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## HOW TO IMPROVE THE QUALITY OF CHILDREN'S TELEVISION

A crusade has been underway in Congress in recent years to improve the quality of broadcast television on behalf of America's children. While obviously well-intentioned, these efforts have failed because they have preserved the current uncompetitive regulatory structure instead of allowing market competition to expand the number of new educational choices available to the average American family. But Congress now has a rare opportunity to improve the quantity and quality of children's programming by inviting a host of new competitors into the marketplace through expanded auctions of broadcast spectrum.

Unfortunately, 104 Members of Congress recently reaffirmed their commitment to the status quo when they sent a letter to the Federal Communications Commission (FCC) asking the agency to strengthen provisions of the Children's Television Act of 1990 (CTA). The problem is that the Children's Television Act actually has more to do with making work for communications industry regulators than with improving the quality of children's television. Although the Act does demand that broadcasters air more programming that "meets the educational and informational needs of children," it fails to define what that means. As a consequence, a lot of bureaucrats must spend a lot of time watching cartoons to decide what they think is "educational" and what is not.

**Bureaucrats decide "Fat Albert" is educational, "The Flintstones" is not.** For example, according to recent FCC rulemakings, both "Fat Albert and the Cosby Kids" and "The Smurfs" are deemed "educational." "The Flintstones" and "G.I. Joe" have not been so lucky. They have been singled out as being out of compliance with the CTA. Instead of asking the FCC to watch cartoons, Congress should ask itself whether regulators should be deciding what children watch at all. Any improvements in the quality of broadcasts in recent years can be attributed to the rise of cable and other video competitors, not edicts from Washington. Efforts such as the CTA are riddled with implementation problems and do nothing to improve the long-run quality of broadcast television. The real answer, as in the world of books and magazines, is to allow more choices and let parents decide for themselves what programs or channels are truly educational.

**Washington knows best?** The 104 Members of Congress who wrote to the FCC want the Commission to establish a minimum number of hours of acceptable programming per week that broadcasters must air. The letter declares that the FCC should establish a quantitative federal requirement of at least three hours of federally approved "educational" programming that private broadcasters must air each week or risk having their broadcasting licenses revoked.

While license revocation is rare in practice, it is the indirect pressure of federal oversight that counts in influencing programming. In essence, the FCC uses laws like the CTA to engage in regulatory extortion: Either firms meet the Commission's demands or they forgo marketplace opportunities which the FCC has the authority to restrict, such as a merger with another communications company.

All of this begs the question of why Congress does not make similar demands of companies doing business in the print media marketplace. Why is it that *The Wall Street Journal*, *The New York Times*, and other newspapers do not have to devote three pages of their "A" sections to issues Washington bureaucrats define as "educational and informational"? While one could argue that it is because the print media already are more focused on such

issues than the more entertainment-minded broadcast industry, in reality the answer lies in seven decades worth of misguided First Amendment jurisprudence that has accorded electronic media lesser speech protections and access to markets than print media. As a consequence, laws like the CTA continue to be applied to electronically transmitted media such as broadcasting, even though they would never pass constitutional muster if applied to the print realm. Serious questions remain as to how the CTA will be enforced once most newspapers and magazines are delivered to Americans electronically.

In addition, such bureaucracy-enhancing efforts clearly do not complement last year's deregulatory efforts aimed at reducing federal meddling in communications markets. Instead of encouraging the FCC to expand its cultural inspections, Congress has the unique opportunity to force broadcasters to improve the quality of their programming, without infringing the spirit of the First Amendment, by launching more spectrum auctions.

**Auctioning spectrum will invite more competition and improve quality.** Policymakers could invite greater numbers of educational and informational providers into the marketplace by auctioning off more spectrum, something Congress is now considering. Unfortunately, policymakers are about to give away approximately \$10 billion to \$70 billion worth of spectrum to the same broadcast industry from which they are trying to demand better programming. This means countless new, innovative educational and informational services may be kept off the market because existing broadcasters will be able to hoard large portions of new spectrum. Consequently, broadcasters will be under even less pressure to offer better quality fare to children and families. Auctioning the spectrum, by contrast, not only would bring in revenue to permit tax cuts and deficit reduction, but also would force incumbent broadcasters to air better quality children's programming to keep in step with their new rivals.

Regulations like the Children's Television Act do not benefit children and should be repealed. Intense rivalry for viewer allegiance, not more federal mandates, is the only way to improve the quality and amount of children's programming. Auction off more spectrum, and America's children will be offered the kind of quality programming they deserve and Congress desires.

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