



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>  
TTY: 1-888-835-5322

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## MEDIA BUREAU ANNOUNCES EFFECTIVE DATE AND PROVIDES GUIDANCE ON TRANSITION PROCEDURES FOR KIDVID REPORTING AND COMPLIANCE WITH REVISED SAFE HARBOR PROCESSING GUIDELINES

### MB Docket Nos. 18-202 and 17-105

On July 12, 2019, the Commission released a *Report and Order* modernizing the children's television programming rules to give broadcasters greater flexibility in serving the educational and informational needs of children.<sup>1</sup> The revised rules will become effective 30 days after publication of a summary of the order in the Federal Register, except for portions of the rules requiring OMB approval.<sup>2</sup> The Federal Register published a summary of the *Report and Order* on August 16, 2019.<sup>3</sup> Accordingly, the following revised rules will take effect on **September 16, 2019** (Effective Date): sections 73.671(c)(2) (expanded Core Programming hours), 73.671(c)(3) (revisions to regularly scheduled weekly programming requirement), 73.671(c)(4) (revisions to requirement that Core Programming be at least 30 minutes in length), 73.671(d) (revised safe harbor processing guidelines), and 73.671(e)(3) (preemption exemption for non-regularly scheduled live programming produced locally by the station).<sup>4</sup> By this Public Notice, we provide guidance as to how broadcasters can demonstrate compliance with the Commission's existing and revised safe harbor processing guidelines on a pro rata basis,<sup>5</sup> and report their efforts in the Commission's Children's Television Programming Report, Form FCC 2100, Schedule H (Children's Report).<sup>6</sup>

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<sup>1</sup> *Children's Television Programming Rules; Modernization of Media Regulation Initiative*, MB Docket Nos. 18-202 and 17-105, Report and Order, FCC 19-67 (July 12, 2019) (*Report and Order*).

<sup>2</sup> *Id.* at para 73. The amendments to §§ 73.671(c)(5) (on-air notification requirement), 73.671(c)(7) (program guides), 73.671(e)(1)-(2) (preemptions), 73.673 (program guides), 73.3526(e)(11)(ii) (recordkeeping requirements for commercial limits), and 73.3526(e)(11)(iii) (reporting and public file requirements) require OMB approval and will become effective after publication in the Federal Register of a notice announcing such approval and the relevant effective date. We will issue a subsequent public notice announcing the effective date of these rules.

<sup>3</sup> *Children's Television Programming Rules; Modernization of Media Regulation Initiative*, 84 Fed. Reg. 41917 (August 16, 2019). See <https://www.federalregister.gov/documents/2019/08/16/2019-16007/childrens-television-programming-rules-modernization-of-media-regulation-initiative>.

<sup>4</sup> See *id.* at 41934-35. Moreover, the additional processing guideline applicable to stations that multicast, which requires broadcasters providing streams of free video programming in addition to their primary program stream to air additional Core Programming based on the amount of programming that is aired on their multicast streams, is eliminated effective September 16, 2019.

<sup>5</sup> *Report and Order* at para. 73.

<sup>6</sup> We note that while broadcasters commonly refer to the Children's Report as FCC Form 398, this form was replaced by FCC Form 2100, Schedule H in 2014, when the Media Bureau transitioned to the LMS filing system.

**Compliance Prior to Effective Date.** Until the Effective Date of the revised rules, broadcasters' compliance with their obligations under the Children's Television Act (CTA) will be evaluated under the existing three-hour per week safe harbor processing guideline. In the *Report and Order*, the Commission replaced the quarterly Children's Report with an annual Children's Report.<sup>7</sup> Accordingly, commercial and Class A television licensees' final quarterly Children's Report will be due by October 10, 2019. This report should cover the period July 1, 2019, through September 15, 2019 (i.e., the portion of the third quarter before the revised safe harbor processing guidelines take effect). Compliance for purposes of determining whether a station has met its obligation under the CTA during this period will be evaluated under the existing safe harbor processing guideline on a pro rata basis. Stations should calculate their weekly average over the quarter based on 11 weeks. Therefore, in order to report that a station has aired an average of three hours per week, the station should have aired a total of 33 hours of Core Programming between July 1, 2019, and September 15, 2019.

Broadcasters are required to have complied with all rules that were in effect during this time period. Broadcasters should respond to all questions on the report for the covered time period, except the requirement for stations to provide information concerning the children's programming they plan to air in the future, which we waive pursuant to section 1.3 of the rules.<sup>8</sup> Failure to provide required information on a form, comply with Commission's rules, or disclose a violation of the rules is subject to sanctions, including forfeiture.

**Compliance After Effective Date.** The *Report and Order* modified the safe harbor processing guidelines for determining compliance with the children's programming rules to include new 156-hour annual guidelines, in addition to the existing three-hours per week guideline. A broadcast television licensee is permitted to begin utilizing the new safe harbor processing guidelines to demonstrate compliance with the CTA starting on September 16, 2019. We will determine compliance under the new safe harbor processing guidelines on a pro rata basis for the period from September 16, 2019, through December 31, 2019. During this period, a licensee will be deemed to satisfy the safe harbor processing guidelines if it continues to air an average of three hours per week of Core Programming (as calculated over the approximately 15-week period from September 16, 2019, through December 31, 2019). Therefore, in order to report that a station has aired an average of three hours per week, the station should have aired a total of 45 hours of Core Programming on its primary stream between September 16, 2019, and December 31, 2019.<sup>9</sup>

Alternatively, a licensee will be deemed to satisfy the safe harbor processing guidelines during this period if it airs at least 45 hours of Core Programming, including a minimum of 30 hours of regularly scheduled weekly Core Programming.<sup>10</sup> Four of those 30 hours must be aired during the remainder of the

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<sup>7</sup> As noted above, this change requires OMB approval and will become effective after publication in the Federal Register of a notice announcing such approval and the relevant effective date.

<sup>8</sup> 47 CFR § 1.3.

<sup>9</sup> In determining that a station should air a total of 45 hours of Core Programming during the period between September 16, 2019, and December 31, 2019 (whether it is demonstrating compliance under either the existing three-hour per week processing guideline or the new annual guidelines), we assumed that a station would have aired a total of 78 hours of Core Programming during the first six months of the year (26 weeks x 3 hours per week = 78 hours) and would air a total of 33 hours of Core Programming during the 11-week period between July 1, 2019, and September 15, 2019 (11 weeks x 3 hours per week = 33 hours).  $[156 - (78 + 33) = 45]$ .

<sup>10</sup> We determined that a station should air a minimum of 30 hours of regularly scheduled weekly Core Programming during the period between September 16, 2019, and December 31, 2019, because under the new annual safe harbor processing guidelines a station must air a minimum of 26 hours per quarter (or two hours per week) of regularly scheduled weekly Core Programming. Thus, a station must air a minimum of 26 hours per quarter of regularly scheduled weekly Core Programming during the period between October 1, 2019, and December 31, 2019, and a minimum of four hours of regularly scheduled weekly Core Programming during the two-week period between

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third quarter of 2019 (i.e., September 16, 2019 to September 30, 2019), with up to two of those hours aired on a station's multicast stream. The other 26 hours must be aired during the fourth quarter of 2019 (i.e., October 1, 2019 to December 31, 2019), with up to 13 hours aired on a station's multicast stream. The remaining 15 out of 45 hours may consist of Core Programs that are not regularly scheduled on a weekly basis, such as educational specials and regularly scheduled non-weekly programming, all of which must be aired on the primary program stream (Category A, Option Two of the safe harbor processing guidelines); or Core Programs that are not regularly scheduled on a weekly basis and/or short-form programs less than 30 minutes in length, all of which must be aired on the primary program stream (Category B of the safe harbor processing guidelines).

The pro rata breakdowns discussed above for determining compliance with the safe harbor processing guidelines before and after the Effective Date apply only to the time periods referenced in this Public Notice. Unless otherwise advised by the Commission, starting on January 1, 2020, broadcasters will need to comply with the newly revised safe harbor processing guidelines, in their entirety, in order to be deemed to have met their children's television programming obligations.

Any children's television programming aired after September 16, 2019, will be reported by commercial and Class A television stations on a broadcaster's first annual Children's Report, which will be due no later than January 30, 2020.<sup>11</sup> FCC Form 2100 Schedule H is in the process of being revised consistent with the Commission's directives in the *Report and Order*.<sup>12</sup> The revisions to the form require OMB approval under the Paperwork Reduction Act. Once OMB approval is received, the Media Bureau will issue a Public Notice announcing the availability of the revised form.

Finally, with respect to any rules that were modified in the *Report and Order* but remain subject to OMB approval, we emphasize that broadcasters must continue to comply with the existing rules until OMB approval is received and the revised rules go into effect. Thus, for example, until the revised rules take effect, broadcasters must continue to reschedule any Core Programming that is preempted in accordance with the Commission's "second home" preemption policy; commercial stations must continue to provide publishers of program guides information regarding the target age of Core Programming; and noncommercial stations must continue to display the E/I symbol during Core Programming.<sup>13</sup>

For all legal matters, please contact Kathy Berthot, Policy Division, Media Bureau, 202-418-2120 or by e-mail at [Kathy.Berthot@fcc.gov](mailto:Kathy.Berthot@fcc.gov), or Evan Morris, Legal Advisor, Media Bureau at 202-418-1656 or by e-mail at [Evan.Morris@fcc.gov](mailto:Evan.Morris@fcc.gov). For LMS filing related issues, please contact Hossein Hashemzadeh of the Video Division, Media Bureau at (202) 418-1658 or by e-mail at [Hossein.Hashemzadeh@fcc.gov](mailto:Hossein.Hashemzadeh@fcc.gov) concerning Class A stations, or Kevin Harding of the Video Division,

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September 16, 2019, and October 1, 2019 (2 weeks x 2 hours per week = 4 hours). Additionally, under the revised rules, a station that multicasts may air up to 13 hours per quarter of regularly scheduled weekly Core Programming (i.e., half of its required 26 hours per quarter of regularly scheduled weekly Core Programming) on a multicast stream. Thus, a station may air on a multicast stream up to 13 hours (one-half of 26 hours) of regularly scheduled weekly Core Programming during the period between October 1, 2019, and December 31, 2019, and up to two hours (one-half of four hours) of regularly scheduled weekly Core Programming during the two-week period between September 16, 2019, and October 1, 2019. As discussed above, the remaining 15 hours of Core Programming that must be aired between September 16, 2019, and December 31, 2019 (45 hours – 30 hours = 15 hours) may consist of programming that is not regularly scheduled on a weekly basis.

<sup>11</sup> Broadcasters will file their next annual report covering the entirety of 2020 in early 2021.

<sup>12</sup> *Report and Order* at para. 67.

<sup>13</sup> As noted above, a subsequent Public Notice will be issued containing the effective date of revised rules that are not going into effect on September 16, 2019. See *supra* note 2.

Media Bureau at 202-418-7077 or by e-mail at [Kevin.Harding@fcc.gov](mailto:Kevin.Harding@fcc.gov) concerning full power stations. Press inquiries should be directed to Janice Wise at (202) 418-8165 or by email at [Janice.Wise@fcc.gov](mailto:Janice.Wise@fcc.gov).

This action is taken by the Chief, Media Bureau, pursuant to authority delegated by sections 0.61 and 0.283 of the Commission's rules.<sup>14</sup>

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<sup>14</sup> 47 CFR §§ 0.61 and 0.283. *Report and Order* at para. 73 (directing the Media Bureau to issue a public notice before the effective date of the new processing guidelines detailing how the pro-rated guidelines will apply).