

FCC FACT SHEET***Modernization of Media Regulation Initiative: Children's Television Programming Rules**

Notice of Proposed Rulemaking – MB Docket Nos. 17-105 and 18-202

Background: The Commission's children's programming rules require commercial and noncommercial broadcast television licensees to serve the educational and informational needs of children through their overall programming and provide programming specifically designed to serve such needs (i.e., Core Programming). Among other things, FCC rules define the criteria that broadcast programming must meet to be considered Core Programming, and include a weekly safe harbor processing guideline for determining licensee compliance.

The video programming landscape has changed significantly since the children's programming rules were first adopted more than 20 years ago, with a wide variety of children's programming now available through numerous outlets. The modifications proposed in the *Notice* are designed to provide broadcasters greater flexibility in fulfilling their children's programming obligations in light of these changes, while preserving access to children's programming for households that rely on over-the-air television and do not have access to the proliferation of programming options on non-broadcast platforms.

What the Notice Would Do:

- Tentatively conclude that the requirements that Core Programming be at least 30 minutes in length and regularly scheduled weekly programming be eliminated.
- Seek comment on whether to expand the timeframe when Core Programming can be aired.
- Tentatively conclude that noncommercial stations should no longer be required to identify Core Programming with the "E/I" symbol, and seek comment on whether to continue to require commercial stations to identify Core Programming with the "E/I" symbol.
- Seek comment on whether to retain the requirement that broadcasters provide information identifying children's programming to publishers of program guides.
- Tentatively conclude that the Children's Television Programming Report, FCC Form 398, should be filed on an annual rather than quarterly basis and seek comment on ways to streamline this report.
- Seek comment on whether to modify the three-hour per week safe harbor processing guideline for determining compliance with the children's programming rules.
- Seek comment on the creation of a framework under which broadcasters could satisfy their children's programming obligations by relying in part on special sponsorship efforts and/or special non-broadcast efforts, and propose to allow Media Bureau staff, rather than the full Commission, to approve the renewal applications of licensees relying on such special efforts.
- Propose to allow multicasting stations to choose on which of their free over-the-air streams to air their required Core Programming hours and tentatively conclude that the additional Core Programming guideline applicable to multicasting stations should be eliminated.
- Seek comment on whether the policies governing the preemption of children's programming should be revised or whether other rule changes proposed in the *Notice* would provide broadcasters sufficient flexibility to schedule their Core Programming so as to avoid the need for preemptions.

* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in MB Docket No. 18-202, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR § 1.1200 *et seq.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Children’s Television Programming Rules) MB Docket No. 18-202
Modernization of Media Regulation Initiative) MB Docket No. 17-105

NOTICE OF PROPOSED RULEMAKING*

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By the Commission:

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION..... 1
II. BACKGROUND..... 3
III. DISCUSSION 15
A. “Core Programming” Definition and Requirements..... 19
1. Requirement that Core Programming Be at Least 30 Minutes in Length 20
2. Core Programming Hours 22
3. Regularly Scheduled Weekly Programming Requirement..... 24
4. On-Air Notification Requirement..... 25
5. Program Guides..... 28
6. Reporting Requirements..... 29
B. Processing Guideline 36
C. Special Sponsorship Efforts and Special Non-Broadcast Efforts 44
D. Multicasting Stations 49
E. Preemption of Children’s Programming 57
IV. PROCEDURAL MATTERS..... 58
A. Initial Regulatory Flexibility Analysis..... 58
B. Initial Paperwork Reduction Act Analysis..... 59
C. Ex Parte Rules..... 60

*This document has been circulated for tentative consideration by the Commission at its July 2018 open meeting. The issues referenced in this document and the Commission’s ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The Commission’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

D. Filing Requirements..... 61
 E. Additional Information 64
 V. ORDERING CLAUSES..... 65
 APPENDIX A – Proposed Rules
 APPENDIX B – Initial Regulatory Flexibility Act Analysis

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we propose to revise the children’s television programming rules to modify outdated requirements and to give broadcasters greater flexibility in serving the educational and informational needs of children. In the more than two decades since the Commission adopted the children’s programming rules, there have been dramatic changes in the way television viewers, including younger viewers, consume video programming. Appointment viewing— watching the same program on the same channel at the same time every week—has significantly declined, while time-shifted viewing has risen. At the same time, the amount of programming for children available via non-broadcast platforms, including children’s cable networks, over-the-top providers, and the Internet, has proliferated. Moreover, with the transition to digital television, broadcasters are able to carry more than one programming stream on their 6 MHz spectrum blocks. Thus, if given more flexibility, broadcasters can now provide a host of alternative children’s programming options outside of the primary stream, giving over-the-air (OTA) viewers access to additional free children’s programming. In light of these changes, and based on comments we have received in response to the Commission’s Modernization of Media Regulation Initiative proceeding,¹ we think the time is ripe to modernize the children’s programming rules to improve broadcasters’ ability to serve the educational and informational needs of today’s young viewers. Our proposals are guided by the directives of the Children’s Television Act of 1990 (CTA),² which requires the Commission to consider, in its review of television license renewals, the extent to which the licensee “has served the educational and informational needs of children through its overall programming, including programming specifically designed to serve such needs.”³

2. Among other matters, we seek input on the Core Programming definition, the Commission’s processing guidelines, and updated rules on multicasting stations. In addition to the specific issues and proposals discussed in this NPRM, we also seek comment on whether there are any other changes to the existing children’s programming rules that we should consider.⁴ We decline in this NPRM to address changes to the rules regarding limits on commercial matter in children’s television programming.⁵

II. BACKGROUND

3. The CTA requires that the Commission consider, in reviewing television license renewals, the extent to which the licensee “has served the educational and informational needs of children

¹ *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (2017) (*Media Modernization Public Notice*) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome).

² Children’s Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, 394.

³ 47 U.S.C. § 303b(a)(2).

⁴ The proposed rules changes set forth in Appendix A also reflect editorial revisions to delete obsolete rules. Specifically, the proposed rules changes delete references in 47 CFR §§ 73.671 and 73.3526 to analog channels.

⁵ 47 CFR § 73.670(a); *see* 47 U.S.C. § 303a (requiring the Commission to prescribe standards with respect to the time devoted to commercial matter in children’s programming). *See also* Letter from Senator Edward J. Markey et al., U.S. Senate, to Federal Communications Commission, at 1 (May 21, 2018) (*Markey Ex Parte Letter*).

through its overall programming, including programming specifically designed to serve such needs.”⁶ The CTA provides that, in addition to considering the licensee’s programming, the Commission may consider in its review of television license renewals (1) any special non-broadcast efforts by the licensee which enhance the educational and informational value of such programming to children; and (2) any special efforts by the licensee to produce or support programming broadcast by another station in the licensee’s marketplace which is specifically designed to serve the educational and informational needs of children.⁷

4. *Initial Children’s Programming Rules.* In 1991, the Commission adopted rules implementing the CTA.⁸ Specifically, the Commission defined “educational and informational programming” as “any television programming which furthers the positive development of children 16 years of age and under in any respect, including the child’s intellectual/cognitive or social/emotional needs.”⁹ The Commission declined at that time to adopt specific requirements as to the number of hours of educational and informational programming that commercial stations must broadcast or the time of day during which such programming must be aired.¹⁰ Instead, the Commission simply required that commercial stations air some amount of educational and informational programming specifically designed for children 16 years of age and under.¹¹ The Commission also adopted recordkeeping and reporting requirements for commercial stations.¹² Specifically, it required commercial licensees to maintain records on their children’s programming efforts, including a summary of the licensee’s programming, non-broadcast efforts, and support for other stations’ programming directed to the educational and informational needs of children, and to place these records in their public inspection files.¹³ In addition, it required commercial licensees to submit with their license renewal applications the summary of the programming and other efforts directed to the educational and informational needs of children.¹⁴

5. The Commission initially declined to impose any children’s programming requirements on noncommercial stations.¹⁵ The Commission noted that the legislative history of the CTA “portrays public broadcasting as a model for educational and informational programming which commercial broadcasters should emulate” and concluded that application of the CTA’s programming provisions to noncommercial stations is not required by the statute, its legislative history, or the public interest.¹⁶ On reconsideration, the Commission reversed course, concluding that the statutory obligation to meet children’s educational and informational needs applies to all broadcasters, including noncommercial

⁶ 47 U.S.C. § 303b(a)(2).

⁷ *Id.* § 303b(b).

⁸ *Policies and Rules Concerning Children’s Television Programming*, Report and Order, 6 FCC Rcd 2111 (1991) (*1991 Report and Order*), recon. granted in part, 6 FCC Rcd 5093 (1991) (*1991 Reconsideration Order*).

⁹ *1991 Report and Order*, 6 FCC Rcd at 2114, paras. 15, 21.

¹⁰ *Id.* at 2115, para. 24.

¹¹ *Id.* at 2115, para. 25.

¹² *Id.* at 2116-17, paras. 31-36.

¹³ *Id.* at 2116, para. 31. Such records were required to indicate, at a minimum, the time, date, duration, and a brief description of each program or non-broadcast effort the licensee made to serve the educational and informational needs of children. Licensees were permitted to make their children’s programming records part of their issues/programs list or keep them as a separate list and to update these records on either an annual or quarterly basis. *Id.*

¹⁴ *Id.*, para. 35.

¹⁵ *Id.* at 2116, para. 30.

¹⁶ *Id.*

broadcasters.¹⁷ However, the Commission continued to exempt noncommercial stations from the recordkeeping and reporting requirements applicable to commercial stations, finding such requirements unnecessary given the commitment that noncommercial stations had demonstrated to serving children.¹⁸ The Commission instead required noncommercial stations to maintain documentation sufficient to show compliance at renewal time with the CTA's programming obligations in response to a challenge or to specific complaints.¹⁹

6. *1996 "Core Programming" Rules and Processing Guidelines.* The Commission revised the children's programming rules in 1996, concluding that its initial regulations implementing the CTA "have not been fully effective in prompting broadcasters 'to increase the amount of educational and informational broadcast television programming available to children.'"²⁰ In order to provide broadcasters with clear guidance regarding their children's programming obligations, the Commission adopted a more particularized definition of programming "specifically designed" to serve children's educational and informational needs.²¹ The Commission labeled such programming as "Core Programming," which it defined as programming that, among other things, has serving the educational and informational needs of children ages 16 and under as a significant purpose, is at least 30 minutes in length, is aired between the hours of 7:00 a.m. and 10:00 p.m., and is a regularly scheduled weekly program.²² The Commission stated that although a program must be regularly scheduled on a weekly basis to qualify as Core, it would leave it to the staff to determine, with guidance from the full Commission as necessary, what constitutes regularly scheduled programming and what level of preemption is allowable.²³

7. Additionally, the Commission adopted a three-hour per week safe harbor processing guideline for determining compliance with the children's programming rules.²⁴ The Commission concluded that a processing guideline would provide broadcasters clarity about their programming obligations under the CTA and would minimize the inequities created by stations that air little Core Programming by subjecting all broadcasters to the same scrutiny for CTA compliance at renewal time.²⁵ Under the processing guideline, the Media Bureau staff is authorized to approve the children's programming portion of a licensee's renewal application where the licensee has aired approximately three hours per week (as averaged over a six month period) of Core Programming.²⁶ Renewal applications are

¹⁷ *1991 Reconsideration Order*, 6 FCC Rcd at 5101, para. 44.

¹⁸ *Id.*, para. 45.

¹⁹ *Id.* at 5102, para. 45.

²⁰ *Policies and Rules Concerning Children's Television Programming*, Report and Order, 11 FCC Rcd 10660, 10661, para. 3 (1996) (*1996 Report and Order*). The Commission found that the legislative history of the CTA makes clear that the statute's objective "'is to increase the amount of educational and informational broadcast television available to children.'" *Id.* at 10671, para. 22 (quoting S. REP. NO. 101-227, at 1 (1989)). According to NAB, commercial broadcasters were airing, on average, two hours per week of regularly scheduled, standard-length educational programming at the time the CTA passed in 1990. *1996 Report and Order*, 11 FCC Rcd at 10719, para. 121.

²¹ *1996 Report and Order*, 11 FCC Rcd at 10696, para. 76.

²² *Id.* at 10699-715, paras. 81-113.

²³ *Id.* at 10711, para. 106.

²⁴ *Id.* at 10718, para. 120.

²⁵ *Id.* at 10720-21, paras. 124-25. In adopting the three-hour processing guideline, the Commission found that although some broadcasters were airing "a significant amount" of educational and informational programming, the evidence suggested that others were not. *Id.* at 10721, para. 125.

²⁶ *Id.* at 10718, para. 120.

divided into two categories for purposes of staff-level CTA review.²⁷ Under Category A, a licensee can demonstrate compliance with the processing guideline by checking a box on its renewal application and providing supporting information indicating that it has aired three hours per week of Core Programming.²⁸ Under Category B, the Bureau staff will approve the children's programming portion of a licensee's renewal application where the licensee makes a showing that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of Core Programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of Core Programming.²⁹ Specials, public service announcements (PSAs), short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children can count toward the processing guideline under Category B.³⁰ Licensees have rarely attempted to demonstrate compliance under Category B due to uncertainty as to how much Core Programming must be provided.³¹

8. The Commission also adopted several public information initiatives designed to facilitate access to information about the shows broadcasters air to fulfill their obligation to air educational and informational programming under the CTA.³² The Commission reasoned that enhancing parents' knowledge of children's educational programming could result in larger audiences for such programs, which in turn could increase the incentives for broadcasters to air more educational programming.³³ The Commission further concluded that access to programming information could facilitate viewer campaigns and other community-based efforts to influence stations to air more and better educational programming.³⁴ These public information initiatives require licensees to provide publishers of program guides and listings information identifying core programs and the target age group for the programs³⁵; to submit children's programming reports on a quarterly basis on a standardized reporting form, the Children's Television Programming Report (FCC Form 398)³⁶; to publicize the existence and location of their children's programming reports³⁷; to provide a brief explanation in their children's programming reports of how particular programs meet the definition of "Core Programming"³⁸; and to designate a liaison for children's programming and to include the name and method of contacting that individual in the station's children's programming reports.³⁹ The Commission also required licensees to provide on-air identification of core educational programs, in a manner and form at the sole discretion of the licensee, at the beginning of the program.⁴⁰ The Commission continued to exempt noncommercial licensees from the

²⁷ *Id.* at 10723, para. 130.

²⁸ *Id.*, para. 131. Repeats and reruns of Core Programming are counted toward fulfillment of the three-hour guideline under Category A. *Id.*, para. 132.

²⁹ *Id.*, para. 133.

³⁰ *Id.* at 10723-24, para. 133.

³¹ *See infra* para. 41.

³² *1996 Report and Order*, 11 FCC Rcd at 10682, para. 47.

³³ *Id.* at 10683, para. 48.

³⁴ *Id.*

³⁵ *Id.* at 10688-89, para. 57.

³⁶ *Id.* at 10693-94, paras. 68-70.

³⁷ *Id.* at 10693, para. 67. The Commission left it to the discretion of the broadcasters how to publicize this information. *Id.*

³⁸ *Id.* at 10691, para. 63.

³⁹ *Id.* at 10690, para. 62.

⁴⁰ *Id.* at 10686, para. 52.

reporting requirements and also exempted them from the other new public information initiatives.⁴¹

9. The Commission stated that licensees whose showings do not fall within Category A or B of the processing guideline will have their renewal applications referred to the full Commission, where they will have the opportunity to demonstrate compliance with the CTA by relying in part on special non-broadcast efforts which enhance the value of children's educational and informational programming and/or special efforts by the licensee to produce or support programming broadcast by another station in the licensee's marketplace which is specifically designed to serve the educational and informational needs of children.⁴² The Commission explained that to receive credit for special non-broadcast efforts, a licensee must show that it has engaged in substantial community activity and that there is a close relationship between its Core Programming and its non-broadcast efforts.⁴³ To receive credit for special sponsorship efforts, a licensee must demonstrate that its production or support of Core Programming aired on another station in its market increased the amount of Core Programming on the station airing the sponsored Core Programming.⁴⁴ The Commission stated that relying on special non-broadcast efforts or special sponsorship efforts does not relieve a licensee of the obligation to air Core Programming, noting that the CTA permits the Commission to consider such special efforts only "in addition to consideration of the licensee's [educational] programming."⁴⁵ The Commission declined to define the minimum amount of Core Programming that a station must air on its own station to receive credit for special efforts or to establish specific program sponsorship guidelines, concluding that these matters are best addressed on a case-by-case basis.⁴⁶ Use of this option to demonstrate compliance with the CTA is even rarer than use of Category B because of the uncertainty as to how much Core Programming must be provided and how special non-broadcast efforts and special sponsorship efforts will be weighed.⁴⁷

10. *2004 Digital Broadcasting, Preemption, and "E/I" Symbol Requirements.* In 2004, the Commission revised the processing guideline to address how the children's programming requirements apply to digital broadcasters that multicast.⁴⁸ Under the revised guideline, in addition to the requirement that stations air an average of three hours of Core Programming on their main program stream, digital broadcasters that choose to provide supplemental streams of free video programming have an increased Core Programming benchmark that is proportional to the additional amount of free video programming they choose to provide via such multicast streams.⁴⁹ Specifically, digital broadcasters must provide one-half hour per week of additional Core Programming for every increment of one to 28 hours of free video programming provided in addition to that provided on the main program stream.⁵⁰ Broadcasters are permitted to air all of their additional digital Core Programming on either one free digital video channel or distribute it across multiple free digital video channels, at their discretion, as long as the stream on which the Core Programming is aired has comparable carriage on MVPDs as the stream triggering the

⁴¹ *Id.* at 10686 n.119.

⁴² *Id.* at 10724, para. 135. *See* 47 U.S.C. § 303b(b).

⁴³ *1996 Report and Order*, 11 FCC Rcd at 10725, para. 137.

⁴⁴ *Id.*, para. 138.

⁴⁵ *Id.*, paras. 137-38.

⁴⁶ *Id.* at 10726, para. 139.

⁴⁷ *See infra* Section III.C.

⁴⁸ *Children's Television Obligations of Digital Broadcasters*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943, 22944, para. 1 (2004) (*2004 Report and Order*).

⁴⁹ *Id.* at 22950, para. 19.

⁵⁰ *Id.* Thus, a digital broadcaster must provide an additional three hours per week of Core Programming for each multicast stream that airs free programming 24 hours per day, seven days per week. *Id.* at 22950-51, para. 19.

additional Core Programming obligation.⁵¹ To ensure that digital broadcasters do not simply replay the same Core Programming to meet the revised processing guideline, the Commission required that at least 50 percent of Core Programming on multicast streams not be repeated during the same week to qualify as core.⁵² The Commission exempted from the additional Core Programming guideline any program stream that merely time shifts the entire programming line-up of another program stream.⁵³

11. The Commission also revised its policies regarding when a station can count preempted Core Programming toward meeting the three-hour per week safe harbor processing guideline.⁵⁴ The Commission determined that a preempted core program must be rescheduled in order to be considered Core Programming.⁵⁵ Additionally, the Commission stated that it would consider, in determining whether the rescheduled program counts as a core educational program, the reason for the preemption, the licensee's efforts to promote the rescheduled program, the time when the rescheduled program is broadcast, and the station's level of preemption of Core Programming.⁵⁶ The Commission exempted core programs preempted for breaking news from the requirement that core programs be rescheduled.⁵⁷ With respect to digital broadcasters that multicast, the Commission stated that it would not consider a core program moved to the same time slot on another of the station's digital program streams to be preempted as long as the alternate program stream receives MVPD carriage comparable to the stream from which the program is being moved and the station provides adequate on-screen information about the move, including when and where the program will air, on both the original and the alternate program stream.⁵⁸ Further, the Commission limited the number of preemptions under the processing guideline to no more than ten percent of core programs in each calendar quarter, explaining that each preemption beyond the ten percent limit would cause that program not to count as core under the processing guideline, even if the program is rescheduled.⁵⁹ The Commission exempted from this ten percent limit preemptions for breaking news.⁶⁰

12. Moreover, the Commission amended its rules regarding on-air identification of Core Programming to require broadcasters to identify Core Programming with the symbol "E/I" and to display this symbol throughout the program in order for the program to qualify as Core.⁶¹ The Commission found that this amendment was warranted because studies of the effectiveness of the children's programming requirements showed a continued lack of awareness on the part of parents regarding the availability of Core Programming and the use of different identifiers by different broadcasters was confusing parents and impairing their ability to choose Core Programming for their children.⁶² The Commission applied the revised on-air identification requirement to both commercial and noncommercial

⁵¹ *Id.* The Commission stated that educational and informational programming aired on subscription channels would not be considered Core Programming under the processing guideline. *Id.*

⁵² *Id.*, para. 23.

⁵³ *Id.*

⁵⁴ As noted above, the Commission previously had left it to the staff to determine what constitutes regularly scheduled programming and what level of preemption is allowable. *See supra* para. 6.

⁵⁵ *2004 Report and Order*, 19 FCC Rcd at 22957, para. 39.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 22958, para. 40.

⁵⁹ *Id.* at 22958, para. 41.

⁶⁰ *Id.*

⁶¹ *Id.* at 22959, para. 46.

⁶² *Id.* at 22958-59, paras. 43-45.

licensees.⁶³ Although the Commission previously had exempted noncommercial licensees from the on-air identification requirement, it found that requiring all licensees to use the E/I symbol throughout the program to identify Core Programming would help “reinforce viewer awareness of the meaning of this symbol.”⁶⁴ The Commission also revised the definition of “Core Programming” to include this on-air identification requirement.⁶⁵

13. *2006 Reconsideration Order and Joint Proposal.* In 2006, the Commission modified the children’s programming rules in response to petitions for reconsideration of the *2004 Report and Order* and a Joint Proposal negotiated by a group of cable and broadcast industry representatives and children’s television advocates to resolve their concerns with the rules adopted in 2004.⁶⁶ The Commission clarified that at least 50 percent of the Core Programming counted toward meeting the revised programming guideline for multicasting stations cannot consist of program episodes that had already aired within the previous seven days on either the station’s main program stream or on another of the station’s free digital program streams.⁶⁷ In addition, the Commission adopted the Joint Proposal recommendation to amend the Children’s Television Programming Report, FCC Form 398, to collect the information necessary to enforce the limit on repeats under the revised guideline.⁶⁸ Licensees are permitted to certify on Form 398 that they have complied with the repeat restriction and are not required to identify each repeated program episode on Form 398, but must retain records sufficient to document the accuracy of their certification, including records of actual program episodes aired, and to make such documentation available to the public upon request.⁶⁹

14. The Commission also accepted the Joint Proposal recommendation to repeal the ten percent cap on preemptions adopted in the *2004 Report and Order* and instead institute a procedure similar to that previously used by the Media Bureau, whereby broadcast networks sought informal approval of their preemption plans each year.⁷⁰ Under this procedure, a program counts as preempted only if it was not aired in a fixed substitute time slot of the station’s choice (known as a “second home”) with an on-air notification of the schedule change occurring at the time of preemption during the previously scheduled time slot.⁷¹ The on-air notification must announce the alternate date and time when

⁶³ *Id.* at 22959-60, para. 47.

⁶⁴ *Id.*

⁶⁵ *Id.* at 22974-75, Appx. B.

⁶⁶ *Children’s Television Obligations of Digital Television Broadcasters*, Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065, 11066, para. 2 (2006) (*2006 Reconsideration Order*). In addition to the petitions for reconsideration, petitions for judicial review of the *2004 Report and Order* and other requests for judicial relief were filed. *Id.* at 11689, para. 9. On December 16, 2005, the Commission adopted an order extending the effective date of most of the rules adopted in the *2004 Report and Order* until sixty days after publication in the Federal Register of an order on reconsideration in that proceeding. *Children’s Television Obligations of Digital Television Broadcasters*, Order Extending Effective Date, 20 FCC Rcd 20611 (2005). The litigation was held in abeyance by the U.S. Court of Appeals for the Sixth Circuit pending action by the Commission on the petitions for reconsideration. *2006 Reconsideration Order*, 21 FCC Rcd at 11069 n.22. The Commission’s issuance of the *2006 Reconsideration Order* resolved the issues raised in the litigation and the petitions for judicial review and other requests for relief were subsequently dismissed as moot.

⁶⁷ *Id.* at 11074, para. 23. The Commission explained that this is not a change in the rule, but rather a clearer statement of what the rule was intended to cover. *Id.* at 11072, para. 17.

⁶⁸ *Id.* at 11074, para. 23.

⁶⁹ *Id.*

⁷⁰ *Id.* at 11076, para. 28.

⁷¹ *Id.* The “second home” policy was implemented by the former Mass Media Bureau beginning in 1997 in a series of letters to the broadcast networks. See, e.g., *Mr. Alan N. Braverman, Senior Vice President & General Counsel, ABC, Inc.*, Letter Order, 12 FCC Rcd 9919, 9922-23 (MB 1997) (*Braverman Letter Order*); *Mr. Rick Cotton*,

(continued....)

the preempted show will air.⁷² All networks requesting preemption flexibility must file a request with the Bureau by August 1 of each year stating the number of preemptions the network expects, when the program will be rescheduled, whether the rescheduled time is the program's second home, and the network's plan to notify viewers of the schedule change.⁷³ Non-network stations are presumed to be complying with the Core Programming guideline and do not need to request preemption relief.⁷⁴

III. DISCUSSION

15. As discussed above, the CTA requires the Commission to take into account the extent to which a broadcast television licensee "has served the educational and informational needs of children through its overall programming, including programming specifically designed to serve such needs" when evaluating its license renewal application.⁷⁵ In addition to considering a licensee's programming, the Commission is also permitted under the CTA to consider any special non-broadcast efforts by the licensee which enhance the educational and informational value of such programming to children and any special efforts by the licensee to sponsor educational and informational programming for children aired on another in-market station.⁷⁶ While the CTA does not mandate a particular quantitative standard for children's programming, the statute makes clear that all television broadcast stations must air some amount of programming specifically designed to serve children's educational and informational needs.

16. The video programming landscape has changed dramatically since the Commission first adopted rules implementing the CTA more than 20 years ago. There has been a major shift in the way in which viewers, including children, consume video programming. Appointment viewing has declined sharply as viewers increasingly access video programming using time-shifting technology (e.g., DVRs and video on demand).⁷⁷ Recent Nielsen data indicate that live TV viewing has been declining between 2% and 6% each year for the last four years in the U.S.⁷⁸ Moreover, there is a vast array of children's programming available on non-broadcast platforms today. As NAB observes, myriad full-time children's cable channels are flourishing, including Nickelodeon, Nick Jr., Teen Nick, Disney Channel, Disney

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National Broadcasting Co., Inc., Letter Order, DA 97-1470, 1997 WL 878297, at 4 (MB July 11, 1997) (*Cotton Letter Order*); *Mr. Martin D. Franks, Senior Vice President, Washington CBS, Inc.*, Letter Order, DA 97-1479, 1997 WL 878296, at 3 (MB July 11, 1997) (*Franks Letter Order*).

⁷² 2006 Reconsideration Order, 21 FCC Rcd at 11076, para. 28.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ 47 U.S.C. § 303b(a)(2).

⁷⁶ *Id.* § 303b(b).

⁷⁷ National Association of Broadcasters Comments at 32 (NAB) ("Generation Z is the first generation to have grown up with on-demand TV content available for most of their lives. They are not driven by the type of network (broadcast or cable), time of day (DVR or live viewing) or location (the room with a cable connection), and expect to be 'able to watch any show anytime, without an appointment.'") (citing Tremor Video/Hulu, *How Gen Z Connects to TV: Exploring the Generational Divide in the Future of TV* at 3-4, 13 (May 2017); Nexstar Broadcasting, Inc. Comments at 12 (Nexstar) ("Children increasingly view media content 'on demand'—whether the content is pre-recorded on a digital video recorder, available through an MVPD VOD service, or on mobile phones, tablets, and other devices."). All of the comments cited herein were filed in response to the *Media Modernization Public Notice*. See *supra* note 1.

⁷⁸ Colin Dixon, *Live TV and Movie Habits Continue Sharp Decline in 2018*, nScreenMedia (Jan. 2, 2018), <http://www.nscreenmedia.com/video-viewing-habits-away-from-tv-movie/>. See also Rani Molla, *Millennials Mostly Watch TV After It's Aired*, Recode.net (Sept. 9, 2017) (stating that "[p]eople aged 18-34 spend 55 percent of their video-watching time consuming content after it has already aired on live TV, according to a new study from the Consumer Technology Association."), <https://www.recode.net/2017/9/9/16266854/millennials-watch-tv-live-video-on-demand>.

Junior, and Disney XD, as are other channels, such as Discovery, Discovery Family, National Geographic, National Geographic Wild, Animal Planet, History Channel, and Smithsonian Channel, that provide educational and informational programming intended for viewers of all ages.⁷⁹ In addition, over-the-top providers such as Netflix, Amazon, and Hulu offer a host of original and previously-aired children's programming.⁸⁰ There are also numerous online sites which provide educational content for children for free or via subscription, including LeapFrog, National Geographic Kids, PBS Kids, Scholastic Kids, Smithsonian Kids, Time for Kids, Funbrain, Coolmath, YouTube, and Apple iTunes U.⁸¹ Further, as part of their educational mission, PBS member stations, which make up 89 percent of all noncommercial television stations, are required by the terms of their membership to air at least seven hours of educational children's programming each weekday, far in excess of what is required under our safe harbor processing guideline.⁸²

17. Furthermore, with the transition of broadcast television from analog to digital, broadcasters are now able to offer multiple free, OTA digital streams or channels of programming simultaneously, using the same amount of spectrum previously required for one stream of analog programming.⁸³ As of February 2016, broadcast television stations were offering more than 5,900 digital multicast channels.⁸⁴ Multicasting allows broadcasters to offer additional programming choices to consumers, particularly consumers in smaller, rural markets, by expanding access to the four major broadcast networks (i.e., ABC, CBS, Fox, or NBC), other established networks (e.g., The CW, myNetworkTV, and Telemundo), and newer networks (e.g., MeTV, This-TV, and Grit).⁸⁵ Programming content offered on multicast channels includes increased local news and public affairs coverage, sports and entertainment programming, foreign-language programming, religious programming, and children's

⁷⁹ NAB Comments at 26 n.56. *See also* Gray Television, Inc. Comments at 1 (Gray) ("Cable networks like Disney Junior, Nickelodeon, and Nick Jr. air popular shows like Doc McStuffins, Sofia the First, Paw Patrol, and Dora the Explorer. HBO recently signed a five-year deal for first-run episodes of Sesame Street to air on its linear and digital platforms."); Motion Picture Association of America Reply at 3 (MPAA) ("The advent of cable and satellite services, increases in their capacity over time, and the entry of telephone providers into the video market have greatly multiplied the number of outlets for children's television programming and also led to the rise of specialty kids channels.").

⁸⁰ Gray Comments at 2 ("Over-the-top providers Netflix, Amazon, and Hulu provide a treasure trove of original and previously-aired children's programming at consumer's fingertips."); MPAA Reply at 3 ("Over-the-top services also now enable children's networks to reach audiences directly via their own applications or through third-party download and streaming services like iTunes, Netflix, and Amazon. And over-the-top services are themselves investing heavily in exclusive, original children's programming.").

⁸¹ NAB Comments at 26 n.56; CBS Corporation, The Walt Disney Company, 21st Century Fox, Inc., and Univision Communications, Inc. Comments at 5 (Content Companies).

⁸² America's Public Television Stations, Corporation for Public Broadcasting, National Public Radio, Inc., and Public Broadcasting Service Comments at 3-4 (Public Broadcasting).

⁸³ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, 32 FCC Rcd 568, 598 n.237 (2017) (*Eighteenth Annual Video Competition Report*).

⁸⁴ *Id.* at 600, para. 77.

⁸⁵ *Id.* at 571, para. 6, 600, para. 78, 611, para. 78. *See also* 2014 Quadrennial Regulatory Review — Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Second Report and Order, 31 FCC Rcd 9864, 9892, para. 72 (2016) ("A significant benefit of the multicast capability is the ability to bring more local network affiliates to smaller markets, thereby increasing access to popular network programming and local news and public interest programming tailored to the specific needs and interests of the local community.").

programming.⁸⁶ We also note that in January 2017, PBS launched a 24/7 educational children’s multicast channel that reaches 95 percent of households and “that is re-doubling the efforts of local stations to serve all children with curriculum-driven children’s programing.”⁸⁷ And, Qubo, Ion Television’s 24/7 broadcast network for kids on one of its multicast streams, allows Ion to provide over 500 percent more children’s programming than what is required in our rules.⁸⁸ The additional programming choices afforded by multicast channels today are particularly beneficial to households that rely exclusively on OTA programming.

18. Given these developments, we believe that it is appropriate at this time to take a fresh look at the children’s programming rules, with an eye toward updating our rules to reflect the current media landscape in a manner that will ensure that the objectives of the CTA continue to be fulfilled. Our proposals set forth below are intended to provide broadcasters more flexibility in fulfilling their obligations under the CTA, while at the same time recognizing that particularized guidance may provide them greater regulatory certainty.

A. “Core Programming” Definition and Requirements

19. We seek comment on possible modifications to the definition of “Core Programming” to remove outdated requirements and provide broadcasters more flexibility in fulfilling their children’s programming obligations. As noted above, “Core Programming” is defined as programming that satisfies the following criteria: (1) it has serving the educational and informational needs of children ages 16 and under as a significant purpose; (2) it is at least 30 minutes in length; (3) it is aired between the hours of 7:00 a.m. and 10:00 p.m.; (4) it is a regularly scheduled weekly program; (5) the program is identified as specifically designed to educate and inform children by the display on the television screen throughout the program of the symbol E/I; (6) instructions for listing the program as educational/informational, including an indication of the intended age group, are provided to publishers of program guides; and (7) the educational and informational objective and the target child audience are specified in writing in the licensee’s children’s programming report.⁸⁹ This definition has remained largely unchanged since its adoption in 1996.⁹⁰ Given the evolution in the way Americans, including children, consume video now, we seek comment on potential changes to the Core Programming definition.

1. Requirement that Core Programming Be at Least 30 Minutes in Length

20. We tentatively conclude that we should eliminate the requirement that educational and informational programming be at least 30 minutes in length to be considered Core Programming. Elimination of this requirement would enable broadcasters to receive Core Programming credit for PSAs, interstitials (i.e., programming of brief duration that is used as a bridge between two longer programs), and other short segments. The Commission recognized that short segments can serve the educational and informational needs of children when it initially implemented the CTA in 1991 and again when it revised the children’s programming rules in 1996.⁹¹ NAB asserts, however, that the Commission’s decision to

⁸⁶ See, e.g., <https://www.tvb.org/Public/PlanningBuying/DigitalSubchannelsandDiginets.aspx> (listing the top 25 networks, as ranked by percentage of TV households covered, that are offered on digital subchannels and the type of programming content offered on these networks).

⁸⁷ Public Broadcasting Comments at 4.

⁸⁸ Letter from Brandon Burgess, Chairman and Chief Executive Officer, Ion Media Networks, to Commissioner Michael O’Rielly, Federal Communications Commission, at 1 (June 19, 2018).

⁸⁹ 47 CFR § 73.671(c).

⁹⁰ As noted above, in 2004, the Commission added to this definition the requirement that Core Programming be identified by the display of the symbol E/I on the television screen throughout the programming. See *supra* para. 12.

⁹¹ 1996 Report and Order, 11 FCC Rcd at 10713, para. 110; 1991 Report and Order, 6 FCC Rcd at 2115, para. 25. Indeed, the Commission found that short segments can count toward meeting the three-hour per week processing

(continued....)

count only programs 30 minutes or longer as core has effectively driven popular short segment programming such as “Schoolhouse Rock” and “In the News” from the air and that this reduction in the variety of children’s educational programming does not promote the public interest.⁹² We agree with NAB that short segments can be used effectively to educate and inform children.⁹³ We seek comment on our tentative decision to eliminate the requirement that educational and informational programming be of a minimum length to be considered Core Programming. Are there additional studies or other data showing the benefits to children of educational and informational short segments? Are there any recent studies that evaluate the utility of short form programming relative to long form programming?⁹⁴

21. Furthermore, if we eliminate the requirement that educational and informational programming be at least 30 minutes in length to be counted as Core Programming, can we address concerns that short segments may be difficult to locate by requiring broadcasters to promote such segments? Moreover, if we eliminate the requirement that educational and information programming be at least 30 minutes in length to be counted as Core Programming, we seek comment on whether we should count short segment programming on a minute-for-minute basis (e.g., 30 minutes of short segment programming would be equivalent to 30 minutes of Core Programming) or in some other manner.

2. Core Programming Hours

22. We seek comment on whether the existing 7:00 a.m. to 10:00 p.m. time frame should be expanded and if so, what the expanded Core Programming hours should be. NAB suggests that we should expand the Core Programming hours to 6:00 a.m. to 11:00 p.m.⁹⁵ We seek comment on this suggestion. Is there data showing that a substantial number of children ages 16 and under watch television programming or view video content earlier than 7:00 a.m. and/or later than 10:00 p.m.? Commenters that propose alternative expanded Core Programming hours should provide support or justification for their proposed hours.⁹⁶ What are the costs of the Core Programming hours requirement

(Continued from previous page) _____
guideline when broadcasters air somewhat less than three hours per week of Core Programming (i.e., under Category B). *1996 Report and Order*, 11 FCC Rcd at 10714, para. 112.

⁹² NAB Comments at 31 & n.71. “Schoolhouse Rock” was an animated, musical interstitial series that aired during Saturday morning children’s programming on ABC from 1973 to 1985 and again from 1993 to 1999. This series, which covered topics such as grammar, science, economics, history, mathematics, and civics, produced many well-known shorts, including “Conjunction Junction” and “I’m Just a Bill.” Hannah Keyser, *15 Schoolhouse Rock Facts*, Mental Floss (Jan. 15, 2015), <http://mentalfloss.com/article/61128/15-things-you-might-not-know-about-schoolhouse-rock>. “In the News,” which aired during Saturday morning children’s programming on CBS from 1971 to 1986 and again from 1997 to 1998, consisted of two-minute segments that summarized national and world events and other topical news stories for children and pre-teens. Claire Noland, *Obituaries, Christopher Glenn, 68; Journalist Was Host of ‘In The News’*, Los Angeles Times (Oct. 18, 2006), <http://articles.latimes.com/2006/oct/18/local/me-glenn18>.

⁹³ See Michael Kilgore, *FCC Commissioner Targets Children’s Programming Rules*, FreeTVBlog (Jan.30, 2018) (agreeing that shorter times for children’s programming can lead to better lesson retention), <http://freetvblog.com/2018/01/30/fcc-commissioner-targets-childrens-programming-rules/>.

⁹⁴ See *1996 Report and Order*, 11 FCC Rcd at 10713, para. 110 (discussing the effectiveness of longer form programming over short form programming).

⁹⁵ NAB Comments at 31-32 (noting that the Commission originally had proposed to define the Core Programming hours as 6:00 a.m. to 11:00 p.m.).

⁹⁶ We note that when the Commission adopted the Core Programming hours, it stated that it did not believe that the time period for Core Programming must be consistent with the indecency safe harbor, which is 10:00 p.m. to 6:00 a.m. *1996 Report and Order*, 11 FCC Rcd at 10702, para. 102. The Commission observed that the indecency safe harbor is intended to provide for the airing of indecent material when the risk of children in the audience is minimized, while the purpose of the Core Programming hours is to promote the availability of children’s educational programs when substantial numbers of children are watching. *Id.*

and what savings or other benefits would viewers receive if we expanded the Core Programming hours? For example, to what extent does the current Core Programming hours requirement limit broadcasters' flexibility to air other desired programming, such as weekend local news and live sports programming?⁹⁷

23. Alternatively, we seek comment on whether it is still necessary to define the time frame in which educational and informational programming for children must be aired to be considered Core Programming. The Commission adopted the current 7:00 a.m. to 10:00 p.m. Core Programming time frame in 1996 because then data showed that there was a relatively small percentage of children in the audience prior to 7:00 a.m. and that the number of children watching television dropped off considerably after 10:00 p.m.⁹⁸ Commenters assert that the 7:00 a.m. to 10:00 p.m. Core Programming time frame has become unduly narrow given the decline in "appointment viewing" by viewers, especially young viewers, and the increased ability of viewers to access children's programming using time-shifting technology.⁹⁹ We seek comment on this view. We ask commenters to present studies or other data indicating the extent of appointment viewing by children ages 16 and under. Is it reasonable to expect that the decline in appointment viewing by viewers over 18 extends to children 16 and under?¹⁰⁰ Do these studies or other data demonstrate that appointment viewing by children ages 16 and under has declined to the extent that there is no longer any need or that there is a significantly reduced need to require that Core Programming air during a prescribed time period to be counted as Core Programming? We note that DVRs that record OTA television are now available at a relatively low cost.¹⁰¹ Have such devices led to a decrease in appointment viewing of children's programming for families that rely on OTA television?

3. Regularly Scheduled Weekly Programming Requirement

24. We tentatively conclude that we should eliminate the requirement that educational and informational programming be "regularly scheduled weekly programming" to be counted as Core Programming. The Commission adopted the regularly scheduled weekly programming requirement because it found that such programming "is more likely to be anticipated by parents and children, to develop audience loyalty, and to build successfully upon and reinforce educational and informational messages, thereby better serving the educational and informational needs of children."¹⁰² We seek comment on whether, given the overall decline in appointment viewing noted above, the regularly scheduled weekly programming requirement is no longer needed to serve its intended purposes and whether it may in fact undermine broadcasters' incentives to air a wider variety of children's programming. If we eliminate this requirement, broadcasters could receive Core Programming credit for airing more types of children's programming, such as educational specials that are not regularly scheduled and non-weekly children's programming. We note, for example, that the "ABC Afterschool Specials" aired between 1972 and 1997 and the "CBS Schoolbreak Specials" aired between 1980 and

⁹⁷ See, e.g., Affiliates Associations Reply at ii (suggesting that, given the increase in weekend local news and live coverage of popular sporting events, the Commission should provide television stations greater flexibility by expanding the hours in which Core programming may be aired).

⁹⁸ 1996 Report and Order, 11 FCC Rcd at 10706-10709, paras. 99-101.

⁹⁹ NAB Comments at 31-32; ABC Television Affiliates Association, CBS Television Network Affiliates Association, and the FBC Television Affiliates Association Reply at 13 n.40 (Affiliates Associations). See also *supra* para. 16.

¹⁰⁰ See *supra* para. 16.

¹⁰¹ See, e.g., Maren Estrada, *This \$27 Box Is All Cord Cutters Need to Record Live TV Without a Cable Company's DVR*, BGR.com (Jan. 8, 2018) (noting that a DVR that records OTA television is available for under \$30), <http://bgr.com/2018/01/08/dvr-for-ota-tv-amazon-price-discount/>.

¹⁰² 1996 Report and Order, 11 FCC Rcd at 10711, para. 105.

1996 were popular and highly acclaimed.¹⁰³ We seek comment on our tentative conclusion that the regularly scheduled programming requirement should be eliminated. Would elimination of the regularly scheduled weekly programming requirement likely incentivize broadcasters to invest in high quality educational specials and non-weekly programming? Is it reasonable to expect that broadcasters would be motivated to promote educational specials and non-weekly children's programming to promote viewership? Do the costs of the regularly scheduled weekly programming requirement outweigh the benefits and, if so, how?

4. On-Air Notification Requirement

25. We tentatively conclude that noncommercial stations should no longer be required to identify Core Programming with the E/I symbol at the beginning of the program or to display this symbol throughout the program. As discussed above, the Commission adopted this requirement for both commercial and noncommercial broadcasters in 2004 to address concerns that there was a continued lack of awareness on the part of parents regarding the availability of Core Programming, finding that use of the E/I symbol could greatly improve the public's ability to recognize and locate core programs at minimal cost to broadcasters.¹⁰⁴ Although noncommercial stations previously had been exempted from the on-air identification requirement, the Commission concluded that requiring all stations to display the E/I symbol throughout the program would help "reinforce viewer awareness of the meaning of this symbol."¹⁰⁵ Public Broadcasting urges the Commission to eliminate this requirement for noncommercial stations, asserting that since the E/I symbol is intended to facilitate the children's programming requirements that apply only to commercial stations, it is not rational to continue to apply this mandate to noncommercial stations.¹⁰⁶ We think that the E/I symbol is sufficiently familiar to parents today that there is little benefit to requiring noncommercial stations—which are not otherwise subject to the reporting requirements and other public information initiatives applicable to commercial stations—to display the E/I symbol. We seek comment on our tentative conclusion to eliminate this requirement for noncommercial stations. If we eliminate the requirement that noncommercial stations display the E/I symbol, how will parents distinguish programming aired on noncommercial stations that is specifically designed to educate and inform children from programming that may be educational or informative but is intended for general audiences?

26. Public Broadcasting also asserts that displaying the E/I symbol "creates technical and viewability challenges for PBS as it works to innovate by streaming across a wide range of platforms" and "is particularly disruptive on smaller screens."¹⁰⁷ In order to more fully understand this concern as a basis for eliminating the E/I symbol requirement, we request additional information on exactly what technical and viewability challenges are created for noncommercial stations when displaying the E/I symbol on children's programming. Is the symbol generally added to programming prior to delivery to the station, or is it added at the time of broadcast by the station? How does the answer impact a broadcaster's ability to remove the E/I symbol? Do stations send their signals to smaller devices, such as

¹⁰³ The ABC Afterschool Specials and CBS Schoolbreak Specials frequently dealt with controversial or socially relevant issues of interest to children and teenagers, such as bullying, substance abuse, teenage pregnancy, suicide, and disabilities. *See, e.g.*, <http://tvtropes.org/pmwiki/pmwiki.php/Series/AfterschoolSpecial>; https://www.revolvy.com/main/index.php?s=ABC%20Afterschool%20Specials&item_type=topic; <http://www.emmytvlegends.org/interviews/shows/abc-afterschool-specials>.

¹⁰⁴ 2004 Report and Order, 19 FCC Rcd at 22958-59, paras. 43-46.

¹⁰⁵ *Id.* at 22960, para. 47.

¹⁰⁶ Public Broadcasting Comments at 3.

¹⁰⁷ *Id.* at 3. *See also* San Bernardino Community College District Reply at 2 (asserting that the time and effort it takes to insert the E/I symbol during production increases the overall costs of developing original content and that the digital watermark diminishes the viewing experience now that educational and informational content is finding its way onto smaller devices like tablets and mobile phones).

smartphones and tablets, through the same transmission that is used to send the signals to television set receivers or through a separate transmission? If separate transmissions are used, does that impact a broadcaster's ability to remove the E/I symbol? Do these challenges arise when the E/I symbol is displayed in programming transmitted OTA to devices with smaller screens or do the challenges arise only when programming containing the E/I symbol is streamed online? If we do not eliminate the requirement that noncommercial stations include the E/I symbol on Core Programming displayed on television sets, should we nonetheless eliminate the requirement when the programming is transmitted OTA to and received by smaller devices, such as smartphones and tablets?

27. We also request comment on whether we should continue to require commercial stations to identify Core Programming with the E/I symbol and display this symbol throughout the program in order for the program to qualify as Core Programming. To what extent do parents today use the E/I symbol to locate and choose Core Programming on commercial stations for their children? Do the costs to commercial licensees of the requirement to display the E/I symbol outweigh the benefits to parents? Does the current E/I symbol requirement cause undue technical difficulties for commercial stations or limit their flexibility to air programming on a variety of devices, including those with small screens? We seek comment from commercial broadcasters on the technical issues raised in the previous paragraph. If we retain the on-air identification requirement for commercial stations, should we afford commercial licensees greater flexibility to address any such technical difficulties by not requiring them to display the E/I symbol when consumers are viewing Core Programming transmitted OTA to and received by devices with smaller screens?

5. Program Guides

28. We seek comment on whether we should retain or eliminate the requirement that broadcasters provide information identifying programming specifically designed to educate and inform children, including an indication of the intended age group, to publishers of program guides.¹⁰⁸ This requirement was intended to improve the information available to parents regarding programming specifically designed for children's educational and informational needs and to make broadcasters more accountable in classifying programming as specifically designed to educate and inform.¹⁰⁹ We request comment on whether this requirement continues to serve its intended purposes. Do program guides publish the information provided by stations? If not, why not? If so, do parents use program guide information today to identify educational and information programming for their children? If not, how do parents identify such programming? Is program guide information used by interested parties to ensure that broadcasters are properly classifying programming as specifically designed to educate and inform? How is the information provided to publishers of program guides made available for use by OTA viewers? Is this information only available in print form, such as in the newspaper or *TV Guide*? Is the information also passed along to interactive guides available on Internet connected television sets or other devices capable of receiving an OTA signal? Do stations include information on their websites to identify their Core Programming as educational and informational?

6. Reporting Requirements

29. We seek comment on ways to streamline the children's television reporting requirements to eliminate unnecessary burdens and redundancies. Currently, commercial television broadcasters are required to file a Children's Television Programming Report on FCC Form 398 on a quarterly basis reflecting efforts made during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children.¹¹⁰ The report requires licensees to provide the average weekly number of hours of Core Programming aired by the station on its main program stream and any

¹⁰⁸ 47 CFR § 73.673.

¹⁰⁹ 1996 *Report and Order*, 11 FCC Rcd at 10714, para. 113.

¹¹⁰ 47 CFR § 73.3526(e)(11)(iii).

multicast streams over the quarter and to provide detailed information on each core and non-core program that is specifically designed to serve the educational and informational needs of children.¹¹¹ The report also requires licensees to certify that at least 50 percent of Core Programming aired on its multicast streams was not repeated during the same week, identify the program guide publishers to which information regarding the licensee's educational and informational programming was provided, as required by our rules, list each core program that was preempted during the preceding quarter, and provide information about whether each such program was rescheduled in accordance with the Commission's preemption policy.¹¹² Licensees are required to place a copy of each quarterly report in the station's online public file and to publicize the existence and location of the reports.¹¹³

30. We tentatively conclude that the Children's Television Programming Report should be filed on an annual rather than quarterly basis, as proposed by NAB and other commenters.¹¹⁴ NAB asserts that the extraordinary detail required by the quarterly reports places undue burdens on television stations.¹¹⁵ NAB indicates that the reports of a single station that provides three program streams (one main and two multicast) generally range from 30-40 pages per quarter and that a station whose reports average 40 pages per quarter will file 160 pages of programming details every year and approximately 1,280 pages during the station's eight-year license term.¹¹⁶ NAB maintains that the quarterly reports are also redundant, as stations must identify every quarter the programs they expect to air in the next quarter and then in the following quarter must report on the programs actually aired.¹¹⁷ We seek comment on our tentative conclusion that these reports should be filed on an annual basis. We note that the quarterly reporting requirement was intended to "provide[] more current information about station performance and encourage[] more consistent focus on educational programming efforts."¹¹⁸ It does not appear, however, that requiring broadcasters to file these reports on a quarterly basis serves any useful purpose today. Does broadcasters' educational and information programming change significantly from quarter to quarter so as to justify the burden of quarterly reports? To what extent does the public use the quarterly reports to monitor station performance in complying with the CTA? Do the burdens to broadcasters of preparing these reports on a quarterly basis outweigh the benefits to the public of having this information on a quarterly basis? If we adopt an annual reporting requirement, we seek comment on when licensees should be required to file their annual reports. Should they be required to file within 10 days of the end of

¹¹¹ *Id.* For example, for each core program aired during the preceding quarter, the report requires broadcasters to specify the following: the title of the program, the origin of the program (local, network, or syndicated), the day/times the program is regularly scheduled, the total number of times aired at the regularly scheduled time, the number of preemptions, the length of the program, the age of the target audience, a description of the educational and informational objective of the program and how it meets the definition of Core Programming, and whether the program is identified by displaying the symbol E/I. See FCC Form 398, Children's Television Programming Report, <https://transition.fcc.gov/Forms/Form398/398.pdf>. The report requires broadcasters to provide a similar level of detail for each non-core educational and informational program (i.e., a program that is specifically designed to meet the educational and informational needs of children ages 16 and under, but does not meet one or more elements of the definition of Core Programming) aired during the quarter.

¹¹² 47 CFR § 73.3526(e)(11)(iii).

¹¹³ *Id.*

¹¹⁴ NAB Comments at 13; Meredith Corp. Comments at 2 (Meredith); Affiliates Associations Reply at 7-8.

¹¹⁵ NAB Comments at 11. See also Gray Comments at 7; Meredith Comments at 2; Nexstar Comments at 11; Named State Broadcasters Associations Reply at 12 (Named State Broadcasters).

¹¹⁶ NAB Comments at 12.

¹¹⁷ *Id.* at 11.

¹¹⁸ 1996 Report and Order, 11 FCC Rcd at 10693, para. 68.

the calendar year,¹¹⁹ or is a longer filing deadline, such as within 30 days of the end of the calendar year, more appropriate?

31. Whether we adopt an annual reporting requirement or retain the quarterly reports, we tentatively conclude that the reports should only require broadcasters to provide information on the programs that they aired to meet their Core Programming requirement and not on the programs they plan to air in the future. There is no evidence that such duplicative reporting serves any useful purpose today. We seek comment on this tentative conclusion.

32. In addition, we seek comment on whether the requirement that broadcasters specify the educational and informational purpose and the target age group of Core Programming in their Children's Television Programming Reports continues to serve the objectives underlying its adoption. The Commission previously found that requiring a statement of educational and informational purpose will ensure that licensees devote attention to the educational and informational goals of Core Programming and how those goals may be achieved, assist licensees in distinguishing programs specifically designed to serve children's educational and informational needs from programs whose primary purpose is to entertain children, and allow parents and other interested parties to participate more actively in monitoring licensee compliance with the CTA.¹²⁰ Requiring licensees to specify the target age group of a core program was intended to encourage licensees to consider whether the content of the program is suited to the interests, knowledge, vocabulary, and other abilities of that age group, was specifically designed to meet the informational and educational needs for children under 16, and to provide information to parents regarding the appropriate age for core programs, thereby facilitating increased program audience and ratings.¹²¹ We request comment on whether the requirement that licensees specify the educational and informational purpose and target age group of Core Programming in their reports is still needed to serve these goals. Do parents rely on this information to plan their children's viewing or do they use program guides or some other source of information? Do parents and other interested parties use this information to monitor licensee compliance with the CTA? To what extent does the E/I symbol obviate the need for this requirement? Do the costs of providing this information outweigh the benefits?

33. We also seek comment on whether to streamline the report and permit broadcasters to certify their compliance with the children's programming requirements, instead of providing detailed information documenting their compliance, as proposed by several commenters.¹²² For example, with regard to a station's Core Programming, the streamlined report could require a licensee to certify that it aired the required number of Core Programming hours and that the programming complied with all applicable Core Programming criteria.¹²³ To the extent that a station does not fully comply, the report would require the licensee to provide details concerning its non-compliance.¹²⁴ We request comment on whether the detailed program information required by the current report is still needed for any useful purpose or whether certifications of compliance with the various children's programming requirements

¹¹⁹ Licensees currently must file their quarterly reports by the tenth day of the succeeding calendar quarter. 47 CFR § 73.3526(e)(11)(iii). If we streamline the Form 398 and permit broadcasters to certify their compliance with the children's programming requirements as discussed below, we expect that a 10-day filing deadline might be sufficient.

¹²⁰ *1996 Report and Order*, 11 FCC Rcd at 10704, para. 93.

¹²¹ *Id.* at 10705, para. 95.

¹²² Content Companies Comments at 13; Gray Comments at 7; Meredith Comments at 2; NAB Comments at 13; Nexstar Comments at 11; Affiliates Associations Reply at 7-8; Named State Broadcasters Reply at 13.

¹²³ *See* NAB Comments at 13 n.24.

¹²⁴ *See* Content Companies Comments at 13 (asserting that the Commission's focus should be on whether, and to what extent, stations do not comply and that the Commission should change the reporting requirements to require certification and/or disclosure only of any non-compliant conduct).

would be sufficient. If we streamline the reports and eliminate the requirement to provide detailed program information, how would the Media Bureau staff and the public verify broadcasters' compliance with the children's programming rules? Similar to how the Commission addresses noncommercial stations, should we require commercial stations to maintain documentation sufficient to show compliance at renewal time in response to a challenge or to specific complaints? How has this process worked for noncommercial stations?

34. What other certifications should be included in a streamlined children's programming report? What information should the reports continue to require in more detail? For example, if a station relies in part on special sponsorship efforts and/or special non-broadcast efforts, should the report continue to require the licensee to provide details on these efforts? While we expect that the rule changes we are proposing should largely eliminate the need for preemptions of Core Programming,¹²⁵ to the extent that a station does preempt Core Programming, should the report continue to require the station to provide detailed information on preemptions and any necessary rescheduling, or should a station be permitted to certify compliance with any preemption policies?

35. We tentatively conclude that we should eliminate the requirement that licensees publicize their Form 398s.¹²⁶ We note that licensees currently are required to place their Form 398s in their public files and we are not proposing to change this requirement.¹²⁷ The additional requirement that licensees publicize their Form 398s was originally intended to "heighten awareness of the CTA and invite members of the public to take an active role in monitoring compliance."¹²⁸ We tentatively conclude that it no longer serves this purpose. We seek comment on our tentative conclusion. Does the requirement that licensees publicize their Form 398s encourage members of the public to seek out stations' Form 398s or to take an active role in monitoring stations' compliance with the CTA?

B. Processing Guideline

36. We seek comment on whether we should modify the three-hour per week safe harbor processing guideline for determining compliance with the children's programming rules. Under the Commission's children's programming processing guideline, Media Bureau staff is authorized to approve the children's programming portion of a broadcaster's license renewal application if the broadcaster has aired three hours per week (averaged over a six-month period) of Core Programming on its primary stream, and an additional three hours per week for each free 24-hour multicast stream.¹²⁹ How has this requirement affected the delivery of broadcast content to consumers? What have been the costs and benefits of this requirement? What programming would broadcasters air if they were not constrained by our processing guideline? Commenters are encouraged to provide real world examples of the scheduling challenges associated with our current processing guideline.

37. If we modify our requirement to carry children's programming on the primary stream (*see infra* Section III.D), how does this equation change? For example, if broadcasters were able to meet our processing guideline by delivering educational and informational programming on one of their multicast streams, would the scheduling burdens associated with this quantitative requirement diminish? What benefits could arise from such an arrangement? Could this additional flexibility incentivize broadcasters to air *more* children's programming?

38. Alternatively, if we maintain the processing guideline on the broadcaster's primary

¹²⁵ *See infra* para. 57.

¹²⁶ 47 CFR § 73.3526(e)(11)(iii) ("Licensees shall publicize in an appropriate manner the existence and location of these Reports.").

¹²⁷ *Id.*

¹²⁸ 1996 *Report and Order*, 11 FCC Rcd at 10693, para. 67.

¹²⁹ *Id.* at 10718, para. 120; 2004 *Report and Order*, 19 FCC Rcd at 22950-51, para. 19.

stream, is more flexibility needed to address scheduling demands? For example, should the safe harbor processing guideline be based on the number of hours aired annually, instead of weekly? Under this modification, Media Bureau staff would be authorized to approve the children's programming portion of a broadcaster's license renewal application where the broadcaster has aired 156 hours per calendar year as opposed to three hours per week of Core Programming as averaged over six months.

39. We seek comment on the merits of evaluating broadcasters' compliance based on programming aired over the course of a year. Would an annual processing guideline provide benefits to broadcasters over the weekly guideline? What impact, if any, would an annual processing guideline have on viewers? If we adopt an annual processing guideline, should we nevertheless require that broadcasters air some minimum number or percentage of their Core Programming hours throughout the year, to ensure that they do not attempt to "stack" Core Programming by airing it all within a single week, month, or quarter and that children have access to educational and informational programming year-round? In addition, we seek comment on whether there are other adjustments to the current processing guideline we should consider and what the justification would be for any such changes.

40. We also seek comment on the impact of our proposals in this NPRM on Category B of the processing guideline. Under Category B, a licensee can demonstrate compliance with the three-hour per week processing guideline by showing that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of Core Programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of Core Programming.¹³⁰ Specials, PSAs, short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children can count toward the processing guideline under Category B.¹³¹ For example, Media Bureau staff might approve the children's programming portion of a renewal application based upon a showing that, while a station fell two hours short of meeting its Core Processing Guideline during a six month period (i.e. an average of 2.92 hours of Core Programming over the six month period), it aired one hour of interstitial programming and an hour-long special. If we determine that the definition of "Core Programming" should be revised as proposed above to eliminate the requirement that Core Programming be at least 30 minutes in length and the regularly scheduled weekly programming requirement (i.e., allow broadcasters to count specials, PSAs, short segments, and non-weekly programming towards their Core Programming hours), we seek comment on whether there is still a need for Category B. Are there other factors that should continue to be considered under Category B even if we eliminate the requirement that Core Programming be at least 30 minutes in length and the regularly scheduled weekly programming requirement? For example, the Commission stated in 1996 that airing Core Programming or non-Core Programming during primetime and investing a substantial amount of money in developing Core Programming aired on the broadcaster's channel would be relevant factors under Category B.¹³² Should these Category B factors still be considered if a licensee does not air the required number of Core Programming hours? If so, how much weight should we give these factors?

41. In the event we decide to retain Category B, we seek comment on how to clarify or revise Category B to increase its certainty and predictability, as requested by commenters.¹³³ According to

¹³⁰ 1996 Report and Order, 11 FCC Rcd at 10723, para. 133.

¹³¹ *Id.* at 10723-24, para. 133.

¹³² *Id.* at 10724, para. 133.

¹³³ NAB Comments at 29 (asserting that broadcasters have uniformly avoided Category B since its adoption because of uncertainty over how much Core Programming a broadcaster is expected to provide and how the FCC counts non-core Category B programming, such as short-form programs, PSAs and specials); Affiliates Associations Reply at 13-15 (asserting that the Affiliates Associations are not aware of any member stations that rely on Category B and urging the Commission to provide prompt, clear guidance on whether and under what circumstances stations might find Category B to be a viable alternative to Category A compliance).

NAB, Category B's vague "somewhat less than three hours per week" requirement creates uncertainty as to how much Core Programming a licensee is expected to provide.¹³⁴ For example, should we require that licensees utilizing the Category B option provide some minimum number of hours of Core Programming and if so, how many hours (under the existing three-hours per week processing guideline, as well as under the annual guideline option discussed above)? Are there other clarifications or revisions that could be made to make the Category B option a more viable alternative for broadcasters? As noted above, it is our intent in this proceeding to provide broadcasters greater flexibility, while at the same time ensuring that they have sufficient guidance on how to comply with the children's programming rules.

42. Additionally, we seek comment on whether there is still a need at all for a quantitative processing guideline for determining compliance of television licensees with the children's programming rules. As discussed above, the CTA does not require the Commission to prescribe specific requirements as to the number of hours of educational and informational programming that television stations must broadcast.¹³⁵ Rather, it simply requires that the Commission consider, in its review of television license renewals, the extent to which the licensee "has served the educational and informational needs of children through its overall programming, including programming specifically designed to serve such needs."¹³⁶ The three-hour weekly processing guideline was intended to provide licensees clear and timely notice of what they can do to ensure they meet their obligations under the CTA.¹³⁷ Nevertheless, given the abundance of children's programming available today from various sources, including PBS, cable networks, over-the-top video providers, Internet sites, and video on demand,¹³⁸ is a quantitative processing guideline for television stations still needed? We seek comment on the extent to which children's programming available on noncommercial broadcast stations, cable networks, and other non-broadcast platforms is programming that is "specifically designed to meet the educational and informational needs of children" and thus an adequate substitute for commercial broadcasters' educational and informational programming.¹³⁹ How has the availability of programming for children via non-broadcast platforms changed since the CTA was enacted in 1990?¹⁴⁰ Considering that Congress prescribed only a very general children's programming requirement and gave the Commission the discretion in how to implement this requirement, is the amount of children's programming available today on noncommercial broadcast stations, cable networks, and other sources relevant to a determination as to whether a quantitative processing guideline is still needed? We also seek comment on how the increase in other sources of children's programming, changes in relevant viewing patterns, and other developments since the enactment of the CTA in 1990 may affect the First Amendment considerations applicable to the

¹³⁴ NAB Comments at 29.

¹³⁵ See *supra* para. 3.

¹³⁶ 47 U.S.C. § 303b(a)(2).

¹³⁷ *1996 Report and Order*, 11 FCC Rcd at 10720-21, para. 124. See also *Affiliates Associations Reply* at 12-13 (asserting that the three-hour processing guideline "remains a stalwart and beneficial tool for stations to use to ensure smooth sailing under the CTA at license renewal time, and it should be retained as an option for all television stations.").

¹³⁸ See *supra* para. 16.

¹³⁹ See *supra* para. 19. The Commission has concluded that the statutory obligation to meet children's educational and informational needs applies to all broadcasters, including noncommercial broadcasters. *1991 Reconsideration Order*, 6 FCC Rcd at 5101, para. 44. Further, as noted above, PBS member stations, which make up 89 percent of all noncommercial television stations, are required by the terms of their membership to air at least seven hours of educational children's programming each weekday, far in excess of what is required under the safe harbor processing guideline. Public Broadcasting Comments at 3-4.

¹⁴⁰ See, e.g., *Competition, Rate Deregulation, and the Commission's Policies Relating to the Provision of Cable Television Services*, Report, 5 FCC Rcd 4962, App. G, Table IV (1990); H.R. REP. No. 101-385, at 6 (1990), as reprinted in 1990 U.S.C.C.A.N. 1605, 1610.

Commission's prescription of broadcast television programming requirements in this manner.

43. We also seek comment on what effect the elimination of the quantitative processing guideline would have on the amount of educational and informational programming available to children. What percentage of parents rely on OTA commercial television to provide programming serving the educational and informational needs of their children? Does OTA commercial television continue to be an important source of video programming, including educational and informational programming, for children of low income families?¹⁴¹ Are there current studies or data showing how much educational and informational programming children watch overall and on OTA commercial stations in particular? If we determine that there is no need for a quantitative processing guideline, how should the Commission evaluate a television licensee's compliance with the children's programming requirement under the CTA during the license renewal process?

C. Special Sponsorship Efforts and Special Non-Broadcast Efforts

44. We seek comment on the creation of a framework under which broadcasters could satisfy their children's programming obligations by relying in part on special efforts to produce or support Core Programming aired on other stations in the market and/or special non-broadcast efforts which enhance the value of children's educational and informational programming.¹⁴² The CTA permits the Commission to consider special sponsorship and special non-broadcast efforts, in addition to consideration of a licensee's programming, in evaluating whether a licensee has served the educational and informational needs of children.¹⁴³ However, few, if any, broadcasters have taken advantage of this opportunity to date. Broadcasters explain that this is because of the additional regulatory hurdles and uncertainty built into our existing rules for broadcasters that choose this option. Specifically, broadcasters note that our rules require the full Commission to approve the children's programming portion of renewal applications relying on such special efforts and claim that there is insufficient guidance on how such special efforts will be counted.¹⁴⁴ Thus, we seek to establish a framework that will make the use of special sponsorship efforts and special non-broadcast efforts a more viable option for broadcasters in fulfilling their children's programming obligations.

45. The CTA states that special sponsorship and special non-broadcast efforts may be considered only "in addition to considering the licensee's [educational] programming."¹⁴⁵ We seek

¹⁴¹ Letter from Angela Campbell, Georgetown Law, Institute for Public Representation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-105, at 1 (Apr. 5, 2018) (IPR *Ex Parte* Letter) (recognizing the changing media landscape and increase in the quantity of children's programming online but asserting that 28% of 0-to 8-year olds in lower income families do not have a home computer, 26% lack access to high-speed internet at home, and 39% do not have cable subscriptions). See also Common Sense Media, *The Common Sense Census: Media Use By Kids Age Zero To Eight* (2017).

¹⁴² See NAB Comments at 30 (urging the Commission to revise its rules so that broadcasters can realistically satisfy, at least in part, their children's television obligations through special sponsorship efforts and/or special non-broadcast efforts).

¹⁴³ 47 U.S.C. § 303b(b).

¹⁴⁴ See NAB Comments at 30 (asserting that "[n]o prudent broadcaster would deliberately subject its license to non-routine, full FCC review, nor would a rational broadcaster increase the risk to its license renewal by relying on a vague, uncertain option for fulfilling its obligations."). As discussed above, the Commission stated in the *1996 Report and Order* that broadcasters that do not fall within Category A or B of the processing guideline will have their renewal applications referred to the full Commission, where they will have the opportunity to demonstrate compliance with the CTA by relying in part on special non-broadcast efforts and/or special sponsorship efforts. *1996 Report and Order*, 11 FCC Rcd at 10724, para. 135. The Commission declined at that time to specify the minimum amount of Core Programming that a sponsoring station must air on its own station or explain how a station would be credited for sponsorship efforts, concluding that these matters are best addressed on a case-by-case basis. *Id.* at 10726, para. 139.

¹⁴⁵ 47 U.S.C. § 303b(b).

comment on how much Core Programming a licensee should be required to air when it is relying in part on special sponsorship and/or special non-broadcast efforts. Should we require a minimum amount of Core Programming and if so, how much should we require? Alternatively, should we give broadcasters the flexibility to decide how much Core Programming to air, provided that their Core Programming hours when combined with their special sponsorship and/or special non-broadcast efforts are the equivalent of the required Core Programming hours? As we have previously stated, we wish to give broadcasters flexibility in fulfilling their children's programming obligations, but we also recognize that particularized guidance may provide them more regulatory certainty.

46. In addition, we seek comment on how we should count a licensee's sponsorship of Core Programming on another in-market station. NAB proposes that we count the sponsorship of Core Programming on another in-market station on a straightforward "minute-for-minute" basis (i.e., count each minute of a sponsored program as the equivalent of a minute of Core Programming).¹⁴⁶ We request comment on this proposal and encourage commenters to suggest alternative proposals for quantifying sponsorship efforts. Should the size of the sponsoring broadcast station be taken into account in our analysis? For example, should we require larger broadcast stations to undertake more substantial sponsorship efforts (e.g., by sponsoring a greater number of minutes of Core Programming) than small broadcast stations in order to receive sponsorship credit? If so, how much more? How should we define "large broadcast station" and "small broadcast station" for purposes of such a requirement—based on annual revenues, market size, or some other measure? The Commission previously has stated that to receive credit for a special sponsorship effort, a broadcaster must demonstrate that its production or support of Core Programming aired on another station in its market increased the amount of Core Programming on the station airing the sponsored Core Programming.¹⁴⁷ We tentatively agree that a licensee should not receive credit where its sponsorship results in no net increase in the amount of Core Programming on the other in-market station; rather, the licensee should be required to demonstrate that its sponsorship resulted in the creation of new Core Programming or expanded the hours of an existing core program. We seek comment on this view.

47. We also seek comment on how to define "special non-broadcast efforts."¹⁴⁸ Under the CTA, special non-broadcast efforts must "enhance the educational and informational value" of a licensee's programming to children.¹⁴⁹ We request comment on the types of special non-broadcast efforts that should receive credit under this provision. We note that PBS stations currently engage in a variety of non-broadcast activities to supplement their educational and informational programming for children, such as hosting educational events for kids at libraries, bookstores, children's museums, science centers, theaters, and other locations in their local communities; partnering with local organizations, including schools, libraries, and summer camps, to keep kids reading and learning during the summer months; and providing free books and learning materials to children from low-income families in their communities.¹⁵⁰

¹⁴⁶ NAB Comments at 31 n.69.

¹⁴⁷ *1996 Report and Order*, 11 FCC Rcd at 10725, para. 138.

¹⁴⁸ NAB Comments at 30-31 (asserting that clear guidance is needed on what "special non-broadcast efforts" means and how special non-broadcast efforts would be counted).

¹⁴⁹ 47 U.S.C. § 303b(b).

¹⁵⁰ See, e.g., Press Release, PBS Kids and Stations Bridge the Summer Learning Gap with Adventure Filled Slate of New Programming and Activities Beginning in June (May 22, 2017), <http://www.pbs.org/about/blogs/news/pbs-kids-and-stations-bridge-the-summer-learning-gap-with-adventure-filled-slate-of-new-programming-and-activities-beginning-in-june/>; Cassie Gage, CPB and PBS Partner with Five Stations to Support Early Learning in Low-Income Communities, Oklahoma Educational Television Authority Blog (Dec. 2, 2016), <http://www.oeta.tv/blogs/education/cpb-and-pbs-partner-with-five-stations-to-support-early-learning-in-low-income-communities/>; Press Release, PBS Kids Kicks Off Its Annual Summer Learning Initiative (May 26, 2016), <http://www.pbs.org/about/blogs/news/pbs-kids-kicks-off-its-annual-summer-learning-initiative/>; Press Release, Milwaukee PBS Invites Families to Join PBS Kids Summer Safari Learning (June 16, 2015),

(continued....)

Are these the types of activities that should be credited as special non-broadcast efforts? Should a broadcaster receive credit for hosting or participating in an educational website for children that reinforces the themes or lessons in the broadcaster's Core Programming? Under non-broadcast efforts, should the Commission take into consideration the availability of children's programming that is aired on Internet streaming platforms? For example, PBS has a dedicated website and app for its children's programming.¹⁵¹ Are there similar on-demand outlets for children's programming aired by commercial stations? Should it matter whether such content is accessible for free or on a paid or subscription basis? How should we count or weigh special non-broadcast efforts? For example, should we count each special non-broadcast effort in which the broadcaster participates as the equivalent of a specified number of required Core Programming hours? Should some special non-broadcast efforts be assigned greater weight than others?

48. Finally, we propose to allow Media Bureau staff, rather than the full Commission, to approve the children's programming portion of renewal applications of licensees relying in part on special sponsorship and/or special non-broadcast efforts. The Bureau staff has substantial experience in evaluating the children's programming efforts of license renewal applicants. Further, we note NAB's comment that broadcasters would be unlikely to take advantage of this option if they are required to subject their license renewal to a non-routine review by the full Commission.¹⁵² We seek comment on this proposal.

D. Multicasting Stations

49. We propose to allow broadcasters the flexibility to choose on which of their free OTA streams to air any Core Programming (or non-Core Programming, to the extent that a broadcaster relies on non-Core Programming to meet its children's programming obligation).¹⁵³ Under this proposal, broadcasters would not be required to air their Core Programming on their main program stream or on a stream that has comparable MVPD carriage as the main program stream. This approach would provide broadcasters with more flexibility to air Core Programming during hours when children are most likely to be watching TV and alleviate the need for broadcasters to preempt Core Programming when it conflicts with content such as public affairs programming and live sports. We seek comment on this proposal. NAB asserts that under the current rules, "[e]ven if a station devotes a significant portion or the entirety of another stream to children's educational programming, it must still air E/I programming on its main stream. Such a requirement appears overly burdensome and unnecessarily restrictive, if not irrational."¹⁵⁴ Do our current rules disincentivize more broadcasters from airing additional children's programming on their multicast streams, outside of our requirements? How would increased flexibility enhance the scheduling and delivery of broadcast content to viewers, both adults and children?

50. We tentatively conclude that neither Section 336 nor the CTA mandates that a station fulfill its obligation to serve the educational and informational needs of children through its primary programming stream. In establishing the statutory framework for the transition to DTV, Congress stated in Section 336(d) that "nothing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity."¹⁵⁵ We tentatively

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<http://www.milwaukeepbs.org/news/press/mptv-invites-families-join-pbs-kids-summer-safari-learning>; Press Release, PBS Kids Offers Free, Fun and Educational Content and Tools for Families This Summer (June 2, 2014), <http://www.pbs.org/about/blogs/news/pbs-kids-offers-free-fun-and-educational-content-and-tools-for-families-this-summer/>.

¹⁵¹ See <http://pbskids.org/>.

¹⁵² See *supra* note 144.

¹⁵³ NAB Comments at 37.

¹⁵⁴ *Id.*

¹⁵⁵ 47 U.S.C. § 336(d).

conclude that a station can continue to serve the public interest by providing children’s educational and informational programming on a multicast channel. Indeed, this is consistent with the CTA, which requires that we consider at renewal whether a television licensee has served the educational and informational needs of children through its “programming,” but does not dictate that such programming must be provided on the primary stream.¹⁵⁶ We believe that this meets the statutory obligation as outlined by Congress while continuing to serve OTA-only households and children that do not have access to alternative non-broadcast content.¹⁵⁷ As Members of Congress recently stressed to the Commission, “‘Kid Vid’ rules remain important today, especially for the many underserved families who rely on free broadcast stations for educational content. Many families cannot access or afford the broadband speeds necessary for streaming online video and have trouble paying for monthly pay-TV subscription services. The ‘Kid Vid’ rules (and especially the mandatory programming hours requirement) make sure that these children have access to quality content to help them learn and thrive in school.”¹⁵⁸ We believe that permitting broadcasters to air their Core Programming on a multicast stream would be the surest way to provide needed flexibility while at the same time allow broadcasters to continue serving this important segment of the population. We seek comment on this tentative conclusion.

51. We also tentatively conclude that we should eliminate the additional Core Programming processing guideline applicable to digital stations that multicast. Under this guideline, broadcasters providing streams of free video programming in addition to their main program stream must air additional Core Programming based on the amount of programming that is aired on their multicast streams.¹⁵⁹ Multicasting stations are permitted to air all of their additional Core Programming on one free video channel, or distribute it across multiple free video channels, at their discretion, as long as the stream on which the Core Programming is aired has comparable MVPD carriage as the stream whose programming generates the Core Programming obligation.¹⁶⁰ Commenters note that when the Commission adopted this processing guideline in 2004, it stated that it intended to revisit the issues addressed in that proceeding within the next three years and consider whether its determinations should be changed in light of technological developments.¹⁶¹ In 2018, we finally revisit this issue.

52. Given the changes in how consumers access video programming and the growth in the amount and sources of educational and information programming available for children since the rule’s adoption in 2004,¹⁶² we tentatively conclude that the additional Core Programming processing guideline for multicasting stations is no longer needed. We also tentatively find that neither the CTA nor Section 336 of the Act mandates that the Commission impose children’s educational and informational programming requirements on multicast streams. The CTA requires that we consider at renewal whether a television licensee has served the educational and informational needs of children through its “programming,” but does not dictate that such programming be assessed on a stream-by-stream basis.¹⁶³ In addition, in establishing the statutory framework for the transition to DTV, Congress stated in Section

¹⁵⁶ *Id.* § 303b(a)(2).

¹⁵⁷ See *IPR Ex Parte* Letter at 1 (noting that 39 percent of 0-to 8-year olds in lower income families do not have cable subscriptions and therefore do not have access to children’s cable channels).

¹⁵⁸ Markey *Ex Parte* Letter at 1.

¹⁵⁹ 47 CFR § 73.671(e)(2)(i). See *supra* para. 10.

¹⁶⁰ 47 CFR § 73.671(e)(2)(i).

¹⁶¹ NAB Comments at 36; Affiliates Associations Reply at 11. See also *2004 Report and Order*, 19 FCC Rcd at 22966, para. 66.

¹⁶² See *supra* paras. 16 and 17.

¹⁶³ 47 U.S.C. § 303b(a)(2). See also *2004 Report and Order*, 19 FCC Rcd at 22953, para. 26 (finding that an additional Core Programming processing guideline for multicasting stations was “consistent with the objective of the CTA,” not mandated by the CTA).

336(b)(5) that the Commission “shall prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.”¹⁶⁴ We tentatively conclude that children’s educational and informational programming requirements for multicast streams are not necessary for the protection of the public interest, convenience, and necessity. We seek comment on our tentative conclusions and ask commenters to provide input on the relative costs and benefits of the current requirements for multicasting stations. To what extent do consumers benefit from the additional Core Programming hours that currently must be provided on multicast channels under the existing processing guideline? Is this programming well-known to or frequently watched by children? To what extent does the current processing guideline increase programming costs for stations or require them to forego other programming options?

53. We also seek comment on how to ensure that the current viewership of children’s programming is not reduced. Should the flexibility to choose on which free OTA stream to air required Core Programming hours come with additional public interest obligations? For example, if a broadcaster decides to air its Core Programming on a multicast stream rather than its primary stream, should it be required to air additional hours of children’s programming or provide some other service to its community? What other, if any, additional safeguards should apply?

54. To the extent that we adopt our proposal to allow broadcasters to choose on which of their free OTA streams to air any Core Programming, we seek comment on how to apply our children’s programming rules to stations broadcasting in ATSC 3.0. In the recent order authorizing television broadcasters to use the Next Generation or ATSC 3.0 broadcast television transmission standard on a voluntary, market-driven basis, the Commission concluded that the ATSC 1.0 and ATSC 3.0 signals of a Next Gen TV broadcaster will be two separately authorized companion channels under the broadcaster’s single, unified license.¹⁶⁵ It further required Next Gen TV broadcasters to simulcast the primary video programming stream of their ATSC 3.0 channels in an ATSC 1.0 format, so that viewers will continue to receive ATSC 1.0 service.¹⁶⁶ The programming aired on the ATSC 1.0 simulcast channel must be “substantially similar” to the programming aired on the 3.0 channel.¹⁶⁷ This means that the programming must be the same, except for programming features that are based on the enhanced capabilities of ATSC 3.0, advertisements, and promotions for upcoming programs.¹⁶⁸ Although the Commission “encourage[d] those Next Gen TV broadcasters that elect to air multiple streams of ATSC 3.0 programming to also simulcast more than a single programming stream,” it only required Next Gen TV broadcasters to simulcast their primary stream in ATSC 1.0 format.¹⁶⁹ The Commission also concluded that each 1.0 and 3.0 stream is subject to children’s programming obligations.¹⁷⁰ Accordingly, based on the rules adopted in the *Next Gen TV Report and Order*, if we adopt our proposal to allow broadcasters to choose on which of their free OTA streams to air any Core Programming, a Next Gen TV broadcaster that chooses to air its Core Programming on its primary 3.0 video stream would be required to simulcast “substantially similar” programming, including any Core Programming, in 1.0 format. If, however, a Next Gen TV broadcaster chooses to air its Core Programming on a multicast 3.0 stream, there is no current requirement that this

¹⁶⁴ 47 U.S.C. § 336(b)(5).

¹⁶⁵ *Authorizing Permissive Use of the “Next Generation” Broadcast Television Transmission Standard*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930, 9953-54, para. 48 (2017) (*Next Gen TV Report and Order*).

¹⁶⁶ *Id.* at 9937, para. 12.

¹⁶⁷ *Id.* at 9942-43, para. 22. The substantially similar requirement will sunset in five years from its effective date absent further action by the Commission via rulemaking to extend it. *Id.*

¹⁶⁸ *Id.* at 9943-45, paras. 23-28.

¹⁶⁹ *Id.* at 9937-38, para. 13.

¹⁷⁰ *Id.* at 9971, para. 80.

programming be simulcast on a 1.0 stream—although the broadcaster would still have the obligation to air Core Programming in 1.0 format. Given this, we seek comment on whether the flexibility of our children’s programming proposal requires us to modify our recent ATSC 3.0 rules. For example, a Next Gen TV broadcaster may wish to air its Core Programming on its primary 3.0 video stream, but instead of simulcasting that Core Programming in 1.0 format, air unique Core programming on a 1.0 multicast stream. Should we permit such flexibility? How would this flexibility impact the children’s programming available to 1.0 viewers? Similarly, how would it impact the other, non-children’s programming offered to viewers via the 1.0 stream? Should broadcasters be required to simulcast the Core Programming aired on the 3.0 multicast video stream on a 1.0 multicast video stream? Are there other issues related to compliance with the proposed revisions to our children’s programming rules, as they relate to the ATSC 3.0 rules, that we should consider? We invite specific comment on what modifications to our ATSC 3.0 rules, if any, may be necessary in light of the contemplated changes to our children’s programming rules.

55. We acknowledge that MVPDs are not required to carry stations’ multicast streams,¹⁷¹ so it is possible that the stream on which a station chooses to air its required Core Programming would not be available to those viewing broadcast stations only through MVPDs.¹⁷² Nevertheless, the stream would still be available over the air and therefore should be available to children in households that do not subscribe, and therefore do not have access to, the myriad of children’s programming options available on cable or satellite. We note that the Commission has allowed multicasting stations to air all of their additional Core Programming (beyond the three-hour weekly baseline) on any free OTA stream only where the stream has MVPD carriage comparable to the stream whose programming generates the Core Programming obligation.¹⁷³ We tentatively conclude that the comparable MVPD carriage requirement is no longer necessary. We believe that the MVPD comparable carriage requirement is less important today, given that viewers with MVPD service have access to cable children’s networks and likely also have access to children’s programming on over-the-top services and Internet sites. We seek comment on this tentative conclusion. If we allow broadcasters to move all of their Core Programming off of their main program stream to a stream that does not receive MVPD carriage, do broadcasters have business incentives to ensure that the programming attracts as many viewers as possible? How do such incentives operate in connection with the broadcast of children’s educational and informational programming? Would the statutory purpose of 47 U.S.C. Section 303b continue to be fulfilled if we were to permit Core Programming to be moved off of the stream that is carried by the MVPD?

56. If we adopt this proposal and broadcasters choose to move their required Core Programming from their main program stream to another free OTA stream, would there be a need to ensure that parents are able to locate the Core Programming? We note that for OTA viewers the multicast

¹⁷¹ See 47 U.S.C. §§ 534(b)(3)(A) (“A cable operator shall carry in its entirety ... the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system”); 535(g)(1) (“[a] cable operator shall retransmit in its entirety the primary video ... of each qualified local noncommercial educational television *station* whose signal is carried on the cable system”). See also 47 U.S.C. § 338(j) (directing the Commission to prescribe regulation imposing requirements on satellite carriers “that are comparable to the requirements on cable operators under sections 534(b)(3) and (4) and 535(g)(1) and (2) of this title.”); 47 CFR § 76.66(j)(1) (“Each television *station* carried by a satellite carrier, pursuant to this section, shall include in its entirety the primary video”). The Commission has concluded that “if a digital broadcaster elects to divide its digital spectrum into several separate, independent and unrelated programming streams, only one of these streams is considered primary and entitled to mandatory carriage.” *Carriage of Digital Television Broadcast Signals et al.*, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598, 2622, para. 57 (2001).

¹⁷² Affiliates Associations Reply at 18 (asserting that “the vast majority of local stations have historically been unable to secure carriage of multicast channels by DISH or DirecTV”).

¹⁷³ 2006 *Order on Reconsideration*, 21 FCC Rcd at 11074, para. 22; 2004 *Report and Order*, 19 FCC Rcd at 22952, para. 24.

stream is located next to the main stream in the channel lineup. Nevertheless, should we require broadcasters to provide on-air notifications to consumers that they intend to move the Core Programming from the main program stream to another channel? If we require them, how often and when should such notifications air? Should they be aired only on those days on which the Core Programming is broadcast or immediately before or during the broadcast of the Core Programming, to ensure that the notifications are seen by the programming's existing audience? Should we also require broadcasters to post information about the move on their websites or allow broadcasters to use websites to notify viewers in lieu of on-air notifications? Alternatively, are there more relevant ways to educate viewers today? Should we give broadcasters flexibility in determining the best way to inform their viewers? Even after initially moving Core Programming to a secondary stream, should stations be required to publicize the availability of children's programming on their secondary stream?

E. Preemption of Children's Programming

57. We seek comment on whether we should revise our policies regarding the preemption of children's programming or whether the added flexibility afforded to broadcasters by the other rule changes proposed in this NPRM, if adopted, would largely eliminate the need for preemptions. Under our existing policies, if a station preempts an episode of a core program for any reason other than breaking news, the station generally must air the rescheduled program in a previously selected "second home" and provide an on-air notification of the schedule change in order for the rescheduled program to count toward compliance with the processing guideline.¹⁷⁴ Commenters complain that the restrictive "second home" policy unnecessarily burdens local stations—especially those stations that air live network sports programming and network and local newscasts on weekend mornings—and impairs their ability to reschedule preempted programs.¹⁷⁵ We seek comment on whether the potential rule changes discussed above would provide broadcasters sufficient flexibility to schedule their Core Programming so as to avoid the need for preemptions. To the extent that commenters believe that these other rule changes would not fully address their concerns with the preemption policies, or if we do not adopt all of those proposals, we request comment on how to provide broadcasters greater flexibility in rescheduling preempted Core Programming. NAB proposes that we eliminate the "second home" policy and instead permit stations to air preempted core programs on the day, time, and OTA stream of their choice, provided that the broadcaster gives adequate notice of the rescheduled time.¹⁷⁶ We seek comment on this proposal and invite commenters to suggest alternative proposals to address their concerns with preemption issues.

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

58. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹⁷⁷ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this NPRM. The IRFA is set forth in Appendix B.

¹⁷⁴ *2006 Reconsideration Order*, 21 FCC Rcd at 11076, para. 28. The Media Bureau has also allowed stations to reschedule preempted programming in a spot that was not the second home, but was adjacent to other children's programming, within as many as two weeks of the preemption; in isolated circumstances, it has allowed rescheduling of preempted programming anytime between 7:00 a.m. and 10:00 p.m. within a week of the preemption. See e.g., *Braverman Letter Order*, 12 FCC Rcd at 9923; *Cotton Letter Order*, 1997 WL 878297, at 4; *Franks Letter Order*, 1997 WL 878296, at 3.

¹⁷⁵ NAB Comments at 33-35; Affiliates Associations Reply at 16-17.

¹⁷⁶ NAB Comments at 35.

¹⁷⁷ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

B. Initial Paperwork Reduction Act Analysis

59. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Ex Parte Rules

60. Permit-But-Disclose. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁷⁸ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

D. Filing Requirements

61. Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

¹⁷⁸ 47 CFR §§ 1.1200 *et seq.*

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

62. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

63. People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

E. Additional Information

64. For additional information on this proceeding, contact Kathy Berthot, Kathy.Berthot@fcc.gov, of the Media Bureau, Policy Division, (202) 418-7454.

V. ORDERING CLAUSES

65. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 303, 303b, 307, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 303, 303b, 307, and 336 this Notice of Proposed Rulemaking **IS ADOPTED**.

66. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

Note: For ease of review, the rule changes are noted below with additions in bold underlined text and deletions with a single line through the text.

The Federal Communications Commission proposes to amend Part 73 of Title 47 of the Code of Federal Regulations (CFR) as follows:

PART 73 — RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

2. Amend §73.671 to delete paragraphs (c)(3) and (c)(4), renumber paragraphs (c)(5)-(c)(7) as (c)(3)-(c)(5), and revise renumbered paragraph (c)(3) to read as follows:

§ 73.671 Educational and informational programming for children.

* * * * *

(c) For purposes of this section, educational and informational television programming is any television programming that furthers the educational and informational needs of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs. Programming specifically designed to serve the educational and informational needs of children ("Core Programming") is educational and informational programming that satisfies the following additional criteria:

- (1) It has serving the educational and informational needs of children ages 16 and under as a significant purpose;
- (2) It is aired between the hours of 7:00 a.m. and 10:00 p.m.;
- (3) For commercial broadcast stations only, the program is identified as specifically designed to educate and inform children by the display on the television screen throughout the program of the symbol E/I;
- (4) The educational and informational objective and the target child audience are specified in writing in the licensee's Children's Television Programming Report, as described in § 73.3526(e)(11)(iii); and
- (5) Instructions for listing the program as educational/informational, including an indication of the age group for which the program is intended, are provided by the licensee to publishers of program guides, as described in § 73.673.

3. Amend §73.671 to delete paragraph (d), renumber paragraph (e) as paragraph (d), and revise renumbered paragraph (d) to read as follows:

§ 73.671 Educational and informational programming for children.

* * * * *

(d) The Commission will apply the following processing guideline to digital stations in assessing whether a television broadcast licensee has complied with the Children's Television Act of 1990 ("CTA") on its digital channel(s). A digital television licensee that has aired at least three hours per week of Core Programming (as defined in paragraph (c) of this section and as averaged over a six month period) on its main program stream will be deemed to have satisfied its obligation to air such programming and shall

have the CTA portion of its license renewal application approved by the Commission staff. The licensee may air all of the Core Programming on its main program stream or on another free program stream, or may distribute it across multiple free program streams, at its discretion. Licensees that do not meet this processing guidelines will have full opportunity to demonstrate compliance with the CTA and be eligible for such staff approval by relying in part on sponsorship of Core educational/informational programs on other stations in the market that increases the amount of Core educational and informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts which enhance the value of children's educational and informational television programming).

4. Amend §73.3526(e)(11)(iii) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(e) * * *

(11)

(iii) *Children's television programming reports.* For commercial TV broadcast stations on an annual basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding year to serve the educational and informational needs of children. The Report is to be placed in the public inspection file by the tenth day of the succeeding calendar year. By this date, a copy of the Report is also to be filed electronically with the FCC. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in § 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. The Report shall also identify the program guide publishers to which information regarding the licensee's educational and informational programming was provided as required in § 73.673, as well as the station's license renewal date. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

* * * * *

APPENDIX B

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)¹ the Commission has prepared this Initial Regulatory Flexibility Act Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The Children's Television Act of 1990 (CTA)⁴ requires that the Commission consider, in its review of television license renewals, the extent to which the licensee "has served the educational and informational needs of children through its overall programming, including programming specifically designed to serve such needs."⁵ The CTA provides that, in addition to considering the licensee's programming, the Commission also may consider in its review of television license renewals (1) any special non-broadcast efforts by the licensee which enhance the educational and informational value of such programming to children; and (2) any special efforts by the licensee to produce or support programming broadcast by another station in the licensee's marketplace which is specifically designed to serve the educational and informational needs of children.⁶ The Commission adopted rules implementing the CTA in 1991,⁷ and revised these rules in 1996,⁸ 2004,⁹ and 2006.¹⁰

3. The existing children's programming rules include a three-hour per week safe harbor processing guideline for determining a renewal applicant's compliance with the rules.¹¹ Under the processing guideline, the Media Bureau staff is authorized to approve the children's programming portion

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, 394.

⁵ 47 U.S.C. § 303b(a)(2). The CTA also required the Commission to prescribe standards with respect to the time devoted to commercial matter in children's programming. *Id.* § 303a. In this NPRM, we focus on the children's programming requirements and do not address the limitations on the amount of commercial matter that may appear in children's programming.

⁶ *Id.* § 303b(b).

⁷ *Policies and Rules Concerning Children's Television Programming*, Report and Order, 6 FCC Rcd 2111 (1991), *recon. granted in part*, 6 FCC Rcd 5093 (1991).

⁸ *Policies and Rules Concerning Children's Television Programming*, Report and Order, 11 FCC Rcd 10660 (1996) (*1996 Report and Order*).

⁹ *Children's Television Obligations of Digital Broadcasters*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943 (2004) (*2004 Report and Order*).

¹⁰ *Children's Television Obligations of Digital Television Broadcasters*, Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065 (2006) (*2006 Reconsideration Order*).

¹¹ 47 CFR § 73.671(e).

of a licensee's renewal application where the licensee has aired three hours per week (averaged over a six-month period) of "Core Programming" (i.e., programming that is specifically designed to serve children's educational and informational needs and meets certain defined criteria).¹² A licensee can demonstrate compliance with the processing guideline by (1) checking a box on its renewal application and providing supporting information indicating that it has aired three hours per week of Core Programming; or (2) showing that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of Core Programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of Core Programming.¹³ Stations that multicast must provide an additional three hours per week of Core Programming for each full-time multicast stream that airs free programming.¹⁴ Licensees that do not satisfy the processing guideline have their renewal applications referred to the full Commission, where they have the opportunity to demonstrate compliance with the CTA by relying in part on special non-broadcast efforts which enhance the value of children's educational and informational programming and/or special efforts by the licensee to produce or support programming broadcast by another station in the licensee's marketplace which is specifically designed to serve the educational and informational needs of children.¹⁵ The children's programming rules also include, among other requirements, procedures governing the preemption of Core Programming;¹⁶ quarterly reporting requirements;¹⁷ program guide requirements;¹⁸ a requirement to publicize the existing and location of children's programming reports;¹⁹ and a requirement to identify Core Programming on-air with the E/I symbol and display this symbol throughout the program.²⁰

4. In the *NPRM*, the Commission proposes to revise the children's television programming rules to modify outdated requirements and to give broadcasters greater flexibility in serving the educational and informational needs of children. Many of the proposed revisions are based on comments received in response to the Commission's Modernization of Media Regulation Initiative proceeding.²¹ These proposed revisions reflect the dramatic changes in the video landscape in the two decades since the children's programming rules were adopted, including changes in the way television viewers, including younger viewers, consume video programming, the increase in the amount of programming for children available via non-broadcast platforms, such as children's cable networks, over-the-top providers, and the Internet, and the availability today of multicast channels which provide additional programming options for households that rely exclusively on over-the-air television. Among other matters, the *NPRM* seeks input on the following issues and proposals:

- *Requirement that Core Programming Be At Least 30 Minutes in Length.* The *NPRM* tentatively concludes that the requirement that educational and informational programming be at least 30 minutes in length to be counted as Core Programming should be eliminated, which would allow public service

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *2006 Reconsideration Order*, 21 FCC Rcd at 11076, para. 28.

¹⁷ 47 CFR § 73.3526(e)(11)(iii).

¹⁸ *Id.* §§ 73.671(c)(7), 73.673.

¹⁹ *Id.* § 73.3526(e)(11)(iii).

²⁰ *Id.* § 73.671(c)(5).

²¹ *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome).

announcements, interstitials (i.e., programming of brief duration that is used as a bridge between two longer programs), and other short segments to be counted as Core Programming.

- *Core Programming Hours.* The *NPRM* seeks comment on whether it is still necessary to define the hours in which educational and informational programming must be aired to be considered Core Programming, and if so, whether to expand the Core Programming hours from 7:00 a.m. to 10:00 p.m. to 6:00 a.m. to 11:00 p.m.
- *Regularly Scheduled Weekly Programming Requirement.* The *NPRM* tentatively concludes that the requirement that educational and informational programming be regularly scheduled weekly programming should be eliminated, which would allow educational specials and non-weekly programming to be counted as Core Programming.
- *On-Air Identification.* The *NPRM* tentatively concludes that noncommercial stations should no longer be required to identify Core Programming with the “E/I” symbol or to display this symbol throughout the program. The *NPRM* also seeks comment on whether to continue to require commercial stations to display the E/I symbol throughout Core Programming.
- *Program Guides.* The *NPRM* seeks comment on whether to retain or eliminate the requirement that broadcasters provide information identifying programming specifically designed to educate and inform children, including an indication of the intended age group, to publishers of program guides.
- *Reporting Requirements.* The *NPRM* tentatively concludes that the Children’s Television Programming Report, FCC Form 398, should be filed on an annual rather than quarterly basis and seek comment on ways to streamline this report. Additionally, the *NPRM* tentatively concludes that the requirement that broadcasters publicize the existence and location of their Children’s Television Programming Reports should be eliminated.
- *Processing Guideline.* The *NPRM* seeks comment on whether to modify the three-hour per week safe harbor processing guideline for determining compliance with the children’s programming rules to make it an annual guideline, which would give broadcasters greater flexibility to air Core Programming based on scheduling demands.
- *Special Sponsorship Efforts and Special Non-Broadcast Efforts.* The *NPRM* seeks comment on the creation of a framework under which broadcasters could satisfy their children’s programming obligations by relying in part on special sponsorship efforts and/or special non-broadcast effort. In particular, the *NPRM* seeks comment on how much Core Programming a licensee should be required to air when it is relying in part on special sponsorship and/or special non-broadcast efforts; whether to count the sponsorship of Core Programming on another in-market station on a straightforward “minute-for-minute” basis or on some other basis; and on the types of activities that should be credited as special non-broadcast efforts. The *NPRM* also proposes to allow Media Bureau staff, rather than the full Commission, to approve the children’s programming portion of renewal applications of licensees relying in part on such special efforts.
- *Multicasting Stations.* The *NPRM* proposes to allow broadcasters that multicast the flexibility to choose on which of their free over-the-air streams to air their required Core Programming hours without regard to carriage by multichannel video programming distributors. Moreover, the *NPRM* tentatively concludes that the additional Core Programming guideline applicable to broadcasters providing streams of free over-the-air programming in addition to their main program stream (i.e., multicasting stations) should be eliminated.
- *Preemption Policies.* The *NPRM* seeks comment on whether the policies regarding the preemption of children’s programming should be revised or whether other rules changes proposed in the *NPRM*,

including elimination of the regularly scheduled weekly programming requirement and the requirement that Core Programming be at least 30 minutes in length, making the three-hour per week processing guideline an annual processing guideline, and allowing broadcasters to choose on which of their free OTA streams to air their required Core Programming hours, would provide broadcasters sufficient flexibility to schedule their Core Programming so as to avoid the need for preemptions. To the extent that commenters believe that these other rule changes would not fully address their concerns with the preemption policies, or some or all of these other rules changes are not adopted, the *NPRM* seeks comment on NAB's proposal to eliminate the "second home" policy and instead permit stations to air preempted core programs on the day, time, and OTA channel of their choice, provided that the broadcaster gives adequate notice of the rescheduled time.

B. Legal Basis

5. The proposed action is authorized pursuant to Sections 1, 4(i), 303, 303b, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303, 303b, and 307.

C. Description and Estimates of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.²² The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²³ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²⁴ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.²⁵

7. The rules proposed herein will directly affect small television broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

8. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound."²⁶ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.²⁷ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5

²² 5 U.S.C. § 603(b)(3).

²³ *Id.* § 601(6).

²⁴ *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

²⁵ *Id.* § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

²⁶ U.S. Census Bureau, 2017 NAICS Definitions, "515120 Television Broadcasting," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515120&search=2017+NAICS+Search&search=2017>.

²⁷ *Id.*

million or less in annual receipts.²⁸ The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of \$25 million or less.²⁹ Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

9. The Commission has estimated the number of licensed commercial television stations to be 1,377.³⁰ Of this total, 1,257 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on January 8, 2018, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 390.³¹ Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

10. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations³² must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

11. *Reporting Requirements.* The *NPRM* tentatively concludes that the Children’s Television Programming Report, FCC Form 398, should be filed on an annual rather than quarterly basis. The *NPRM* also seeks comment whether the requirement that broadcasters specify the educational and informational purpose and the target child audience of Core Programming in their Children’s Television Programming Reports continues to serve the objectives underlying its adoption. In addition, the *NPRM* seeks comment on whether to streamline the Children’s Television Programming Report and allow broadcasters to certify their compliance with the children’s programming requirements, rather than provide detailed information in the report documenting their compliance.

12. *Recordkeeping Requirements.* The *NPRM* does not propose any new recordkeeping requirements.

13. *Other Compliance Requirements.* The *NPRM* seeks comment on whether it is still necessary to define the hours in which educational and informational programming must be aired to be

²⁸ 13 CFR § 121.201; 2012 NAICS Code 515120.

²⁹ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting), https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~515120.

³⁰ *December 31, 2017 Broadcast Station Totals.*

³¹ *Id.*

³² “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

considered “Core Programming” and if so, whether to expand the Core Programming hours from 7:00 a.m. to 10:00 p.m. to 6:00 a.m. to 11:00 p.m. Additionally, the *NPRM* tentatively concludes that the requirement that educational and informational programming be “regularly scheduled weekly programming” to be considered Core Programming, which would allow educational specials and non-weekly programming to be counted as Core Programming. The *NPRM* also tentatively concludes that the requirement that educational and informational programming be at least 30 minutes in length to be considered Core Programming should be eliminated, which would enable broadcasters to receive Core Programming credit for public service announcements, interstitials (i.e., programming of brief duration that is used as a bridge between two longer programs), and other short segments.

14. The *NPRM* seeks comment on whether to provide broadcasters greater flexibility in scheduling their Core Programming by modifying the three-hour per week safe harbor processing guideline for determining compliance with the children’s programming rules to make it an annual guideline. The *NPRM* also seeks comment on the creation of a framework under which broadcasters could satisfy their children’s programming obligations by relying in part on special sponsorship efforts and/or special non-broadcast efforts. The *NPRM* tentatively concludes that the additional Core Programming requirement applicable to multicasting stations should be eliminated. Further, the *NPRM* seeks comment on whether to allow broadcasters to choose on which of their free over-the-air streams to air their required Core Programming hours.

15. Finally, the *NPRM* tentatively concludes that the requirement that broadcasters publicize the existence and location of their Children’s Television Programming Reports should be eliminated; tentatively concludes that noncommercial stations should no longer be required to identify Core Programming with the “E/I” symbol or to display this symbol throughout the program and seeks comment on whether commercial stations should be required to do so; and seeks comment on whether to retain or eliminate the requirement that broadcasters provide information identifying programming specifically designed to educate and inform children, including an indication of the intended age group, to publishers of program guides.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

16. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³³

17. The revisions proposed in the *NPRM* are intended to modernize the children’s programming rules by modifying outdated requirements and giving broadcasters greater flexibility in fulfilling their children’s programming obligations. Thus, we expect that the proposed revisions, if adopted, will only benefit affected small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

18. None

³³ 5 U.S.C. § 603(c)(1)-(4).