

**Remarks of FCC Commissioner Michael O’Rielly
2018 Kentucky Broadcasters Association Conference
Bowling Green, Kentucky
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Thank you for that kind introduction and for the opportunity to join you here in Bowling Green, Kentucky. I had the privilege of meeting your president, Chris Winkle, and several Kentucky broadcasters earlier this year in Columbus, Ohio, for the Midwest Broadcaster’s ATSC 3.0 Conference. There, I appreciated the chance to discuss both the exciting opportunities of 3.0 – which I have witnessed firsthand in both Phoenix, Arizona, and East Lansing, Michigan – and the urgency of agency attention.

I also discovered how much fun you guys are. Suffice it to say, the Kentuckians were the life of the party at dinner (while still abiding by all ethical, legal, and decorum standards). In fact, when Chris reached out to invite me to speak with you guys today, the question wasn’t: how can I politely decline so my wife who just delivered our second daughter does not kill me? Instead, it was: how can I make this happen, while making sure my wife doesn’t kill me? So, again, I appreciate the invitation, and I will try to make this quick, as the only thing worse than listening to an FCC Commissioner is having him or her speak before a dinner we all know is going to be a good time.

As I said in Ohio, again last month in Orlando, and many times before, I always like to begin my speeches with broadcasters by thanking you for all that you do. No one is better at providing critical information in times of need, keeping communities safe when bad weather approaches, or uniting a community when circumstances require. So, thank you from the bottom of my heart for serving your communities and your neighbors.

Updating Commission Rules

As many of you know, since Chairman Pai took the helm at the FCC, the Commission has been focused on eliminating archaic regulations that no longer make sense. These actions have taken many shapes, from eliminating the main studio rule to eradicating duplicative or non-useful forms at the Commission. Incredibly, we actually had requirements to maintain a paper copy of our rules and post broadcast licenses on walls in your studios. And yet, until this Commission, these rules lingered, causing unnecessary burdens on the industry, without offering any real consumer benefits. In the coming months, I hope that we can bring to order many of these proceedings that we launched in 2017 and earlier this year. This list includes rules on how broadcasters inform the public about certain broadcast applications, the delivery of retransmission elections, and ways to streamline reauthorization procedures for assigned or transferred satellite stations. And, I look forward to teeing up the next round for consideration!

Moreover, this process means bringing to conclusion the Commission’s proceeding examining our children’s programming rules. In January, I penned a blog questioning the usefulness of these rules in an era of Nickelodeon, Nick Jr., Disney Channel, Discovery Family, Animal Planet, and so many other options available on cable, over the air, over the top, and online. With all these selections, were cookie cutter requirements outlined by the agency in 1996 still needed? As one commenter wrote, had the “require-it-and-they-will-watch” premise actually worked? My goal was to be provocative in order to generate a conversation. The next thing I knew, I was leading the proceeding.

I appreciate the Chairman entrusting me with this important modernization item. I also recognize that as the lead on this topic, I must understand all the issues and listen to all perspectives before moving forward on any final order. We released a Notice of Proposed Rulemaking (NPRM) in July to consider changes – big and small. Now, we are reviewing comments. Here are some interesting findings from our record:

- Children eight years or younger consume approximately 2.2 hours of programming per day, but 48 minutes of that consumption is through a mobile device or tablet;
- A mobile device such as a tablet or smartphone is available in 98 percent of households with children present;
- According to one study, 93 percent of teens ages 13 to 15 use social platforms to access video, including 82 percent through YouTube and 72 percent through Netflix;
- According to Nielsen, as of June 2018, Netflix was the top viewing destination for children under the age of 11, and 72 percent of children between the ages of 8 to 11 prefer YouTube videos over traditional linear television; and
- Across the four major English-language broadcast networks, total viewership of persons ages 2 to 17 on any given day dropped from 4 million in the 1991-1992 television season to 600,000 in the 2017-2018 season. Saturday morning viewership by children ages 2 to 11 has declined by 71 percent since 2007, despite the requirement in 2006 to increase the amount of children's programming aired via broadcasters' multicast channels.

I say this not to denigrate broadcasters' future which I believe to be bright, but to state facts that are a market reality. Despite these marketplace changes, the Commission's rather rigid, one-size-fits-all requirements may present real opportunity costs for broadcasters by deprioritizing local programming:

- To bring it home to this audience, Block WDRB (TV) filed in the record that it has been thwarted from airing pre-game shows to talk about important Saturday basketball games, including two Louisville games and one Kentucky game which I hear are quite popular in this region. Similarly, Block estimates that if it could air local news on Saturday mornings instead of children's programming, it could hire 14 additional employees.
- Cadillac Telecasting Company, another broadcaster to comment in our proceeding, explained scheduling issues it had in trying to air the 2018 World Cup in June and July, as well as the memorial services for the late Senator John McCain, both due to conflicts with its required Kid Vid block.
- Griffin's Tulsa station was unable to air the annual Susan G. Komen Race for the Cure and had to cut short its coverage of a Saturday morning parade celebrating the opening of a \$400 million public park due to its Kid Vid obligations.
- An Oklahoma TV station stopped its extended weather coverage to air mandated Kid Vid programs. Anyone aware of weather issues in Oklahoma?
- And, according to Nexstar's general managers, its stations have forgone airing local sports programs, health specials, parades, debates and national breaking news due to the Commission's Kid Vid requirements. In particular, one Nexstar station was unable to broadcast a six-week program on the opioid crisis meant to educate viewers on where to get assistance in the community.

Some in the record dismiss both the decline in broadcasting viewership and incline in broadcast alternatives, suggesting that broadcasting is the only medium truly available to all. Beyond the data mentioned previously, consider that according to Nielsen, only 0.5 percent of households with children ages 2-17 (or about 582,000 households) have neither Internet nor multichannel video services. This is a small but important number. Even more importantly, over-the-air is over-the-air. The NPRM I designed

provided needed flexibility to avoid the scenarios I just outlined by broadcasters, while still ensuring that those 582,000 households without the options previously described had access to children's programming. According to the Commission's proposal, broadcasters would need to maintain their obligations to air children's programming but could do so on whatever stream made the most sense. As one broadcaster in the record explained, "Viewers have access to Channel 4.2 the same as they have access to Channel 4.1." Exactly.

However, as comments have come in, some have expressed concern with this proposal, not because children would not have access to programming, but because if moved to the multicast, companies would not be able to profit off such programming. Think about that for a minute. One of the original purposes of the Children's Television Act was to limit the amount of advertising towards children. And yet, a chief opponent of these proposals fears a transition to multicast channels because it would lose 98 percent of its advertising revenues. In its comments this company asks, "What's in this for children?" It's a great question. Unfortunately, most of the advocacy so far appears to be that we must keep Kid Vid mandates on primary channels so that companies can make sufficient revenues via advertising dollars. This sounds like a consideration of what's best for the programming company rather than what is really best for children.

It does raise the question on the continued necessity to mandate additional processing guidelines on broadcasters' multicast streams. Some commenters argue that such an elimination would deprive children of hundreds of hours of educational content per week. This figure is derived by taking the number of current multicast channels available and multiplying it by three. Unfortunately, it's not that simple. For starters, as mentioned previously, broadcasters have actually seen a steady decline in children's programming viewership since 2007, despite the mandate to air additional children's programming on multicast channels in 2004. Moreover, it often does not make sense to air three hours of children's programming on certain multicast channels. For example, Meredith Corp. explains how it receives complaints when airing its mandated Kid Vid requirements on its 24/7 radar multicast channel. Even Litton, a chief opponent of many of our Kid Vid rule changes, commented that "removing the requirement to provide three hours on each multicast stream would not harm children." This reform would certainly transition our focus on children's programming from quantity to quality.

And, let's have an honest conversation about quality. Sesame Street Workshop in its comments recognized that the current implementation of the Act "has not resulted in the delivery of the highest quality educational and informational programming for children." Interestingly, this group points to "high-quality programs offered by PBS and some commercial cable providers" – not programming aired by commercial broadcasters – as programming that has "been consistently found to enhance academic and social skills." Another commenter provided the Commission with anecdotes of people fearful of losing *Mr. Rogers*, *Arthur*, *Wild Kratts*, *Sesame Street*, and *Electric Company* – all highly valuable programming, but none of which originates on commercial broadcast stations. Programming aired on PBS and other noncommercial stations is simply not what is at issue in this proceeding. Instead, the focus of this proceeding is on modernizing the offerings by commercial broadcast stations. As Nexstar argues, creating "opportunities for broadcasters to produce or procure higher quality, local facing or focus driven children's programming . . . instead of settling for canned, rule compliant, programming widely available from networks and syndicators would benefit consumers the most."

For example, in eliminating our 30-minute requirement – a modification that I can find little, if any opposition to in the record – broadcasters could air short-form series following social media models. Today, NBC news partners with Snapchat to offer a twice-daily, app-based news program for Generation

X viewers called “Stay Tuned.” This programming has more than 600 short-form episodes, each less than 10 minutes long, and reaches 35 million unique viewers each month, with more than one billion total views. Under our current rules, these formats cannot count towards a broadcaster’s Kid Vid requirements, so many are reluctant to invest. How many more examples of this would we see if more flexibility was provided and the 30-minute rule was eliminated?

The record is full of other examples highlighting why our rules need to be modified. Meredith Corp. again submitted data indicating Americans are getting up earlier and launched a 4am newscast to respond. Yet, our current rules ignore, and therefore disincentive, any Kid Vid programming aired before 7am. Moreover, one-off programming can emphasize STEM learning, such as a space launch or seasonal weather programming focused at children. Such programming is unlikely to be offered today, since it would not be considered “regularly scheduled” and therefore not count towards a broadcaster’s Kid Vid requirements.

I look forward to the opportunity to review the reply comments on this proceeding, which are due later this month. It is important for me to emphasize that I remain open-minded and will only move forward on a proposal that strikes the important balance of protecting children viewers, modernizing our rules, and providing flexibility.

Television Repack Process

Another issue the Commission will tackle in the upcoming months is the television repack process. As you know, Phase 1 is now officially underway and will continue through November 30, with Phase 2 beginning December 1. It appears that we are on track for a smooth process, at least in these initial phases. This is partly because our so-called Phase 0 allowed for the transition of more than 120 full power and Class A stations. Moreover, most experts are not anticipating huge problems until at least Phase 3.

Throughout this process, I am interested to know exactly what experiences stations are having and what issues may be on the horizon. For example, I am well aware of how both weather delays and tower crew shortages can affect phases later on, particularly now as we head into the winter months. For those in these later phases, please keep me posted.

State of the Industry

Finally, I hope that by the end of the year the Commission will launch our 2018 Quadrennial Review of our media ownership rules. In this review, we must revisit our current definition of the media marketplace. As I have stated on multiple occasions, the prevailing view that individual communications sectors somehow do not compete with one another defies logic. AM radio competes with more than just AM radio, FM radio competes with more than just FM radio, and local television broadcasters compete with more than just local TV stations. Just consider the stats I offered earlier! Further, I was at the NAB Radio Show a couple weeks ago, and I can guarantee you, folks I spoke with there certainly believe they are competing with more than just their fellow AM or FM radio stations.

Not only is it important for us to update this definition to get our rules right and to be reflective of the 2018 marketplace but doing so would send an important message to other parts of the government where viewpoints of the media marketplace have been even less nimble than my agency.

I think it is fair to say that the media industry is undergoing a dynamic change. In fact, I would suggest we've seen more changes in the last five years than in the last 20 to 25 years combined. Not only are there fierce new competitors in this space, but there are real opportunities for broadcasters going forward, if we at the Commission can get our rules right. I believe we struck the proper balance when it came to ATSC 3.0 – in which we adopted a consumer-driven, market-centered, flexible, and voluntary approach. Similarly, I believe we are heading in the right direction throughout our media modernization proceedings. And, it is my hope that we can finally eliminate our siloed approach to regulation in our upcoming quadrennial. If I could find a common theme among these proceedings, it is the need for greater flexibility. That will certainly be my focus in the upcoming months.

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Thank you for your attention this evening. My speech was a little heavy on the television side, so I would of course be more than happy to answer any questions you may have on radio or other topics. Alternatively, I can let you get to your dinner and some of the famous Kentucky fun.