

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Implementation of the Child Safe Viewing)	MB Docket No. 09-26
Act; Examination of Parental Control)	
Technologies for Video and Audio)	
Programming)	
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COMMENTS OF CHILDREN’S MEDIA POLICY COALITION

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April 16, 2009

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SUMMARY

The Children's Media Policy Coalition ("CMPC") submits these comments in response to the Commission's Notice of Inquiry implementing the Child Safe Viewing Act of 2007. CMPC identifies several problems with the current V-chip scheme and recommends a number of steps, both to resolve some of those problems and to transform the V-Chip into a more effective parental control tool.

Although the V-Chip continues to represent an important step towards providing parents with control over violent, sexual, and otherwise inappropriate television content, the current V-Chip scheme is not nearly as effective as it could be. Low levels of parental use, awareness, and understanding of the V-Chip and program ratings system; frequently inaccurate and inconsistent program ratings that are assigned without any effective, independent oversight of the program-rating process; and significant gaps in the V-Chip's content-blocking capabilities have prevented the V-Chip scheme from achieving its full potential. Given these significant shortcomings, CMPC makes the following recommendations:

- The V-Chip should be able to function with multiple, independent ratings systems so that parents can choose from among several different ratings systems that which they believe to be most reliable and most consistent with their values.
- The existing ratings system should be modified to take account of inappropriate television commercials and embedded advertising content so that parents can choose to block such content using the V-Chip.
- The Oversight Monitoring Board should be made more transparent and accessible to the public so that parents understand the Board's role and can more effectively participate in the oversight process.

- The ratings system should be modified to include a content descriptor for children's programming designated as Educational/Informational so that parents can use the V-Chip not only to block objectionable content, but also to affirmatively channel desirable content into their homes.

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Children Now, the American Academy of Child and Adolescent Psychiatry, American Academy of Pediatrics, American Psychological Association, Benton Foundation, and the Office of Communication of the United Church of Christ (“Children’s Media Policy Coalition” or “CMPC”), by their attorneys, the Institute for Public Representation, respectfully submit these comments in response to the Federal Communication Commission’s (“FCC” or “Commission”) Notice of Inquiry requesting comment on “the existence and availability of advanced blocking technologies that are compatible with various communications devices or platforms.”¹

The Telecommunications Act of 1996 directed the Commission to require that covered television receivers be equipped with V-Chip technology that would allow parents to block “violent, sexual, or other programming that they believe harmful to their children.”² The Commission implemented this V-Chip requirement in two 1998 orders, one adopting the

¹ *Implementation of Child Safe Viewing Act*, 74 Fed. Reg. 11334 (2009); *see* Child Safe Viewing Act of 2007, Pub. L. No. 110-452, § 2(a), 122 Stat. 5025, 5025 (2008).
² Telecommunications Act of 1996, Pub. L. No. 104-104, § 551(a)(9), 110 Stat. 56, 140.

industry's proposed program ratings system³ and one establishing the technical requirements to enable the blocking of programming based on those ratings.⁴ Ten years later, in December 2008, Congress passed the Child Safe Viewing Act ("the Act"). The Act required the Commission to examine the existence and availability of advanced blocking technologies and parental empowerment tools across a wide variety of distribution platforms and devices, and to report its findings to Congress.⁵

CMPC is pleased to have the opportunity to comment in this important proceeding. In particular, CMPC will address (1) the most significant problems that prevent the current V-Chip scheme from being an effective content-blocking mechanism, and (2) what steps could be taken to address some limitations of the current V-Chip scheme.

I. THE CURRENT V-CHIP SCHEME SUFFERS FROM SIGNIFICANT FLAWS THAT LIMIT ITS USE AND EFFECTIVENESS.

Today's media environment is saturated with excessive violence, sexual activity, inappropriate commercial messages, and other content that many parents find objectionable for their children. As such, it is crucial that parents are able to exercise effective control over the content to which their children are exposed. Although the V-Chip continues to represent an important step towards providing parents with such control, the current V-Chip scheme is not nearly as effective as it could be. As recently as 2007, the FCC found that less than half of television sets currently in use were equipped with a V-Chip.⁶ Indeed, the FCC found in its

³ *Implementation of Section 551 of the Telecommunications Act of 1996*, 13 FCC Rcd. 8232 (1998) ("*Implementation of Section 551*").

⁴ *Technical Requirements to Enable Blocking of Video Programming Based on Program Ratings*, 13 FCC Rcd. 11,248 (1998).

⁵ Child Safe Viewing Act of 2007, Pub. L. No. 110-452, 122 Stat. 5025 (2008).

⁶ *Violent Television Programming and its Impact on Children*, 22 FCC Rcd. 7929, ¶ 28 (2007).

Violence Report that “the evidence clearly points to one conclusion: the V-chip is of limited effectiveness in protecting children from violent television content.”⁷

In 1998, the Commission noted that its proceedings implementing the V-Chip and program ratings system “focused on Congress’s goal of achieving an effective method by which the rating system, when used in conjunction with the v-chip technology, will provide parents with useful tools to block programming they believe harmful to their children.”⁸ Over a decade later, those parents who own a V-Chip-equipped television set often remain unaware of the V-Chip’s capabilities or find the V-Chip difficult to use. Many parents also find the program ratings system difficult to understand, and even those who understand the ratings system find that networks and distributors often inconsistently and inaccurately apply the ratings to their programming. Ultimately, the limitations of both the V-Chip technology and the program ratings system must be resolved if the V-Chip is going to function as Congress and the FCC intended.

A. Low Levels Of Parental Use, Awareness, And Understanding Of The V-Chip And Program Ratings System Hinder The V-Chip’s Effectiveness.

Since its inception, the V-Chip scheme has suffered from low levels of parental use, awareness, and understanding. In approving the program ratings system developed by the broadcast, cable, and motion picture industries and modified in response to the concerns of various advocacy groups, the Commission noted the industry’s commitment to undertake “independent, scientific research and evaluation of the rating system once the v-chip is in place. . . to determine whether the rating system is working and providing parents with the information

⁷ *Id.* at ¶ 29.

⁸ *Implementation of Section 551*, 13 FCC Rcd. 8232 at ¶ 2.

needed to make viewing choices for their children.”⁹ The Commission “expect[ed] that the research and evaluation of the rating system, once the system has been in use, [would] allow for adjustments and improvements to the system.”¹⁰ However, we are not aware of any industry research on the ratings system’s accuracy or effectiveness.

Nevertheless, independently conducted studies on the V-Chip and program ratings system have raised serious concerns about their effectiveness. In a 2007 Kaiser Family Foundation (“KFF”) study, only 16% of all parents reported ever having used the V-Chip, even though two-thirds of parents reported that they were “very” concerned that children were exposed to too much inappropriate media content and a plurality (32%) of those parents reported that television was the medium that concerned them most.¹¹

Part of the problem is that many parents simply do not realize that their television sets are equipped with a V-Chip. One 2003 study found that more than one-third of families with V-Chip-equipped television sets mistakenly reported that their set was not equipped for blocking programs based on the ratings system.¹² More recently, the KFF found that of the 82% of parents who purchased a new television set after January 2000, more than half were not aware that their television set had a V-Chip.¹³

⁹ *Id.* at ¶ 22.

¹⁰ *Id.*

¹¹ *Parents, Children, and Media: A Kaiser Family Foundation Survey* 1, 3, 13 (2007) (“2007 Kaiser Survey”).

¹² Amy Jordan & Emory Woodard, Annenberg Pub. Policy Ctr. of Univ. of Pa., *Parents’ Use of the V-Chip to Supervise Children’s Television Use* 3 (2003), available at http://www.annenbergpublicpolicycenter.org/Downloads/Media_and_Developing_Child/Childrens_Programming/20030402_Children_and_TV_Roundtable/20030402_ParentsVchip_report.pdf (“2003 Annenberg Study”).

¹³ *2007 Kaiser Survey* at 9.

But even among those parents who have a V-Chip and are aware of it, less than half (46%) have actually used it.¹⁴ Many find the multi-step process required to program the V-Chip to be confusing and frustrating.¹⁵ In fact, only 27% of parents participating in one study felt they could figure out how to program the V-Chip, and many parents “who might otherwise have used the V-Chip were frustrated by an inability to get it to work properly.”¹⁶

B. Inaccurate, Inconsistent, And Incomplete Ratings Limit The V-Chip’s Effectiveness.

The V-Chip cannot be an effective parental empowerment tool unless parents understand the program ratings system and those ratings are applied consistently and accurately. Recent research by the Kaiser Family Foundation indicates that although most parents are aware of the TV ratings, most do not understand what the ratings mean.¹⁷ According to that study, less than one-third of parents with children aged 2–6 could name any of the ratings that identify programming suitable for their children (TV-G, TV-Y, and TV-Y7).¹⁸ Parents seem even less likely to understand the content-based descriptors: 51% understood that “V” indicates violence, 36% understood that “S” indicates sexual content, and only 2% understood that “D” indicates suggestive dialogue.¹⁹ In addition, only 11% knew that “FV” indicates fantasy violence, and 9% mistakenly believed that the “FV” designation indicated programming suitable for “family viewing.”²⁰

¹⁴ *Id.*

¹⁵ *See 2003 Annenberg Study* at 3.

¹⁶ *Id.* at 4.

¹⁷ *2007 Kaiser Survey* at 8.

¹⁸ *Id.*

¹⁹ *Id.* at 9.

²⁰ *Id.* at 8.

Even if education initiatives could increase parental understanding of the ratings system, the current V-Chip scheme would still fail to achieve its main purpose—that of helping parents to identify and block programs with potentially objectionable material—because the age-based designations and content descriptors are often applied inconsistently and inaccurately. For example, as previously noted by the Commission, a 2002 study by Professor Dale Kunkel and others found that “in all four areas of sensitive material—violence, sexual behavior, sexual dialogue, and adult language—the large majority of programs that contain such depictions are not identified by a content descriptor.”²¹ The study’s authors concluded that “[p]arents who might rely solely on the content-based categories to block their children’s exposure to objectionable portrayals would be making a serious miscalculation, as the content descriptors actually identify only a small minority of the full range of violence, sex, and adult language found on television.”²²

The prevalence of inconsistent and inaccurate ratings should not be surprising. Networks and distributors assign age-based and content-based ratings to their own programming and, as the Commission has acknowledged, they may have a significant economic incentive to “underrate” their programming to avoid the lower advertising revenues typically commanded by more restrictive ratings.²³ Although an Oversight Monitoring Board (“the Board”) was established in 1998 “to ensure that the rating guidelines are applied accurately and consistently to television programming,”²⁴ the Board has very little real authority. Comprising twenty-four members—

²¹ See *Violence Report* at ¶ 35 (citing Dale Kunkel et al., *Deciphering the V-Chip: An Examination of the Television Industry’s Program Rating Judgments*, 52 J. Commc’ns 112, 136 (2002)).

²² See *id.*

²³ See *id.* at ¶ 36 (citing James T. Hamilton, *Who Will Rate the Ratings?*, in *The V-Chip Debate: Content Filtering from Television to the Internet* 133, 143, 149 (Monroe E. Price, ed. 1998)).

²⁴ *Implementation of Section 551*, 13 FCC Rcd. 8232 at ¶ 10.

eighteen of whom are associated with the industry—the Board formally reviews complaints regarding a program only after there have been a significant number of complaints lodged against a specific episode; otherwise, complaints are simply passed on to the network. Indeed, the Board has brought only one program to a formal vote in the past three years.

II. SUGGESTIONS FOR INCREASING THE USE AND EFFECTIVENESS OF THE V-CHIP.

The Commission, Congress, and the industry can act to promote the use and effectiveness of the V-Chip in a number of ways.

A. The Commission Should Ensure That The V-Chip Will Function Effectively With Multiple, Independent Ratings Systems.

Six years ago, in comments submitted in the *Children’s Television Obligations of Digital Television Broadcasters* proceeding, the Children’s Media Policy Coalition urged the Commission to “adopt flexible technical standards [for the V-Chip] that will allow for future improvements and the possibility of supporting multiple ratings systems.”²⁵ The Commission determined that “DTV technical standards should not foreclose the option of using V-Chip technology to support multiple rating systems” and stated that the FCC had “adopted standards . . . permitting manufacturers to develop V-Chip technology that can be used in conjunction with additional ratings systems.”²⁶

²⁵ Comments of Children’s Media Policy Coalition at 23, MB Dkt. No. 00-167, filed Apr. 21, 2003.

²⁶ *Children’s Television Obligations of Digital Television Broadcasters*, 19 FCC Rcd. 22943, ¶ 63 (2004) (“*Children’s Television Obligations*”).

Although the Commission has adopted technical standards to “ensure the ability to modify the content advisory system,”²⁷ parents remain unable to utilize this technology. A V-Chip scheme for the digital age should allow parents to choose, from among multiple, independent ratings systems, that which they find to be the most reliable, easiest to understand, and most reflective of their personal views of what television content is inappropriate for their children. Indeed, at least four organizations—Common Sense Media, Parents Television Council, Plugged In Online, and Moral Metric—have already developed their own alternative ratings systems for television programming.²⁸ However, no alternative systems can be used to block inappropriate programming unless broadcasters agree to transmit them in their program stream; to our knowledge, no broadcaster has yet agreed to do so.

Consideration should thus be given to requiring or incentivizing broadcasters’ use of the enhanced V-Chip capabilities that the Commission has already mandated by its own rules. The Commission must also take steps to ensure that manufacturers of digital television receivers are in compliance with the Commission’s mandate that the V-Chip be able to respond to changes in the content advisory system; to the extent that they are not, the Commission should take appropriate action.

²⁷ *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd. 18279, ¶ 156 (2004) (“*Second Periodic Review*”) (mandating use of Program and System Information Protocol (“PSIP”), a technological standard that would “ensure the ability to modify the content advisory system”). The Commission also amended its rules to require that digital television receivers be “able to respond to changes in the content advisory system.” 47 C.F.R. § 15.120(d)(2) (2008); *see also Second Periodic Review*, 19 FCC Rcd. 18279 at ¶ 156.

²⁸ *See* The Coalition for Independent Ratings Services, <http://www.independentratings.org/ratings> (last visited Apr. 15, 2009).

B. The Oversight Monitoring Board Should Be Made Transparent And Accessible To The Public.

As discussed above, the Oversight Monitoring Board has not effectively ensured the accuracy and consistency of program ratings. The Board's role has been limited to addressing complaints, and yet most parents are not aware that the Oversight Monitoring Board exists, much less that they can file complaints with it regarding the program ratings system. While there is contact information available on the tvguidelines.org website, there is insufficient information about the purpose of the Board, its process, or its membership. Moreover, the complaints that are directed to the Board reflect a lack of public understanding of its role, as they range from pertinent concerns about ratings to inquiries regarding billing, satellite function, and political or religious views.

More transparency and public involvement in this process is essential to provide a check on the Board and to ensure that it is functioning in a way that benefits parents. The Commission should make sure that parents are aware of the Board and its role. For example, broadcasters could be required to air information or public service announcements to educate parents about the Board. The Board's meetings could also be made open to the public, so that concerned parents and consumers would have an opportunity to participate in the Board's oversight process.

C. Parents Should Be Able To Use The V-Chip To Block Inappropriate Advertising Content.

The Commission invited comment on whether commercials could be rated so that the V-Chip or other technology could be used to block those with inappropriate content.²⁹ Indeed, parents' concerns over inappropriate television content is not limited to the violence, sex, and coarse language often featured in television programs. Rather, parents are also concerned with

²⁹ *Implementation of Child Safe Viewing Act*, 74 Fed. Reg. 11,334, ¶ 19 (2009).

inappropriate advertisements (such as commercials for violent films, alcoholic beverages, or adult-oriented prescription drugs such as Viagra) that air during supposedly age-appropriate programming, as well as with subtle commercial messages delivered through product placement and other embedded advertising techniques. However, commercials are not currently rated. And because there is no way to preemptively identify inappropriate commercials or programs with embedded advertising messages, there is no mechanism by which parents can shield their children from commercial messages during even otherwise age-appropriate programming. The current V-Chip scheme's inability to allow parents to block such content is a serious flaw that should be addressed.

1. Broadcasters Or Advertisers Should Rate Commercials Such That Parents Can Block Those With Objectionable Content.

Many parents believe that the lack of ratings for television advertising is a serious issue. Focus group sessions have demonstrated that many parents are at least as concerned about inappropriate advertising content as they are about inappropriate content in television programs.³⁰ And the Federal Trade Commission ("FTC") has indicated that such concerns are justified. In its 2000 report on marketing of violent entertainment, the FTC found that excessively violent advertising on broadcast television is, in fact, reaching children.³¹

Movie studios have since taken some steps to limit advertising for R-rated movies to persons under 17 years of age, but these efforts do not effectively limit children's exposure to inappropriate advertising. Specifically, the FTC found in 2007 that the movie studios'

³⁰ 2007 Kaiser Family Survey at 7.

³¹ Federal Trade Commission, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* 14–15 (Sept. 2000), available at <http://www.ftc.gov/reports/violence/vioreport.pdf>.

agreement to not advertise for R-rated movies during television programs where 35% or more of the audience is under 17 years old has “little impact on the studios’ ability to place ads for R-rated films on television shows favored by teens, given that very few network and syndicated programs popular with teens have under-17 audiences greater than 35%.”³² Moreover, the studios’ agreement still permits advertisements for excessively violent or otherwise inappropriate films to reach audiences of which up to one-third of all viewers are under 17 years old. For example, the Parents Television Council advised the FTC that ads for extremely violent R-rated movies such as *Doom* and *Hostel* were aired in 2006 during *Family Guy*, a program for which children 2 to 17 make up about 25% of the audience.³³ The Children’s Advertising Review Unit (“CARU”) of the Council of Better Business Bureaus also found that several major film studios were running ads for PG-13 rated movies during children’s programming, including programming on Nickelodeon and the Cartoon Network.³⁴ Parents cannot shield their children from such content when it appears, without warning, in unrated commercials.

Commercials should be assigned ratings in much the same way that television programs currently are, with the addition of a content descriptor identifying commercials that promote adult-oriented products such as alcohol or certain prescription drugs. Not only would assignment of such ratings allow parents to block advertising content that they deem inappropriate for their children, but it would also allow networks and distributors to make better informed decisions regarding what commercials would be appropriate for a given program’s intended audience.

³² Federal Trade Commission, *Marketing Violent Entertainment to Children: A Fifth Follow-up Review of Industry Practices in the Motion Picture, Music Recording, and Electronic Game Industries* 4–5 (Apr. 2007).

³³ *Id.* at 5.

³⁴ *See id.*

2. Broadcasters Should Adjust The Program Ratings System To Identify Programming That Includes Embedded Advertising.

The Commission's recent proceeding on embedded advertising,³⁵ in which numerous parents and concerned individuals submitted brief comments urging the commission to regulate product placement and other embedded advertising techniques, demonstrates that parents are also concerned about covert advertising and how it affects their children. One parent stated that product placement is a "problem . . . of growing importance" to her family, and called the technique "sneaky and subliminal."³⁶ Another commenter objected to "having soft drinks and junk food embedded in television shows that are watched by children in high numbers, such as American Idol."³⁷ A pediatrician also expressed concern "with the damaging effects this hidden advertising has on the health and welfare of American kids."³⁸ Indeed, the vast majority of brief comments submitted in the embedded advertising proceeding were from individuals urging the commission to regulate product placement and similar marketing techniques.

While the present proceeding cannot address all of parents' concerns regarding regulation of embedded advertising, the V-Chip could address some of these concerns by enabling parents to preemptively identify and block programs containing embedded advertising messages. Parents could easily block such programming if networks and distributors simply added to the current program ratings system a new content descriptor that identifies programs that include product placement or product integration techniques. Because broadcasters and origination cablecasters are already required under Section 317 of the Communications Act to make sponsorship identification announcements in any programming for which consideration has been

³⁵ *Sponsorship Identification Rules and Embedded Advertising*, 23 FCC Rcd. 10,682 (2008).

³⁶ Comments of Sharon Leeds, MB Dkt. No. 08-90, filed Dec. 4, 2008.

³⁷ Comments of Tamar Besson, MB Dkt. 08-90, filed on Sept. 24, 2008.

³⁸ Comments of Joan Budd, MB Dkt. 08-90, filed on Sept. 22, 2008.

received,³⁹ amending the current ratings system in this manner would impose a minimal burden. Such a content descriptor could then operate in conjunction with the current V-Chip to allow parents who are concerned with such commercial messages to block such programming.

D. The Program Ratings System Should Allow Parents To Affirmatively Select “Good” Content, Such As Educational/Informational-Designated Programming.

In 2004, the FCC amended its rule regarding on-air identification of core Educational/Informational (“E/I”) programming to require both analog and digital broadcasters to identify such programming with the “E/I” symbol, “which must be displayed throughout the program in order for the program to qualify as core educational programming.”⁴⁰ The Commission reasoned that “parents can increase the audience of an educational program by encouraging their children to watch the show, but can only do so if they know in advance when the show will air and that the show is educational.”⁴¹ Although the Commission stated that it planned to address whether digital broadcasters should be required to embed E/I information in their program streams for use with the V-Chip,⁴² it does not appear that the FCC has ever returned to the issue.

The Commission should take this opportunity to consider such a requirement. Parents should be able to use the V-Chip not only to block objectionable content, but to assist them in finding appropriate and high quality content for their children. As noted above, the Commission

³⁹ 47 U.S.C. § 317(a)(1) (2000); *see also* 47 C.F.R. § 76.1615 (2008) (applying broadcast provisions of Section 317 of the Communications Act to origination cablecasting).

⁴⁰ *Children’s Television Obligations*, 19 FCC Rcd. 22943 at ¶ 2.

⁴¹ *Id.* at ¶ 45.

⁴² *Id.* at ¶ 65.

already requires broadcasters to identify E/I programming on air.⁴³ Adding an E/I content descriptor to the current ratings system would allow parents to more easily identify such programming and affirmatively channel it to their children. The Commission should thus urge broadcasters and distributors to include E/I designations in the current content ratings system and to embed E/I information in their program streams.

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⁴³ 47 C.F.R. § 73.671(c)(5) (2008) (requiring that core educational and informational television programming be “identified as specifically designed to educate and inform children by the display on the television screen throughout the program of the symbol E/I”); see *Children's Television Obligations*, 19 FCC Rcd. 22943 at ¶ 2.