
The Children's Hour Revisited: The Children's Television Act of 1990

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Introduction

The Children's Television Act of 1990 [\(note 1\)](#) (Act) is an unusual piece of legislation. The Act is a rarity in an era in which the Federal Communications Commission (FCC or Commission) has given up many regulations [\(note 2\)](#) and has had many others overturned in court. [\(note 3\)](#) Not only does it provide for the setting of standards for broadcasting directed at children, [\(note 4\)](#) it places limits on advertising, [\(note 5\)](#) and forces broadcasters to explain their efforts in these areas when seeking license renewal. [\(note 6\)](#)

Congress and the FCC regard children's television with special importance. Children's high susceptibility to advertising [\(note 7\)](#) and lack of power in the marketplace have been the main justifications for regulating broadcasting aimed at them. [\(note 8\)](#) However, the FCC has not always been amenable to strict guidelines. [\(note 9\)](#) The Act of 1990 represented a dramatic turnaround in Commission action. Previously, the FCC had shown a desire to deregulate in the children's television area. [\(note 10\)](#)

The Act has displeased many, however, including both the staunchest supporters of protective legislation for children and broadcasters. [\(note 11\)](#) Parents' and children's advocacy groups disapprove of the way broadcasters are responding to the Act, [\(note 12\)](#) and broadcasters are uncertain how to respond to the Act's demand that they serve "the educational and informational needs of children." [\(note 13\)](#) The Act is vague, so vague that little positive action has occurred in children's television.

In the wake of this situation, many are calling for changes in children's television regulations, including limits on time and content of programs and a stricter definition of children's television. [\(note 14\)](#) But stronger regulations are bound to face challenges because of the difficulty in enforcing them, and because they may intrude on broadcasters' First Amendment rights.

I. The Act as of 1990

The Children's Television Act of 1990 has three basic features. It places time restrictions on advertising during children's programming, [\(note 15\)](#) requires broadcasters to make an effort to air programming that benefits children, [\(note 16\)](#) and informs broadcasters that, at license renewal time, compliance with these factors will be considered as part of their duty to program in the public interest. [\(note 17\)](#) The Act gives the Commission the opportunity to modify these limits after January 1993. [\(note 18\)](#) But with the rationale for the rule being to "protect children from overcommercialization," [\(note 19\)](#) it seems unlikely the ad limits will be relaxed.

Section 303b of the Act emphasizes the importance of this legislation. It allows the FCC to consider broadcasters' efforts in complying with the Act when reviewing license renewal applications. [\(note 20\)](#) The Commission may examine how well a licensee is following the advertising restrictions, and whether the licensee is meeting the "educational and informational needs of children." [\(note 21\)](#) In a small victory for broadcasters, the Act does not require them to keep specific or detailed records of their compliance. [\(note 22\)](#) They may even ask the Commission to consider their nonbroadcast efforts to educate children or their support of other licensees' child-oriented programming within the same market. [\(note 23\)](#) There are no minimum amounts required for this type of programming, nor are there any descriptions of what qualifies as educational or informational television. [\(note 24\)](#)

The advertising restrictions are perhaps the clearest of the three rules. Section 303a commanded the Commission to follow rulemaking proceedings that resulted in limits on advertising of 10.5 minutes per hour on weekends and twelve minutes per hour on weekdays during child-oriented broadcasts. [\(note 25\)](#) Children's programming is generally defined by the FCC as that geared toward children under twelve. [\(note 26\)](#) These rules apply to cable operators as well as over-the-air licensees. [\(note 27\)](#) All types and lengths of programs for children must meet the requirements, including "short segment" programming (programs less than half an hour long). [\(note 28\)](#) Some general, all-age programming may be used to fulfill the Act's programming requirements if these shows are beneficial to children. [\(note 29\)](#) Congress has made it clear, however, that a licensee does not meet its obligation to younger viewers if it does not show some programming made expressly for them. [\(note 30\)](#)

When Congress passed the Act, it found that television could be an important tool in educating children; [\(note 31\)](#) therefore, part of the broadcaster's duty to serve the "public interest" requires it to provide programming for

children.[\(note 32\)](#) Also, broadcasters are asked to consider "the characteristics of the child audience" in making programming and advertising decisions.[\(note 33\)](#)

The FCC has articulated several reasons for regulating in this area. One is that broadcasting is to be made in the public interest,[\(note 34\)](#) and it is in the interest of children to protect them from the persuasions of advertising.[\(note 35\)](#) Also, it is in the public interest to promote the educational needs of children.[\(note 36\)](#) The immaturity of children is another factor the Commission has considered when creating regulations for children's television.[\(note 37\)](#)

Regulation of children's broadcasting dates back to the 1970s.[\(note 38\)](#) The FCC submitted its first major statement on the issue in 1974[\(note 39\)](#) and it was affirmed by the United States Court of Appeals for the D.C. Circuit.[\(note 40\)](#) This policy statement avoided direct regulations, and instead required broadcasters to make a "meaningful effort" to provide more children's programming.[\(note 41\)](#) It also placed limits on advertising and asked that television stations make an effort to keep programs and commercials separate.[\(note 42\)](#)

In the 1980s, the Commission paid little attention to how broadcasters programmed for children. In its 1984 Report and Order, the FCC stated that television was adequately serving the needs of children,[\(note 43\)](#) and that any greater regulation would overburden the broadcast industry, possibly *reducing* the quality of programming available for children.[\(note 44\)](#) The diversity of television-type resources available with which to educate and entertain children was cited as a reason for this new direction.[\(note 45\)](#) The massive deregulation efforts of the Reagan administration also presumably played a part in the FCC's lack of regulatory effort.[\(note 46\)](#)

Children's interest groups quickly took the FCC to task for its deregulatory stance. The Court of Appeals for the D.C. Circuit held that it was within the FCC's power to consider other forms of television, such as video and cable, in deciding to curtail its programming regulations.[\(note 47\)](#) But two years later it found that the Commission had not adequately justified its reasons for dropping some regulations.[\(note 48\)](#) Because of the Commission's "long history . . . of separate treatment of children's television," it could not drop all of its regulatory measures without some clear, precise reasoning.[\(note 49\)](#)

Congress also became involved. Between 1985 and 1989, several bills were considered that proposed greater regulation of broadcasting for children.[\(note 50\)](#) A popular bill passed by both the Senate and the House of Representatives[\(note 51\)](#) (and endorsed by many in the broadcast industry)[\(note 52\)](#) was pocket vetoed by President Reagan in 1988.[\(note 53\)](#) By 1990, however, Congress had created a new law that was enough to force the FCC to act in the area of children's television.[\(note 54\)](#) Various groups have asked the FCC to either clarify or strengthen the regulations contained in the Act.[\(note 55\)](#) The Commission has thus far declined to extend the Act into the areas of program-length commercials, or to define further what kind of programming it considers the most educational for children. The FCC has recently requested comments on how the law is working,[\(note 56\)](#) suggesting that it will be more active in enforcing the current rules.[\(note 57\)](#)

II. Issues Since Enactment

A. The Advertising Restrictions

Congress was very specific regarding the action the FCC should take against advertising shown during children's programs. The Act commands the Commission to limit commercial broadcasting to 10.5 minutes per hour on weekends, and twelve minutes per hour on weekdays.[\(note 58\)](#) These rules apply to all stations, broadcast and cable,[\(note 59\)](#) and to all lengths of programs.[\(note 60\)](#) The limits were likely set in response to several surveys that demonstrated that television stations in the 1980s, after the FCC's repeal of its commercial guidelines, often broadcast far more than twelve advertising minutes per hour, especially in the larger markets.[\(note 61\)](#) A study conducted by Action for Children's Television found stations airing as much as fourteen minutes per hour of advertising during children's programs.[\(note 62\)](#) A 1990 study concluded that, overall, stations in a wide range of cities were within the time limits, but that cable and independent broadcast stations showed far fewer commercials than did broadcast network affiliate stations.[\(note 63\)](#)

The Commission itself has conducted random reviews of ads being broadcast in order to check up on its licensees.[\(note 64\)](#) An audit conducted in January 1992 came up with ten violations out of more than 160 television stations and cable systems inspected.[\(note 65\)](#) Fines of up to \$20,000 were levied on three stations cited as violators, with three others receiving admonishments from the FCC.[\(note 66\)](#) The latter punishment carries a higher fine for repeat offenders.[\(note 67\)](#) A spokesperson for the FCC has indicated more audits are likely in the future.[\(note 68\)](#)

More recently, several stations that had turned *themselves* in were fined.[\(note 69\)](#) These stations and the one involved in the 1992 audit were cited for either violating advertising time limits or for airing commercials advertising a product connected with the show being aired.[\(note 70\)](#) Although not specifically part of the Act, broadcasters have been asked to distinguish programming from commercials when children are the majority of the audience.[\(note 71\)](#) This request arises from the perception that young children cannot separate ads from programming and are easily swayed by commercial matter.[\(note 72\)](#)

Broadcasters remain unclear on what constitutes compliance. One recent violator, Superstation WTBS in Atlanta, was admonished for going over the weekday advertising time limits.[\(note 73\)](#) The station challenged the FCC's finding, because it believed that ads promoting programming on other stations owned by Turner Broadcasting should not be counted as "commercial matter."[\(note 74\)](#) WTBS argued that these ads did not have to meet the FCC's standards because the ads were not sold for money to the broadcaster.[\(note 75\)](#) The Commission, however, defined "sold" as any situation where the broadcaster receives "valuable consideration" from the advertiser, and it stated that in this case, WTBS received such consideration either directly or indirectly.[\(note 76\)](#) For this violation, WTBS received only an admonishment because it agreed to monitor this practice more carefully in the future.[\(note 77\)](#)

While proponents of the Act hope these fines and punishments will create more compliance with the ad limits,[\(note 78\)](#) some broadcasters have stated that it takes too much time and money to comply with the Act.[\(note 79\)](#) It has been suggested that some broadcasters may simply give up trying to program for children for fear of sanctions if they do not comply.[\(note 80\)](#) The FCC's past relative leniency with most violators,[\(note 81\)](#) and the fact that the Act places an affirmative duty on broadcasters to program for children, make it unlikely that stations will completely abandon children's programming.[\(note 82\)](#)

One way broadcasters have dealt with both the ad limits and the duty to program for children is with "kids clubs." The clubs show informational or educational spots between children's programs, which are tied together by an on-air host.[\(note 83\)](#) Most clubs send a newsletter containing ads to members, providing a way for the sponsoring station to sell more advertising without violating time limits.[\(note 84\)](#) The Fox network Kids Club has some 4.5 million members across the country.[\(note 85\)](#)

B. Center for Media Education Report

After the Act had been law for one year, the Center for Media Education (CME), a Washington-based consumer watchdog group, released a study analyzing broadcasters' compliance with the Act's programming requirements and studying whether the Act was achieving Congress's and the FCC's goals for children's programming.[\(note 86\)](#) The CME (in conjunction with the Institute for Public Representation at the Georgetown University Law Center) reviewed the license renewal applications of stations in fifteen markets--five large, five midsize, and five small markets. These markets were in the eight states with the first stations that would have to follow the Act's logging requirements for renewal. A total of fifty-eight stations' applications were reviewed as part of the study.[\(note 87\)](#)

The study's findings were not positive. The information logged by the stations did not indicate their attempts to program for children. Few shows were being created to meet the Act's goals, and those broadcast were aired sporadically or at odd hours (after midnight, for example). And stations' "educational or informational programming" was often just the same old reruns or cartoons with new descriptions.[\(note 88\)](#)

1. Information Provided on Compliance

The report found that more than 25 percent of the stations reviewed never logged the time, date, or length of the

programs they cited as fulfilling their duty to program for children.[\(note 89\)](#) The reason for this lack of specificity is that the Act does not say what licensees must submit at renewal time. With no set standards, the renewal submissions reviewed by the CME ran from just one page to fifty pages.[\(note 90\)](#)

Many stations that did file more than a few pages were less than helpful in explaining what they had done to program for children. Some just listed programs shown, with no explanation of how these shows were educational or informational (or if they were for children at all).[\(note 91\)](#) But with no guidelines from the FCC on what licensees should submit, it should come as no surprise that the actual submissions were inadequate.[\(note 92\)](#)

Until 1993, the Commission seemed unconcerned with the quality of the submissions it was receiving from broadcasters. In 1993, however, the Commission delayed renewing the licenses of seven midwestern stations until more information was provided on the stations' compliance with the Act.[\(note 93\)](#) Out of some 320 renewal applications reviewed by the Commission since the Act became law, these seven stations were the first to receive greater scrutiny from the Commission.[\(note 94\)](#)

With President Clinton setting a more active, regulatory mode for the country and the government, the FCC may become more involved in enforcing the children's programming rules.[\(note 95\)](#) It may take this sort of involvement to bring broadcasters into compliance; until now there has been little to no incentive for them to change the shows they provide for children.

2. Timing of Children's Programs

The stations that did submit evidence of times and dates of children's programs did little better. It seems that when broadcasters do go to the trouble of showing an educational, informational, interesting children's show, they show it at a time when almost no child would be (or should be) watching television. Of those stations that provided program times, children's news shows were broadcast between 5:30 and 7:00 a.m. nearly 60 percent of the time.[\(note 96\)](#) Other shows were broadcast after midnight. Programs shown at more acceptable hours, such as weekend afternoons, often were shifted from time slot to time slot or, worse, frequently preempted.[\(note 97\)](#)

The Act sets no standards for when children's programming should run. Indeed, many in favor of the Act had hoped it would provide some variety beyond the usual Saturday morning fare.[\(note 98\)](#) Instead, the lack of standards has made it harder for children to watch shows geared for them.

3. Is *G.I. Joe* Educational?

Some broadcasters would argue that cartoons such as *G.I. Joe* are educational. A New Orleans television station said *G.I. Joe* covered "[i]ssues of social consciousness and responsibility."[\(note 99\)](#) Other shows used by broadcasters to meet children's programming needs included *Chip 'n Dale Rescue Rangers*, *Super Mario Brothers*, and *Yo Yogi!*, where in one episode a character catches a "bank-robbing cockroach" by "using his head, rather than his muscles."[\(note 100\)](#) *Santa Claus Is Coming to Town*, a Christmas special, is even considered educational because it "answers some of the mysteries, myths, and questions surrounding the legend of Santa Claus."[\(note 101\)](#)

It is unlikely that most people would consider these shows educational, or even informational, but broadcasters contend they are.[\(note 102\)](#) Plot summaries are twisted into moral lessons that supposedly teach good values. Worse, some stations are even willing to place *all* cartoons in the educational category.[\(note 103\)](#)

Even if broadcasters are not willing to go so far as to label cartoons educational, they still call them "pro-social."[\(note 104\)](#) Since the FCC has demanded broadcasters meet children's "cognitive/intellectual or emotional/social" needs,[\(note 105\)](#) broadcasters have generally focused on the latter--not that this has meant a change in what they broadcast. Instead, a "pro-social" program is one that shows any kind of "message," no matter how far one has to stretch to find it.[\(note 106\)](#) Even now, several years after enactment of these policies, children's programs still bear little resemblance to the FCC standards. For the fall 1993 children's TV lineup, ABC tried to push *Tales from the Cryptkeeper*--based on HBO's adult horror series--as a way to teach children "a wonder-filled morality lesson."[\(note 107\)](#)

Broadcasters even try to place all-age programs into these categories. While the FCC allows stations to use some general programming to meet their Act requirements, such shows are not alone sufficient.[\(note 108\)](#) Yet many stations in the CME report were found to have simply given lists of such programs without specific reference to how they filled the needs of children.[\(note 109\)](#) The kinds of programs listed were not always what most people would consider appropriate for children, either[\(note 110\)](#)--how many parents of young children would want them to be educated by *Hard Copy*?

It is easy to see, however, why the broadcasters sampled for this study acted this way. Nothing in the Act said cartoons could not be used as informational/educational/pro-social programming,[\(note 111\)](#) and some cartoons probably do meet those standards.[\(note 112\)](#) With so little to follow, most broadcasters assumed that they might as well list anything vaguely related to children.[\(note 113\)](#)

Broadcasters have given four reasons why they cannot immediately comply with the Act, especially with the slow economy.[\(note 114\)](#) Children's shows are often expensive to produce, yet they do not bring in much revenue. Broadcasters argue it takes time to create good children's programs, and two years is just not enough time to judge their efforts.[\(note 115\)](#) Also, some stations *had* to air cartoons because they had contractual obligations.[\(note 116\)](#) Finally, new programs are being produced, the CME study found,[\(note 117\)](#) but these programs are shown infrequently or at inappropriate hours for children to watch.[\(note 118\)](#)

C. The FCC Responds

The FCC began to look into these issues concerning children's television after the CME report came out. Whether the Commission's actions were taken out of shame, in response to public demand, or as part of a new, more activist FCC under President Clinton is not clear.[\(note 119\)](#) But it does appear the Commission will take the Act more seriously in the future.[\(note 120\)](#)

The first step the Commission took was to let broadcasters know they cannot count cartoons toward their educational programming requirement.[\(note 121\)](#) Educational means educational, the FCC said, although for the moment it is declining to go much beyond that for an explanation. A program designed to be educational will be in compliance; one that merely happens to have a buried message or a social theme will not fit the standard.[\(note 122\)](#)

The Commission also sought comments on the Act,[\(note 123\)](#) perhaps unsure of how it should handle a more regulatory stance. The FCC can impose more clearly defined or stricter rules, and may well do so.[\(note 124\)](#)

The Commission also signaled a renewed regulatory effort in holding up the license renewal applications of seven stations until they further explain their compliance with the Act.[\(note 125\)](#) It would be unusual for the Commission to withhold a license for something other than felonious acts,[\(note 126\)](#) but the threat of losing one's license will certainly have broadcasters thinking about how to better comply.

Broadcasters are concerned about the CME study and the recent FCC announcements, but they have little recourse. Congress strongly backs the idea of greater FCC intrusion into broadcasters' programming, especially where children are concerned. House telecommunications subcommittee Chairman Edward J. Markey (D-Mass.) stated, "Broadcasters, beware. The new era has begun."[\(note 127\)](#)

The broadcast industry may have to brace itself for the worst. At the time this Note was submitted for publication, a bill was to be introduced in the House by Representative Ron Wyden (D-Or.) that would require stations to broadcast an hour of preschool programming every week.[\(note 128\)](#) Their arguments that new programming takes time will meet with little success, considering that members of Congress already feel stations are taking too long to comply.[\(note 129\)](#) As one person testified at a 1993 hearing, it took the Public Broadcasting Service less than six months to produce quality children's television.[\(note 130\)](#) Broadcasters can only alienate their viewers--especially parents--by resisting governmental efforts to help America's future--its children.

Commentators express doubts that commercial broadcasters are capable of policing themselves.[\(note 131\)](#) Broadcasters gave in without much of a fight when the Act was passed in 1990, and they may have to do so again to avoid

embarrassment and bad publicity. It appears that neither the government nor the public is on their side.[\(note 132\)](#)

III. Redesigning the Act to Better Meet Its Goals

The FCC recently asked for comments on the Children's Television Act.[\(note 133\)](#) Specifically, it asked for opinions on how the Commission might better implement the Act, through new, revised rules and clearer explanations of what the rules require.[\(note 134\)](#) Sometime in 1994 the Commission will announce what it wants from broadcasters concerning children's programming.[\(note 135\)](#) But based on the problems with the Act already noted, it is likely the Commission will regulate in three main areas: penalties, content, and time.

A. Penalties Could Be Harsher

While the Act is noted for the wide latitude it gives broadcasters, it also gives the FCC great freedom. For example, the FCC may modify the advertising regulations at any time provided that proper notice is given, public comment is permitted, and there is "a demonstration of need."[\(note 136\)](#) The FCC also may consider broadcasters' advertising and programming compliance when renewing licenses;[\(note 137\)](#) when violations occur there are no restrictions on what type of penalties the Commission can impose. So far, the FCC has reacted to violations by handing out admonishments and fines,[\(note 138\)](#) and by delaying the renewal applications of a few stations.[\(note 139\)](#)

If the Commission is serious about its renewed efforts to enforce the Act, then it will take advantage of its freedom and levy harsher penalties on violators. An admonishment seems appropriate in instances of small violations, as in the WTBS case.[\(note 140\)](#) But a heavy fine or license removal for repeat offenders would please supporters of the Act.[\(note 141\)](#)

The largest fine the FCC has handed down for a violation of the Act is \$20,000.[\(note 142\)](#) While this is a fairly substantial amount, it is not enough to get a broadcaster's attention automatically. A station may find a fine of this size is worth it if it recoups the loss by selling more ads per hour than allowed or by programming to audiences other than children. A series of fines, however, might have greater effect. The FCC should follow up on the progress of the stations it has found not in compliance.[\(note 143\)](#) If it finds stations have not corrected their errors or are not programming for children, larger fines could be imposed.

When the Act first came into existence, the Commission stated it had the right to audit broadcasters randomly, but that it would not then do so.[\(note 144\)](#) Since that time, it has chosen to audit stations without telling them.[\(note 145\)](#) Until broadcasters show greater willingness to comply with the Act, the FCC could step up these audits, doing them more often and in greater detail. Everything Congress has said regarding the Act indicates it would support such efforts and any fines that result from them.[\(note 146\)](#)

Beyond just fines and admonishments lies broadcasters' greatest fear--the license removal. Currently license renewal is essentially a perfunctory act, with no licenses denied, and very few applications delayed.[\(note 147\)](#) If the FCC wants to force compliance with the Act, all it needs to do is introduce the specter of a license not being renewed to bring broadcasters in line.[\(note 148\)](#) This is a strong punishment, and one the Commission would not lightly impose. But for repeat offenders, it seems appropriate. A license to broadcast is granted so the broadcaster can program in the public interest. Congress has determined broadcasting for children is part of the public interest. If the broadcaster cannot meet these standards, license removal is an appropriate response.

Before the FCC takes a license away, it needs concrete evidence of the broadcaster's lack of compliance. The best way for the Commission to get this would be through the information provided by the station itself when it files for license renewal.[\(note 149\)](#) To make sure it is getting the information it needs, the Commission will have to create more detailed guidelines.[\(note 150\)](#) As previously discussed, there is no consistency in what broadcasters turn in to demonstrate their efforts to program for children.[\(note 151\)](#) To remedy this, the FCC could create a sample format for broadcasters to follow, letting them know when lists of programs are appropriate and when more detailed explanations are required. The Commission could also require broadcasters to explain why the show was broadcast when it was, and what audience the broadcaster was targeting.[\(note 152\)](#) Broadcasters could also be asked to keep separate lists of their

efforts to program to children through all-age shows or how they complied by supporting other stations' programming. These areas could also be documented in detail, with explanations of how they show an effort to reach the child audience.

Obviously, compliance will take a great deal of effort on the part of broadcasters. But when faced with the prospect of losing a license, most will comply.

B. Further Definition of "Educational" Children's Television Is Necessary

Before the Commission starts revoking licenses, it needs to further define informational and educational children's programming. [\(note 153\)](#) It took a step in that direction when it announced that cartoons are not. [\(note 154\)](#) The Commission stated that it wants stations to cite programs that are meant to be educational and informational, not just those that happen to contain a lesson or useful knowledge for children. [\(note 155\)](#)

One possible way to define educational would be to limit it to nonfiction programming. [\(note 156\)](#) Of course, this leaves out a wide range of fiction programs that have the power to educate or inform. Others have suggested that no commercially oriented programs count toward the requirement, [\(note 157\)](#) but that could remove shows like *Sesame Street* or *Winnie-the-Pooh*, shows that have been merchandised heavily due to their popularity, but that still have the power to educate. [\(note 158\)](#) The Commission could base its decision on whether the show was made around an already-existing toy or game (like *Super Mario Brothers* or *G.I. Joe*), [\(note 159\)](#) but that seems a rather arbitrary decision, sure to cut out some deserving programming while allowing in some overly commercial shows. Because of these problems, the Commission might best serve all interested parties by using the nonfiction definition of educational, perhaps allowing some fiction in under the "informational" banner.

Many supporters of the Act would like to see commercially oriented programs wiped out altogether. [\(note 160\)](#) While it is unlikely the Commission would go that far, it does have the power to create more regulations for program-length commercials. The Commission was given authority to make rules about such shows, but declined to adopt a very strict definition of what they are. While most activists would define them as any show built around a game or toy, [\(note 161\)](#) the Commission refers to them as "a program associated with a product in which commercials for that product are aired." [\(note 162\)](#) To avoid being one of these shows, all a broadcaster must do is not show a commercial for the toy *during* the program. But nothing stops a station from advertising the toy in the programs preceding and following the toy's show. [\(note 163\)](#)

If the Commission adopted the less restrictive definition of program-length commercials, broadcasters would face the possibility of having too many ads per hour because the entire program would be an ad. If the Commission wants to force broadcasters into showing fewer commercials and more educational programs, this would be a quick way to do it.

The Commission could also refuse to allow stations to count adult or all-age programs toward their requirement to provide educational programming for children. [\(note 164\)](#) The Center for Media Education report found broadcasters highlighting the news as well as all-age shows as being beneficial for children. [\(note 165\)](#) While news programs, both local and national, are undoubtedly educational for children sometimes, news shows certainly are not broadcast just for children. It is likely that many news programs do not make sense to younger viewers. The FCC ought to make clear that these kinds of programs can only be used to round out a broadcaster's programming for children. In addition, the FCC could require that a station show how news programming specifically benefits children before such programming would fulfill a station's educational requirement. [\(note 166\)](#) Such a rule would avoid the problem the Center for Media Education found in its study--stations listing shows such as *Hard Copy* or *The Jerry Springer Show* without saying which episode or broadcast was informational for children. [\(note 167\)](#)

Categorizing children's programming would help broadcasters create a good mix of programming types. [\(note 168\)](#) For example, educational programs could make up 30 percent of the children's programming requirement, with informational shows making up another 20 percent, entertainment programs filling up another 30 percent, and the rest left to the station's discretion. Placing limits such as these would prevent broadcasters from showing the same kind of programs over and over, and would perhaps force some creativity.

The FCC could also extend the Act to make age-group programming requirements.[\(note 169\)](#) One congressman has suggested forcing broadcasters to program to preschoolers one hour a week.[\(note 170\)](#) If Congress were willing to pass legislation for that age group, other age groups probably would not be far behind. It should be easy enough to divide children into age groups: preschool (2-4), early elementary (5-9), preteen (10-12), early teen (13-15), middle teen (16-18). Making such divisions might even make compliance easier for broadcasters, because it would give them a wider range of options for programming. These divisions would also further the Act's goal of promoting diversity of programming for children.

C. Showing Children's Television When Children Are Watching

Content restrictions and regulations will not make a bit of difference for children if broadcasters continue to run educational children's television at hours when children are not likely to be viewers.[\(note 171\)](#) Therefore, the FCC needs to set guidelines for when children's programming is broadcast. The Commission could be restrictive about this kind of regulation, perhaps setting up a "children's viewing hour" every night of the week. Or it could be more general and simply say programs shown after a certain hour at night, say 10 p.m. on weeknights, would not be eligible for consideration at license renewal time.[\(note 172\)](#) The same rule would be applied to shows shown very early in the morning; no programs before 7 a.m. could be used to show compliance.[\(note 173\)](#)

If the FCC adopts regulations creating age-group programming categories, then times could be adopted to fit each category. This could allow more flexibility to broadcasters. Preschoolers could be targeted during the day, when they would more likely be at home; programs for older teens could be shown after school or even later at night on the weekends.

Rules like these could mean extra work for everyone involved. The FCC would have more difficulty monitoring stations, and stations would have more headaches trying to keep track of all the categories and times for each one. These rules certainly will not make compliance with the Act any simpler, but they might make children's broadcasting a little better for children.

IV. Problems with Creating More Children's Television Regulations

More rules and regulations may sound like the answer to the problems with the Children's Television Act, but there is no guarantee the FCC will adopt such measures. First, the Commission might not agree these suggestions would work, and even if it did, it may not want to expend the effort. Implementing more rules could require more supervision than the Commission could handle. In these days of budget and staff cuts, there might not be enough people or money to spend on monitoring broadcasters so closely. While the Act is undoubtedly important to the Commission, it is not the only regulation the agency has to administer. Perhaps newer technologies and other areas of the communication world will be of more pressing concern to the FCC.

Even if the Commission would like to implement a slew of new regulations, it might not be able to do so. Broadcasters are sure to rebel against strict rules, especially ones involving what kind of programming they show.[\(note 174\)](#) While the public may not side with broadcasters on these issues, it is possible courts will. Good intentions aside, the regulation of content and program timing may not pass constitutional standards.

A. The First Amendment Could Prevent Stricter Regulations of Children's Television

The Act in its present form is apparently constitutional. Broadcasters must air programming in the public interest, because there are not enough broadcast outlets for everyone to use.[\(note 175\)](#) The rationale for this greater level of intrusion is "spectrum scarcity"--the lack of opportunity for the general public to be heard over the airwaves.[\(note 176\)](#) Because not everyone can operate a broadcast station, those who do may only do so by acting as a public trustee.[\(note 177\)](#) Congress and the FCC cannot tell a broadcaster what to program, but they can stop or modify certain kinds of

programming where a substantial government interest exists.[\(note 178\)](#) Congress indicated that the protection of children from the evils of advertising and the importance of educating American youth were substantial enough reasons to create the Children's Television Act, and broadcasters apparently did not feel overly burdened by the Act.[\(note 179\)](#) While broadcasters have complained about the restrictions imposed by the Act,[\(note 180\)](#) there has been no litigation so far, probably due to the fact that the Act has not yet required much action from stations.

A stronger version of the Act could lead to litigation, especially if the FCC imposes more content-based regulations. Rules that will not let broadcasters use cartoons to satisfy the children's programming requirement could be viewed as forcing stations to air a certain kind of programming, something much more direct and specific than the Act now requires.

Similarly, time limitation regulations of that kind force a broadcaster to air a certain kind of programming at a certain time, removing the broadcaster's right to choose what he or she airs. Broadcasters would undoubtedly see such a regulation as infringing on their First Amendment right to speak free from government coercion.[\(note 181\)](#)

Congress has not given the FCC the authority to interfere with what broadcasters say once they are licensed.[\(note 182\)](#) Courts, too, have noted that once the license is granted, the Commission must allow broadcasters their right to speak free from government control.[\(note 183\)](#) The only way the Commission can impinge on that right is to have the restriction narrowly tailored to meet a substantial governmental interest.[\(note 184\)](#)

Congress and the courts have found that the interest in protecting children is substantial.[\(note 185\)](#) The Act, as currently written, is apparently tailored narrowly enough to be constitutional. But more regulation could easily be seen as too broad because more content restrictions may interfere with what a broadcaster airs, yet might not improve children's television any more than the current rules do.

If one balances the broadcasters' right to program what they want against the government's interest in children, it is not clear that the government should win. It is a question of how substantial the government's interest is, especially if the interest is defined as educating children. Congress cannot promulgate a law inhibiting the broadcasters' right to program what they choose unless there exists a strong reason for doing so.[\(note 186\)](#) In addition, this power is only to be used when there is no other way to correct the problem.[\(note 187\)](#)

The main question to be answered is whether television is the cause or the solution to the problem Congress has identified. It is all very well and good to say children are the country's future, and it is important that they catch up with the children of other nations, but as one broadcaster has pointed out, why should broadcasters be responsible for educating them?[\(note 188\)](#) Congress cannot force broadcasters to become teachers. If education were the problem, then perhaps Congress should appropriate more money to the public school systems. There is no clear relationship between the aims of the Act and children's programming, which makes it difficult for Congress to substantiate its proposals for more regulation.[\(note 189\)](#)

The current rules of the Act place only an affirmative duty on the broadcast industry to program for children in some way.[\(note 190\)](#) It could be argued, however, that better defining that duty would not be content regulation at all, and therefore would not make the Act susceptible to constitutional challenge. Regulation of children's television may not be a limit at all, as it does not require any certain programming to be broadcast.[\(note 191\)](#) The FCC should not come under attack if it further clarifies the definition of educational and informational television. By proposing that cartoons, all-age shows, and adult news programs should not satisfy the children's programming requirements, no greater burden would be placed on the broadcasters than now exists under the Act. But if the FCC starts telling stations how many educational/informational shows they must program, and how often they may show entertainment for children, the law will be unenforceable. It is too great a restriction, and it will not clearly promote the government's interest in protecting children.

The same is true of time restrictions, other than the most basic ones. It is not too much to ask broadcasters to show programs for children at hours when they will be watching television. The *Pacifica* Court already decided that broadcasters may only air programs unsuitable for children when they will not be tuning in.[\(note 192\)](#) To require the reverse is surely no greater burden for broadcasters. It is common sense that the goals of the Act can never be met if children are not exposed to the programming designed for them.

But a regulation imposing strict time restrictions could be going too far. Setting specific times every day when programs for children must be broadcast takes away all freedom of decision. The interest in providing quality television for children is not so great that the government has the right to intrude this deeply into a broadcaster's decisionmaking process.

In no other area does the FCC tread so far into programming. The Commission has often told stations what they cannot show, [\(note 193\)](#) but time restrictions go much further. Such rules keep a broadcaster from showing a different program--one that might also have high quality and be of interest to another group. The FCC does not have the power or the right to set tight restrictions on when stations can program for children.

Whether Congress or the Commission can classify children by age groups within the Act's rules is a more interesting question. No substantial governmental interest for doing so has been put forward, but such an interest could exist if the FCC compiled data showing such regulation is important. However, the fact that different age groups have different needs would not be a sufficient governmental interest, unless it could be shown that the educational needs of certain age groups are currently not being met (which seems highly likely). More information would be required to prove such a theory.

The FCC could satisfy many viewers concerned with children's television if it adopted regulations to rid television of the much despised program-length commercial. [\(note 194\)](#) Commercial speech has less constitutional protection than other kinds of speech, [\(note 195\)](#) and therefore is more easily regulated. Adopting a tougher definition of the "program-length commercial" would certainly be within the government's interest, because the Act is designed to protect children from the dangers of commercials. While defining a "program-length commercial" as any show created around a toy is less narrow than the current definition, it is not overly restrictive. Even the toymakers admit such shows are just another way of marketing their products. [\(note 196\)](#)

The problem with regulating this way is that it discriminates between commercial shows and shows that were not originally commercial, but which now have toys to go along with them, such as *Sesame Street*. It does not seem consistent that *Sesame Street* can continue to be "educational" just because it was an educational program before it produced a line of dolls and toys, while *G.I. Joe* must be considered purely "commercial" because the toy came before the cartoon series. [\(note 197\)](#)

If the FCC were to institute a rule prohibiting programs created around established toys, marketers could easily subvert the rule by creating programs featuring a not-yet marketed toy. The toy company could then start selling the toy right after the show began to air. Of course, this action could be risky because the toy has not yet proven popular, but toymakers looking for more sales would probably do whatever they deem necessary to sell their products.

The potential failure of such a rule would likely keep the FCC from ever passing it. But the FCC could make other rules that perhaps limit the time and number of program-length commercials that could be shown. Such limitations would probably pass the "substantial governmental interest" test without placing too much of a burden on broadcasters. This type of rule would not stop broadcasters from showing commercially oriented cartoons; it would just limit the times they could be shown.

Many of the regulations suggested would likely survive constitutional challenge, but broadcasters might have one more valid argument. With the proliferation of media available--cable channels, videocassettes, and interactive television, to name a few--broadcasters could argue that not only is spectrum scarcity an obsolete idea, but so is the notion that children are not getting what they need from television. [\(note 198\)](#) Cable channels are full of kids' programs ranging from the Discovery Channel to the child-oriented Nickelodeon network. The FCC itself espoused such an idea back in 1985 when cable was available to an even smaller percentage of homes than it is now. [\(note 199\)](#)

Still, the risk that some children would not receive cable or have access to other media exists. [\(note 200\)](#) Supporters of the Act would not want to see the child audience divided into those who can afford educational television and those who cannot. [\(note 201\)](#) Until cable and VCRs become as common as telephones, this argument will not be taken seriously. Broadcasters must program in the public interest no matter what their actual competition is doing.

B. Problems with Content Definition

If content-based regulations were constitutional, they might still be hard to enforce or, for that matter, write. Defining educational television too narrowly would not serve the purposes of the Act, because there would be no room for growth. Broadcasters are not risk takers, so they probably would find the least objectionable programming format and stick with it--forever. Diversity of programming is not served by setting narrow limits.[\(note 202\)](#)

Of course, defining the Act broadly has not been successful either.[\(note 203\)](#) Finding the middle ground will be a difficult task for the FCC, especially when one considers that most of those making suggestions on how to enforce the Act have a vested interest in the final outcome.

Requiring too much educational programming could even cause a backlash among the viewers; children do not want to watch the same kind of show all the time any more than adults do. Driving them away from children's television might be helpful for their education, but not necessarily. Children might just watch adult programs instead.

While the Act encourages educational programming, it cannot go so far as to wipe out entertainment programs for children.[\(note 204\)](#) Television is not school, nor should it be. It has an incredible hold over people, especially children,[\(note 205\)](#) but not so great a hold that it must be taken over by the government and used only for educational purposes. The FCC must keep in mind that no matter how great the urge to regulate, the regulation must accomplish something. Regulations will not protect children unless they are artfully crafted to do so.

C. How Much Can the Broadcaster Bear?

With any regulations come market concerns. If the FCC forces broadcasters to create new children's shows--shows without a built-in commercial sponsor--how will the broadcasters pay for them?[\(note 206\)](#) The fact that stations will have to create new shows--not rely on old reruns--will also be costly.[\(note 207\)](#) Because of their limited potential audience, these new programs will not have the ability to generate profit as well as all-age shows.[\(note 208\)](#)

Over-the-air stations could lose out to cable television systems, which do not receive licenses and therefore cannot be so sanctioned for not following the Act.[\(note 209\)](#) If the audience did not watch the new educational programs, broadcast stations would lose advertising revenue.[\(note 210\)](#) The advertisers may go to cable if cable's audience grows and stations' viewers diminish.

In the past, the FCC has almost gone out of its way to ensure that broadcast television survives against the onslaught of cable television.[\(note 211\)](#) But broadcast television may be losing its favored position. A U.S. representative on the House telecommunications subcommittee stated that producing quality children's shows would be like a "payback" from broadcasters for all the benefits the industry has received in the past.[\(note 212\)](#) The era of broadcast protectionism could be over, and broadcasters may have to learn how to compete with cable. If the market will not support over-the-air television as well as it did before cable, broadcasters will have to scale down their industry.

Broadcasters could help themselves by using another section of the Children's Television Act to help pay for the new programs they must produce. The Act also established the National Endowment for Children's Educational Television, which provides grants to those wishing to produce educational programming for children.[\(note 213\)](#) The catch is that grants are given only to programs that will be aired on public or noncommercial television for two years after the show's creation.[\(note 214\)](#) After that time, the programs may be aired on commercial stations (as long as the programming is not interrupted with commercial advertisements).[\(note 215\)](#)

If Congress and the FCC decided to help broadcasters a little more, they could rewrite the endowment rules to provide some funding for commercial broadcasters. If Congress were serious about promoting educational television for children, all broadcasters should be able to receive funding to create such programming. Noncommercial stations may receive grants for children's programs because they lack the money to produce quality shows.[\(note 216\)](#) If commercial broadcasters could show they have the same problems, they should be able to receive some funding as well. Congress should help all broadcasters as long as the market cannot bear the costs of creating educational children's

programming. As a result, it is not just the broadcasters who could lose in this market situation, but the children as well.

Conclusion

The future of the Children's Television Act remains uncertain. The FCC's recent call for comments on how to implement the Act indicates that even the Commission is not sure what should be done to make television a more educational experience for young viewers. Congress appears to want to create more rules for promoting educational programs,[\(note 217\)](#) but more rules will not necessarily solve the problems of the overcommercialization of children's television and the lack of quality shows for children.

Instead, better definitions of what broadcasters should be doing will help if the Commission can ever decide exactly what educational television includes. By refusing to count cartoons as educational programming, the Commission has made an important first step toward making television more than just entertainment. If the Commission makes broadcasters air educational programs at times when children will be watching, the FCC will have taken another step in the right direction.

The Commission may enforce its goals through the use of fines and the threat of license delay or removal. But if the Commission abuses its power and goes too far by creating rules no one can live with or implement, there will be litigation. Broadcasters will not tolerate having their freedom taken away, and courts will not allow restrictive rules to stand if the FCC cannot prove regulations are absolutely necessary.

Ultimately, a compromise between the Commission and broadcasters is likely. The Commission can gain concessions from broadcasters if they work together, and broadcasters can avoid court battles where they might win their right to free speech but lose respect from the public. Such an alliance led to the enactment of the law in 1990. The Commission must be careful, though, to make sure that a compromise has some meaning and use. If new regulations fail to help the cause of children's television, another generation of children could be lost.

Notes

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1. Pub. L. No. 101-437, 104 Stat. 996 (codified at 47 U.S.C. secs. 303a-303b, 393a, 394 (Supp. III 1991)). [Return to text](#)
2. *See, e.g.*, In Re Complaint of Syracuse Peace Council against Television Station WTVH, *Memorandum Opinion and Order*, 2 FCC Rcd. 5043 (1987) (eliminating the Fairness Doctrine), *aff'd on other grounds sub nom.* Syracuse Peace Council v. FCC, 867 F.2d 654 (D.C. Cir. 1989). [Return to text](#)
3. *See, e.g.*, FCC v. League of Women Voters, 468 U.S. 364 (1984) (Commission cannot forbid editorializing by noncommercial stations); Century Comm. Corp. v. FCC, 835 F.2d 292 (D.C. Cir. 1987) (abolishing "must-carry" rules for cable television), *cert. denied*, 486 U.S. 1032 (1988). [Return to text](#)
4. 47 U.S.C. sec. 303a (Supp. III 1991). [Return to text](#)
5. 47 U.S.C. sec. 303a(b) (Supp. III 1991). [Return to text](#)
6. 47 U.S.C. sec. 303b(a) (Supp. III 1991). [Return to text](#)
7. *In re* Petition of Action for Children's TV (ACT) for Rulemaking Looking Toward the Elimination of Sponsorship and Commercial Content in Children's Programming and the Establishment of a Weekly 14-Hour

- Quota of Children's TV Programs, *Children's Television Report and Policy Statement*, 50 F.C.C.2d 1, para. 34 (1974) [hereinafter *Children's TV Report and Policy Statement*], *aff'd*, 564 F.2d 458 (D.C. Cir. 1977). [Return to text](#)
8. Michael J. Palumbo, *Broadcast Regulation, Has the Marketplace Failed the Children: The Children's Television Act of 1990*, 15 *Seton Hall Legis. J.* 345, 374-76 (1991). [Return to text](#)
 9. *See generally In re Children's TV Programming and Advertising Practices, Report and Order*, 96 F.C.C.2d 634 (1984) (outlining the FCC's decision against regulating children's television in the 1980s) [hereinafter *Advertising Practices Report and Order*]. [Return to text](#)
 10. *See, e.g., id.* [Return to text](#)
 11. Action for Children's Television (ACT), which is now defunct, has historically been the prime lobby group for stricter children's programming guidelines. For ACT's initial responses to the Act of 1990, see generally Peter D. Lambert, *Battlelines Drawn on Children's Rulemaking*, *Broadcasting*, Feb. 4, 1991, at 22. *See also* Patrick J. Sheridan, *FCC Sets Children's Ad Limits*, *Broadcasting*, Nov. 12, 1990, at 33. [Return to text](#)
 12. *See* Edmund L. Andrews, *Broadcasters, to Satisfy Law, Define Cartoons as Education*, *N.Y. Times*, Sept. 30, 1992, at A1, B8; *see also* Joe Flint, *Study Slams Broadcasters' Kids Act Compliance*, *Broadcasting*, Oct. 5, 1992, at 40; Doug Halonen, *Study Blasts TV on Service to Kids*, *Electronic Media*, Oct. 5, 1992, at 3; *Report Says Broadcast Stations Not in Compliance with Children's Television Law*, Daily Rep. for Executives (BNA) No. 190, at A-7, A-8 (Sept. 30, 1992). The main complaint is that television stations list cartoons as educational, socially conscious programming. A New Orleans television station listed the following plot summary for the cartoon *Bucky O'Hare*: "Good-doer Bucky fights off the evil toads from aboard his ship. Issues of social consciousness and responsibility are central themes of the program." Center for Media Educ. & Institute for Public Representation, Georgetown Univ. Law Center, A Report on Station Compliance with the Children's Television Act 6 (Sept. 29, 1992) [hereinafter Center for Media Educ.] (unpublished manuscript, on file with the *Federal Communications Law Journal*). [Return to text](#)
 13. *See* Randall M. Sukow, *The Serious Business of Children's TV Rules*, *Broadcasting*, Apr. 20, 1992, at 24, 24; *see also* Andrews, *Broadcasters, to Satisfy Law, Define Cartoons as Education*, *supra* note 12, at B8. [Return to text](#)
 14. The Center for Media Education, which did a study on the programming broadcasters list as educational, called for an FCC inquiry into the matter. Center for Media Educ., *supra* note 12, at 10. The FCC responded by releasing a notice of inquiry and seeking comment on how it should deal with problems in children's programming. *In re Policies and Rules Concerning Children's TV Programming Revision of Programming Policies for TV Brdcast. Stations, Notice of Inquiry*, 8 FCC Rcd. 1841 (1993) [hereinafter *Children's TV Programming Notice of Inquiry*]. [Return to text](#)
 15. 47 U.S.C. sec. 303a(b) (Supp. III 1991). [Return to text](#)
 16. 47 U.S.C. sec. 303b(a)(2) (Supp. III 1991); Educational and Informational Programming for Children, 47 C.F.R. sec. 73.671 (1992). [Return to text](#)
 17. 47 U.S.C. sec. 303b(a) (Supp. III 1991). [Return to text](#)
 18. 47 U.S.C. sec. 303a(c) (Supp. III 1991). [Return to text](#)
 19. *H.R. Rep. No.* 385, 101st Cong., 2d Sess. 14 (1990), *reprinted in* 1990 U.S.C.C.A.N. 1605, 1619; *see also* Sheridan, *supra* note 11, at 33. [Return to text](#)
 20. 47 U.S.C. sec. 303b(a) (Supp. III 1991). [Return to text](#)
 21. 47 U.S.C. sec. 303b(a)(2) (Supp. III 1991). [Return to text](#)

22. Center for Media Educ., *supra* note 12, at 3-4. [Return to text](#)
23. *See* 47 U.S.C. sec. 303b(b) (Supp. III 1991). [Return to text](#)
24. The FCC, however, has recently stated that entertainment programs, cartoons particularly, do not meet the "educational and informational" standard. *Children's TV Programming Notice of Inquiry*, *supra* note 14, para. 3 n.6. [Return to text](#)
25. 47 U.S.C. sec. 303a(b) (Supp. III 1991). [Return to text](#)
26. Commercial Limits in Children's Programs, 47 C.F.R. sec. 73.670 (1992). [Return to text](#)
27. *In re* Policies and Rules Concerning Children's TV Programming, Revision of Programming and Commercialization Policies, Ascertainment Requirements and Programming Log Requirements for Commercial TV Stations, *Report and Order*, 6 FCC Rcd. 2111, para. 1 (1991) [hereinafter *Children's TV Programming Report and Order*]. [Return to text](#)
28. *In re* Policies and Rules Concerning Children's TV Programming, *Memorandum Opinion and Order*, 7 FCC Rcd. 3197, para. 2 (1992) [hereinafter *Children's TV Programming MO & O*]. [Return to text](#)
29. 47 C.F.R. sec. 73.671 (1992). [Return to text](#)
30. *Children's TV Programming Report and Order*, *supra* note 27, para. 23. [Return to text](#)
31. H.R. Rep. No. 385, *supra* note 19, at 14, 1990 U.S.C.C.A.N. at 1619. [Return to text](#)
32. *Id.* [Return to text](#)
33. Educational and Informational Programming for Children, 47 C.F.R. sec. 73.671 (1992), reads: "For purposes of this section, educational and informational television programming is any television programming which furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs." [Return to text](#)
34. *See* *Red Lion Brdcast. Co. v. FCC*, 395 U.S. 367, 376 (1969); *NBC v. FCC*, 319 U.S. 190, 194 (1943). [Return to text](#)
35. *Children's TV Report and Policy Statement*, *supra* note 7, para. 8. [Return to text](#)
36. *See* Children's Television Act of 1990, Pub. L. No. 101-437, sec. 202, 104 Stat. 996, 997-98. Congress has also cited how poorly American children compare with foreign children scholastically as a reason television should help educate children. S. Rep. No. 227, 101st Cong., 1st Sess. 5 (1989). [Return to text](#)
37. *Children's TV Report and Policy Statement*, *supra* note 7, para. 17. [Return to text](#)
38. *See In re* Petition of Action for Children's TV (ACT) for Rulemaking Looking Toward the Elimination of Sponsorship and Commercial Content in Children's Programming, *Notice of Inquiry and Notice of Proposed Rule Making*, 28 F.C.C.2d 368 (1971). [Return to text](#)
39. *Children's TV Report and Policy Statement*, *supra* note 7, para. 35. [Return to text](#)
40. *Action for Children's TV v. FCC*, 564 F.2d 458 (D.C. Cir. 1977). [Return to text](#)
41. *See Children's TV Report and Policy Statement*, *supra* note 7, para. 12. [Return to text](#)
42. *Id.* paras. 46-56. [Return to text](#)

43. *Advertising Practices Report and Order*, *supra* note 9, para. 32. [Return to text](#)
44. *Id.* para. 35. [Return to text](#)
45. *Id.* paras. 26-31. [Return to text](#)
46. Palumbo, *supra* note 8, at 345. [Return to text](#)
47. *Action for Children's TV v. FCC*, 756 F.2d 899, 901 (D.C. Cir. 1985) (holding that cable television and videocassettes reached enough of the television viewing market to be considered by the FCC and suggesting that in an individual market, with little cable available, broadcasters should have to bear a significant part of the programming of children's television). [Return to text](#)
48. *Action for Children's TV v. FCC*, 821 F.2d 741, 745 (D.C. Cir. 1987) (replacing logging requirements with quarterly lists and commercial guidelines). [Return to text](#)
49. *Id.* at 747. [Return to text](#)
50. H.R. 4125, 100th Cong., 2d Sess. (1988) (introduced by Rep. Thomas Tauke (R-Iowa)); H.R. 3288, 100th Cong., 2d Sess. (1988) (introduced by Rep. Terry Bruce (D-Ill.)); S. 1594, 99th Cong., 1st Sess. (1985) (introduced by Sen. Frank Lautenberg (D-N.J.)); H.R. 3216, 99th Cong., 1st Sess. (1985) (introduced by Rep. Timothy Wirth (D-Colo.)); H.R. 2263, 99th Cong., 1st Sess. (1985) (introduced by Rep. Howard Nielson (R-Utah)). [Return to text](#)
51. H.R. 3966, 100th Cong., 2d Sess. (1988) (introduced by Rep. John Bryant (D-Tex.)). [Return to text](#)
52. *Reagan Kills Children's TV Bill; Industry, Hill, Stunned by Veto*, Broadcasting, Nov. 14, 1988, at 68, 68. [Return to text](#)
53. Under U.S. Const. art. I, sec. 7, cl. 2, President Reagan had been advised to veto the bill by the Department of Justice and the National Telecommunications and Information Administration. The Office of Management and Budget and the FCC also expressed reservations about the Bill. *Reagan Kills Children's TV Bill; Industry, Hill Stunned by Veto*, *supra* note 52, at 69. [Return to text](#)
54. H.R. 1677, 101st Cong., 1st Sess. (1989) (introduced by Rep. John Bryant (D-Tex.)). A similar bill was introduced in the Senate, S. 797, 101st Cong., 1st Sess. (1989) (introduced by Sens. Howard Metzenbaum (D-Ohio) and Frank Lautenberg (D-N.J.)). The House then adopted an amended version of H.R. 1677 to match the Senate bill. Palumbo, *supra* note 8, at 351. President Bush withheld his signature for 10 days after receiving the bill, allowing it to become law. *Advertising Bill Becomes Law*, 48 Cong. Q. Weekly Rep. 3507, 3507 (1990). [Return to text](#)
55. *See, e.g.*, Harry A. Jessell & Kim McAvoy, *FCC Comments Call for Constitutional Challenge to Children's Act*, Broadcasting, Jan. 28, 1991, at 48, 48 (Radio- Television News Directors Association arguing that Act should be interpreted in "least restrictive" manner because spectrum scarcity and public trustee rationales no longer justify content regulation); Peter D. Lambert, *ACT Challenges Children's TV Rules*, Broadcasting, May 20, 1991, at 62 (Action for Children's Television asks that "program-length commercials" be regulated under the Act's advertising mandates). [Return to text](#)
56. *Children's TV Programming Notice of Inquiry*, *supra* note 14, para. 11. [Return to text](#)
57. Edmund L. Andrews, *Flintstones and Programs Like It Aren't Educational, FCC Says*, N.Y. Times, Mar. 4, 1993, at A1, A20. [Return to text](#)
58. 47 U.S.C. sec. 303a(b) (Supp. III 1991). [Return to text](#)

59. See *Children's TV Programming Report and Order*, *supra* note 27, para. 1. [Return to text](#)
60. *Children's TV Programming MO & O*, *supra* note 28, para. 2. [Return to text](#)
61. See H.R. Rep. No. 385, *supra* note 19, at 7-8, 1990 U.S.C.C.A.N. at 1611-12 (discussing National Association of Broadcasters' Children's Television Commercialization Survey and a report by Action for Children's Television). [Return to text](#)
62. *Id.* [Return to text](#)
63. See *Most Broadcasters Already Meet New Federal Child TV Standards, Study Finds*, Daily Rep. for Executives (BNA) No. 77, at A-13 (Apr. 22, 1991). The study was conducted in 1990 by the Institute of Communications Research at Indiana University, for the Advertising Review Unit of the Council of the Better Business Bureau. [Return to text](#)
64. Sukow, *supra* note 13, at 24. [Return to text](#)
65. Harry A. Jessell, *Six TV's Hit for Violating Kids' TV Rules*, Broadcasting, Jan. 18, 1993, at 95, 95. [Return to text](#)
66. *Id.* [Return to text](#)
67. *Id.* at 96. [Return to text](#)
68. *Id.* [Return to text](#)
69. See Letter from Roy J. Stewart, Chief, MM, to Licensee, Big Horn Comm., Inc., KCTZ (TV) (Mont.), 8 FCC Rcd. 5081 (1993); Letter from Roy J. Stewart, Chief, MM, to Licensee, WKBD (TV) (Mich.), 8 FCC Rcd. 5079 (1993); Letter from Roy J. Stewart, Chief, MM, to Licensee, KEVN-TV (Tex.) and KIVV-TV (Tex.), 8 FCC Rcd. 5077 (1993). [Return to text](#)
70. Jessell, *supra* note 65, at 95. [Return to text](#)
71. See *Children's TV Report and Policy Statement*, *supra* note 7, para. 34; *cf.* 47 U.S.C. sec. 317 (1988) (requiring broadcasters to disclose consideration paid for programming). *But see* National Ass'n for Better Brdcast. v. FCC, 830 F.2d 270 (D.C. Cir. 1987) (holding that 47 U.S.C. sec. 317 applies to children's programming even when the program is not wholly commercial in nature); Broadcast and Cable Servs.; Children's TV Programming, *Final Rule and Petitions for Reconsideration*, 56 Fed. Reg. 42,707 (1991). [Return to text](#)
72. See *Children's TV Report and Policy Statement*, *supra* note 7, para. 34; Palumbo, *supra* note 8, at 374-77. [Return to text](#)
73. Letter from Edythe Wise, Chief, Complaints and Investigations Branch Enforcement Div., MM, to Licensee, TV Station WTBS (Atlanta), 8 FCC Rcd. 490 (1993). [Return to text](#)
74. *Id.* at 490. [Return to text](#)
75. *Id.* [Return to text](#)
76. *Id.* [Return to text](#)
77. *Id.* [Return to text](#)
78. See Jessell, *supra* note 65, at 95. [Return to text](#)
79. *Id.* at 96. [Return to text](#)

80. *Id.* (Tony Boquer, general manager of KHWE in Honolulu, said, "You may end up with less [children's] programming."). [Return to text](#)
81. *See, e.g., supra* notes 64-67 and accompanying text. [Return to text](#)
82. *See* Jessell, *supra* note 65, at 95 (only three of the 10 violators in the January 1992 audit received monetary fines). [Return to text](#)
83. Alan Radding, *Stations Tune In to Kids*, *Advertising Age*, May 18, 1992, at 37, 37. [Return to text](#)
84. *Id.* [Return to text](#)
85. *Id.* [Return to text](#)
86. Center for Media Educ., *supra* note 12, at 2. [Return to text](#)
87. *Id.* [Return to text](#)
88. *Id.* at 4. [Return to text](#)
89. *Id.* at 3. [Return to text](#)
90. *Id.* at 4. [Return to text](#)
91. *Id.* [Return to text](#)
92. The FCC states that acceptable documentation of compliance for checking advertising overages could consist of (1) lists of the number of commercial minutes per hour or (2) certified documentation of stations' children's programming that featured the advertising. Broadcast and Cable Servs.; Children's TV Programming, *supra* note 71, paras. 13, 21. Also, the FCC requires "summaries" of the ways stations are complying with their programming requirements. *Id.* No greater detail is given. [Return to text](#)
93. *See* Andrews, *Flintstones and Programs Like It Aren't Educational, FCC Says*, *supra* note 57, at A1; *FCC Opens Discussion of Children's Television Act*, *Daily Variety*, Mar. 3, 1993, at 3; *FCC Says Cartoons Can't Count as Educational Shows*, *Chi. Trib.*, Mar. 4, 1993, at 3. [Return to text](#)
94. *FCC Opens Discussion of Children's Television Act*, *supra* note 93, at 3. [Return to text](#)
95. Andrews, *Flintstones and Programs Like It Aren't Educational, FCC Says*, *supra* note 57, at A20. [Return to text](#)
96. Center for Media Educ., *supra* note 12, at 5. [Return to text](#)
97. *Id.* at 5, 7. [Return to text](#)
98. One of the early bills in Congress suggested rules that set minimum hours and reasonable times children's programs could be shown. S. 1594, 99th Cong., 1st Sess. (1985). [Return to text](#)
99. Center for Media Educ., *supra* note 12, at 6. [Return to text](#)
100. *Id.* [Return to text](#)
101. *Id.* at 7. [Return to text](#)
102. Halonen, *supra* note 12, at 41. [Return to text](#)
103. Center for Media Educ., *supra* note 12, at 5-6. [Return to text](#)

104. *Id.* at 8. [Return to text](#)
105. *Children's TV Programming Report and Order*, *supra* note 27, para. 21. [Return to text](#)
106. Center for Media Educ., *supra* note 12, at 8. [Return to text](#)
107. Mark Lorando, *Twinkie TV*, Times-Picayune (New Orleans), May 31, 1993, at D1. [Return to text](#)
108. *Children's TV Programming Report and Order*, *supra* note 27, para. 25. [Return to text](#)
109. Center for Media Educ., *supra* note 12, at 9. [Return to text](#)
110. *Cf. id.* (*Hard Copy*, *CNN Headline News*, and *The Donahue Show* listed by a station as contributing to children's informational and educational needs). [Return to text](#)
111. The Act does state that children should be protected from overcommercialization on television, and many cartoons are little more than long commercials with a semblance of a plot. Pub. L. No. 101-437, sec. 101(4), 104 Stat. 996, 996 (1990). But the word "cartoon" never appears in the above Act. [Return to text](#)
112. Edmund L. Andrews, *FCC Flunks Fred Flintstone*, N.Y. Times, Mar. 7, 1993, sec. 4, at 2. [Return to text](#)
113. Halonen, *supra* note 12, at 41. [Return to text](#)
114. *Markey Promises Greater Attention to Enforcement of Children's TV Law*, Daily Rep. for Executives (BNA) at 46 (Mar. 11, 1993). [Return to text](#)
115. *Id.*; *see also* Joyce Price, *TV Broadcasters Warned to Provide Educational Fare*, Wash. Times, Mar. 11, 1993, at A4; Constance Sommer, *Educational TV Programs Lacking, Activists Charge*, L.A. Times, Mar. 11, 1993, at F5. [Return to text](#)
116. Sommer, *supra* note 115, at F5. [Return to text](#)
117. Center for Media Educ., *supra* note 12, at 5. [Return to text](#)
118. *Id.* [Return to text](#)
119. Concerning the Clinton administration's possible views, *see generally* Andrews, *Flintstones and Programs Like It Aren't Educational, FCC Says*, *supra* note 57; Sommer, *supra* note 115. *See also* *Broadcasters May Feel the Heat in Kidvid Sesh*, Daily Variety, Mar. 10, 1993, at 24; *FCC Opens Discussion of Children's Television Act*, *supra* note 93, at 3. [Return to text](#)
120. Joseph P. Kahn, *Yabba Dabba Don't; Regulators Rap Non-Educational TV for Children*, Boston Globe, Mar. 5, 1993, at 1, 8. [Return to text](#)
121. *Children's TV Programming Notice of Inquiry*, *supra* note 14, paras. 6-8. [Return to text](#)
122. *Id.* para. 8. [Return to text](#)
123. *Id.* para. 7. [Return to text](#)
124. Andrews, *Flintstones and Programs Like It Aren't Educational, FCC Says*, *supra* note 57, at A1. [Return to text](#)
125. *See id.* [Return to text](#)
126. Andrews, *Broadcasters, to Satisfy Law, Define Cartoons as Education*, *supra* note 12, at A1, B8. [Return to text](#)

127. Dennis Wharton, 'Broadcasters Beware,' *Licenses Are at Risk Over Kids' TV, Congress Warns*, *Daily Variety*, Mar. 11, 1993, at 1. [Return to text](#)
128. Price, *supra* note 115, at A4; *Markey Promises Greater Attention to Enforcement of Children's TV Law*, *supra* note 114, at 46. [Return to text](#)
129. Price, *supra* note 115, at A4. [Return to text](#)
130. *Id.* Noted children's performer Shari Lewis testified, "PBS commissioned their children's [programming] initiative in May; in September, we were all before the cameras." *Id.* [Return to text](#)
131. *Id.* In the FCC's call for comments on the implementation of the Act, the Commission stated, "We continue to believe that licensees must, for the most part, themselves define the appropriate scope of their service to children in their communities." *Children's TV Programming Notice of Inquiry*, *supra* note 14, para. 5. [Return to text](#)
132. At recent hearings, Congress was far from friendly toward broadcasters. Children's television was called everything from "disappointing" to "the video equivalent of a twinkie." *See Oversight Hearing on the Implementation of the Children's Television Act of 1990 Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce*, 103d Cong., 1st Sess. (1993) [hereinafter *Oversight Hearing*]. [Return to text](#)
133. *Children's TV Programming Notice of Inquiry*, *supra* note 14, para. 11. [Return to text](#)
134. *Id.* paras. 7, 9. [Return to text](#)
135. Andrews, *Flintstones and Programs Like It Aren't Educational, FCC Says*, *supra* note 57, at A20. At the time this Note was submitted for publication, the Commission had not indicated how far it would go in creating new rules or penalties. [Return to text](#)
136. 47 U.S.C. sec. 303a(c)(2) (Supp. III 1991). [Return to text](#)
137. 47 U.S.C. sec. 303b(a)(2) (Supp. III 1991). [Return to text](#)
138. Jessell, *supra* note 65, at 95. [Return to text](#)
139. *See* Andrews, *Flintstones and Programs Like It Aren't Educational, FCC Says*, *supra* note 57, at A1. [Return to text](#)
140. *See supra* notes 73-77 and accompanying text. [Return to text](#)
141. Lambert, *Battlelines Drawn on Children's Rulemaking*, *supra* note 11, at 22. [Return to text](#)
142. *See* Jessell, *supra* note 65, at 95. [Return to text](#)
143. *See Oversight Hearing*, *supra* note 132 (testimony of Peggy Charren, founder of Action for Children's Television). [Return to text](#)
144. Broadcast and Cable Servs.; *Children's TV Programming*, *supra* note 71, para. 12. [Return to text](#)
145. *See* Sukow, *supra* note 13, at 24. [Return to text](#)
146. *See generally* Andrews, *Flintstones and Programs Like It Aren't Educational, FCC Says*, *supra* note 57; Price, *supra* note 115; Sommer, *supra* note 115. [Return to text](#)
147. *See* Andrews, *Broadcasters, to Satisfy Law, Define Cartoons as Education*, *supra* note 12, at B8; Sukow, *supra* note 13, at 24. [Return to text](#)

148. *See Oversight Hearing, supra* note 132 (statement of the National Association of Broadcasters) (nearly 15-page statement demonstrating how much broadcasters are worried about possible sanctions). [Return to text](#)
149. This is exactly how the FCC caught three recent violators. If the stations thought the Commission would be lenient if they admitted their errors, they were mistaken; each station was fined \$15,000. All kept their licenses, though. *See supra* note 69 and accompanying text. [Return to text](#)
150. Both broadcasters and activists for better children's television would like to see this happen. *Oversight Hearing, supra* note 132 (statement of National Association of Broadcasters); *id.* (testimony of Peggy Charren, founder of Action for Children's Television). [Return to text](#)
151. Center for Media Educ., *supra* note 12, at 4. [Return to text](#)
152. *Cf. Oversight Hearing, supra* note 132 (testimony of Peggy Charren, founder of Action for Children's Television) (proposing several requirements for airing children's programming). [Return to text](#)
153. *Id.* (opening remarks by the Committee). [Return to text](#)
154. *Children's TV Programming Notice of Inquiry, supra* note 14, paras. 6-8. [Return to text](#)
155. *Id.* [Return to text](#)
156. Lambert, *Battlelines Drawn on Children's Rulemaking, supra* note 11, at 22. [Return to text](#)
157. *Id.* [Return to text](#)
158. *See Andrews, Flintstones and Programs Like It Aren't Educational, FCC Says, supra* note 57, at A20. [Return to text](#)
159. *See Robert L. Steiner, Double Standards in the Regulation of Toy Advertising, 56 U. Cin. L. Rev. 1259, 1271 (1988).* [Return to text](#)
160. Lambert, *Battlelines Drawn on Children's Rulemaking, supra* note 11, at 22. [Return to text](#)
161. Lambert, *ACT Challenges Children's TV Rules, supra* note 55, at 62. [Return to text](#)
162. *Children's TV Programming Report and Order, supra* note 27, para. 40. [Return to text](#)
163. Lambert, *ACT Challenges Children's TV Rules, supra* note 55, at 62. [Return to text](#)
164. *Oversight Hearing, supra* note 132 (testimony of Peggy Charren, founder of Action for Children's Television). [Return to text](#)
165. Center for Media Educ., *supra* note 12, at 9. [Return to text](#)
166. *Oversight Hearing, supra* note 132 (testimony of Peggy Charren, founder of Action for Children's Television). [Return to text](#)
167. Center for Media Educ., *supra* note 12, at 9. [Return to text](#)
168. *Oversight Hearing, supra* note 132 (testimony of Peggy Charren, founder of Action for Children's Television). [Return to text](#)
169. *Id.* [Return to text](#)

170. *Id.* (opening remarks by Rep. Ron Wyden (D-Or.)). [Return to text](#)
171. *Id.* [Return to text](#)
172. *Id.* (testimony of Peggy Charren, founder of Action for Children's Television). [Return to text](#)
173. *Id.* [Return to text](#)
174. The general counsel for the National Association of Broadcasters expressed surprise when the Commission announced it would consider strengthening the Act. He referred to the action as "turning back the clock to the 1970s," when stricter regulations were more common. Andrews, *Flintstones and Programs Like It Aren't Educational, FCC Says*, *supra* note 57, at A20. [Return to text](#)
175. *Red Lion Brdcast. Co. v. FCC*, 395 U.S. 367, 390 (1969). [Return to text](#)
176. *Id.* [Return to text](#)
177. *Id.* [Return to text](#)
178. For example, the FCC can regulate the broadcasting of lewd speech, *FCC v. Pacifica Found.*, 438 U.S. 726 (1978), or the airing of commercial matter, such as cigarette commercials, *Capital Brdcast. Co. v. Mitchell*, 333 F. Supp. 582 (D.D.C. 1971), *aff'd sub nom. Capital Brdcast. Co. v. Acting Att'y Gen.*, 405 U.S. 1000 (1972). [Return to text](#)
179. Many broadcasters, in fact, backed the Act, perhaps because of its leniency and vagueness. James Hedlund, president of the Association of Independent Television Stations (INTV) said of the Act, "[B]y and large, the commission, with the limited discretion they had, has done a good job that [broadcasters] can live with." Patrick J. Sheridan, *FCC Endorses Children's TV Act*, *Broadcasting*, Apr. 15, 1991, at 90, 90. [Return to text](#)
180. *See, e.g.*, Jessell and McAvoy, *supra* note 55, at 48 ("If children's educational and informational programming can be coerced, why not coerce the same special attention by television for the benefit of other societal groups (e.g., the elderly) . . . ?"); Price, *supra* note 115, at A4 ("Don't shoot all of us for the questionable actions of a few."). [Return to text](#)
181. *See Oversight Hearing*, *supra* note 132 (statement of National Association of Broadcasters). [Return to text](#)
182. 47 U.S.C. sec. 326 (Supp. III 1991) (denying the FCC the right to censor broadcasts). *But see Pacifica*, 438 U.S. 726 (allowing the FCC to regulate indecent broadcasts under a nuisance rationale). [Return to text](#)
183. *See, e.g.*, *FCC v. League of Women Voters*, 468 U.S. 364, 389-90 (1984) (refusing to let FCC restrict editorial speech on noncommercial television stations receiving funding from the Corporation for Public Broadcasting). [Return to text](#)
184. *Id.* at 378. [Return to text](#)
185. *See supra* notes 31-32, 36-37, 39 and accompanying text. [Return to text](#)
186. *League of Women Voters*, 468 U.S. at 378. [Return to text](#)
187. *Id.* [Return to text](#)
188. *See Andrews, Broadcasters, to Satisfy Law, Define Cartoons as Education*, *supra* note 12, at B8. [Return to text](#)
189. *Oversight Hearing*, *supra* note 132 (statement of Brooke Spector, Vice-President and General Manager WUAB-TV (Cleveland)) (discrediting the Center for Media Education study that indicated broadcasters were not making serious efforts to comply with the Act). [Return to text](#)

190. See 47 U.S.C. sec. 303a (Supp. III 1991). [Return to text](#)
191. S. Rep. No. 227, 101st Cong., 1st Sess. 17 (1989) (noting broadcasters' obligation to provide diversified programming to meet children's needs through educational and informational programs); see also 136 Cong. Rec. H8537 (daily ed. Oct. 1, 1990) (statement of Rep. Edward J. Markey (D-Mass.)) (Act merely requires educational and informational programming). [Return to text](#)
192. See *FCC v. Pacifica Found.*, 438 U.S. 726, 749-50 (1978) (taking into account time of day radio program aired). [Return to text](#)
193. See *Oversight Hearing*, *supra* note 132. [Return to text](#)
194. Especially happy would be members of the now-defunct Action for Children's Television, who have referred to the Act as "a failure." Flint, *supra* note 12, at 40. ACT had consistently petitioned the Commission to reconsider and revise its definition of "program-length commercials." Lambert, *ACT Challenges Children's TV Rules*, *supra* note 55, at 62. [Return to text](#)
195. See generally *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557 (1980) (discussing First Amendment protection of commercial speech). [Return to text](#)
196. Peggy Charren, *Whose Hand Rocks the Cradle?*, 56 U. Cin. L. Rev. 1251, 1255 (1988) (quoting a marketing director from Tonka Toys as saying, "We believe that in order to keep kids buying GoBots, we needed to do a TV series."). [Return to text](#)
197. Steiner, *supra* note 159, at 1270. [Return to text](#)
198. See Kahn, *supra* note 120, at 8. [Return to text](#)
199. See *Advertising Practices Report and Order*, *supra* note 9, paras. 26-31. [Return to text](#)
200. Kahn, *supra* note 120, at 8 (roughly 60% of households have cable television, leaving many children without access to that medium). [Return to text](#)
201. *Id.* [Return to text](#)
202. See generally Andrews, *FCC Flunks Fred Flintstone*, *supra* note 112, at 2 (suggesting that the line between education and entertainment is blurry). [Return to text](#)
203. See generally Brooks Boliek, *Study: Maryland B'casters Flunk Kids TV Standards*, Hollywood Rep., July 28, 1993, at 1; Wharton, *supra* note 127, at 1; Center for Media Educ., *supra* note 12. [Return to text](#)
204. Indeed, the FCC has stated, "The primary objective of qualifying 'core' children's programming should be educational and informational, with entertainment as a secondary goal." *Children's TV Programming Notice of Inquiry*, *supra* note 14, para. 8. [Return to text](#)
205. Children are said to spend as much time in front of the television as they do in the classroom. S. Rep. No. 227, *supra* note 191, at 5; see also *Oversight Hearing*, *supra* note 132 (statement of Rep. Edward J. Markey (D-Mass.)). [Return to text](#)
206. See Andrews, *Flintstones and Programs Like It Aren't Educational*, *FCC Says*, *supra* note 57, at A20 (broadcasters may have to produce more programming with limited commercial and profit potential). [Return to text](#)
207. *Id.* [Return to text](#)

208. *Id.* [Return to text](#)
209. *Id.* [Return to text](#)
210. *Id.* [Return to text](#)
211. For instance, the FCC has attempted to force cable systems to carry over-the-air stations as part of their programming (known as "must-carry"). *See* Century Comm. Corp. v. FCC, 835 F.2d 292 (D.C. Cir. 1987) (less restrictive must-carry rules still unconstitutional because lack of demonstrated need for them), *cert. denied*, 486 U.S. 1032 (1988); Quincy Cable TV, Inc. v. FCC, 768 F.2d 1434 (D.C. Cir. 1985) (FCC proposed must-carry rules violate the First Amendment because they are overbroad and unnecessary), *cert. denied*, 476 U.S. 1169 (1986). The FCC has tried to regulate in other ways as well. *See* Home Box Office v. FCC, 567 F.2d 9 (D.C. Cir.) (FCC cannot regulate the number and age of films and sporting events shown by a cable programmer), *cert. denied*, 434 U.S. 829 (1977); National Ass'n. of Regulatory Util. Comm'rs v. FCC, 533 F.2d 601 (D.C. Cir. 1976) (FCC cannot regulate cable television system used for two-way communication because such a system is a common carrier). *But see* United Video, Inc. v. FCC, 890 F.2d 1173 (D.C. Cir. 1989) (FCC may enforce syndicated exclusivity regulation on cable television systems). [Return to text](#)
212. Wharton, *supra* note 127, at 1 (statement by Edward J. Markey (D-Mass.)). [Return to text](#)
213. 47 U.S.C. sec. 394 (Supp. III 1991). [Return to text](#)
214. 47 U.S.C. sec. 394(b)(2)(A) (Supp. III 1991). [Return to text](#)
215. 47 U.S.C. sec. 394(b)(2)(B) (Supp. III 1991). [Return to text](#)
216. *See*, Pub. L. No. 101-437, sec. 201, 104 Stat. 996, 998 (1990) ("[E]ducational television programming for children is aired too infrequently either because public broadcast licensees and permittees lack funds or because commercial broadcast licensees or cable television system operators do not have the economic incentive . . ."). [Return to text](#)
217. *See supra* notes 127-30 and accompanying text. [Return to text](#)