

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
TVOMB Television Ratings System)	MB Docket No. 19-41
Public Notice)	

COMMENTS OF FREE PRESS

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May 22, 2026

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EXECUTIVE SUMMARY

The Federal Communications Commission published a notice on April 22, 2026, seeking public comment on the Television Oversight Monitoring Board’s parental rating system guidelines. Among the various questions posed, the Commission sought comment on “whether the industry’s approach is continuing to provide the information that is relevant to parents today” regarding “controversial gender identity issues ... [s]pecifically ... transgender and gender non-binary programming.”

Free Press strongly opposes the Commission’s meritless and invalid attempt to influence television ratings and thereby chill LGBTQ+ content with which its current Chairman may disagree. The FCC does not have any authority to regulate the parental ratings system, which is a voluntary system that Congress intended to be developed and implemented by the broadcast and broader video industry through the 1996 Telecommunications Act’s Section 551. Furthermore, its attempt to influence the industry through such a *Notice* raises numerous First Amendment concerns, including the unfounded conflation of “gender identity” with obscene or indecent material. The *Notice* also risks a chilling effect for all producers of content about LGBTQ+ storylines and those viewers who wish to seek it out or would otherwise benefit from it.

This inquiry is yet another measure in this Commission’s and the Trump administration’s wider censorial campaign that targets disfavored groups and retaliates against its critics. We urge the FCC to abandon this endeavor to intimidate and silence LGBTQ+ voices.

I. The Commission Does Not Have Authority to Regulate the Voluntary Ratings System.

The Federal Communications Commission (“FCC” or “Commission”) has no authority over the television parental ratings guidelines.¹ Section 551 of the 1996 Telecommunications Act (“Telecom Act”) provided for a ratings system that would be developed by the television industry, not the FCC.² The congressional conference committee report on the Telecom Act clearly states that:

the guidelines and recommended procedures for a rating system [in section 551 of the 1996 Act] are not rules and do not include requirements. They are intended to provide industry with a carefully considered and practical system for rating programs if industry does not develop such a system itself. However, nothing in subsection (b)(1) authorizes, and the conferees do not intend that, the Commission require the adoption of the recommended rating system nor that any particular program be rated.³

The FCC itself recognized in 1998 that its prospective authority had been delayed by Congress to allow the industry to establish a ratings system.⁴ In response to Section 551, the National Association of Broadcasters, National Cable Television Association, and Motion Picture Association of America jointly submitted a system of voluntary parental guidelines. Section 551(e) did direct the FCC to determine whether the proposed rating system was acceptable.⁵ The FCC solicited two separate rounds of public comment in 1997 on the industry’s

¹ See *FCC’s Media Bureau Seeks Comment on Further Empowering Parents to Protect Their Children And Make Informed Choices About the Tv Programs Their Children Watch*, MB Docket No. 19-41, Public Notice, DA 26-392 (rel. Apr. 22, 2026) (“Notice”).

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 551(e) (1996). “The amendment made by subsection (b) of this section shall take effect 1 year after the date of enactment of this Act, but only if the Commission determines, in consultation with appropriate public interest groups and interested individuals from the private sector, that distributors of video programming have not, by such date— (A) established voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children, and such rules are acceptable to the Commission; and (B) agreed voluntarily to broadcast signals that contain ratings of such programming.” *Id.*

³ S. Conf. Rep. No. 104-230, at 195 (emphasis added).

⁴ *Implementation of Section 551 of the Telecommunications Act of 1996, Video Programming Ratings*, CS Docket No. 97-55, Report and Order, 13 FCC Rcd 8232, 8233, ¶ 4 & n.10 (1998) (“*FCC Implementation Report*”).

⁵ *Id.* ¶ 2.

initial and revised parental guidelines,⁶ which notably included content warnings for “sexual, violent, or indecent material about which parents should be informed prior to its display to children.”⁷ Its report on the implementation of Section 551 noted that: “Most commenters urge the Commission to find that the *TV Parental Guidelines*, as revised, are acceptable.”⁸

Any statutory authority granted then “expired in March 1998, when the Commission found that the Guidelines satisfied Section 551 of the Telecommunications Act of 1996,” as industry comments reinforced in 2019.⁹ Nor did Congress grant the FCC any oversight function over the TV Oversight Management Board (“TVOMB”), which was established to “ensure that the rating guidelines are applied accurately and consistently to television programming.”¹⁰ The Telecom Act delineated for the FCC a role to create a ratings system only if the industry failed to do so. It did not articulate any further role for the FCC to review the work of the TVOMB. The FCC last reported on the accuracy and oversight of the TVOMB parental ratings system in 2019 pursuant to a congressional mandate.¹¹

Section 551(e) reflects the longstanding view of the Commission that “industry self-regulation is preferable to the adoption of rigid governmental standards” with regards to the “broad question of what is appropriate for viewing by children.”¹² Even in 1975, the Commission

⁶ *Id.* at 8234, ¶ 5.

⁷ *Id.* at 8232, ¶ 1.

⁸ *Id.* at 8240, ¶ 15.

⁹ National Association of Broadcasters, NTCA – The Internet & Television Association, and The Motion Picture Association of America, Joint Reply Comments on TV Parental Guidelines Report, MB Docket No. 19-41, at 8 (filed Mar. 19, 2019) (“Joint Reply Comments”), <https://www.nab.org/documents/filings/NAB-NCTA-MPAATVRatingsReply%20Comments3-19-19.pdf>.

¹⁰ *FCC Implementation Report*, 13 FCC Rcd at 8240, ¶ 10.

¹¹ See John Eggerton, *Congress Directs FCC to Review TV Ratings*, BROADCASTING + CABLE (Feb. 21, 2019), <https://www.nexttv.com/news/congress-directs-fcc-to-review-tv-ratings>; see also Stephen Council, *A one-time ‘conservative superstar in California just went bankrupt*, SF GATE (Oct. 8, 2025), <https://www.sfgate.com/sf-culture/article/parents-television-council-went-bankrupt-21091238.php>.

¹² *Report on the Broadcast of Violent, Indecent, and Obscene Material*, 51 F.C.C.2d 418, 419 (1975).

understood that “judgments concerning the suitability of particular types of programs for children are highly subjective.”¹³ Therefore, when Congress authorized the creation of a voluntary ratings system, it did so with the explicit recognition that the industry should retain the primary responsibility to do so.

Chairman Carr is now placing his thumb on the scale to shape American conversation and culture. He has no statutory authority to do so. The *Notice* cites alleged concerns and controversy over “shows with transgender and gender non-binary programming.”¹⁴ Ratings for this programming or any programming are wholly outside of the Commission’s control, and the use of this public comment procedure to coerce change raises constitutional concerns.

II. The Agency’s Attempt to Dictate TV Ratings Raises Incurable First Amendment Concerns.

Beyond its patent disregard for the limits or lack of the FCC’s statutory authority, this *Notice* raises grave First Amendment concerns. As the Supreme Court noted in 1978, “the fact that society may find speech offensive is not a sufficient reason for suppressing it.”¹⁵ Yet while the *Notice* purports to simply ask questions and seek public comment, it instead communicates its disdain for certain programming.

The *Notice* begins its inquiry by citing congressional intent behind the passage of Section 551 of the Telecom Act. Specifically, it asserts that Congress “acted to empower parents” by providing them with the ability “to block violent, sexual or other programming that parents believe is harmful to their children.”¹⁶ It then claims that “significant concerns have been raised

¹³ *Id.*

¹⁴ *Notice* at 2.

¹⁵ *Federal Communications Commission v. Pacifica Foundation*, 438 U.S. 726, 745 (1978).

¹⁶ *Notice* at 1.

about the ratings system,”¹⁷ but cites only commenter concerns from 2019—even though many television programs that aired seven years ago are no longer available today and many programs available today were not even on the air, let alone conceived of.

In fact, data consistently shows that parents are overwhelmingly satisfied with the voluntary ratings system. The industry’s initial joint comments in response to the 2019 congressional inquiry reported that 90% of parents were aware of the TV ratings, and nearly 90% of parents remained satisfied with the accuracy of those ratings.¹⁸ TVOMB’s public reporting has found a continued “downward trend in ratings related-comments” since 2021.¹⁹ In 2025, TVOMB reported receiving 170 pieces of public correspondence, only 11 of which related to the TV Parental Guidelines ratings.²⁰

The question of TV rating accuracy may be of interest to those who have asked the FCC to take up this issue. Yet the agency’s fishing expedition here clearly sets out to eliminate or discourage specific content, invoking incurable First Amendment concerns. By inviting comment from the public over programming that purportedly “include[s] or promote[s] [...] controversial gender identity issues,” the FCC insinuates that such programming may be obscene, indecent, or profane material. This is a misguided and false attempt to wedge alleged parental concerns into these limited categories that the agency can regulate to some small degree.²¹

¹⁷ *Id.* at 2.

¹⁸ Joint Reply Comments at 8.

¹⁹ TV Parental Guidelines Monitoring Board, *Annual Report 2025* at 7 (2025), https://www.tvguidelines.org/resources/TV_Parental_Guidelines_2025AnnualReport.pdf.

²⁰ *Id.*

²¹ See 18 U.S.C. § 1464; see also 47 C.F.R. § 73.3999.

A. Content about gender or gender identity is not obscene or indecent.

Obscene material refers to lewd or excessively sexual material.²² The FCC’s own website defines indecent speech as “material that, in context, depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards for the broadcast medium.”²³

The United States Supreme Court laid out in 1973 the standards that jurors should apply in determining if material is obscene, in what is known as the *Miller* test.²⁴ The *Miller* test includes three elements: (1) whether the average person applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; (2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (3) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Even when material includes a small percentage of what some might deem sexual or sexually explicit content, it still will not meet the threshold of the *Miller* test because all three of these factors must be met for a work to be obscene. Consider: children’s books about gay parent families, or scientific diagrams about reproductive health and women’s periods, or television commentary about abortion restrictions playing out across the country today. All of these examples carry literary, artistic, political, or scientific value and are not obscene under the *Miller* test.

²² See *Miller v. California*, 413 U.S. 15 (1973).

²³ *Broadcast of Obscenity, Indecency, and Profanity*, The Federal Communications Commission (last updated Dec. 20, 2022), <https://www.fcc.gov/enforcement/areas/broadcast-obscenity-indecency-profanity>. This same webpage mentions profanity, but offers no definition for it.

²⁴ See *Miller*, 413 U.S. at 24.

Moreover, children’s programming does not include obscene or sexually graphic material, or stations would risk having their licenses revoked by the Commission. To suggest programming that discusses gender identity may be obscene or indecent material, which would be the only quasi-plausible reason for the Commission to inquire about such television content at all, distorts First Amendment law and disparages the lives and stories of families and communities that want to watch shows that explore themes of gender identity. And it is a patently absurd and politically motivated misreading by Chairman Carr of the operative statute and FCC precedent. As we explained above, Section 551 of the Telecom Act required voluntary ratings for programming that “contains sexual, violent, or other indecent material about which parents should be informed.” It did not require labeling of any and all material that some parents may “believe is harmful to their children,” as the *Notice* purports—or rather, distorts.

This also begs the question of what, exactly, the Commission means when it refers to “gender identity.” While such a vague label would itself invite challenges and raise more questions than it answers, the Commission shows its hand by proclaiming that “the industry guidelines that parents rely on are rating shows with transgender and gender non-binary programming as appropriate for children and young children.”²⁵ This line, buried within the numerous questions posed by this *Notice*, conveys the Commission’s true inquiry and hints at the targeted intent to suppress specific content for viewers. One of the central tenets of our First Amendment jurisprudence is that “the government must remain neutral in the marketplace of ideas.”²⁶ The FCC is abusing procedural mechanisms by acting outside of its statutory authority, and using them to further this administration’s anti-trans agenda.

²⁵ *Notice* at 2.

²⁶ *Federal Communications Commission v. Pacifica Foundation*, 438 U.S. 726, 745 (1978).

B. FCC control of TV ratings would chill broader public access to television programming, especially chilling content made by, for, and about the LGBTQ+ community.

The Supreme Court has long held that a stated desire to protect our country’s youth does not allow the government to “reduce the adult population to [consuming] only what is fit for children” or limiting our public discourse “to that which would be suitable for a sandbox.”²⁷

Even if, taken at face value, the FCC were attempting to protect children, possible agency control of TV ratings would chill public access to television programming and reduce our discourse to what is fit for youth. Were the agency to influence TV ratings—and with the clear intent here to eliminate and repress specific content about gender and gender identity, specifically about trans and non-binary people—the effect would likely be more conservative ratings for programming that considers issues of gender, femininity, masculinity, transgender, and other topics. This would likely include restrictions and tighter TV ratings on all content about LGBTQ+ individuals.

The breadth of children’s programming today also demonstrates the impracticality of applying categories or labels. Take the Australian children’s show *Bluey*, which was the most-watched show (among all children’s programming and general audience programming too) in the United States in 2024.²⁸ The show has won critical acclaim for its approach to storytelling that appeals to children and parents alike across the globe.²⁹ While its stories are told from the perspective of a six-year-old, *Bluey* tackles storylines such as infertility.³⁰ During its season three finale, a minor character made a reference to his two “mums” when telling a story about his

²⁷ *Reno v. ACLU*, 521 U.S. 844, 875, 888 (1997).

²⁸ Lars Brandle, ‘*Bluey*’ Is No. 1 Most-Watched Show In U.S. For 2024, VARIETY AUSTRALIA/NEW ZEALAND (Sept. 10, 2024), <https://au.variety.com/2024/tv/news/bluey-most-watched-show-united-states-2024-17465/>.

²⁹ David Sims, *In Praise of ‘Bluey,’ the Most Grown-Up Show for Children*, THE ATLANTIC (Aug. 15, 2023), <https://www.theatlantic.com/culture/archive/2023/08/bluey-season-3-review/675020/>.

³⁰ *Id.*

guinea pig.³¹ This inclusive moment was widely celebrated for showing a diverse representation of family³² (a topic with which the *Notice* claims to concern itself).³³

According to changes contemplated by the *Notice*, should *Bluey* be designated with a more mature rating for portraying a family with two mothers? Should it come with a warning for simply representing the reality of many everyday families? It is this reality that the Commission is trying to erase, along with the administration’s wider efforts to erase historical and present conversations about diversity and inclusion.³⁴ The *Notice* itself, along with the path it clearly suggests, would chill producers’ willingness to take on stories, programming, or even news coverage about topics regarding gender, identity, queerness, and related topics of value to the LGBTQ+ community. That would implicate the First Amendment rights of producers of potential programming as well as viewers that might otherwise benefit from and seek out these topics.

The Commission’s anti-trans communiqué, dressed up as questions about the TV industry’s voluntary ratings system, perpetuates dangerous misperceptions of a minority that the Trump administration disfavors and is actively targeting. The Republican Party has increasingly resorted to sponsoring and passing anti-trans legislation in the wake of the Supreme Court’s

³¹ Rosie Colosi, *Did ‘Bluey’ introduce its first gay couple? The history of LGBTQ+ representation in animated series*, TODAY (June 7, 2024), <https://www.today.com/parents/bluey-lgbtq-family-rcna155265>.

³² *Id.*

³³ *Notice* at 2-3 (“Accordingly, we seek comment here on any changes that can or should be made to the current ratings system to ensure that it is more responsive to the issues that parents confront today. This includes any changes that may make sense for TVOMB to ensure that it is representative of a range of family values.”) (emphasis added).

³⁴ As one of its first acts, the Trump administration declared its opposition to Diversity, Equity and Inclusion (“DEI”) initiatives. The executive orders signed by President Trump in the first days of his second term ended steps taken by the Biden administration to promote racial equity and equal opportunity. See Taylor N. Riccard, *Recent Executive Actions on Diversity, Equity, and Inclusion (DEI)*, Congressional Research Service (Jan. 29, 2025), https://www.congress.gov/crs_external_products/IN/PDF/IN12497/IN12497.2.pdf.

decision in *Obergefell v. Hodges*, the landmark case that legalized same-sex marriage.³⁵ This manufactured fixation has bled over into governmental actors’ messaging,³⁶ as the administration and other officials ramp up their anti-trans rhetoric and actions, including even a new “counterterrorism strategy” that includes “radically pro-transgender” ideologies.³⁷

Since the very beginning of Brendan Carr’s tenure as FCC chair, he has sought to undermine long-held regulatory standards and violate First Amendment rights for consumers and media entities while enacting his agenda of censorial control over our free press. This *Notice* is another example of such tactics, with deeply erosive implications for our expressive and associational rights. As Commissioner Anna Gomez commented: “This is a solution in search of a problem, and another example of this Commission prioritizing culture war politics over the real issues that affect consumers every day.”³⁸

III. Conclusion

There are any number of urgent matters that demand the FCC’s attention, whether universal broadband access or review of behemoth media mergers. Here, there is no issue for the Commission to pursue. By giving parents choice over programming and by installing V-chip technology into televisions, Congress intended to give individual parents capability for blocking

³⁵ *From Obergefell to Skremetti: A Decade of Escalating Anti-Transgender Attacks*, American Civil Liberties Union (last visited May 19, 2026), <https://www.aclu.org/from-obergefell-to-skrmetti-a-decade-of-escalating-anti-transgender-attacks> (cataloguing efforts of “anti-equality activists who begin testing new avenues to block legal protections for LGBTQ people.”).

³⁶ See David Wright, *Republicans reprise anti-transgender ‘Kamala is for they/them’ ads for the midterms*, CNN (Aug. 9, 2025), <https://www.cnn.com/2025/08/09/politics/republicans-anti-transgender-ads>.

³⁷ *United States Counterterrorism Strategy*, The White House (2026), <https://www.whitehouse.gov/wp-content/uploads/2026/05/2026-USCT-Strategy-1.pdf>.

³⁸ John Hendel, *Brendan Carr floats TV ratings for transgender content*, POLITICO (Apr. 22, 2026), <https://www.politico.com/news/2026/04/22/brendan-carr-tv-gender-identity-fcc-00887017>.

programming they believe may be harmful to their children.³⁹ Congress did not intend to give some parents a platform from which to dictate choice for other families.

The Commission should abandon this contrived and morally repugnant exercise, as it has no authority to suggest changes to the TV ratings system.

Respectfully Submitted,

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May 22, 2026

³⁹ See *FCC Implementation Report*, 13 FCC Rcd at 8233, ¶ 2 (observing that “Congress’ goal [was] achieving an effective method by which ... parents [can] block programming they believe harmful to their children”).