



May 22, 2026

Marlene H. Dortch
Secretary, Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Opposing proposed recommendations for changes to the structure and functions of the TVOMB; MB Docket No. 19-41

Madam Secretary:

American Atheists strongly opposes the FCC's desired changes to the structure and functions of the TVOMB and the current identification and rating system for television programming. The FCC Media Bureau's Public Notice (the "Notice") sought comment, in particular, about whether "descriptions of the content provide a sufficient basis for parents to make informed decisions concerning viewing decisions for their family, including when gender identity themes are discussed or displayed" and whether "additional faith-based organizations be represented on the TVOMB?" Changes like those suggested by the FCC in the Notice directly contravene what Congress directed the industry to establish in the Telecommunications Act of 1996.¹ As the Notice itself points out, "Congress specifically excluded ratings based on political or religious content."² Moreover, it is apparent from the Notice that the FCC seeks to pressure the industry to convert the current programming information and ratings system from one that is viewpoint neutral to one that necessarily discriminates on the basis of viewpoint. Such a change would not only discourage participation in the system (a necessary component of the voluntary system of self-regulation that the industry established after the passage of the Telecommunications Act of 1996) but would be an unconstitutional exercise of the regulatory authority the FCC does possess. For these reasons, American Atheists strongly opposes the recommendations proposed by the FCC in its Notice.

The changes the FCC seeks to recommend through its Notice are counter to Congress' intent.

When Congress passed the Telecommunications Act, it provided for the creation of a video programming information and rating system that would be put into effect by law unless the television industry established equivalent "voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, §§ 551(b)(1), (e)(1), 110 Stat. 56, 139 (1996) (Telecommunications Act).

² Notice at n.2.

informed before it is displayed to children.”³ It is apparent from the Notice that the FCC seeks to conflate “gender identity themes” with these objectionable types of content the Telecommunications Act sought to regulate.⁴ To do so would be absurd. The mere discussion or display of gender identity themes is not sexual, violent, or indecent. The depiction of transgender or nonbinary characters is not inherently different than the depiction of cisgender characters and neither warrants nor justifies greater regulation. While gender identity is a subject that has generated significant political heat and non-cis gender identities have become a focus of religious ire, that does not render the subject sexual, violent, or indecent.

Congress expressly stated that the information and rating system may not consider political or religious factors.⁵ The FCC’s Notice itself acknowledges this.⁶ Nevertheless the FCC now seeks to pressure the industry into incorporating such considerations into the system. This is neither warranted nor permitted by the Telecommunications Act. Notably, the statutory rating system was never implemented specifically because the industry established its own equivalent, voluntary rating system.⁷ Were the FCC to now find that the current system is insufficient because it fails to implement what amount to political and religious factors into the rating system, it would find itself establishing a statutory system that Congress explicitly precluded from considering the same factors. The FCC’s arguments are fundamentally self-defeating.

The changes the FCC seeks to impose would violate the First Amendment, fundamentally altering and undermining the information and rating system.

Vitality, the existing information and rating system is viewpoint neutral. This is necessary in order for a *voluntary* system of industry self-regulation. The continued existence of such a system requires the buy-in of numerous stakeholders, many of whom would balk at voluntarily participating in a system that could be weaponized against them on the basis of the viewpoints and messages of their programming.

Moreover, the programming information and rating system developed by the industry, while ostensibly voluntary, is better viewed as a mandated self-regulation⁸ in which the

3 *Id.* at § 551(e)(1).

4 Notice, at 4.

5 Telecommunications Act, § 551(b)(1).

6 Notice at n.2.

7 Telecommunications Act, § 551(e)(1); *see also* 47 USCS § 303(w) (noting that the section in question was “omitted”).

8 Saule T. Omarova, *Rethinking the Future of Self-Regulation in the Financial Industry*, 35 *Brook. Q. Int’l L.* 665, 677 (2010).

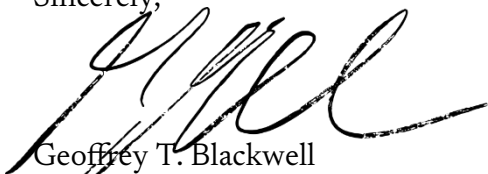
government forces regulation on an industry. Government-mandated self-regulations of this kind must pass constitutional muster and are subject to First Amendment analysis.⁹ Injecting a viewpoint-based classification into the existing, viewpoint-neutral information and rating system creates serious First Amendment concerns. “Viewpoint discrimination is... an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.”¹⁰ Consequently, government actions that subject speech and expressive activity to disparate treatment based on the message conveyed is essentially forbidden.¹¹

The changes the FCC seeks to force upon the TVOMB are unequivocally viewpoint-based and could not come anywhere close to withstanding strict scrutiny. This extends not just to the censorship and labeling of programming that contains “gender identity themes” but also to forcing the TVOMB to include additional members that have specifically a “faith-based” viewpoint.

Conclusion

The FCC clearly intends to coerce the TVOMB into favoring content that supports the current administration’s radical and harmful ideology. Doing so would violate the First Amendment, go directly against the stated intention of Congress when it passed the Telecommunications Act, and discourage participation in the existing, viewpoint-neutral television programming information and rating system. For all these reasons, American Atheists strongly opposes the changes recommended by the FCC’s Notice.

Sincerely,



Geoffrey T. Blackwell
Legal Director, General Counsel
American Atheists
legal@atheists.org
908-603-8787

⁹ *Janus v. AFSCME, Council 31*, 585 U.S. 878, 887 (2018); *Keller v. State Bar of Cal.*, 496 U.S. 1, 9-10 (1990).

¹⁰ *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

¹¹ *Chiles v. Salazar*, ___ U.S. ___, 146 S. Ct. 1010, 1015 (2026)