

110TH CONGRESS
1ST SESSION

H. R. 2738

To empower parents to protect children from increasing depictions of indecent material on television.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 2007

Mr. LIPINSKI (for himself, Mr. FORTENBERRY, Mr. SHULER, and Mr. ADERHOLT) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To empower parents to protect children from increasing depictions of indecent material on television.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family and Consumer
5 Choice Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Subscription television services have estab-
9 lished a pervasive presence in the lives of Americans,
10 including American children. Over 80 percent of

1 American households subscribe to multi-channel
2 video programming. Approximately 58 percent of all
3 households subscribe to cable television service, and
4 approximately 25 percent subscribe to direct broad-
5 cast satellite (in this section referred to as “DBS”)
6 service. Of those subscribing to cable service, 88 per-
7 cent subscribe to expanded basic service, while just
8 12 percent subscribe only to basic service. Approxi-
9 mately fewer than half of American households sub-
10 scribing to cable receive digital cable service.

11 (2) The substantial majority of American chil-
12 dren have access to multi-channel video program-
13 ming in their home. Approximately 74 percent of
14 children from ages 2 through 18 live in homes with
15 cable or DBS service, and 78 percent of children
16 under the age of 7 live in homes with such service.
17 Of those homes with children subscribing to cable
18 service, the vast majority subscribe to expanded
19 basic cable service. Approximately 20,900,000 house-
20 holds with children subscribe to expanded basic cable
21 service, while just 2,900,000 households with chil-
22 dren subscribe only to basic cable service.

23 (3) American children, on average, spend a sig-
24 nificant part of their day watching television, includ-
25 ing cable programming. According to Nielsen Media

1 Research, children ages 2 through 11 watch an aver-
2 age of 3 hours and 15 minutes of television per day,
3 and children ages 12 through 17 watch an average
4 of 3 hours, 7 minutes of television per day. Children
5 in homes with subscriptions to multi-channel video
6 programming watch, on average, about 67 percent
7 more television than children in homes with only
8 broadcast television service.

9 (4) Many adults and most children do not dis-
10 tinguish between broadcast channels and cable chan-
11 nels. Rather, they view them as interchangeable and
12 regularly switch between these types of channels.

13 (5) Children often watch television in the ab-
14 sence of parental supervision. For example, many
15 children watch television when they are home alone
16 after school while their parents are still at work, and
17 many children watch television at friends' houses
18 when their own parents are not present. A Kaiser
19 Family Foundation report in March 2005 found that
20 68 percent of children ages 8 through 18 have a tel-
21 evision set in their bedroom, and 37 percent have
22 subscription multi-channel video service in their bed-
23 rooms. Furthermore, according to the Department
24 of Education, 81 percent of children ages 2 through
25 7 sometimes watch television without adult super-

1 vision. Additionally, a 2003 Kaiser Family Founda-
2 tion White Paper found that 91 percent of children
3 ages 4 through 6 have turned on the television by
4 themselves.

5 (6) Multichannel video programming distribu-
6 tors, such as cable and DBS operators, are critical
7 sources of video programming, such as public affairs
8 programming, news programming and educational
9 programming, which is not duplicated by broadcast
10 television. Cable operators on average offer 25 chan-
11 nels in their basic tier of programming and approxi-
12 mately 45 additional channels in their expanded
13 basic tier. Cable channels offering educational, infor-
14 mational, or entertainment programming that is ap-
15 propriate for or attractive to children are generally
16 included on the same expanded basic tier as chan-
17 nels offering programming that is sexually explicit.
18 Parents are generally not given the choice of only
19 purchasing channels that carry programming that is
20 appropriate for children.

21 (7) Indecent programming on channels carried
22 on extended basic cable service is pervasive. Sexually
23 explicit material is shown more than twice as often
24 in original cable programming than in broadcast
25 programming.

1 (8) Complaints about indecent cable program-
2 ming have increased exponentially in recent years. In
3 2004, the Federal Communications Commission re-
4 ceived 700 percent more cable indecency complaints
5 than it received in 2003.

6 (9) Parents are concerned that indecent pro-
7 gramming is being aired on cable channels viewed by
8 children. A Kaiser Family Foundation White Paper
9 has found that most parents believe cable program-
10 ming should be subject to the same indecency rules
11 as broadcast television. In addition, during the first
12 half of 2005, the Federal Communications Commis-
13 sion received 10 or more complaints about alleged
14 indecency or obscenity on 20 different cable net-
15 works. Of these 20 cable networks, 15 rank in the
16 top 25 cable networks watched by children ages 2
17 through 11 during prime time, and 17 rank in the
18 top 25 networks watched by children ages 12
19 through 17 during prime time. Most of the cable
20 programs about which indecency complaints have
21 been filed with the Federal Communications Com-
22 mission aired during hours when many children are
23 watching television.

24 (10) Because subscribers to multichannel video
25 programming and their children often “channel-

1 surf” to find out what is on television, they are sus-
2 ceptible to unexpected exposure to unwanted con-
3 tent. Cable subscribers on average use their remote
4 control to sample more channels before choosing a
5 program than do those viewers who only receive
6 over-the-air broadcasting, thus making cable sub-
7 scribers more susceptible to being confronted by un-
8 wanted material. According to a study conducted in
9 2002 by the Cable Television Administration & Mar-
10 keting Society, over 60 percent of cable subscribers
11 use their remote controls to “channel-surf,” that is,
12 to find out what is on television. Moreover, approxi-
13 mately 75 percent of children of ages 4 through 6
14 have changed channels using a remote control ac-
15 cording to a 2003 Kaiser Family Foundation White
16 Paper.

17 (11) The “v-chip” does not effectively protect
18 children from indecent programming carried by mul-
19 tichannel video programming distributors. According
20 to a 2004 Survey by Knowledge Networks SRI, most
21 of the television sets currently in use in the United
22 States are not equipped with a v-chip, and of the
23 280,000,000 sets currently in United States house-
24 holds, approximately 161,000,000 are not equipped
25 with a v-chip. Households that have a television set

1 with a v-chip are also likely to have 1 or more sets
2 that are not equipped with a v-chip, as found in a
3 2005 Broadcasting & Cable TVFAX article.

4 (12) The ability to block channels pursuant to
5 sections 624(d)(2) and 640 of the Communications
6 Act of 1934 (47 U.S.C. 624(d)(2); 640) does not ef-
7 fectively protect children from indecent program-
8 ming carried by multichannel video programming
9 distributors.

10 (13) A host of practical obstacles, including
11 long waits and blocking failures, currently frustrate
12 parents who attempt to rely on such options. This
13 is especially true for those cable subscribers who do
14 not have digital cable service.

15 (14) Because of the manner in which multi-
16 channel video programming distributors currently
17 bundle channels, most multichannel video program-
18 ming subscribers currently receive and pay for nu-
19 merous channels that they do not watch. According
20 to Nielsen Media Research, for example, households
21 receiving more than 70 networks only watch, on av-
22 erage, about 17 of these networks.

23 (15) While multichannel video programming
24 distributors currently provide subscribers with a va-
25 riety of methods of blocking the audio and video pro-

1 programming of any channel that they do not wish to
2 receive, such distributors generally do not offer the
3 subscriber a credit on account of such blocked chan-
4 nel. Thus, subscribers must pay for channels in-
5 cluded in programming tiers even if they are blocked
6 at the request of the subscriber.

7 (16) For those adults seeking to view program-
8 ming for mature audiences, there are many sources
9 of such programming on premium tiers currently of-
10 fered by multichannel video programming distribu-
11 tors. HBO and Showtime, for example, are offered
12 by the vast majority of cable and DBS services, and
13 both programmers carry content that is more sexu-
14 ally explicit than what is available on broadcast
15 channels. At least 98 percent of all cable systems
16 offer premium channels and 43 percent of cable tele-
17 vision households subscribe to 1 or more premium
18 channels.

19 (17) Parents need more effective ways to limit
20 the exposure of children to television with harmful
21 content by being able to purchase cable program-
22 ming that only contains programming that is child-
23 friendly.

24 (18) The efforts to limit the exposure of chil-
25 dren to harmful television content have not been

1 successful because Federal regulatory agencies have
2 not had the authority to require cable and satellite
3 providers to offer programming that only contains
4 programming that is child-friendly. Therefore, legis-
5 lation is necessary to give Federal regulatory agen-
6 cies the authority to combat this problem.

7 **SEC. 3. DEFINITIONS.**

8 Section 602 of the Communications Act of 1934 (47
9 U.S.C. 522) is amended—

10 (1) by striking “For purposes of this title—”
11 and inserting the following:

12 “(a) **IN GENERAL.**—For purposes of this title—”;
13 and

14 (2) by adding at the end the following:

15 “(b) **ADDITIONAL DEFINITIONS.**—In this title, the
16 following definitions shall apply:

17 “(1) **EXPANDED BASIC TIER.**—The term ‘ex-
18 panded basic tier’—

19 “(A) means the tier of channels offered by
20 a multichannel video programming distributor
21 that is most frequently subscribed to by the
22 subscribers of such distributor other than the
23 basic service tier; and

24 “(B) includes channels offered in such
25 basic service tier.

1 “(2) FAMILY TIER OF PROGRAMMING.—

2 “(A) IN GENERAL.—The term ‘family tier
3 of programming’ means a tier of channels of-
4 fered by a multichannel video programming dis-
5 tributor that—

6 “(i) includes all channels offered on
7 the expanded basic tier of such distributor;
8 and

9 “(ii) does not include those channels
10 offered on such expanded basic tier that
11 carry programs that are rated TV-14 or
12 TV-MA under the TV Parental Guidelines,
13 as such ratings were approved by the Com-
14 mission in implementation of section 551
15 of the Telecommunications Act of 1996,
16 Video Programming Ratings, Report and
17 Order, CS Docket No. 97-55, 13 F.C.C.
18 Red. 8232 (1998)), between—

19 “(I) the hours of 6 a.m. and 10
20 p.m., in the Eastern or Pacific Time
21 Zones; or

22 “(II) the hours of 5 a.m. and 9
23 p.m., in the Central or Mountain
24 Time Zones.

1 “(B) AUTHORITY OF COMMISSION TO MOD-
2 IFY DEFINITION.—The Commission, by rule,
3 may modify the definition in subparagraph
4 (A)—

5 “(i) if the TV Parental Guidelines de-
6 scribed in subparagraph (A) are modified;
7 or

8 “(ii) to better effectuate the purposes
9 of this Act, including to protect children
10 from indecent and profane video program-
11 ming.

12 “(3) MULTICHANNEL VIDEO PROGRAMMING
13 SERVICE.—The term ‘multichannel video program-
14 ming service’ means any video programming service
15 provided by a multichannel video programming dis-
16 tributor.

17 “(4) THEMED TIER OF CHANNELS.—The term
18 ‘themed tier of channels’ means a tier of channels—

19 “(A) in which each channel in such tier of-
20 fers programming in the same genre as the
21 other channels, such as a package of sports
22 channels or premium movie channels; and

23 “(B) that are offered by a multichannel
24 video programming distributor for subscription

1 separately from other channels or tiers of chan-
2 nels.”.

3 **SEC. 4. PROTECTING CHILDREN FROM INDECENT VIDEO**
4 **PROGRAMMING.**

5 Part IV of title VI of the Communications Act of
6 1934 (47 U.S.C. 551 et seq.) is amended by adding at
7 the end the following:

8 **“SEC. 642. PROVISION OF PROGRAMMING SUITABLE FOR**
9 **CHILDREN BY MULTICHANNEL VIDEO PRO-**
10 **GRAMMING DISTRIBUTORS.**

11 “(a) RULEMAKING.—

12 “(1) IN GENERAL.—Not later than 270 days
13 after the date of enactment of this section, the Com-
14 mission shall initiate and conclude a rulemaking to
15 adopt measures to protect children from indecent
16 video programming carried by a multichannel video
17 programming distributor.

18 “(2) REQUIRED CONTENT.—

19 “(A) OBLIGATIONS OF MVPD’S.—The rules
20 adopted under paragraph (1) shall require a
21 multichannel video programming distributor to
22 do one of the following:

23 “(i) In accordance with the indecency
24 and profanity policies and standards ap-
25 plied by the Commission to broadcasters,

1 as such policies and standards are modi-
2 fied from time to time, not transmit any
3 material that is indecent or profane on any
4 channel in the expanded basic tier of such
5 distributor between—

6 “(I) the hours of 6 a.m. and 10
7 p.m., in the Eastern or Pacific Time
8 Zones; or

9 “(II) the hours of 5 a.m. and 9
10 p.m., in the Central or Mountain
11 Time Zones.

12 “(ii) Fully scramble or otherwise fully
13 block, without charge, the audio and video
14 programming on any channel that a sub-
15 scriber does not wish to receive, except
16 that such distributor—

17 “(I) may not block—

18 “(aa) a channel required to
19 be on the basic tier of such dis-
20 tributor pursuant to section
21 623(b)(7)(A); or

22 “(bb) any equivalent channel
23 on a direct broadcast satellite
24 service or other type of multi-

1 channel video programming serv-
2 ice.

3 “(II) May not be required to
4 block—

5 “(aa) video programming of-
6 fered on a per-channel or per-
7 program basis; or

8 “(bb) video programming on
9 a themed tier of channels, unless
10 a subscriber does not subscribe to
11 such channel, program, or tier.

12 “(iii) Allow a subscriber to subscribe
13 to a family tier of programming.

14 “(B) ELECTION OF MVPD’S.—The rules
15 adopted under paragraph (1) shall—

16 “(i) require a multichannel video pro-
17 gramming distributor to notify in writing,
18 on an annual basis—

19 “(I) the Commission as to which
20 option described in clauses (i) through
21 (iii) of subparagraph (A) such dis-
22 tributor elects to follow; and

23 “(II) the subscribers of such dis-
24 tributor as to which option described
25 in clauses (i) through (iii) of subpara-

1 graph (A) such distributor elects to
2 follow;

3 “(ii) allow, on an annual basis, each
4 multichannel video programming dis-
5 tributor to change the election made by
6 such distributor under clause (i).

7 “(C) SCRAMBLING OPTIONS.—

8 “(i) IN GENERAL.—The rules adopted
9 under paragraph (1) shall require each
10 multichannel video programming dis-
11 tributor that elects to follow the option de-
12 scribed in subparagraph (A)(ii) to—

13 “(I) give any subscriber who
14 elects to block any channel included in
15 any service tier to which such sub-
16 scriber subscribes a credit on the
17 monthly bill of such subscriber for
18 such blocked channel in an amount
19 equal to the amount that such dis-
20 tributor pays for the right to provide
21 such blocked channel to such sub-
22 scriber, calculated in accordance with
23 clause (ii); and

24 “(II) provide, at least on an an-
25 nual basis, to each subscriber com-

1 prehensive written information con-
2 cerning the amount of any credit that
3 such subscriber would receive under
4 subclause (I), if such subscriber elect-
5 ed to exercise such subscriber’s right
6 to block a particular channel included
7 in any service tier to which such sub-
8 scriber subscribes.

9 “(ii) CALCULATION OF CREDIT.—The
10 credit described in clause (i)(I) shall be
11 calculated as follows:

12 “(I) If a multichannel video pro-
13 gramming distributor pays a fee per
14 subscriber for the right to provide a
15 channel to the subscribers of such dis-
16 tributor, then the amount of such
17 credit shall be equal to the amount of
18 such per subscriber fee.

19 “(II) If a multichannel video pro-
20 gramming distributor pays a fixed
21 amount for the right to provide a
22 channel to all or a specified number of
23 subscribers of such distributor, then
24 the amount of such credit shall be

1 equal to an allocable share of such
2 fixed amount.

3 “(III) If a multichannel video
4 programming distributor does not pay
5 for the right to provide a channel to
6 the subscribers of such distributor,
7 then a subscriber shall not be entitled
8 to receive a credit under clause (i)(I).

9 “(IV) If the subscriber elects to
10 block, under clause (i)(I), the channel
11 of any nonprofit network, the sub-
12 scriber shall not be entitled to any
13 credit under this subparagraph.

14 “(D) FAMILY TIER OPTIONS.—The rules
15 adopted under paragraph (1) shall require each
16 multichannel video programming distributor
17 that elects to follow the option described in sub-
18 paragraph (A)(iii) to allow a subscriber to the
19 digital service offered by such distributor to ob-
20 tain the family tier of programming for 1 or
21 more of the video reception devices of such sub-
22 scriber, while at the same time obtaining other
23 service tiers for other video reception devices of
24 such subscriber.

1 “(b) SEVERABILITY.—If any provision of this section,
2 or the application thereof to any person or circumstance,
3 is held to be unlawful, the remaining portions of this sec-
4 tion not deemed unlawful shall—

5 “(1) not be affected thereby; and

6 “(2) remain in effect to the fullest extent per-
7 mitted by law.”.

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