

**PREPARED STATEMENT OF  
THE FEDERAL TRADE COMMISSION**

**on**

**MARKETING FOOD TO CHILDREN AND ADOLESCENTS:  
A REVIEW OF INDUSTRY EXPENDITURES, ACTIVITIES, AND  
SELF-REGULATION**

**Before the**

**SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL  
GOVERNMENT  
and the  
SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN SERVICES,  
EDUCATION, AND RELATED AGENCIES  
of the  
COMMITTEE ON APPROPRIATIONS**

**UNITED STATES SENATE**

**Washington, D.C.  
September 23, 2008**

## I. Introduction

Chairman Durbin, Chairman Harkin, Ranking Member Brownback, Ranking Member Specter, and Members of the Subcommittees, I am Jon Leibowitz, Commissioner of the Federal Trade Commission (“FTC” or “Commission”).<sup>1</sup> The Commission is pleased to have this opportunity to provide testimony on our efforts to address childhood obesity. Today, I would like to provide some context to the Commission’s efforts, describe the agency’s various initiatives to advocate for responsible marketing and enhanced self-regulation, and then turn more specifically to a discussion of the Commission’s July 2008 Report to Congress: “Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self- Regulation.”<sup>2</sup> The full text of the Report has been submitted to the Subcommittees for the record.

The Commission believes that this Report will provide an important benchmark for measuring the future progress of self-regulatory initiatives. In addition to describing the state of food marketing to children and adolescents in 2006 and analyzing industry initiatives to date, the Report also sets forth a number of recommendations. For example, the Commission recommends that all companies engaged in marketing food to children limit such marketing to products that meet meaningful, nutrition-based standards and that such standards apply to *all*

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<sup>1</sup> The written statement presents the views of the Federal Trade Commission. My oral testimony and responses to questions reflect my views, and do not necessarily reflect the views of the Commission or any other Commissioner.

<sup>2</sup> Federal Trade Commission, *Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation* (2008) (2008 Report), available at <http://www.ftc.gov/os/2008/07/P064504foodmktngreport.pdf>. See also Concurring Statement of Commissioner Jon Leibowitz, available at <http://www.ftc.gov/speeches/leibowitz/080729foodmarketingtochildren.pdf>.

forms of advertising and promotion. A good first step would be for all such companies to join the self-regulatory initiative established by the Council of Better Business Bureaus.<sup>3</sup> In addition, the Commission recommends that the media and entertainment companies develop their own self-regulatory program to impose meaningful nutrition standards for both the licensing of characters and the advertising placed on programming directed to children. After allowing a reasonable time for response to these recommendations, the Commission will issue a follow-up report assessing the extent to which the recommendations have been implemented and identifying what, if any, additional measures may be warranted.

## **II. FTC's Authority and History on Food Marketing to Children**

The Federal Trade Commission is the nation's consumer protection agency and has a broad mandate under Section 5 of the Federal Trade Commission Act to stop deceptive or unfair acts and practices in commerce.<sup>4</sup> The Commission fulfills this mandate primarily through law enforcement, but also engages in rulemaking, research, policy development, consumer and business education, and promotion of industry self-regulatory initiatives. Issues that relate to health and well-being have always been a priority of our consumer protection mission, and in recent years, the Commission has devoted substantial resources to addressing childhood overweight and obesity.

The prevalence and seriousness of this public health problem have been well documented

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<sup>3</sup> See pp. 6-7, *infra*.

<sup>4</sup> 15 U.S.C. § 45(a).

by the Centers for Disease Control and Prevention (CDC).<sup>5</sup> The causes of the problem are complex, and there is ongoing vigorous debate over the social and economic factors that may contribute to the problem. Poor city planning that makes it difficult for children to walk or bike ride, cuts in school physical education classes, increased television viewing, computer use, and video gaming, fewer hours of sleep, and more frequent restaurant meals have all been cited as factors. Much of the public attention has naturally focused on what and how much children consume and what types of foods and beverages they are encouraged to eat and drink by marketers.

The Commission has concluded that, at this point, the most effective means of addressing childhood obesity, and particularly the food marketing issue, is through industry initiatives that include vigorous self-regulation.<sup>6</sup> Under the right circumstances, industry-generated solutions

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<sup>5</sup> According to the CDC, the prevalence of overweight youth has increased about three-fold over the last 25 or 30 years, with 19 percent of children ages 6 to 11 and 17 percent of teenagers 12 to 19 now overweight or obese. The long-term health consequences for these children are serious and include increased risk of cardiovascular disease and increased prevalence of type 2 diabetes. Centers for Disease Control and Prevention, *Obesity and Overweight: Childhood Overweight*, available at <http://www.cdc.gov/nccdphp/dnpa/obesity/childhood/index.htm>.

<sup>6</sup> In 1978, the Commission embarked on a rulemaking effort to address concerns about marketing of sugary foods to children. In 1980, Congress enacted restrictions that prohibited the Commission from adopting any rule regarding children's advertising that relies on a legal basis that the advertising is unfair under the FTC Act. FTC Improvements Act of 1980, Pub. L. No. 96-252, Sections 11(a)(1), 11(a)(3), 94 Stat. 374 (1980) (current version codified at 15 U.S.C. § 57a(h)). For this and other reasons, the Commission ultimately terminated the rulemaking proceeding. 46 Fed. Reg. 48,710 (Oct. 2, 1981). An effort by government to ban or restrict food marketing could also face significant constitutional constraints. Any government regulation of truthful commercial speech must pass three tests: (1) there must be a substantial government interest to be achieved by restricting the speech; (2) the regulation must directly advance that interest; and (3) the restriction must be narrowly tailored. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 564 (1980).

have the potential to address a public health problem of this magnitude quickly, creatively, and flexibly.

For these reasons, the Commission has focused its efforts in recent years on encouraging, guiding, and pushing the private sector in the right direction. We have explored how the food industry can contribute to reversing obesity trends through product and packaging innovations and responsible marketing practices that emphasize healthier food choices for children. The Commission has also looked at ways that the media and entertainment industries can use their considerable creative know-how and strong appeal to children to encourage healthier diets and lifestyles. The FTC has kept a close watch on industry progress and has been candid in its assessments. We are encouraged by what we have seen so far, but we are also recommending that industry take additional steps.

### **III. The 2005 Workshop on Marketing, Self-Regulation, and Childhood Obesity**

The Commission's push for industry solutions to childhood obesity began in July 2005, when the FTC and the Department of Health and Human Services (HHS) jointly convened a two-day Workshop on Marketing, Self-Regulation, and Childhood Obesity.<sup>7</sup> This event brought together some of the largest food manufacturers and entertainment companies, as well as government officials, health experts, and consumer advocates. The purpose of the workshop was neither to determine the causes of childhood obesity nor to assess blame; rather, the goal was to focus attention on positive initiatives that industry members and others could take to encourage

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<sup>7</sup> *Marketing, Self-Regulation, and Childhood Obesity: A Joint Workshop of the Federal Trade Commission and the Department of Health and Human Services* (July 14-15, 2005). Agenda and transcript of proceedings available at <http://www.ftc.gov/bcp/workshops/foodmarketingtokids/index.htm>.

healthier eating and living by the nation's young people.

The workshop yielded a number of important findings, which are detailed in an April 2006 joint report of the FTC and HHS.<sup>8</sup> The report identified several steps that food and beverage companies were already taking to respond to childhood obesity, including the introduction of new, lower-calorie products and smaller-portion packages; use of icons and seals to provide simple nutrition information; and an increase in use of popular characters to deliver nutrition and health messages to children.<sup>9</sup> In addition, two companies<sup>10</sup> had committed to shift their children's advertising to products meeting certain nutrition standards.

The 2006 Report included a series of specific recommendations for the food and media industries. The FTC and HHS called on industry to implement self-regulatory initiatives to change the way food is marketed to children. The agencies also encouraged food marketers to: create more nutritious food choices for children through product innovation and reformulation; expand product packaging efforts to control portion size and calories; explore labeling initiatives to help consumers identify lower-calorie, more nutritious foods; improve the nutritional profile of foods marketed to children; educate consumers about nutrition and fitness; and improve the nutritional quality of foods and beverages sold in schools outside of the meal program. In addition, the 2006 Report recommended that media and entertainment companies incorporate

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<sup>8</sup> Federal Trade Commission & Department of Health and Human Services, *Perspectives on Marketing, Self-Regulation, & Childhood Obesity* (2006) (2006 Report), available at <http://www.ftc.gov/os/2006/05/PerspectivesOnMarketingSelf-Regulation&ChildhoodObesityFTCandHHSReportonJointWorkshop.pdf>.

<sup>9</sup> *See id.* at 11-23.

<sup>10</sup> Kraft Foods, Inc. and PepsiCo, Inc.

nutrition and fitness messages into programming and revise their practices with respect to licensing popular children's characters for use in food marketing.<sup>11</sup>

#### **IV. The 2007 Forum and Current Assessment of Industry Efforts**

In July 2007, the FTC and HHS conducted a follow-up forum to review progress in the implementation of these self-regulatory and educational initiatives.<sup>12</sup> The agencies were encouraged to learn that the 2005 Workshop and 2006 Report had provided a stimulus for many individual company efforts as well as broad industry programs. One notable program is the Children's Food and Beverage Advertising Initiative, established by the Council of Better Business Bureaus (CBBB) and the CBBB's National Advertising Review Council.<sup>13</sup> To date, 14 of the largest food and beverage companies – estimated to represent more than two-thirds of children's food and beverage television advertising expenditures<sup>14</sup> – have joined the Initiative, making pledges that, when fully implemented, will significantly improve the landscape of food marketing to children. Most of these companies have committed either not to direct television, radio, print, and Internet advertising to children under 12 or to limit such advertising to foods that qualify as "healthy dietary choices" by meeting specified nutritional standards, such as

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<sup>11</sup> See 2006 Report at 48-54.

<sup>12</sup> *FTC/HHS Forum on Marketing, Self-Regulation, and Childhood Obesity* (July 18, 2007). Agenda and transcript of proceedings available at <http://www.ftc.gov/bcp/workshops/childobesity/index.shtml>.

<sup>13</sup> See *About the Initiative*, available at [www.us.bbb.org/advertisers4healthykids](http://www.us.bbb.org/advertisers4healthykids).

<sup>14</sup> That estimate was made with reference to the initial ten program members. Four additional major companies subsequently subscribed to the Initiative. See Press Release, Council of Better Business Bureaus, *New Food, Beverage Initiative to Focus Kids' Ads on Healthy Choices; Revised Guidelines Strengthen CARU's Guidance to Food Advertisers* (Nov. 14, 2006), available at [www.us.bbb.org/advertisers4healthykids](http://www.us.bbb.org/advertisers4healthykids) (More Information, item 7).

limitations on calories, fat, sugar, and sodium and/or providing certain nutritional benefits to children. In addition, the companies have pledged to limit the use of licensed characters to promote “healthy dietary choices” or healthy lifestyles, not to seek product placements in child-directed media, not to advertise food or beverages in elementary schools, and to use only their “healthy dietary choices” in interactive games directed to children.

The forum also highlighted another industry program directed specifically at the sale of foods and beverages in schools. Created in 2006 under the auspices of the Alliance for a Healthier Generation, the program brings together several food and beverage companies who have committed to limit the sale of “competitive foods” – those sold outside of the school meal program – to lower-calorie, more nutritious products.<sup>15</sup> Although not yet fully implemented, the program has already begun to have a significant impact, resulting in a 58 percent decrease in total calories for beverages shipped to schools between 2004 and the 2007-08 school year.<sup>16</sup>

## **V. The 2008 Food Marketing Study and Report**

The Commission’s 2008 Report assesses the industry’s self-regulatory initiatives undertaken since our last report and identifies areas where we believe more needs to be done. In addition, this Report provides the results of the agency’s comprehensive study of food and beverage industry marketing expenditures and activities directed to children and adolescents.

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<sup>15</sup> See *Competitive Foods Guidelines for K-12 Schools and Alliance School Beverage Guidelines*, Alliance for a Healthier Generation, available at [www.healthiergeneration.org](http://www.healthiergeneration.org). The Alliance is a partnership of the American Heart Association and the William J. Clinton Foundation.

<sup>16</sup> See American Beverage Association, *School Beverage Guidelines Progress Report 2007-2008* (Sept. 2008), available at <http://www.schoolbeverages.com/download.aspx?id=111>.



Until now, research on food and beverage marketing to children has consisted largely of studies of television advertising and, to a lesser extent, other forms of traditional, measured media. The FTC's Bureau of Economics, for example, issued a study in 2007 comparing children's exposure to food advertising on television in 1977 with their exposure in 2004. The study concluded that children's exposure to food ads had fallen modestly from 6,100 ads seen by children ages 2-11 in 1977, to 5,500 ads in 2004. In 2004, however, children's ad exposure was more concentrated on children's programming; about half of the food ads seen by children were during programs in which they were at least 50 percent of the audience, compared to about one quarter of the ads seen in 1977.<sup>17</sup> Although children's exposure to food advertising on television has remained fairly constant over the past 30 years, marketing to children has become omnipresent, and promotional campaigns have become more integrated because of the Internet, other new electronic media, and the burgeoning of cross-promotions with products, movies, and characters popular with children and teens. Previously, however, there has been little information quantifying children's exposure to these newer, more integrated marketing venues and techniques.

The FTC's new study, which was conducted at the request of Congress,<sup>18</sup> addresses not

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<sup>17</sup> *Children's Exposure to TV Advertising in 1977 and 2004: Information for the Obesity Debate*, FTC Bureau of Economics Staff Report (June 2007), available at [www.ftc.gov/os/2007/06/cabecolor.pdf](http://www.ftc.gov/os/2007/06/cabecolor.pdf).

<sup>18</sup> The Conference Report (H.R. Rep. No. 109-272 (2005)) for the Commission's FY 2006 appropriation legislation (Pub. L. No. 109-108) incorporated by reference language from the Senate Report directing the FTC to submit a report to the Committee regarding:

marketing activities and expenditures of the food industry targeted toward children and adolescents. The report should include an analysis of commercial advertising time on television, radio, and in print media; in-store marketing; direct

only marketing activities in traditional measured media – television, radio, and print – but also analyzes the Internet and other new media, as well as older, but mostly unmeasured, forms of promotional activities directed to youth. This Report presents a great deal of information not previously collected and not otherwise available to the research community. Significantly, the study analyzes data from 2006 – a year just before, or very early in the inception of, industry self-regulatory activities. The Commission believes, therefore, that the study will serve as a benchmark for measuring the future effects of voluntary efforts to reduce the amount or improve the nutritional profile of food and beverage marketing to children.

#### **A. Study Design and Scope**

The study analyzes data from both public and non-public sources to provide a comprehensive picture of expenditures and activities directed toward children and adolescents by 44 food and beverage producers, marketers, and quick-service restaurants (QSRs) in the United States during 2006. Those 44 companies, which provided data in response to compulsory process issued by the Commission, were generally selected based on their status as the top advertisers during children’s programming and as the companies with the largest sales shares for selected food categories. The Commission sought information from these companies for marketing of brands in 11 categories of food products ranging from breakfast cereals, candy, and carbonated beverages, to fruits and vegetables. Companies were required to report their marketing expenditures across 20 categories of promotional activities including traditional media

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payments for preferential shelf placement; events; promotions on packaging; all Internet activities; and product placements in television shows, movies, and video games.

S. Rep. No. 109-88, at 108 (2005).

like television, newer media like the Internet and mobile phones, and other promotional techniques like product placement, event sponsorship, character licensing, and in-school marketing. In each category, spending was broken down between activities targeted to children (ages 2-11) and adolescents (ages 12-17). In addition to reporting spending, companies were also asked to provide samples or descriptions of their marketing in various categories.<sup>19</sup>

Although the study does not include the entire universe of companies marketing food to children and adolescents, or the entire range of foods promoted to them, the Commission believes that it covers a substantial majority of such expenditures and activities for the relevant time frame. It should provide an accurate picture of the scope and variety of food marketing to American youth in 2006.

## **B. Key Findings**

The Report provides a detailed breakdown of spending for both children and teenagers for each type of marketing activity and across each food category. It also provides examples and descriptions of the various promotional techniques used by the companies. This testimony will highlight only a few key findings.

Total spending on food and beverage marketing to children and teens (together described as “youth”) by the 44 reporting companies slightly exceeded \$1.6 billion, with approximately \$870 million of that spent on marketing directed to children under 12.<sup>20</sup> Not surprisingly,

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<sup>19</sup> Appendix A to the Report describes the research methods in detail and identifies the specific companies, food categories, and promotional activities that were included in the study.

<sup>20</sup> 2008 Report, *supra* note 2, at 7. The cost of youth marketing reported here is significantly lower than some previous estimates. There are several reasons for this disparity. Other researchers have not had access to the confidential company financial data obtained by the

television advertising, one of the more expensive media, accounted for nearly half (46 percent) of the total reported youth-directed marketing expenditures. With a total of \$745 million spent, television advertising ranked at the top of promotional techniques. In-store display materials and packaging ranked second in youth-directed spending at 12 percent (\$195 million), closely followed by in-school marketing at 11 percent (\$186 million).<sup>21</sup> The Internet and other new media and techniques, such as digital media and viral marketing, represented a combined 5 percent of youth-directed expenditures (\$77 million). Youth-directed premiums were reported as representing only 4 percent of total expenditures (\$67 million).<sup>22</sup>

The low level of spending on premiums may seem surprising at first glance. The figure, however, does not tell the whole story because it excludes toys distributed by QSRs with children's meals – an expense that is recouped by the cost of the meal and thus not reported as a marketing expenditure by the companies. If the cost of QSR toys is added to premium expenditures, this marketing technique jumps from \$67 million to \$427 million, ranking second only to television in youth-directed expenditures.<sup>23</sup>

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Commission. Moreover, prior estimates have included advertising directed to children for products other than food and also have included price promotions, which generally are targeted to adults and therefore were not included in the FTC data.

<sup>21</sup> The FTC defined the in-school marketing category to include the commissions paid to schools and school districts by beverage companies and bottlers pursuant to vending machine contracts. Thus, the majority of the expenditures reported in this category were not for traditional advertising or marketing activities. The Commission included these expenses because the payments afford the companies access to young people in school. We recognize that many schools rely on these payments to support athletic and other school programs.

<sup>22</sup> 2008 Report at 8, 12-13.

<sup>23</sup> *Id.* at 8.

The foods most heavily marketed to all youth were carbonated beverages, restaurant foods, and breakfast cereals, with these three categories comprising 63 percent of all youth-directed spending.<sup>24</sup> For children under 12, the top marketed food categories, ranked in order, were breakfast cereals (\$229 million), restaurant food (\$161 million), and snack foods (\$113 million).<sup>25</sup> Again, this ranking changes dramatically if the cost of toys included in QSR kids' meals is added to expenditures for children under 12. With these toys included, QSR food becomes the most heavily marketed category to children, at \$521 million – more than twice that spent in any other food and beverage category.<sup>26</sup>

In addition to providing these figures, the Report describes the various ways in which food is marketed to children. A principal finding is that many marketing campaigns are fully integrated, weaving together a sweeping net of repeated product exposure across multiple venues and techniques. A typical campaign, for example, may begin with a child seeing an ad on television. The child is then likely to encounter promotional displays and product packaging at the grocery store or restaurant and perhaps receive a toy or other premium upon purchase of the product. Often, that toy or premium will be tied to a popular movie release, for which there will be additional advertising exposure. The child also might be directed to a website to enter a package UPC or other code to participate in a sweepstakes or earn points toward prizes. Once on the website, the child may interact with the brand through online games or participate in viral marketing by sending an e-card to a friend.

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<sup>24</sup> *Id.* at 10.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

The extensive cross-promotion of food and beverage products with popular movie releases illustrates the integration of marketing methods. The PG-13-rated movie, *Pirates of the Caribbean: Dead Man's Chest*, for example, was released in July 2006.<sup>27</sup> Coinciding with the release, food, beverage, and restaurant companies ran cross promotions for QSR meals, frozen waffles, fruit snacks, breakfast cereals, popcorn, lunch kits, candy, and fresh fruit. The food products tied to *Pirates* were promoted by television ads, in-theater ads, Internet “advergames,” specially marked packaging, and in-store displays and tags for pineapples and bananas. Limited edition line extensions were created, including candy that turned gold in the mouth, fruit snacks in treasure shapes, and frozen waffles stamped with movie images. Promotions also included premiums and prizes like skull-shaped cereal bowls, bandanas, and skull strobe light key chains.<sup>28</sup> *Pirates* was just one of approximately 80 films, television programs, and video games used in cross promotion of food and beverages to children and teens in 2006.<sup>29</sup>

The Report also provides illustrations of many other youth-directed marketing techniques used by the industry. It describes, for example, the variety of methods that the industry uses to market in schools – vending machines, contests, team sponsorship, event advertising, and others. The Report also describes the branding of clothing, toys, and other children’s merchandise with food, beverage, and QSR logos; digital marketing that includes downloadable podcasts,

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<sup>27</sup> In October 2006, the Walt Disney Company announced new food guidelines stating that its name and characters would be used only for food products that meet specific nutritional requirements, including limits on calories, fat, and sugar. This and other initiatives by media and entertainment companies are described in the 2008 Report at 78-79.

<sup>28</sup> 2008 Report at 37-38.

<sup>29</sup> *Id.* at 29-32.

“webisodes,” and ringtones; viral marketing; word-of-mouth marketing that recruits youth as “ambassadors” to hand out product samples and promotional items; event marketing; celebrity endorsements; product placement; philanthropic activities, and more.

### **C. Key FTC Recommendations**

Drawing from the findings of our study as well as from our assessment of the industry’s progress on self-regulation since our first report, the 2008 Report concludes with several new and stronger recommendations designed to further strengthen and expand on all aspects of the industry’s self-regulatory efforts and company initiatives.

First, the Commission recommends that *all* food and beverage companies adopt and adhere to meaningful nutrition-based standards for marketing their products to children under 12. A useful first step would be to join the CBBB Initiative. In other words, *all* companies should take measures to limit their food and beverage promotions directed to children to those for healthier products.

Second, given the integrated nature of most marketing campaigns, the Commission also recommends that these nutrition-based standards be extended beyond television, radio, print, and Internet advertising, to cover the full spectrum of marketing activities to children, including product packaging, advertising displays at the retail site, premium distribution, celebrity endorsements, and other promotional activities.

Third, the Commission also recommends that all companies stop in-school promotion of foods and beverages that do not meet meaningful nutrition-based standards. In addition, all companies that sell “competitive” food or beverage products in schools (outside of the school meal program) should join the Alliance for a Healthier Generation or otherwise adopt and adhere

to meaningful nutrition-based standards for foods and beverages sold in schools, such as those recommended by the Institute of Medicine.

Fourth, the Report contains many other specific recommendations for the food industry, which address the nutritional profile of product offerings, nutrition labeling, healthy messages, and marketing in schools.

Finally, in light of the character licensing and extensive cross promotion of foods with films and children's television programs, the Report also recommends actions by media and entertainment companies. Included among these is a recommendation that media and entertainment companies should consider instituting their own self-regulatory initiative and working with the CBBB in this endeavor.<sup>30</sup>

## **VI. Conclusion**

The Commission is hopeful that continued and expanded efforts by all stakeholders will yield more progress in addressing the issue of childhood obesity. Going forward, the Commission will continue to monitor developments in this area. In particular, we will be looking at the progress of the food and media industries' self-regulatory initiatives and examining the impact on marketing to children. At an appropriate point in the future, the Commission is committed to issuing a follow-up report assessing the extent to which the recommendations in the 2008 Report have – or have not – been implemented.

On behalf of the Commission, I would like to thank the Subcommittees for the opportunity to present testimony on this important topic.

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<sup>30</sup> The complete list of recommendations is set forth in the Executive Summary. 2008 Report at ES-8 - ES-11.