
FCC Extends Comment Deadlines in Its “Empowering Parents and Protecting Children in an Evolving Media Landscape” Proceeding

by Lauren Lynch Flick

Proceeding Is Important to Electronic Media Content Producers, Television Stations, Advertisers, Educators, Electronics Manufacturers, and Privacy Experts.

On January 13, 2010, the FCC released an Order granting two requests for extension of time to file comments in response to the FCC’s Notice of Inquiry (“NOI”) in its “Empowering Parents and Protecting Children in an Evolving Media Landscape” proceeding. One of the requests was filed jointly by the Association of National Advertisers, the American Advertising Federation, the American Association of Advertising Agencies, the Direct Marketing Association, the Interactive Advertising Bureau, and the Promotion Marketing Association. The second was filed jointly by the Children’s Food and Beverage Advertising Initiative and the Children’s Advertising Review Unit of the Council of Better Business Bureaus, Inc. These parties requested additional time to prepare their comments in light of the numerous issues raised in the NOI and the year-end holidays that fell in the middle of the comment period. The new date for filing Comments in the proceeding is **February 24, 2010** and the new date for filing Reply Comments is **March 26, 2010**.

The nature of the parties requesting extensions is significant and reflects both the breadth of the FCC’s inquiry and the potential for new regulations affecting a wide variety of industry groups. In the NOI, the FCC inquires broadly into the potential benefits and detriments to children of all electronic media, not just broadcast media, with the goal of developing a regulatory regime aimed at empowering parents to maximize those benefits while minimizing the detriments.

The FCC identifies a number of benefits electronic media offer children, including: (i) access to educational content; (ii) acquiring technological literacy needed to compete in a global economy; (iii) developing new skills in the use of technology and the creation of content; (iv) facilitating new forms of communication with family and peers; (v) improving health through telemedicine; and (vi) removing barriers for children with disabilities. With respect to educational content, the Commission specifically invites comment as to the amount of educational content available, the incentives promoting its creation, and its availability to children of different ages, backgrounds, and those whose first language is not English.

The Commission asks whether the core educational children's television programming that broadcasters are required to air pursuant to the Children's Television Act of 1990 is of sufficient quality, and whether such programming is too focused on issues of social/emotional development such that additional programming addressing cognitive/intellectual topics is needed. The Commission also inquires into children's educational programming carried on broadcast stations' multicast channels, asking whether it is of sufficient quality and adequately promoted. Finally, the Commission asks for comment about the size of children's television audiences, the economics of providing programming to them, and whether the Commission should adopt rules that would allow commercial entities to fund the creation of programming on services such as PBS.

With regard to the potential risks to children of electronic media, the FCC suggests as issues: (i) exposure to exploitative advertising; (ii) exposure to inappropriate content (such as offensive language, sexual content, violence, or hate speech); (iii) impact on health (childhood obesity, tobacco use, sexual behavior, drug and alcohol use); (iv) impact on behavior (in particular, exposure to media violence leading to aggressive behavior); (v) harassment and bullying; (vi) sexual predation; (vii) fraud and scams; (viii) failure to distinguish between who can and who cannot be trusted when sharing information; and (ix) compromised privacy. The Commission asks for studies that identify the chief harms to children and whether there is consensus on those harms.

With respect to advertising, the FCC notes that new forms of electronic media expose children to new types of advertising, such as interactive advertisements (for example, advergames), embedded advertisements, and behavioral or viral campaigns. The Commission asks about the extent of that exposure, the extent of parental concern regarding that exposure, what studies have been conducted with respect to the impact of that exposure, and whether there are regulations that the government can impose that would limit children's exposure to advertisements in new media the way the Children's Television Act has limited exposure to advertisements on broadcast, satellite and cable television.

Concerning the FCC's regulations under the Children's Television Act, the Commission asks if inappropriate content is contained in the commercials children see in children's programming or in general audience programming they are likely to watch, whether inappropriate content can be successfully blocked, and whether the FCC's regulation that treats some promotions for programs not intended for children as commercials, and therefore subject to the limits on advertising during children's programming, has been effective in keeping promos for inappropriate programming out of children's programming.

The FCC also specifically calls for more study into the effect of food advertising on childhood obesity. It asks whether voluntary industry efforts to encourage healthier diet and lifestyle choices have been effective, and whether those efforts apply across media platforms, or only to television.

With respect to protecting children from certain media content, the Commission incorporates its earlier report in response to the Children's Safe Viewing Act of 2007 in which it catalogued a number of different parental control technologies available on different media platforms, but concludes that none can work across all media platforms and that there is little uniformity in how each works. In July 2009, the Senate Committee on Commerce, Science and Transportation held a hearing titled "Rethinking the Children's Television Act for a Digital Media Age," at which its Chairman, Senator Jay Rockefeller, expressed a desire to see a single button that a parent could push to have objectionable content blocked on all platforms. The FCC asks whether parents are aware of the existing tools available, whether they are easy for parents to use, whether parents are familiar with existing ratings systems, and whether they believe that the existing "TV Parental Guidelines" are reliable. The Commission goes on to ask whether use of the V-chip can be increased and whether a single ratings system could be applied effectively across multiple platforms.

The FCC also seeks information about non-technological means of protecting children, such as household media use rules. It asks whether there are any studies showing whether such rules are effective at protecting children, especially when media is consumed outside of the home, whether there are any particular rules that could be promoted as best practices, and whether there are resources to assist parents in this process.

The Commission further inquires into the state of media literacy among parents, teachers and children. In particular, the FCC asks whether there is a minimum level of media literacy necessary to participate in modern society, whether media literacy is taught in schools, and whether parents are aware of existing resources on media literacy. The Commission asks whether the government should establish a single on-line resource and how it should promote that resource.

Finally, the FCC asks about the limits on its authority to regulate the various media covered by this inquiry. It acknowledges that this proceeding overlaps with work being done by other governmental agencies and requests information as to how the Commission can partner with those agencies, and whether any of those efforts address platforms other than online media, such as radio, television, and video games.

As is apparent from this Alert, the FCC's inquiry is far reaching, with the potential to impact many industries. Given the additional time being provided for Comments and Reply Comments, the breadth and depth of initial and responsive comments filed in this proceeding will likely be substantial. Those interested in participating in the proceeding may contact members of the Communications Group for assistance in assessing the potential impact of the proceeding on particular businesses, strategies for obtaining the most beneficial results out of the proceeding, and preparation of comments to be submitted to the FCC.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the author below.

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