

May 11, 2007

Dear Chairman Markey:

Thank you for your letter. Like you, we are deeply concerned about the pervasive and persuasive effect the media has on our children's nutritional choices. As we have noted frequently in discussions with family groups, health experts, food and beverage companies, and the media and advertising industries, childhood obesity has become a national epidemic.

We share your concern for the health and well-being of America's children. The Institute of Medicine recently found that one-third of American children are either obese or at risk for obesity.¹ According to the same Institute, over the past three decades, the proportion of overweight adolescents has doubled and the number of children ages 6-11 has tripled.²

We are also well aware of the alarming facts and figures about the large amount of junk food marketing targeted to children. The Kaiser Family Foundation estimates that children view between 4,400 and 6,000 ads per year and a large number of these messages are for mostly candy, cereal and fast food.³

Both Congress and the Commission have already taken steps to ensure that broadcasters are mindful of the unique needs and vulnerabilities of children. As you know, in the Children's Television Act, Congress noted that children are uniquely susceptible to the persuasive messages contained in television advertising.⁴ Indeed, Congress enacted limits on the amount of advertising that could be shown during children's television programming.

As your letter mentions, we joined Senators Brownback (R-KS) and Harkin (D-IA), and our colleague Commissioner Michael Copps, to form the Task Force on Media and Childhood Obesity ("The Task Force").

The Task Force has met twice so far and will hold three more meetings in the months ahead. At the conclusion of its work, The Task Force will present a report containing guidelines for the media, advertising and food and beverage industries to address the impact of the media on our children's eating and exercise habits. We look forward to the recommendations and insights contained in the report.

We would like to address the specific questions you raised in your letter:

¹ Institute of Medicine, "Progress in Preventing Childhood Obesity: How Do We Measure Up," (Sept, 13, 2006).

² Institute of Medicine, "Childhood Obesity in the United States: Facts and Figures," Fact Sheet (Sept. 2004).

³ Food for Thought: Television Food Advertising to Children in the United States, Kaiser Family Foundation at 3 (March 2007).

⁴ U.S. Congress, Children's Television Act of 1990.

First, you ask whether we have “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?”

We agree that efforts taken by other countries to combat the problems of childhood obesity and poor nutrition certainly are worthy of our consideration. As you suggest, OFCOM would be a good place to start as they seem to have developed a comprehensive approach to all children’s programming, including programming on broadcast, cable and satellite. We will therefore ask the Task Force to examine solutions from both the U.S. and other countries, including specifically the U.K. We look forward to any recommendations which the Task Force makes and will certainly take into consideration the methods employed in other countries to address the problems of childhood obesity and poor nutrition.

Second, you ask whether we would support “steps to limit or eliminate the amount of food advertisements on television viewed by children” and whether the Commission has “plans to initiate a rulemaking on this topic?”

We are currently awaiting the Task Force’s suggestions on guidelines to be adopted by the media, advertising and food and beverage industries to stem the epidemic of childhood obesity. We are hopeful the Task Force will produce serious and concrete efforts to mitigate the impact of marketing in the media on children’s health and well-being. While we will await the final recommendations by the Task Force, some additional restrictions on the type of advertising that airs during children’s programming may be necessary absent sufficient industry guidelines. We will also consider any other suggestions, including yours to initiate a rulemaking on this topic, after the recommendations have been provided. In addition, the Commission will implement whatever steps Congress deems appropriate to address the issue.

Third, you ask whether we would “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?”

We appreciate your leadership in passage of the Children’s Television Act of 1990 (CTA), and take our responsibility to implement and enforce its provisions very seriously. The Commission’s rules require the separation of programming content from commercial material with a “bumper.” And our rules prohibit program characters and show hosts from being featured in commercials run during the program in which they appear. Once again, while we will await the final set of recommendations by the Task Force some additional restrictions on the type of advertising that airs during educational programming may be necessary absent sufficient industry guidelines.

Fourth, you ask us to provide “other ideas for using the Commission’s authority to ensure that Commission licensees use the public airways in a manner that does not exacerbate the problems of childhood obesity and poor nutrition.”

As noted above, we look forward to the culmination of The Task Force's work and will look to its report for such ideas. Its recommendations should reflect not only what the industry participants can and should do but also what the Commission could do. After receiving the report, we will consider potential next steps for the FCC.

In addition, you specifically ask about other ideas for using the Commission's authority to ensure that the "public airwaves" do not exacerbate the problem. While we agree that additional restrictions of advertising on children's programming may be necessary absent sufficient industry guidelines, we would note that recent studies seem to indicate that the problem is significantly worse on children's programming that does not utilize the public airwaves. As such, any remedies targeted only at those licensees who use the airwaves maybe not only insufficient to address the problem, but counterproductive.

For example, according to the most recent Kaiser study that you cite in your letter, "[t]he three ad-supported children's cable networks—ABC Family, Cartoon Network, and Nickelodeon... feature the most amount of time for food ads (3:31 min/hr). This represents 32% of the advertising time on those networks. In comparison, the top four broadcast networks air 1:52 min/hr of food ads, 13% of their advertising time. The ad-supported children's cable networks air 8.8 food ads per hour, considerably above the 4.8 food ads per hour on the top four broadcast networks."⁵ In addition, the study goes on to conclude, "half (50%) of all advertising time on children's shows is devoted to food advertising... The three ad-supported children's cable networks continue to lead here with 4.34 minutes/hour of food ads during children's shows."⁶

You conclude that given other statistics found in this study, "no one can plausibly argue that there is no link between television advertising and childhood obesity." Given Kaiser's findings related to the fact that the problem is more pervasive on cable than on broadcast, this conclusion cannot be limited to those who use the "public airwaves." Rather, the problem appears to be at least if not more pervasive on cable television. Thus, any proposed solution targeted toward those who use the public airwaves and which does not include cable television would be inappropriate and ineffective.

Finally, we are confident that the diverse array of perspectives and expertise represented on the Task Force will result in a valuable report that will better inform us about the aspects of the childhood obesity crisis that fall outside of the scope of the usual expertise of the Commission and its staff.

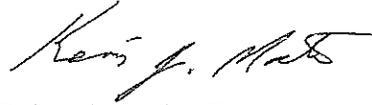
⁵ Food for Thought: Television Food Advertising to Children in the United States, Kaiser Family Foundation at 8 (March 2007).

⁶ Id. at 8.

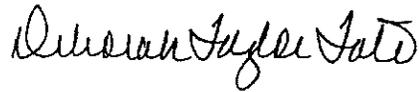
Thank you again for your leadership on these issues relating to the health and well-being of our children.

Sincerely,

/Kevin J. Martin

A handwritten signature in cursive script that reads "Kevin J. Martin".

/Deborah Taylor Tate

A handwritten signature in cursive script that reads "Deborah Taylor Tate".