

Angela J. Campbell, Professor, Georgetown University Law Center, discusses the effect of the new guideline requiring the broadcasting of three hours of children's educational television per week in the USA.

Children's educational television — the American experience

In the autumn of 1997, new children's television rules took effect in the USA. As the licensing agency, the Federal Communications Commission (FCC), begins to analyse stations' compliance with the new rules, this article describes those rules and likely implementation problems.

In 1996, more than twenty years after first declaring that television stations had an obligation to provide educational programming for children, the FCC finally answered the question, 'how much?' The FCC adopted a guideline of three hours per week. While three hours a week may not seem like much, it took no less than a White House summit in an election year to obtain this result. In addition to establishing the guideline, the FCC defined what programming would qualify, and established procedures to increase public monitoring. Broadcasters agreed not to challenge the constitutionality of the FCC's decision.

Children's television regulation

Under the processing guideline, licensees who fall into Category A or B can have their licences renewed by the FCC staff. Stations that have aired three hours per week of 'core' programming, averaged over a six month period, fall into Category A. Category B stations have aired 'somewhat less' than three hours of core programming but, 'have aired a package of different types of educational and information programming that demonstrates a level of commitment to educating and informing children that is at least equivalent to' three hours of core

programming. Applicants who do not fit within either category will be referred to the FCC for a full opportunity to demonstrate compliance with the Children's Television Act of 1990.

Core programming must meet six criteria:

- 1) have serving the educational and informational needs of children ages 16 and under as a significant purpose;
- 2) specify the educational objective of the program and target audience in writing in the station's children's program report;
- 3) be aired between 7:00 a.m. and 10:00 p.m.;
- 4) be regularly scheduled;
- 5) be of substantial length, i.e. at least 30 minutes; and
- 6) be identified as educational children's programming when aired and such identification must be provided to program guides.

The first element involves a subjective judgment first, whether the programming is educational, and second, whether educating is a 'significant purpose' of the program. Unfortunately, the FCC rules give little guidance as to either inquiry. The rules adopted in 1991 had defined educational and informational programming as 'any television programming which furthers the positive development of children 16 years and under in any respect, including the child's intellectual/cognitive or social/emotional needs'. After concluding that this definition 'does not provide licensees with sufficient guidance', the FCC modified the definition by replacing the phrase 'positive development'

with 'educational and informational needs'. In other words, the FCC now defines educational and informational programming as programming that serves the educational and informational needs of children.

The FCC explains that the 'significant purpose' criterion is designed to encourage programming that educates and informs but also is entertaining and attractive to children. However, it never explains how it will determine whether education is a significant purpose.

The FCC emphasises that whether programming qualifies as educational does not depend on the topic or viewpoint. To determine whether a program meets the first criterion, the FCC,

will ordinarily rely on the good faith judgment of broadcasters, who will be subject to increased community scrutiny as a result of the public information initiatives ... We consequently will rely primarily on such public participation to ensure compliance with the significant purpose prong of the definition of core programming, with Commission review taking place only as a last resort.

The second element is intended to help licensees focus on children's specific educational needs as well as to help parents better understand and evaluate licensees' responses. Reporting the target audience is intended to make it possible to determine whether children of different ages are receiving adequate service. The third element is designed to ensure that educational children's programming is aired when children can watch it. The last three elements are designed to help parents and children find educational programming. Regularly scheduled,

standard-length programming is more likely to be listed in program guides.

Identification of programming as educational is intended to improve the public's ability to monitor licensees' efforts and to complain when broadcasters fail to meet their responsibilities.

What programming counts

As the FCC begins to review stations' reports of programs aired to meet the guideline, it will have to determine whether the programming qualifies. Some broadcasters may try to count programming which is intended for a broader audience as children's educational.

The tendency to program for a broader audience is not surprising in light of the economics of television programming. Because commercial broadcasters make money by selling audiences to advertisers, they have an incentive to air programming that will attract the largest number of viewers desired by advertisers. Children are inherently less attractive to advertisers than adults because they make up a smaller part of the audience. Furthermore, children have less money than adults to spend on advertised products and are interested in fewer advertised products. Educational programming is further disadvantaged in that it is relatively expensive to produce and tends to be targeted to a narrow age range.

While use of a guideline is likely to ameliorate the problem of penalising broadcasters who do present educational programming, it does not eliminate the market incentive to maximise the number of viewers and to reach older viewers, who are more attractive to advertisers.

The quality of children's educational programming has been a source of concern in the USA. But the FCC identifies as a 'first principle' that judgments about program quality should be made by the public, not the government. It remains to be seen whether parental pressure and market forces will take care of quality concerns. If programs are low quality, children will not watch them. Because broadcasters seek the largest possible audience for advertisers, they have at least some incentive to devote resources to a quality program. But if they do not and members of the

public complain, it is unclear what action the FCC will take. It is difficult to imagine that the FCC would refuse to count programs because of weak characterisations or slow paced storylines, as the ABA has done. These types of judgments would be seen as interfering in the editorial discretion of broadcasters.



Classification

The FCC does not assess whether a program is educational or informational in advance. Indeed, although the Children's Television Act requires broadcasters to air some children's educational programming, the FCC has never questioned the validity of any claim that a particular program serves children's educational needs in assessing licence renewals under that Act. Although such a challenge was possible, in practice, it was not worthwhile for members of the public to challenge a licensee's claims when there was no requirement that the licensee air any particular amount of children's educational programming. Now that the FCC has adopted a quantitative processing guideline, dissatisfied viewers have more incentive to bring a licence renewal challenge. It is likely that the FCC will at some time have to judge whether programs meet the criteria.

For example, suppose a station applying for licence renewal lists 'Teenage Mutant Ninja Turtles' as a program counting toward the guideline. Assume that the program meets all but the first criteria for core programming. The station claims that the program meets the first criterion, having educating children as a significant purpose, because it teaches that good triumphs over evil and includes pro-social messages about

the value of friendship. If a parents' group claims that 'Teenage Mutant Ninja Turtles' does not have educating or informing children as a significant purpose, how can the FCC resolve this dispute without a meaningful definition of 'educational and informational'?

Even assuming that the FCC can judge whether 'Teenage Mutant Ninja Turtles' has educating or informing children as a significant purpose, the timing of this decision — at licence renewal — is problematic. Licence terms were recently extended to eight years. A station may be unreasonably claiming programming as core programming for up to eight years before the FCC can do anything about it.

Conclusion

US broadcasters may be tempted to claim as satisfying the three hour guideline programming that is not specifically designed for children, is of low quality or is not sufficiently educational. Instead of determining in advance whether programming meets its criteria, the FCC has left that determination to licensees, while permitting members of the public to challenge the reasonableness of a licensee's claims at the end of the licence term. This raises the question of whether, in the absence of preclassification, a quantitative minimum will lead to the airing of quality, age-specific and entertaining children's educational programming. Since preclassification would probably be found to violate the constitutional guarantee of free speech, the FCC must look to other means to maximise the success of the guideline. Specifically, I suggest that the FCC consider providing a more helpful definition of 'educational.' Second, to address quality concerns, the FCC might examine whether sufficient resources are available for children's programs and whether production values are equivalent to adult programming. Finally, the FCC should review the efforts of licensees on an annual basis. Annual review would both give broadcasters a strong incentive to comply and create a body of precedent elucidating the meaning of educational and informational programming for children.