therefore, the FCC specifically requests comment on the question of whether Congress intended the programming requirements of the Act to apply to noncommercial as well as commercial broadcast licensees. (The FCC acknowledges that, by definition, the Act's limits on commercial matter would not apply to noncommercial licensees.)

Management has carefully studied the Act, the legislative history and the FCC's Notice of Proposed Rule Making, and we have concluded that CPB's participation in this important proceeding is certainly warranted. It is an integral part of CPB's mission to encourage the growth of public broadcasting through its use for educational as well as instructional and cultural purposes, and to foster the continuing

development of programming that addresses the special needs of such unserved and underserved audiences as the nation's children. Accordingly, programming devoted to the needs of children has been a top priority of the CPB Television Program Fund for years. The children's television programming regulations at issue thus include significant policy implications for CPB, as well as for America's children and for public broadcasting as a whole. Therefore, CPB's own involvement in children's programming, in addition to its role as an advocate of the public interest on national regulatory issues affecting public broadcasting and the public served by public broadcasting, make it incumbent upon CPB to participate.

We have consulted with America's Public Television Stations (APTV), PBS, Children Television Workshop (CTW), and other representatives of public television stations and producers of children's television programs. We agree with the conclusion of APTV and PBS that there is some legal question about whether the Act was conceived or designed to regulate public broadcasters. The ambiguities in the statutory language, in conjunction with the repeated laudatory references to noncommercial broadcasters throughout the legislative history, suggests that the sponsors of the legislation were striving to bring the commercial broadcasters up to the high standards in children's programming already achieved and currently maintained by public broadcasters.

However, regardless of whether the legislative record demonstrates a need for applying children's programming requirements to public broadcasters, there can be no doubt that public broadcasting has a proven commitment to the goals on which the Act is based -- the proliferation of high quality programming designed to serve the informational and educational needs of America's children. It is an essential element of public broadcasting's mission -- past, present and future -- to serve the American public in this manner. Therefore, it must be stressed that, whatever legal conclusion the FCC reaches, public broadcasting stands able and willing to continue to contribute its resources, its experience and its expertise to meeting the goals of the Act by increasing both the quantity and quality of programming dedicated and available to children. Furthermore, public broadcasting should be prepared to go on the record and show that it has "served the educational and informational needs of children through the [licensees'] overall programming, including programming specifically designed to serve such needs." The message must be clear that children's programming is and will remain one of public television's highest priority whether or not this commitment continues on a voluntary basis or is compelled by regulation.

We are currently working closely with APTV and PBS in an effort to prepare and submit joint comments to the FCC on behalf of public broadcasting. We all agree that a unified position is preferable. However, the possibility of such a joint filing will turn on whether there is a consensus on the proper emphasis of the comments.

In sum, we recommend that CPB take this opportunity to convey the message set forth above. If the Board accepts this recommendation, then we are prepared to file comments on January 30, 1990 in the FCC rule making concerning the Children's Television Act of 1990. Accordingly, we request authorization from the Board, through the adoption of the attached draft resolution, to participate in this and future proceedings concerning children's television programming.

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