

[109H5919-EC]

.....
(Original Signature of Member)

110TH CONGRESS
1ST SESSION

H. R.

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

IN THE HOUSE OF REPRESENTATIVES

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

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:

1 (1) Subscription television services have estab-
2 lished a pervasive presence in the lives of Americans,
3 including American children. Over 80 percent of
4 American households subscribe to multi-channel
5 video programming. Approximately 58 percent of all
6 households subscribe to cable television service, and
7 approximately 25 percent subscribe to direct broad-
8 cast satellite (in this section referred to as “DBS”)
9 service. Of those subscribing to cable service, 88 per-
10 cent subscribe to expanded basic service, while just
11 12 percent subscribe only to basic service. Approxi-
12 mately fewer than half of American households sub-
13 scribing to cable receive digital cable service.

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

1 (3) American children, on average, spend a sig-
2 nificant part of their day watching television, includ-
3 ing cable programming. According to Nielsen Media
4 Research, children ages 2 through 11 watch an aver-
5 age of 3 hours and 15 minutes of television per day,
6 and children ages 12 through 17 watch an average
7 of 3 hours, 7 minutes of television per day. Children
8 in homes with subscriptions to multi-channel video
9 programming watch, on average, about 67 percent
10 more television than children in homes with only
11 broadcast television service.

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

16 (5) Children often watch television in the ab-
17 sence of parental supervision. For example, many
18 children watch television when they are home alone
19 after school while their parents are still at work, and
20 many children watch television at friends' houses
21 when their own parents are not present. A Kaiser
22 Family Foundation report in March 2005 found that
23 68 percent of children ages 8 through 18 have a tel-
24 evision set in their bedroom, and 37 percent have
25 subscription multi-channel video service in their bed-

1 rooms. Furthermore, according to the Department
2 of Education, 81 percent of children ages 2 through
3 7 sometimes watch television without adult super-
4 vision. Additionally, a 2003 Kaiser Family Founda-
5 tion White Paper found that 91 percent of children
6 ages 4 through 6 have turned on the television by
7 themselves.

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

24 (7) Indecent programming on channels carried
25 on extended basic cable service is pervasive. Sexually

1 explicit material is shown more than twice as often
2 in original cable programming than in broadcast
3 programming.

4 (8) Complaints about indecent cable program-
5 ming have increased exponentially in recent years. In
6 2004, the Federal Communications Commission re-
7 ceived 700 percent more cable indecency complaints
8 than it received in 2003.

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

1 mission aired during hours when many children are
2 watching television.

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

21 (11) The “v-chip” does not effectively protect
22 children from indecent programming carried by mul-
23 tichannel video programming distributors. According
24 to a 2004 Survey by Knowledge Networks SRI, most
25 of the television sets currently in use in the United

1 States are not equipped with a v-chip, and of the
2 280,000,000 sets currently in United States house-
3 holds, approximately 161,000,000 are not equipped
4 with a v-chip. Households that have a television set
5 with a v-chip are also likely to have 1 or more sets
6 that are not equipped with a v-chip, as found in a
7 2005 Broadcasting & Cable TVFAX article.

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

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

19 (14) Because of the manner in which multi-
20 channel video programming distributors currently
21 bundle channels, most multichannel video program-
22 ming subscribers currently receive and pay for nu-
23 merous channels that they do not watch. According
24 to Nielsen Media Research, for example, households

1 receiving more than 70 networks only watch, on av-
2 erage, about 17 of these networks.

3 (15) While multichannel video programming
4 distributors currently provide subscribers with a va-
5 riety of methods of blocking the audio and video pro-
6 gramming of any channel that they do not wish to
7 receive, such distributors generally do not offer the
8 subscriber a credit on account of such blocked chan-
9 nel. Thus, subscribers must pay for channels in-
10 cluded in programming tiers even if they are blocked
11 at the request of the subscriber.

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

24 (17) Parents need more effective ways to limit
25 the exposure of children to television with harmful

1 content by being able to purchase cable program-
2 ming that only contains programming that is child-
3 friendly.

4 (18) The efforts to limit the exposure of chil-
5 dren to harmful television content have not been
6 successful because Federal regulatory agencies have
7 not had the authority to require cable and satellite
8 providers to offer programming that only contains
9 programming that is child-friendly. Therefore, legis-
10 lation is necessary to give Federal regulatory agen-
11 cies the authority to combat this problem.

12 **SEC. 3. DEFINITIONS.**

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

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

17 “(a) IN GENERAL.—For purposes of this title—”;
18 and

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

20 “(b) ADDITIONAL DEFINITIONS.—In this title, the
21 following definitions shall apply:

22 “(1) EXPANDED BASIC TIER.—The term ‘ex-
23 panded basic tier’—

24 “(A) means the tier of channels offered by
25 a multichannel video programming distributor

1 that is most frequently subscribed to by the
2 subscribers of such distributor other than the
3 basic service tier; and

4 “(B) includes channels offered in such
5 basic service tier.

6 “(2) FAMILY TIER OF PROGRAMMING.—

7 “(A) IN GENERAL.—The term ‘family tier
8 of programming’ means a tier of channels of-
9 fered by a multichannel video programming dis-
10 tributor that—

11 “(i) includes all channels offered on
12 the expanded basic tier of such distributor;
13 and

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

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

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

7 “(B) AUTHORITY OF COMMISSION TO MOD-
8 IFY DEFINITION.—The Commission, by rule,
9 may modify the definition in subparagraph
10 (A)—

11 “(i) if the TV Parental Guidelines de-
12 scribed in subparagraph (A) are modified;
13 or

14 “(ii) to better effectuate the purposes
15 of this Act, including to protect children
16 from indecent and profane video program-
17 ming.

18 “(3) MULTICHANNEL VIDEO PROGRAMMING
19 SERVICE.—The term ‘multichannel video program-
20 ming service’ means any video programming service
21 provided by a multichannel video programming dis-
22 tributor.

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

1 “(A) in which each channel in such tier of-
2 fers programming in the same genre as the
3 other channels, such as a package of sports
4 channels or premium movie channels; and

5 “(B) that are offered by a multichannel
6 video programming distributor for subscription
7 separately from other channels or tiers of chan-
8 nels.”.

9 **SEC. 4. PROTECTING CHILDREN FROM INDECENT VIDEO**
10 **PROGRAMMING.**

11 Part IV of title VI of the Communications Act of
12 1934 (47 U.S.C. 551 et seq.) is amended by adding at
13 the end the following:

14 **“SEC. 642. PROVISION OF PROGRAMMING SUITABLE FOR**
15 **CHILDREN BY MULTICHANNEL VIDEO PRO-**
16 **GRAMMING DISTRIBUTORS.**

17 “(a) RULEMAKING.—

18 “(1) IN GENERAL.—Not later than 270 days
19 after the date of enactment of this section, the Com-
20 mission shall initiate and conclude a rulemaking to
21 adopt measures to protect children from indecent
22 video programming carried by a multichannel video
23 programming distributor.

24 “(2) REQUIRED CONTENT.—

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

5 “(i) In accordance with the indecency
6 and profanity policies and standards ap-
7 plied by the Commission to broadcasters,
8 as such policies and standards are modi-
9 fied from time to time, not transmit any
10 material that is indecent or profane on any
11 channel in the expanded basic tier of such
12 distributor between—

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

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

19 “(ii) Fully scramble or otherwise fully
20 block, without charge, the audio and video
21 programming on any channel that a sub-
22 scriber does not wish to receive, except
23 that such distributor—

24 “(I) may not block—

1 “(aa) a channel required to
2 be on the basic tier of such dis-
3 tributor pursuant to section
4 623(b)(7)(A); or

5 “(bb) any equivalent channel
6 on a direct broadcast satellite
7 service or other type of multi-
8 channel video programming serv-
9 ice.

10 “(II) May not be required to
11 block—

12 “(aa) video programming of-
13 fered on a per-channel or per-
14 program basis; or

15 “(bb) video programming on
16 a themed tier of channels, unless
17 a subscriber does not subscribe to
18 such channel, program, or tier.

19 “(iii) Allow a subscriber to subscribe
20 to a family tier of programming.

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

23 “(i) require a multichannel video pro-
24 gramming distributor to notify in writing,
25 on an annual basis—

1 “(I) the Commission as to which
2 option described in clauses (i) through
3 (iii) of subparagraph (A) such dis-
4 tributor elects to follow; and

5 “(II) the subscribers of such dis-
6 tributor as to which option described
7 in clauses (i) through (iii) of subpara-
8 graph (A) such distributor elects to
9 follow;

10 “(ii) allow, on an annual basis, each
11 multichannel video programming dis-
12 tributor to change the election made by
13 such distributor under clause (i).

14 “(C) SCRAMBLING OPTIONS.—

15 “(i) IN GENERAL.—The rules adopted
16 under paragraph (1) shall require each
17 multichannel video programming dis-
18 tributor that elects to follow the option de-
19 scribed in subparagraph (A)(ii) to—

20 “(I) give any subscriber who
21 elects to block any channel included in
22 any service tier to which such sub-
23 scriber subscribes a credit on the
24 monthly bill of such subscriber for
25 such blocked channel in an amount

1 equal to the amount that such dis-
2 tributor pays for the right to provide
3 such blocked channel to such sub-
4 scribe, calculated in accordance with
5 clause (ii); and

6 “(II) provide, at least on an an-
7 nual basis, to each subscriber com-
8 prehensive written information con-
9 cerning the amount of any credit that
10 such subscriber would receive under
11 subclause (I), if such subscriber elect-
12 ed to exercise such subscriber’s right
13 to block a particular channel included
14 in any service tier to which such sub-
15 scribe subscribes.

16 “(ii) CALCULATION OF CREDIT.—The
17 credit described in clause (i)(I) shall be
18 calculated as follows:

19 “(I) If a multichannel video pro-
20 gramming distributor pays a fee per
21 subscriber for the right to provide a
22 channel to the subscribers of such dis-
23 tributor, then the amount of such
24 credit shall be equal to the amount of
25 such per subscriber fee.

1 “(II) If a multichannel video pro-
2 gramming distributor pays a fixed
3 amount for the right to provide a
4 channel to all or a specified number of
5 subscribers of such distributor, then
6 the amount of such credit shall be
7 equal to an allocable share of such
8 fixed amount.

9 “(III) If a multichannel video
10 programming distributor does not pay
11 for the right to provide a channel to
12 the subscribers of such distributor,
13 then a subscriber shall not be entitled
14 to receive a credit under clause (i)(I).

15 “(IV) If the subscriber elects to
16 block, under clause (i)(I), the channel
17 of any nonprofit network, the sub-
18 scriber shall not be entitled to any
19 credit under this subparagraph.

20 “(D) FAMILY TIER OPTIONS.—The rules
21 adopted under paragraph (1) shall require each
22 multichannel video programming distributor
23 that elects to follow the option described in sub-
24 paragraph (A)(iii) to allow a subscriber to the
25 digital service offered by such distributor to ob-

1 tain the family tier of programming for 1 or
2 more of the video reception devices of such sub-
3 scriber, while at the same time obtaining other
4 service tiers for other video reception devices of
5 such subscriber.

6 “(b) SEVERABILITY.—If any provision of this section,
7 or the application thereof to any person or circumstance,
8 is held to be unlawful, the remaining portions of this sec-
9 tion not deemed unlawful shall—
10 “(1) not be affected thereby; and
11 “(2) remain in effect to the fullest extent per-
12 mitted by law.”.