

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Children's Television Programming Rules, Modernization of Media Regulation Initiative*, MB Docket Nos. 18-202 and 17-105, Report and Order and Further Notice of Proposed Rulemaking.

Today, the Commission takes an important step in the ongoing effort to modernize our media regulations, better reflecting the current marketplace, which looks dramatically different than the last time we updated the children's television programming rules, commonly known as "Kid Vid." Multichannel News recently generated a graphic listing all the television devices, services, and content producers competing in today's market, and it consisted of well over a hundred different entities. This is a far cry from the early 1990s when the educational and information programming mandate was first imposed on broadcasters.

I would like to thank the Chairman for the opportunity to lead the review of Kid Vid regs, and for his support in getting this item across the finish line in less than a year. And, a very heartfelt thanks to the Media Bureau staff, especially Ms. Berthot, for their Herculean effort to assess the record, draft and redraft the item, and employ their incredible knowledge of the broadcast industry to get us to today.

When we started the review process in earnest to update our Kid Vid rules, I laid out four target principles: 1) protect existing viewers; 2) give broadcasters needed flexibility in scheduling required programming; 3) respond to the shifting video marketplace; and 4) simplify compliance. In the end, we accomplished three out of four, with simplicity probably losing out. On balance, any additional complexity for those taking advantage of the new rules seems like a manageable tradeoff for meeting the other three objectives.

First, regarding the children. This item largely retains the existing regulations for the benefit of those who watch Kid Vid shows every week. Other than modifying the reporting burdens, the item only makes incremental changes to the overall framework. This is a modest approach that does nothing to disturb the requirement for broadcasters to air 156 hours per year of Kid Vid programs. The vast majority of programming will still be in 30-minute blocks, and broadcasters can begin airing shows at 6:00 am instead of 7:00 am, which reflects evidence in the record that—surprise, surprise!—many children do actually wake up early on Saturdays.

Remarkably, and very importantly, every single one of the 156 hours per year that must be aired will be accessible to households that only have access to over-the-air television. As some have pointed out, these are precisely the households that may lack access to broadband-dependent services, such as over-the-top video platforms or other streaming services. Critics have argued this is nonetheless ill-advised because multicast channels have traditionally had lower viewership. But the popularity of the multicast channels as a whole is immaterial to whether over-the-air-only households will continue to have access when combined with the notification requirements in the item. Moreover, as the Order highlights,¹ the vast majority—two-thirds—of the programming must still be aired on a primary stream. The Order also points out that there are nearly 700 *more* free, over-the-air television stations today than there were in 1990.² And, I haven't even gotten to the 350 public broadcasting stations around the country that are each

¹ *Children's Television Programming Rules; Modernization of Media Regulation Initiative*, MB Docket Nos. 18-202, 17-105, Report and Order and Further Notice of Proposed Rulemaking, ¶ 45 (proposed Jul. 10, 2019), <https://www.fcc.gov/document/modernizing-childrens-television-programming-rules>.

² *Id.* at ¶ 45.

required to air at least seven hours *per day* of children’s educational and informational programming.³ Further, PBS Kids and Ion Television’s Qubo also air 24/7 kids’ content on multicast channels, reaching 95 percent and 67 percent of TV households respectively. Both have informed the Commission that they intend to continue operating these channels into the foreseeable future.

Beyond failing to demonstrate how the one hour per week multicast harms over-the-air only viewers, those objecting to our very modest reforms ignore the underlying market principle that drives television content: TV stations are always looking to increase viewership because this is how they generate revenue to survive, whether on a primary stream or multicast channels. Just because some content may be shifted to multicast doesn’t mean broadcasters won’t promote it. Quite the opposite is true. I met with a station earlier this week and heard about how they were able to expand their reach into markets where they previously did not have a presence by broadcasting on multicast channels. I do not deny there is room for further development of the multicast market, but to say that this is a graveyard of unwatched television—children’s television no less—is flatly wrong.

Second, some argue that viewers will be harmed by enabling broadcasters to air up to one-third of their required programming throughout the year, instead of being regularly scheduled each week. However, the bulk of the hours per year must still be regularly scheduled, preserving the business model of companies producing Kid Vid content. For the remaining hours, giving stations flexibility will allow for more accurate advanced program scheduling that may result in fewer preemptions. Take, for example, a broadcast affiliate that airs network sports over the course of consecutive weekend mornings for a month. Rather than being forced to choose between airing local news or public affairs programming and rescheduled children’s programming—as some commenters informed us occurs⁴—the station can meet its Kid Vid obligations by shifting a portion of kids’ shows to another time when children are actually more likely to be viewers, perhaps during the summer months.

This flexibility also better reflects the current video market place where viewers tend to watch video on demand or in large quantities, so-called “binge-watching.” A station may want to stack more programs together into blocks or focus on after-school specials of an hour or more. Further, permitting stations programming flexibility does not mean they are able to walk away from their regularly scheduled requirements, as they still must maintain a minimum of 26 hours per quarter, regularly scheduled each week. This modest amount of scheduling flexibility will allow broadcasters the opportunity to compete with other video providers without drastically altering the foundation of our Kid Vid requirements.

Third, some question whether broadcasters should have the option under Guideline B to air programming that is less than 30-minutes long. I would humbly point out that the ability to experiment with program lengths is not a new idea, but one that is long-established in the *existing regulations*. While some research has been submitted purporting to establish 30 minutes as the gold standard for educational programming, we reiterate today that 30 minutes was settled upon in 1996 because the existing “dominant broadcast television format” was at least 30 minutes long.⁵ The record in this proceeding strongly corroborates our effort to give broadcasters the opportunity to offer more suitable child-centric programming, like after school specials and short-form shows. But again, this is not a novel idea; our only action is to provide more specificity on what qualifies under Guideline B.

Fourth, the item provides further flexibility by permitting preemption for locally-produced content. Expanding the preemption for breaking news couldn’t be more focused on the broadcaster ideal

³ *Id.* at ¶ 11 n.51.

⁴ *Id.* at ¶ 54.

⁵ *Id.* at ¶ 31.

of localism. This preemption only applies for programming that is not regularly scheduled and is produced *by* the station airing it. The Order includes many examples which were pulled from the record: local parades, high school sports, public officials' swearing-in ceremonies, momentous funerals, and so on.⁶ Localism is so fundamental to the mission of broadcasters that it's imperative we don't force them to choose between airing locally-produced content and Kid Vid programming, which has unfortunately happened in the past.

Finally, when it comes to the NPRM that we seek to adopt today, I would remind everyone that the NPRM simply seeks to implement *existing* language in the Kid Vid statute that has not adequately been addressed by regulation. I would have been comfortable moving to order on these special sponsorship efforts, but it seems perfectly reasonable to ask thoughtful questions about what special sponsorship efforts should encompass. Moreover, the tentative conclusions are extremely conservative in their approach and are certainly protective of children. Specifically, the proposal asks whether and how much a commercial broadcaster can contribute to the local public broadcasting station in the market, which already focuses significant attention on young audiences, enabling the latter to produce even more children's programming than what is being aired today. By no means is this an effort to undermine the Kid Vid rules.

In closing, this Order may not have gone as far as some of us would have liked in reconceiving the statutory mandate for Kid Vid regulations and it doesn't blindly maintain the status quo as others demand. But, on balance, we found a landing spot that preserves broadcast children's programming and provides broadcasters flexibility befitting of the brave new world of video programming facing us today. In terms of simplicity, unfortunately, that will have to wait for another day.

I approve.

⁶ *Id.* at ¶ 54.