

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *Children's Television Programming Rules*, MB Docket No. 18-202; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105

Today, the Commission takes an important, first step, in modernizing our children's programming requirements, commonly referred to as "Kid Vid." We seek comment on rules written in 1996, and last updated in 2006. I thank the Chairman for allowing me to take the lead on this important topic, and my colleagues for their thoughtful consideration of this item.

As the item itself recognizes, it has been over 20 plus years since the Commission first adopted rules implementing the Children's Television Act (CTA). Since initiation, there has been a major shift in the way viewers consume content. Live television viewing has declined and broadcast television is no longer in the same position as it once was. Today, a child, including mine, can consume programming not only on cable channels such as Nickelodeon, Nick Jr., Disney Channel, Discovery Family, and Animal Planet, but also through over-the-top providers like Netflix, Amazon, and Hulu that offer a treasure trove of original and previously-aired children's programming. Content is available online via National Geographic Kids, Scholastic Kids, Smithsonian Kids, and others. And, broadcast stations, both commercial and noncommercial, have used their multicast channels to launch 24/7 children's television programming, including PBS Kids and Ion Television's Qubo. Specifically, Ion's use of its multicast streams allows it to provide over 500 percent more children's programming than is required under the Commission's rules. Overall, this is a great success story for children of all ages and backgrounds. In fact, I would venture to say that there is no better time than now to be a consumer of such content.

Given these changes, it is unsurprising that there is bipartisan agreement that reviewing the Kid Vid rules is appropriate. In a letter from 25 center-right consumer advocates, the Commission was encouraged to update our Kid Vid rules, in part because of the "significant changes since the 90s, particularly in terms of access to new content delivery platforms." The letter continued, "[i]n previous decades, broadcasters were the primary access point, but now the vast majority of American households have more options. According to Nielsen, there are only 2.5 percent of households without cable or internet access in the home. Of those homes, only 20 percent have a child between the ages of two and 17. That leaves only 0.5 percent of households with children that don't have cable or internet in the home, but individuals in these homes may be accessing content like the PBS app on their wireless devices." In a separate letter from 11 public interest groups it was recognized that "major changes have taken place in the video marketplace and that it is appropriate for the FCC to take a fresh look at its rules in light of these changes."

Similarly, in an op-ed, Patrice Onwuka, a senior policy analyst with the Independent Women's Forum, explained that "educational children's content has grown exponentially over the past few decades thanks to technology. However, regulations governing kids' television programming has not kept pace." And, the Multicultural Media, Telecom and Internet Council (MMTC) recently stated "[n]eedless to say, the media landscape has significantly changed since the rules went into effect in 1990. We believe media modernization is a good thing, particularly as it impacts multicultural consumers, creators, and minority broadcasters."

Despite this, broadcasters continue to operate under archaic Commission rules. In essence, to carry out the CTA, the Commission set forth three paths for broadcasters to receive their broadcast-license renewals, the main asset of a local station. Under Category A, the Commission established a processing guideline that permits the Media Bureau to process a license renewal if the broadcast station aired an average of three hours per week of "Core Programming." Due to the greater certainty provided by this option, most broadcasters go this route. Category B includes combining other programming – such as PSAs or short-form programs – with Core Programming to reach the three-hour processing

guideline. For broadcasters that do not meet the requirements of Category A or B, the full Commission must approve their renewal application. Under this approach, broadcasters can demonstrate compliance with the CTA by relying on special non-broadcast efforts. This rulemaking seeks comments on ways to improve each processing guideline.

For Category B, this item seeks comment on how to bring more certainty to the process, in order to increase its utilization. The Commission also seeks comment on how to provide more guidance on what constitutes special non-broadcast efforts. Under this option, I can envision a scenario, as authorized by the CTA, in which a broadcaster could provide funding for another entity in the market doing a better job at serving children's needs. For example, I recently traveled to Lansing, Michigan and had the opportunity to tour WKAR. Not only was WKAR the first public broadcasting station to go through the repack, but it also just received the first Special Temporary Authority (STA) experimental license for a noncommercial station to initiate ATSC 3.0 set-up and broadcasting. Yet, what struck me on the tour, was its pervasive dedication to children. WKAR provides 57 hours a week of children's programming on its primary signal and an amazing 168 hours a week on its 24/7 PBS Kids multicasting channel. Beyond the programming, the station is experimenting with how best to engage children through other technologies, including the Internet, via hand-held tablets targeted to the very young and those in need. Is there a way that a broadcaster in the local market could enhance WKAR's work, rather than air programming blocks that may be rarely watched? I hope comments to this proceeding will help us establish a workable framework for at least some broadcasters to take advantage of this approach.

For Category A, the item questions whether three hours per week remains the appropriate requirement, or if another amount of time is more suitable. The item also considers whether the weekly requirement should be an annual requirement, and, if so, what protections are needed to ensure that children's programming is aired throughout the course of the year. The item also asks a series of questions on the definition of Core Programming. Unfortunately, the current requirements for programming to constitute as Core impose real opportunity costs on broadcasters and, as a result, their viewers. For example, to meet the Commission's burdensome definition, broadcasters have forgone local newscasts, public affairs programming, and live events on Saturday mornings in order to air their mandated Core Programming.

Moreover, the current definition does not reflect how children currently consume television content. For example, today our rules require that programming be at least 30 minutes in length in order to count as Core. As a parent of a two-year-old, I can attest that children are not watching programming in thirty-minute blocks. Even worse, beyond not reflecting market realities, this requirement has killed off shorter, high quality programs that were once popular and educational, such as *Schoolhouse Rock* and *In the News*. For these reasons, we tentatively conclude to eliminate this requirement.

We also ask questions about the time period in which children's programming must air. Currently, our rules only count programming as Core if it is aired between the hours of 7:00 a.m. to 10:00 p.m. But, with the rise in DVRs and On Demand programming, as well as streaming services, appointment viewing has rapidly declined. Gone are the days when children wake up on Saturday morning at a set time to catch their favorite show. For my part, when my daughter wants *Blaze and the Monster Machines*, her favorite show, she wants it at that moment, not some future Saturday. Therefore, this item questions whether the time period outlined in our rules should be extended, or, alternatively, eliminated altogether.

Next, our rules require that programming be "regularly scheduled at least weekly" in order to count as Core. Again, not only does this no longer reflect the way children consume content, but, it has had the unintended consequence of eliminating once popular and highly acclaimed programming, such as *ABC Afterschool Specials* and *CBS Schoolbreak Specials*. As the item makes clear, eliminating this requirement will allow broadcasters to receive credit for airing more types of children's programming.

To me, it seems logical that allowing broadcasters to offer a greater variety of children's programming that is responsive to consumer demand, rather than Commission mandate, will be a huge win for the children that consume this content.

The item likewise looks at our on-air notification and program guide requirements and asks a series of questions on how to modernize these rules. It also seeks to streamline the reporting requirements associated with our rules. Currently, our rules require quarterly reports from broadcasters to document their Kid Vid compliance. In these reports broadcasters must list all the programs they aired in the previous quarter to meet the Commission's three-hour processing guideline, and all the programming it plans to air in the following quarter. This is redundant. The item considers ways to reduce our paperwork burdens while still ensuring that the Commission can confirm that our requirements are met. For example, the item considers making the quarterly requirement an annual requirement, and only requiring information about programming actually aired, not broadcaster's futuristic plans. Similarly, we seek comment on whether to revise our rules regarding reports demonstrating compliance with the limits on commercial matter in children's programming from a quarterly filing to an annual requirement.

Finally, the item revisits our rules on multicast stations. Specifically, the item proposes allowing broadcasters to choose which of their free over-the-air streams to air their Kid Vid programming. To the over-the-air viewer, it should not matter which station the programming is aired on since all are available.

In conclusion, I want to reemphasize that the launch of this rulemaking is the *beginning* of the process, not the end. That means everyone will have plenty of time to provide the requisite analysis of the proposed rule changes I just outlined before the Commission moves forward on any final decision. Despite this, some have argued that we should switch the item from a Notice of Proposed Rulemaking to a Notice of Inquiry. In this case, switching from an NPRM to an NOI is nothing more than Washington speak for injecting unnecessary delay and distraction. We can and will obtain the same data in an NPRM that we could in any NOI.

I did, however, make clear at the outset and throughout this process that I stood ready to work with anyone on this rulemaking to reframe or ask additional questions so that it appropriately explores ways to bring added flexibility to local broadcasters without harming children watching current programming. That is why when Commissioner Rosenworcel requested that I replace the tentative conclusions in this document with questions, I was willing to accept these edits. To be clear, this is not the direction I would have preferred. I feel strongly that more direction can help assist those commenting in this proceeding. But, I agreed to this proposal and requested that the Media Bureau make the edits. Despite this concession, I was informed that even with these edits it was not sufficient to garner a bipartisan vote. Having been unable to reach agreement, the item we will vote on today appears very similar to that draft item circulated three weeks ago. While I am disappointed that, despite my willingness to negotiate, we will not receive unanimous support for today's item, I continue to commit to anyone who is interested in working in good faith, that my door, and mind, remains open as we receive comments and additional data throughout this proceeding.