



FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

Michael J. Copps
Commissioner

May 11, 2007

The Honorable Edward J. Markey
2108 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515-2107

Dear Chairman Markey:

Thank you for your letter regarding childhood obesity and the prevalence of television advertisements directed at children for junk food and other food products lacking in nutritional value. I appreciate this opportunity to respond.

As an initial matter, it is clear that we face a significant public health threat here. While there are many factors that contribute to the problem of childhood obesity (and surely parents bear significant responsibility in this regard), you and I both recognize that many pediatric and public health experts are convinced that advertising – and particularly television advertising – is also a contributing factor.

This is hardly surprising. It is unlikely that the food industry would be spending billions to market its products to kids if these messages had no effect. Indeed, as you note, the Commission has found that children – especially younger children – are particularly vulnerable to commercial pitches because they have difficulty distinguishing between advertisements and programming. They accept commercials as true because they have not yet developed the skills and cognitive resources to distinguish between fact and fiction.

The real question, then, is not *whether* we have a problem but what we *can* and *should* do about it. As Congress has stated, “[i]t is difficult to think of an interest more substantial than the promotion of the welfare of children who watch so much television and rely upon it for so much of the information they receive.”¹

One potentially positive development is the recently-formed Task Force on Media and Childhood Obesity, on which I am pleased to serve along with my colleagues, Chairman Kevin Martin and Commissioner Deborah Tate. My hope is that this public-private partnership will develop sufficient momentum to make a real difference. The last

¹ See *Second Report and Order*, 21 FCC Rcd 11,065, 11,067 (2006) (citing legislative history of Children’s Television Act of 1990).

thing we need is another report laying out the problem of childhood obesity. We need tangible results. This will require something more than “business as usual.”

Recent events give me a measure of hope that this effort could succeed. Just last year, many of the key players in the media and the children’s advocacy community came together and hammered out a joint proposal to resolve numerous outstanding issues regarding the FCC’s children’s television rules. This kind of outcome is possible here, but it will take real commitment on all sides to find common ground and then to make a difference.

While I want to give this process every chance to work, I also believe that the Commission should be prepared to initiate its own rulemaking to examine these issues. I agree with you that the Commission has ample authority to do so.

First, Congress enacted the Children’s Television Act of 1990 (“CTA”) to limit the number of commercials shown during children’s programming and to make clear that the Commission cannot and need not rely solely on market forces to ensure that licensees provide adequate children’s educational and informational programming. Moreover, as you point out, the CTA finds that licensees should “follow practices in connection with television programming *and* advertising that take into consideration the characteristics of this child audience.”² To that end, Congress specifically required the Commission (1) to protect children from excessive amounts of advertising on television;³ and (2) to consider during the license renewal process whether a station’s programming has served the educational and informational needs of children.⁴

Second, the Commission has independent authority under its public interest mandate to examine these issues. Indeed, long before enactment of the CTA, the Commission relied on its public interest authority to find that broadcasters have a special obligation to serve the child audience. As the Commission noted in 1996: “For over 30 years, the Commission has recognized that, as part of their obligation as trustees of the public’s airwaves, broadcasters must provide programming that serves the special needs

² See 47 U.S.C. § 303a note, emphasis added.

³ See 47 U.S.C. § 303a. Under current rules, commercial television broadcasters, as well as cable and satellite operators, must limit the amount of commercial matter during children’s programming to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays.

⁴ See 47 U.S.C. § 303b. In 1996, the Commission adopted a processing guideline pursuant to which broadcasters that aired at least three hours per week of programming “specifically designed” to serve the educational and informational needs of children ages 16 and under (otherwise known as “core” programming) could receive staff-level approval of the CTA portion of their license renewal application.

of children.”⁵ The Commission exercised that authority, for instance, in prohibiting “host-selling” during children’s programming and requiring licensees to provide adequate separation between children’s programming and commercial messages.⁶

I do not underestimate the complexity of the factual, legal, and policy issues that would be involved in such a proceeding. In particular, I recognize the role that advertising plays in our commercial television system and I certainly do not want to jeopardize the development of high quality children’s programming. As you note, however, the Commission has a fundamental obligation to ensure that the public airwaves are used in a manner that serves the public interest. Simply because this job may be difficult is no excuse for shirking it. Moreover, as the children’s television proceeding demonstrates, the launching of a rulemaking proceeding need not mean the end of other efforts to reach a broader consensus; it might even stimulate them. One way or another, however, this issue needs to be addressed.

In response to your specific questions:

(1) Have you examined the efforts of other countries to combat the problems of childhood obesity and poor nutrition by restricting, or banning altogether, junk food advertisements on television?

While I am indeed familiar with the fact that other countries, such as the United Kingdom, have launched initiatives to combat childhood obesity, I have not yet had an opportunity thoroughly to review them. My hope is that the Task Force will undertake a comprehensive review of other nation’s activities during the course of its work. As you know, I have been actively prodding the Commission to do more data-gathering and analysis, across the gamut of communications issues, so that we can better learn from the experiences of other nations.

(2) Do you believe the Commission should take steps to limit or eliminate the amount of food advertisements on television viewed by children? Does the Commission have plans to initiate a rulemaking on this topic? Would you support such a step?

As noted above, I would support a Commission rulemaking on this topic. I would support putting any and all ideas on the table, including a limit on the amount of food advertising on television viewed by children. Additionally we should be exploring a tightening of the limitations on overall children’s advertising.

⁵ See *In the Matter of Policies and Rules Concerning Children’s Television Programming*, 11 FCC Rcd 10,660 (1996) at ¶ 14; see also *Children’s Television Report and Policy Statement*, 50 FCC 2d 1 (1974) at ¶¶ 15-18.

⁶ See *Children’s Television Report and Policy Statement*, 50 FCC2d 1 (1974) at ¶¶ 46-54.

(3) Do you support disqualifying, for purposes of complying with the Children's Television Act, any educational children's show that airs with junk food advertisements during its programming timeframe?

I would support exploring this idea as well in the context of a broader rulemaking.

(4) Please provide other ideas for using the Commission's authority to ensure that Commission licensees use the public airwaves in a manner that does not exacerbate the problems of childhood obesity and poor nutrition.

The Commission could explore the idea of mandatory counter-messaging. For instance, broadcasters that air junk food ads during children's programming could be required to air meaningful numbers of public service announcements that stress the importance of healthy foods and healthy eating.

The Commission could explore further restricting the use of licensed characters that appear in ads shown during programming subject to the children's commercial limits.

The Commission could investigate the use of product placement in children's programming subject to the commercial advertising limits, and take any enforcement or other action necessary to ensure that the separation between programming and advertising content is maintained.

The Commission could investigate and periodically report to Congress and the public on the prevalence of junk food ads on children's programming, changing trends in such ads, the ongoing responses of industry, the scientific research on the effect of these ads, and possible legislative responses.

Thank you again for your letter and for your leadership on these issues. I look forward to our continuing work together on this important issue.

Warm regards,



Michael J. Copps