

**Congress of the United States**  
**Washington, DC 20515**

April 16, 2007

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

The Honorable Michael J. Copps  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

The Honorable Deborah Taylor Tate  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Dear Chairman Martin, Commissioner Copps, and Commissioner Tate:

I am writing with respect to the role that the media plays in informing young children about healthy dietary and nutritional choices. I am concerned about an unhealthy trend toward poor nutrition and childhood obesity and the prevalence of television advertisements for fast food, junk food, sugared cereals, and other foods wholly lacking in nutritional value. In this context, I am pleased you are representing the Federal Communications Commission (the "Commission") on the Task Force on Media and Childhood Obesity.

According to the National Center for Health Statistics, in the past three decades, there has been a 300 percent increase in the rate of American children who are either overweight or obese. Weight-related illnesses once limited mostly to adults, such as Type 2 diabetes, high blood pressure, liver problems, and premature heart disease, are now being diagnosed in teens. If this trend continues, today's children could be the first in generations to enjoy shorter life expectancies than their parents. As such, it is no surprise that the United States Surgeon General has identified obesity as "the fastest growing cause of disease and death in America."

While the growing problem of childhood obesity cannot be attributed solely to advertising, and parents have an undeniable responsibility to steer their children toward healthy choices, numerous experts in the fields of pediatrics and public health have identified advertising – and television advertising, in particular – as one of the most pernicious factors driving this alarming trend. As the Institute of Medicine has found, there is strong evidence that television advertising of foods and beverages has a direct effect on what children choose to eat.<sup>1</sup> And, unlike adults, “children are more ‘trusting and vulnerable to commercial ‘itches,’... and children ‘cannot distinguish conceptually between programming and advertising.’”<sup>2</sup> Thus, I am deeply concerned about a recent study released by the Henry J. Kaiser Family Foundation which discovered that “[f]ood is the number one product advertised to kids....”<sup>3</sup> Among other key findings, the Kaiser Foundation reported:

- 2- to 7-year-old children see 12 food ads per day, or 4,400 ads per year, or nearly 30 hours of food marketing on television.
- 8- to 12-year-old children see the most food commercials: this equates to 21 ads per day, or 7,600 ads per year, or nearly 51 hours of food marketing on television.
- 13- to 17-year-olds see 17 food ads per day, or 6,000 ads per year, or nearly 41 hours of food marketing on television.
- Half of all ad time on children’s shows is for food.
- Of the food ads targeting children and teens, 34 percent are for candy or snacks, 28 percent are for cereal, and 10 percent are for fast food.
- By contrast, only 4 percent of food ads targeted at children and teens are for dairy products, 1 percent are for fruit juices, and none are for fruits or vegetables.

Given these statistics, no one can plausibly argue that there is no link between television advertising and childhood obesity.

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<sup>1</sup> *Food Marketing to Children and Youth: Threat or Opportunity?* Institute of Medicine (2005).

<sup>2</sup> *Children’s Television Obligations Of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 00-167 (Nov. 23, 2004) (“2004 Children’s Television Report and Order”) at ¶ 5, citing *Children’s Television Report and Policy Statement*, 50 FCC 2d 1 (1974), *aff’d*, *Action for Children’s Television v. FCC*, 564 F.2d 458 (D.C. Cir. 1977).

<sup>3</sup> *Food for Thought: Television Food Advertising to Children in the United States*, The Henry J. Kaiser Family Foundation (March 2007).

It was encouraging to hear that at the last Task Force meeting, some of the nation's largest food and beverage companies volunteered to devote at least half of their advertising directed at children to promoting healthier lifestyles and good nutrition. Broadcasters, such as Disney, described similar efforts to incorporate healthier messages into their children's programming.

While purely voluntary steps on the part of industry are certainly to be commended, I do not believe that sprinkling public service announcements for exercise and good nutrition into an avalanche of television advertising for unhealthy foods will be adequate to confront this public health problem. As history has shown, "in the absence of specific requirements, broadcasters have not provided sufficient programming that serves the educational and informational needs of children..." so "the FCC [can] not rely solely on market forces to increase the educational and informational programming available to children on commercial television."<sup>4</sup> If, in the absence of regulation, broadcasters will not satisfy their fundamental public interest obligation to show enough educational and informational programming that *helps* children, I do not believe the Commission can rely on broadcasters to limit the amount of advertising that potentially *harms* children, especially when more than \$3 billion is spent annually on fast food advertising alone.<sup>5</sup>

I trust you will agree that the Commission has an obligation to play an active role in combating this problem. The Commission, after all, is the steward of this Nation's public airwaves, and among its primary responsibilities is a duty to ensure that broadcast licensees use those airwaves in a manner that is consistent with the public interest. Further, in enacting the Children's Television Act ("CTA") – of which I was the primary House sponsor – Congress delegated to the Commission an even more specific duty to ensure that "television station operators and licensees ... follow practices in connection with children's television programming and advertising that take into consideration the characteristics of this child audience."<sup>6</sup> There is no question that the Commission has both the affirmative obligation and the statutory authority to examine whether placing limitations on certain food advertising to children would further the public interest.

The Commission could start by examining the efforts of the Office of Communications ("OFCOM"), its sister agency in the United Kingdom, which recently imposed significant restrictions on television advertising to limit children's exposure to ads for food and drink products that are high in fat, salt, and sugar ("HFSS"). Specifically, OFCOM imposed a total ban on HFSS food and drink advertisements in and around all programs of particular appeal to children under the age of 16, broadcast at any time of day or night on any channel. This includes a total ban in and around all

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<sup>4</sup> 2004 *Children's Television Report and Order* at ¶ 27.

<sup>5</sup> *The Role of Media in Childhood Obesity*, The Henry J. Kaiser Family Foundation (February 2004).

<sup>6</sup> 47 U.S.C. § 303a note.

children's programming and on dedicated children's channels as well as in youth-oriented and adult programs that attract a significantly higher than average proportion of viewers under the age of 16. OFCOM estimates that as a result of these restrictions, children under 16 will see 41 percent fewer HFSS food and drink advertisements and children under the age of nine will see a 51 percent reduction in the number of such ads.<sup>7</sup> Australia is considering a similar ban, while governments in France, the Philippines, Thailand, China, Denmark, Finland, Malaysia, Korea, and Romania have placed restrictions on food advertising to children, even though they do not ban such ads outright.<sup>8</sup>

Here in the U.S., the Commission already has statutory tools under the CTA that permit it to adopt common sense restrictions on food advertising during children's programming. First, under the CTA, commercial television broadcast licensees and cable operators must limit the amount of commercial matter aired during children's programs to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays.<sup>9</sup> However, the Commission "may, after notice and public comment and a demonstration of the need for modification of such limitations, modify such limitations in accordance with the public interest."<sup>10</sup> Based on the Kaiser Foundation's recent finding that half of all advertising during children's shows is for food, and the vast majority of these ads are for unhealthy foods, I believe that the public interest compels the Commission to initiate the proceeding the statute permits on this matter. Unless there is a dramatic and swift elimination of advertisements for junk food during children's programming, the Commission should adopt further limits on the overall amount of commercial matter that can be aired during children's programming. This approach was endorsed in a recent Policy Statement by the American Academy of Pediatrics, which asks Congress and the Commission to limit advertisements during children's programming to no more than five to six minutes per hour, decreasing the current amount by about 50 percent.<sup>11</sup>

Second, the CTA requires the Commission to consider whether commercial television stations have served "the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs," through the Commission's review of television broadcast

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<sup>7</sup> New restrictions on the television advertising of food and drink products to children, News Release, November 17, 2006, available at: [http://www.ofcom.org.uk/media/news/2006/11/nr\\_20061117](http://www.ofcom.org.uk/media/news/2006/11/nr_20061117).

<sup>8</sup> Food Marketing in Other Countries, Center for Science in the Public Interest, February 16, 2007, available at: [http://www.cspinet.org/nutritionpolicy/foodmarketing\\_abroad.pdf](http://www.cspinet.org/nutritionpolicy/foodmarketing_abroad.pdf).

<sup>9</sup> 47 U.S.C. § 303a(b).

<sup>10</sup> 47 U.S.C. § 303a(b).

<sup>11</sup> Policy Statement: Children, Adolescents, and Advertising, *Pediatrics*, Vol. 118 No. 6 (December 2006), available at: <http://pediatrics.aapublications.org/cgi/content/full/118/6/2563>

renewal applications.<sup>12</sup> To encourage commercial television stations to comply with the CTA's educational programming mandate, the Commission's rules allow a broadcaster that airs at least three hours per week of "core" educational programming to receive staff-level approval of the CTA portion of its renewal application rather than having its license renewal application referred to the full Commission.<sup>13</sup> "Core" educational programming is defined as regularly-scheduled, weekly programming of at least 30 minutes in duration, aired between 7 a.m. and 10 p.m., that has serving the educational and informational needs of children ages 16 and under as a significant purpose.<sup>14</sup> To ensure that parents can find this programming, commercial television stations also must identify this programming as educational/informational in reports and program guides.

The goal behind the CTA and the implementing regulations was to provide a "safe space" wherein children could watch wholesome, kid-friendly fare. Essentially, it creates an electronic oasis in what many parents still consider to be a "vast wasteland" of televised fare for young children. Inundating children with advertisements for fast food, junk food, and sugared cereals in this core, educational "safe space" – which constitutes a mere *three hours* of a broadcaster's total airtime each week – would seem to send kids mixed messages, however. Indeed, if a "core" educational program tells children to eat healthy foods and exercise, but the advertisements aired during the program encourage them to eat Twinkies and Fruit Loops, the ads have the potential to undercut the educational and informational value of the program. As such, the Commission should consider disqualifying any children's program during which junk food advertisements are aired from a broadcast licensee's weekly three-hour core programming requirement. Such a rule would not ban such advertising altogether. Instead, it would leave broadcasters with a great deal of flexibility, as they would have the choice of airing junk food ads during other programs outside the narrow, three-hour "core" educational programming window, or they could elect to have their license renewal applications reviewed by the full Commission instead of Media Bureau staff.

Again, I am encouraged that you are concerned about the impact of the media on the childhood obesity epidemic and I am pleased that you have taken the initial step of participating in the Task Force on Media and Childhood Obesity. I am also eager to ascertain how you plan to address this problem at the Commission. Specifically, I respectfully request that you answer the following questions:

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<sup>12</sup> 47 U.S.C. § 303b.

<sup>13</sup> 47 C.F.R. § 73.671(d). Similar requirements were recently imposed on digital television broadcasters.

<sup>14</sup> 47 C.F.R. § 73.671(c).

- (1) Have you 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?
- (2) Do you believe the Commission should take steps to limit or eliminate the amount of food advertisements on television viewed by children? Does the Commission have plans to initiate a rulemaking on this topic? Would you support such a step?
- (3) Do you 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?
- (4) Please provide other ideas for using the Commission's authority to ensure that Commission licensees use the public airwaves in a manner that does not exacerbate the problems of childhood obesity and poor nutrition.

Please respond to these questions by May 4, 2007. If you have any questions regarding this matter, please call me or have your staff contact Maureen Flood at 202-226-2424. Thank you in advance for your time and attention in responding to this request.

Sincerely,



Edward J. Markey  
Chairman

House Subcommittee on  
Telecommunications and the Internet