

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

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

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## I. INTRODUCTION

1. In this *Report and Order and Further Notice of Proposed Rulemaking*, we take steps to modernize the children's television programming rules and give broadcasters greater flexibility in serving the educational and informational needs of children. The media landscape has changed dramatically since the Commission first adopted children's television programming rules in 1991. Today, children have an abundance of educational and informational programming options available from both broadcast stations and non-broadcast sources, including children's cable networks and online video providers. In addition, our record shows that there has been a major shift in the way young viewers access video programming. Live viewing of broadcast television among children has declined sharply, as children's viewing of video content on other media platforms and time-shifted viewing have risen.<sup>1</sup> At the same time, we recognize that children in minority and low-income households are more likely to rely exclusively on over-the-air broadcast television and to watch live rather than time-shifted television.<sup>2</sup> The rules we adopt today will provide broadcasters additional scheduling flexibility, allow broadcasters to offer more diverse and innovative educational programming, and relieve unnecessary burdens on broadcasters, while also ensuring that high quality educational programming remains available to all children. Our action in this proceeding is a continuation of the Commission's efforts to modernize its media regulations and reduce outdated requirements that can impede competition and innovation in the media marketplace.<sup>3</sup>

2. Among the key changes to the children's programming rules adopted in the *Report and Order* are the following:

- *Core Programming Hours.* We expand the 7:00 a.m. to 10:00 p.m. time frame during which Core Programming must be aired to allow stations to begin airing such programming earlier, at 6:00 a.m., reflecting changing viewing habits among children and creating additional flexibility for broadcasters.
- *Regularly Scheduled Weekly Programming Requirement.* We require that a majority of Core Programming be regularly scheduled weekly programming, but we permit broadcast stations to air a limited amount of programming that is not regularly scheduled weekly programming, including educational specials and regularly scheduled non-weekly programming, and have it count as Core Programming.
- *Requirement that Core Programming Be At Least 30 Minutes in Length.* We continue to require that a majority of Core Programming be at least 30 minutes in length, but we permit broadcast stations to air a limited amount of short-form programming, including public service announcements (PSAs) and interstitials (i.e., programming of brief duration that is used as a bridge between two longer programs), and have it count as Core Programming.
- *Processing Guidelines.* We modify the safe harbor processing guidelines for determining compliance with the children's programming rules. Under Category A of the revised guidelines, Media Bureau staff will be authorized to approve the children's programming portion of a broadcaster's license renewal application if the station airs either (i) three hours per week (as averaged over a six-month period) of Core Programming, or (ii) 156 hours of Core Programming annually, including at least 26 hours per quarter of regularly scheduled weekly programming of at least 30 minutes in length and up to 52 hours annually of Core Programs of at least 30 minutes in length that are not aired on a regularly scheduled weekly

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<sup>1</sup> See *infra* para. 17.

<sup>2</sup> See *infra* para. 19.

<sup>3</sup> See *Commission Launches Modernization of Media Regulation Initiative*, MB Docket No. 17-105, Public Notice, 32 FCC Rcd 4406 (2017) (*Modernization Initiative Public Notice*) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary, or unduly burdensome).

- basis, such as educational specials and regularly scheduled non-weekly programming. Under Category B, Media Bureau staff will be authorized to approve the children's programming portion of a broadcaster's license renewal application if the station airs 156 hours of Core Programming annually, including at least 26 hours per quarter of regularly scheduled weekly programming of at least 30 minutes in length. The remaining Core Programming hours under Category B (up to 52 hours annually) may consist of Core Programs that are not aired on a regularly scheduled weekly basis, including educational specials, other non-regularly scheduled programming, and regularly scheduled non-weekly programming, and short-form programming, including PSAs and interstitials.
- *Airing of Core Programming.* We require that broadcast stations air the substantial majority of their Core Programming on their primary program streams, but we permit broadcast stations to air up to 13 hours per quarter of regularly scheduled weekly programming on a multicast stream. We also eliminate the additional processing guideline applicable to stations that multicast.
  - *Preemptions.* We modify our preemption policies to permit a broadcast station that preempts an episode of a regularly scheduled weekly program on its primary stream to air the rescheduled episode on its primary stream at any time during Core Programming hours within seven days before or after the date the episode was originally scheduled to air, provided that the station makes an on-air notification of the schedule change. We also expand the existing breaking news exemption to the requirement that preempted Core Programs be rescheduled. Specifically, we permit a station to preempt an episode of a regularly scheduled weekly program in order to air non-regularly scheduled live programming produced locally by the station without any requirement to reschedule the episode.
  - *On-Air Notification Requirement.* We eliminate the requirement that noncommercial broadcast stations identify their Core Programming by displaying the "E/I" symbol throughout the program. We retain the requirement for commercial broadcast stations.
  - *Program Guides.* We retain the requirement that broadcasters provide information identifying programming specifically designed to educate and inform children to publishers of program guides but will no longer require that broadcasters provide program guide publishers an indication of the age group their programming is intended to serve.
  - *Reporting Requirements.* We revise the children's programming reporting requirements by requiring that Children's Television Programming Reports (FCC Form 398)<sup>4</sup> be filed on an annual rather than quarterly basis, within 30 days after the end of the calendar year; eliminating the requirements that the reports include information describing the educational and informational purpose of each Core Program aired during the current reporting period and each Core Program that the licensee expects to air during the next reporting period; eliminating the requirement to identify the program guide publishers who were sent information regarding the licensee's Core Programs; and streamlining Form 398 by eliminating certain fields. We also eliminate the requirement to publicize Form 398.
  - *Recordkeeping Requirements for Commercial Limits.* We revise the rules to permit broadcast stations, cable operators, and DBS operators to file their certifications of compliance with the commercial limits in children's programming annually rather than quarterly and to permit the filing of these certifications within 30 days after the end of the calendar year.

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<sup>4</sup> We note that Form 398 was replaced by Form 2100 Schedule H in 2014. However, given that broadcasters generally still refer to this form as Form 398, we will refer to it herein as Form 398.

In the *Further Notice of Proposed Rulemaking*, we seek additional 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 their markets.

## II. BACKGROUND

3. The Children's Television Act of 1990 (CTA)<sup>5</sup> requires the Commission to consider, in reviewing television license renewals, the extent to which the licensee "has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs."<sup>6</sup> The CTA provides that, in addition to considering the licensee's programming in its review of television license renewals, the Commission also may consider: (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.<sup>7</sup>

4. The Commission initially adopted rules implementing the CTA in 1991,<sup>8</sup> and revised these rules in 1996,<sup>9</sup> 2004,<sup>10</sup> and 2006.<sup>11</sup> Under the current children's programming rules, "educational and informational programming" is defined as "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."<sup>12</sup> Programming specifically designed to serve the educational and informational needs of children, also known as "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) it is a regularly scheduled weekly program; (4) it is at least 30 minutes in length; (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 age group for which the program is intended, are provided to publishers of program guides; and (7) the educational

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<sup>5</sup> Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, 394.

<sup>6</sup> 47 U.S.C. § 303b(a)(2).

<sup>7</sup> *Id.* § 303b(b).

<sup>8</sup> *Policies and Rules Concerning Children's Television Programming*, MM Docket No. 90-570, Report and Order, 6 FCC Rcd 2111 (1991) (*1991 Report and Order*), recon. granted in part, 6 FCC Rcd 5093 (1991) (*1991 Reconsideration Order*).

<sup>9</sup> *Policies and Rules Concerning Children's Television Programming*, MM Docket No. 93-48, Report and Order, 11 FCC Rcd 10660 (1996) (*1996 Report and Order*).

<sup>10</sup> *Children's Television Obligations of Digital Television Broadcasters*, MM Docket No. 00-167, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943 (2004) (*2004 Report and Order*).

<sup>11</sup> *Children's Television Obligations of Digital Television Broadcasters*, MM Docket No. 00-167, Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065 (2006) (*2006 Reconsideration Order*). A detailed history of the children's programming rules is set forth in the *Notice of Proposed Rulemaking* in this proceeding and is incorporated herein by reference. *Children's Television Programming Rules; Modernization of Media Regulation Initiative*, MB Docket Nos. 18-202 and 17-105, Notice of Proposed Rulemaking, 33 FCC Rcd 7041, 7042-48, paras. 4-14 (2017) (*NPRM*).

<sup>12</sup> 47 CFR § 73.671(c); *1991 Report and Order*, 6 FCC Rcd at 2114, paras. 15, 21.

and informational objective and the target child audience are specified in writing in the licensee's children's programming report.<sup>13</sup>

5. The children's programming rules include a three-hour per week safe harbor processing guideline for determining a license renewal applicant's compliance with the rules.<sup>14</sup> Under the processing guideline, the Media Bureau staff is authorized to approve the children's programming portion of a licensee's renewal application if the station has aired approximately three hours per week (as averaged over a six-month period) of Core Programming on its primary program stream.<sup>15</sup> Renewal applications are divided into two categories for purposes of staff-level CTA review.<sup>16</sup> 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 the station has aired three hours per week (as averaged over a six-month period) of Core Programming.<sup>17</sup> 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 the station 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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

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<sup>13</sup> 47 CFR § 73.671(c); *2004 Report and Order*, 19 FCC Rcd at 22959-60, paras. 46-47; *1996 Report and Order*, 11 FCC Rcd at 10699-715, paras. 81-113.

<sup>14</sup> 47 CFR § 73.671(e); *1996 Report and Order*, 11 FCC Rcd at 10718, para. 120.

<sup>15</sup> 47 CFR § 73.671(e)(1); *1996 Report and Order*, 11 FCC Rcd at 10718, para. 120. The term "primary program stream" generally refers to the programming stream for which a broadcaster demands mandatory carriage. *See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98-120, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598, 2622, para. 57 (2001).

<sup>16</sup> *1996 Report and Order*, 11 FCC Rcd at 10723, para. 130.

<sup>17</sup> 47 CFR § 73.671(e)(1); *1996 Report and Order*, 11 FCC Rcd at 10723, para. 131-32. Repeats and reruns of Core Programming are counted toward fulfillment of the three-hour guideline under Category A. *1996 Report and Order*, 11 FCC Rcd at 10723, para. 132.

<sup>18</sup> 47 CFR § 73.671(e)(1); *1996 Report and Order*, 11 FCC Rcd at 10723, para. 133.

<sup>19</sup> 47 CFR § 73.671(e)(1); *1996 Report and Order*, 11 FCC Rcd at 10723-24, para. 133. As noted in the *NPRM*, licensees have rarely attempted to demonstrate compliance under Category B due to uncertainty as to how much Core Programming must be provided. *NPRM*, 33 FCC Rcd at 7045, para. 8, 7059, para. 41.

<sup>20</sup> 47 CFR § 73.671(e)(1); *1996 Report and Order*, 11 FCC Rcd at 10724, para. 135. *See* 47 U.S.C. § 303b(b). While the Commission found that relying on special non-broadcast or sponsorship efforts does not relieve a licensee of the obligation to air Core Programming because the CTA permits the Commission to consider such efforts only "in addition to consideration of the licensee's [educational] programming," it 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. *1996 Report and Order*, 11 FCC Rcd at 10725-26, paras. 137-39. As explained in the *NPRM*, few (if any) broadcasters have taken advantage of this option because of the uncertainty as to how much Core Programming

(continued....)

6. In addition to the requirement to air an average of three hours of Core Programming on their primary program stream, digital broadcasters that multicast also have an obligation to air educational and informational programming on their multicast streams. Specifically, such stations must air an additional one-half hour per week of Core Programming for every increment of one to 28 hours of video programming provided on free multicast streams.<sup>21</sup> Thus, for example, 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.<sup>22</sup> Stations that multicast may air all of their additional 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 additional Core Programming obligation.<sup>23</sup> At least 50% of the Core Programming counted toward meeting the additional processing guideline cannot consist of program episodes that aired during the previous week on either the station's primary program stream or one of its free multicast streams.<sup>24</sup>

7. The existing rules also require broadcasters to submit detailed children's programming reports on a quarterly basis on a standardized reporting form, the Children's Television Programming Report (FCC Form 398);<sup>25</sup> to publicize the existence and location of their children's programming reports<sup>26</sup>; to provide a brief explanation in their children's programming reports of how particular programs meet the definition of "Core Programming"<sup>27</sup>; and to designate a liaison for children's programming and include the name and method of contacting that individual in the station's children's programming reports.<sup>28</sup> Moreover, the Commission has implemented a procedure to address when a station can count preempted Core Programming toward meeting the processing guideline.<sup>29</sup> Under this procedure, Core Programming will be counted 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.<sup>30</sup> The on-air notification must announce the alternate date and time when the preempted show will air.<sup>31</sup> All networks requesting preemption flexibility must file a request with the Media Bureau by August 1 of each year stating the number of preemptions the network expects, when the program will be rescheduled, whether

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must be aired and how special efforts will be weighed and because broadcasters are reluctant to subject their license renewal to a non-routine review by the full Commission. *NPRM*, 33 FCC Rcd at 7061, para. 44.

<sup>21</sup> 47 CFR § 73.671(e)(2)(i); *2004 Report and Order*, 19 FCC Rcd at 22950, para. 19.

<sup>22</sup> 47 CFR § 73.671(e)(2)(i); *2004 Report and Order*, 19 FCC Rcd at 22950-51, para. 19.

<sup>23</sup> 47 CFR § 73.671(e)(2)(ii); *2004 Report and Order*, 19 FCC Rcd at 22952, para. 24.

<sup>24</sup> 47 CFR § 73.671(e)(3); *2006 Reconsideration Order*, 21 FCC Rcd at 11074, para. 23.

<sup>25</sup> 47 CFR § 73.3526(e)(11)(iii); *1996 Report and Order*, 11 FCC Rcd at 10693-94, paras. 68-70. *See supra* note 4.

<sup>26</sup> 47 CFR § 73.3526(e)(11)(iii); *1996 Report and Order*, 11 FCC Rcd at 10693, para. 67. The Commission left it to the discretion of the broadcasters how to publicize this information. 47 CFR § 73.3526(e)(11)(iii); *1996 Report and Order*, 11 FCC Rcd at 10693, para. 67.

<sup>27</sup> 47 CFR § 73.3526(e)(11)(iii); *1996 Report and Order*, 11 FCC Rcd at 10691, para. 63.

<sup>28</sup> 47 CFR § 73.3526(e)(11)(iii); *1996 Report and Order*, 11 FCC Rcd at 10690, para. 62.

<sup>29</sup> *2006 Reconsideration Order*, 21 FCC Rcd at 11076, para. 28.

<sup>30</sup> *Id.* The "second home" policy was originally 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); *Mr. Rick Cotton, National Broadcasting Co., Inc.*, Letter Order, DA 97-1470, 1997 WL 878297, at \*4 (MB July 11, 1997); *Mr. Martin D. Franks, Senior Vice President, Washington CBS, Inc.*, Letter Order, DA 97-1479, 1997 WL 878296, at \*3 (MB July 11, 1997).

<sup>31</sup> *2006 Reconsideration Order*, 21 FCC Rcd at 11076, para. 28.

the rescheduled time is the program's second home, and the network's plan to notify viewers of the schedule change.<sup>32</sup> Finally, the children's programming rules apply to both commercial and noncommercial stations, except that the Commission has exempted noncommercial stations from the reporting requirements in view of their demonstrated commitment to serving the educational and informational needs of children.<sup>33</sup>

8. The CTA additionally requires the Commission to limit the number of minutes that commercial broadcast licensees and cable operators may air during children's programming.<sup>34</sup> Specifically, the CTA provides that television broadcast licensees and cable operators shall limit the duration of advertising in children's programming to "not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays."<sup>35</sup> The Commission initially adopted rules implementing this statutory provision in 1991,<sup>36</sup> and extended these rules to DBS providers in 2004.<sup>37</sup> Among other requirements, these rules require broadcast stations, cable operators, and DBS providers to place records sufficient to demonstrate compliance with the limits on commercial matter in children's programming in their public files on a quarterly basis.<sup>38</sup>

9. On July 12, 2018, in response to comments received in the Modernization of Media Regulation Initiative proceeding,<sup>39</sup> the Commission adopted a *Notice of Proposed Rulemaking* proposing 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.<sup>40</sup> The Commission received comments from approximately 50 entities and individuals, including broadcasters and broadcast industry organizations, cable operators and cable industry organizations, nonprofit organizations, and program producers. Broadcast commenters urge the Commission to update the children's programming rules to reflect the 21st century video marketplace better, to give stations greater flexibility to offer educational and informational programming tailored to how children and their families consume video content today, and to eliminate unnecessary regulatory burdens.<sup>41</sup> The nonprofit organizations and program producers generally support the Commission's efforts to undertake a review of the children's programming rules, but raise concerns that some proposals could significantly reduce the availability of high quality children's educational and informational programming, particularly for

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<sup>32</sup> *Id.* Non-network stations are presumed to be complying with the Core Programming guideline and do not need to request preemption relief. *Id.*

<sup>33</sup> *1991 Reconsideration Order*, 6 FCC Rcd at 5101, paras. 44-45. Noncommercial stations are required 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. *Id.* at 5102, para. 45.

<sup>34</sup> 47 U.S.C. § 303a.

<sup>35</sup> *Id.*

<sup>36</sup> *1991 Report and Order*, 6 FCC Rcd at 2111-13, paras. 2-13; *1991 Reconsideration Order*, 6 FCC Rcd at 5094-99, paras 3-34.

<sup>37</sup> *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, MM Docket No. 93-25, Second Order on Reconsideration of First Report and Order, 19 FCC Rcd 5647, 5668, para. 48 (2004) (*DBS Public Interest Obligations Second Order on Reconsideration*) ("[W]e will require DBS providers to comply with the rules regarding commercial limits on children's programming that apply to cable operators.").

<sup>38</sup> 47 CFR §§ 73.3526(e)(11)(ii), 76.1703, 25.701(e)(3).

<sup>39</sup> *Modernization Initiative Public Notice*, 32 FCC Rcd 4406.

<sup>40</sup> *NPRM*, 33 FCC Rcd at 7041, para. 1.

<sup>41</sup> *See, e.g.*, National Association of Broadcasters Comments at 1 (NAB); CBS Corp., NBCUniversal Media, LLC, 21st Century Fox, Inc., and Univision Communications Inc. Comments at 1-3 (Network Commenters); Block Communications, Inc. Comments at 1-2 (Block); Cadillac Telecasting Co. Comments at 2 (Cadillac).

children in low-income and minority households, and the availability of video-described and closed-captioned children's educational and informational programming.<sup>42</sup>

### III. DISCUSSION

#### A. Statutory Authority

10. As an initial matter, we conclude that the Commission has the authority to update the children's programming rules to reflect the changes that have occurred in the video marketplace for children's programming since the rules were originally adopted. We reject the argument that the Commission lacks the authority to adopt most of the proposals set forth in the *NPRM* because doing so would violate congressional intent expressed in the CTA, as well as the public interest obligation set forth in the 1934 Act and the Telecommunications Act of 1996 (1996 Act).<sup>43</sup> The CTA requires the FCC to "consider the extent to which the licensee has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs," when reviewing TV stations' license renewal applications.<sup>44</sup> We agree with NAB that the CTA grants the Commission considerable discretion in its implementation,<sup>45</sup> and that the statute does not mandate that the Commission adopt specific quantitative standards or any other particular requirements for children's television programming.<sup>46</sup> Moreover, the 1934 Act and the 1996 Act do not directly address the obligations of television stations to serve the educational and informational needs of children. The general public interest standard established in the 1934 Act requires all broadcast stations to serve "the public interest, convenience, and necessity,"<sup>47</sup> but does not mandate that the Commission impose any particular requirements on television licensees to serve children's educational needs through programming. Similarly, while section 336 of the Act, as added by the 1996 Act, imposes a general public interest obligation on digital television stations,<sup>48</sup> this section does not require the Commission to adopt specific children's programming requirements. We thus conclude that the Commission has ample authority to revise the children's programming rules in light of marketplace changes.

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<sup>42</sup> See, e.g., Common Sense Kids Action Comments at 2-11 (Common Sense); Litton Entertainment Comments at ii-iii (Litton); National Hispanic Media Coalition Comments at 1-3 (NHMC).

<sup>43</sup> Center for Digital Democracy, Campaign for a Commercial-Free Childhood, and the Benton Foundation Comments at 5-7 (CDD *et al.*). CDD *et al.* argue that the use of the public spectrum is licensed to broadcasters in return for their serving the public interest, that broadcasters' public service obligation includes a responsibility to provide diversified programming designed to meet the varied needs and interests of the child audience, and that Congress codified this obligation in the CTA and the 1996 Act. *Id.* According to CDD *et al.*, adopting the modifications proposed in the *NPRM* would harm the public interest. *Id.* at 9-16.

<sup>44</sup> 47 U.S.C. § 303b(a)(2).

<sup>45</sup> NAB Reply at 9. See also Block Comments at 7 ("Nothing in the CTA dictates how much programming must be provided, what the programs must contain, or on which program stream a station must air it.").

<sup>46</sup> See *1996 Report and Order*, 11 FCC Rcd at 10722, para. 129 (concluding that "the CTA does not require quantitative standards or guidelines") (emphasis in original). The legislative history of the CTA confirms that Congress did "not intend that the FCC interpret" the statute "as requiring or mandating a quantification standard governing the amount" of educational and informational programming a station must air to qualify for renewal of its license and that a "broad range of programming will meet the standard of service" expected of licensees. H.R. Rep. No. 101-385, at 17 (1989).

<sup>47</sup> See 47 U.S.C. §§ 307, 309.

<sup>48</sup> *Id.* §§ 336(b)(5) (providing that the Commission shall "prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity"), 336(d) ("Nothing in this section shall be construed as relieving a television broadcast station from its obligation to serve the public interest, convenience, and necessity.").



## B. The Current State of the Marketplace for Children's Programming

11. The marketplace for children's programming has undergone a dramatic transformation since the passage of the CTA in 1990. The record in this proceeding convincingly shows that there is more educational and informational programming available to children today than ever before.<sup>49</sup> The digital transition has enabled broadcasters to offer multiple free, over-the-air digital streams or channels of programming simultaneously, using the same amount of spectrum previously required for one stream of analog programming.<sup>50</sup> Multicasting allows broadcasters to offer additional programming choices to consumers, which is particularly beneficial to households that rely exclusively on over-the-air television. Public television has taken advantage of the opportunities afforded by multicasting by launching a 24/7 PBS KIDS multicast and online streaming channel, which is available to more than 95% of U.S. TV households, including many children who may not attend pre-school.<sup>51</sup> According to PTV, the PBS KIDS channel has performed especially well among underserved children.<sup>52</sup> Children's time spent viewing PBS has increased 47% among low-income families and 32% in broadcast-only homes since the PBS KIDS channel was launched.<sup>53</sup> PTV explains that African-American, Hispanic, and low-income households make up a larger percentage of the PBS KIDS audience as compared to their representation in the U.S. population, with PBS stations reaching 5.3 million African-American children, 8.4 million Hispanic children, and four million children from low-income homes each year.<sup>54</sup> PTV asserts that the expansive reach of PBS KIDS television and digital content is meaningful because research confirms the positive impact of this content on children's learning.<sup>55</sup> A recent study measuring the short- and long-term effects of PBS KIDS content on young children's literacy found that children who consumed PBS KIDS media gained the equivalent of 1.5 months of literacy development beyond typical growth and that PBS KIDS literacy-themed content was particularly effective at promoting children's vocabulary and language sound knowledge.<sup>56</sup> PTV asserts that its commitment to educating young people has long gone above and beyond the statutory and regulatory requirements and this fact will not change regardless of how the Commission proceeds in this rulemaking.<sup>57</sup>

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<sup>49</sup> See, e.g., America's Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service Comments at 2 (PTV); NAB Comments at 27; Network Commenters Comments at 2; Block Comments at 3; Cadillac Comments at 5; Gray Television, Inc. Comments at 5 (Gray); Meredith Corp. Comments at 1-2 (Meredith); NCTA – The Internet & Television Association Comments at 3-4 (NCTA); Nexstar Broadcasting, Inc. Comments at 2 (Nexstar); ION Media Networks, Inc. Reply at 1 (ION).

<sup>50</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 16-247, Eighteenth Report, 32 FCC Rcd 568, 598 n.237 (MB 2017) (*Eighteenth Annual Video Competition Report*). As of February 2016, broadcast television stations were offering more than 5,900 digital multicast channels. *Id.* at 600, para. 77.

<sup>51</sup> PTV Comments at 2. See also <http://www.pbs.org/about/about-pbs/overview/>. PTV notes that PBS member stations, which make up 90% of all noncommercial educational television licensees, are required as a condition of membership to broadcast at least 7 hours of educational children's content per weekday on the station's primary video channel (i.e., 35 hours per week). PTV Comments at 4.

<sup>52</sup> PTV Comments at 2.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 4.

<sup>55</sup> *Id.* at 5.

<sup>56</sup> *Id.* (citing Lisa B. Hurwitz, *Getting a Read on Ready To Learn Media: A Meta-analytic Review of Effects on Literacy*, *Child Development* (Feb. 19, 2018), <https://onlinelibrary.wiley.com/doi/abs/10.1111/cdev.13043>).

<sup>57</sup> *Id.* at 2.

12. ION also provides a free, 24/7 multicast channel for children, Qubo, which is distributed by each of ION's 65 stations and receives approximately 67% national coverage.<sup>58</sup> ION states that Qubo has aired almost six times the amount of children's educational and informational programming required by the Commission's rules each year.<sup>59</sup> ION currently airs 111 hours of educational and informational content per week on Qubo, representing 66% of its current schedule, and Qubo introduced eight new programs in 2018 alone.<sup>60</sup> ION asserts that it "will remain dedicated to serving the needs of children through top-quality, values-based educational programming regardless of the outcome of this proceeding."<sup>61</sup>

13. In addition, as NAB observes, there is an abundance of children's educational and informational programming available on over-the-air broadcast television today that did not exist when Congress passed the CTA in 1990.<sup>62</sup> As of March 31, 2019, there were 270 more full-power commercial stations and 25 more noncommercial educational television stations than there were in 1990, as well as 387 Class A TV stations, a service that did not even exist in 1990.<sup>63</sup> All of these 682 additional stations currently provide children's programming.

14. Moreover, the record reflects that non-broadcast platforms today offer a wealth of options in children's educational programming.<sup>64</sup> There is wide array of full-time children's cable channels that air educational programming, including Baby First TV Network, Disney, Disney Junior, Disney XD, Nickelodeon, Nick Jr., Teen Nick, and Universal Kids, as well as family-oriented cable channels that provide educational and informational programming for viewers of all ages, including National Geographic, National Geographic Wild, Animal Planet, and Smithsonian Channel.<sup>65</sup> Additionally, original and previously-aired children's programming is available on over-the-top (OTT) platforms such as Netflix, Amazon, and Hulu.<sup>66</sup> There are also myriad online sites that provide children's educational and informational content for free or via subscription, such as PBS KIDS, YouTube and YouTube Kids, LeapFrog, National Geographic Kids, Scholastic Kids, Smithsonian Kids, Time for Kids, Noggin,

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<sup>58</sup> ION Reply at 1. See also Digital Subchannels and Diginets, Top 25 Digital Broadcast Networks Ranked by TV Households Coverage, <https://www.tvb.org/Default.aspx?TabID=1535>.

<sup>59</sup> ION Reply at 1.

<sup>60</sup> *Id.* at 2.

<sup>61</sup> *Id.* at 3.

<sup>62</sup> NAB Comments at 28; Letter from Rick Kaplan, General Counsel and Executive Vice President, Legal and Regulatory Affairs, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 17-105 and 18-202, at 2 (filed June 13, 2019) (NAB June 13, 2019 *Ex Parte* Letter).

<sup>63</sup> NAB June 13, 2019 *Ex Parte* Letter at 2 (citing FCC News Release, *Broadcast Station Totals as of March 31, 2019* (Apr. 2, 2019) and FCC News Release, *Broadcast Station Totals as of Oct. 31, 1990* (Nov. 2, 1990)).

<sup>64</sup> NAB Comments at 27; Network Commenters Comments at 2; Block Comments at 3; Cadillac Comments at 5; Gray Comments at 5; Meredith Comments at 1-2; NCTA Comments at 3-4.

<sup>65</sup> Nexstar Comments at 2; NAB Comments, MB Docket No. 17-105, at 26 n.56 (rec. July 5, 2017) (NAB Media Modernization Comments); Gray Comments, MB Docket No. 17-105, at 1 (rec. July 5, 2017) (Gray Media Modernization Comments); Motion Picture Association of America Reply, MB Docket No. 17-105, at 3 (rec. Aug. 4, 2017) (MPAA Media Modernization Reply). One commenter suggests that the availability of educational content for children on cable networks, such as Universal Kids, does not support relaxation of the children's programming rules, asserting that Universal Kids recently announced that it has ceased creating original programming. Letter from Lindsey Barrett, Counsel for CCFC & CDD, Institute for Public Representation, Georgetown University Law Center, and Amina Fazullah, Digital Equity Counsel, Common Sense Media, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 17-105 and 18-202, at 2 (filed June 27, 2019) (IPR June 27, 2019 *Ex Parte* Letter) (citing Alexandra Whyte, *Universal Kids Halts Original Programming*, Kidscreen (June 19, 2019),

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Funbrain, Coolmath, and Apple iTunes U.<sup>67</sup> For example, PTV notes that PBS KIDS averages 253 million video streams per month across all digital platforms and that streaming on PBS KIDS accounts for 35% of all time spent watching children’s videos online.<sup>68</sup> PBS Learning Media, a pre-K through 12th grade classroom service with more than a million registered users that reaches over 25 million students, also makes PBS’s educational content freely available to every classroom across the country.<sup>69</sup> Given all of these programming choices, it is not surprising that broadcasters report that viewership among children of educational and informational programming on most commercial stations has been declining.<sup>70</sup> In this regard, NAB notes that data from NBC and CBS show that 95% of the audience for children’s educational and informational programming on their owned-and-operated and affiliated stations is older than 18 and around two-thirds is over the age of 55.<sup>71</sup> NAB further notes that during the 2017-18 season, children’s educational and informational programming on hundreds of NBC and CBS owned-and-operated and affiliated stations each averaged only 57,000 viewers between the ages of two and 17. Moreover, across each of these stations fewer than 90 children ages two to 17 on average watched any given Core Program via broadcast antenna.<sup>72</sup>

15. Some commenters claim that the vast majority of the programming provided on non-broadcast platforms is entertainment rather than educational programming and that the educational programming offered on these platforms may not be age-appropriate or specifically produced for children under 17 years of age.<sup>73</sup> We recognize that not all of the content available on these non-broadcast platforms is programming “specifically designed to serve the educational and informational needs of children.” As NAB points out, however, “broadcast channels are not child-oriented for most of the viewing day, and they may also include programs that some parents would prefer their children not view. Cable channels and OTT platforms therefore cannot be dismissed merely because they are not solely devoted to educational content suitable for children.”<sup>74</sup> Notably, there are many programs available on non-broadcast platforms that are recommended as educational programming for children by trusted

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<http://kidscreen.com/2019/06/19/universal-kids-halts-original-programming/> (Whyte, *Universal Kids*). We note, however, that the article cited by IPR and other media reports indicate that although Universal Kids will no longer develop original children’s programming, it will continue to acquire original children’s programming from its sister company, DreamWorks Animation, and from third-party producers. See Whyte, *Universal Kids*; Mercedes Milligan, *Universal Kids Nixes Original Content Division*, Animation Magazine (June 19, 2019), <https://www.animationmagazine.net/tv/universal-kids-nixes-original-content-division/>; Brian Steinberg, NBCU Will Tie Universal Kids Cable More Directly to DreamWorks Animation Content, Variety (June 19, 2019), <https://variety.com/2019/tv/news/universal-kids-originals-dreamworks-animation-content-1203247607/>. Moreover, any developments pertaining to one cable channel do not mean that we should ignore the broad array of other cable channels airing educational programming.

<sup>66</sup> Nexstar Comments at 3; Gray Media Modernization Comments, at 2; MPAA Media Modernization Reply at 3. One commenter suggests that the availability of educational content for children on online sites, such as Amazon, does not support relaxation of the children’s programming rules, asserting that Amazon recently announced that it has ceased creating original children’s programming. IPR June 27, 2019 *Ex Parte* Letter at 2 (citing Elizabeth Foster, *What Does Amazon’s Kids Shift Mean for Producers?*, Kidscreen (June 20, 2019), [http://kidscreen.com/2019/06/20/what-does-amazons-kids-shift-mean-for-producers/?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=what-does-amazons-kids-shift-mean-for-producers&\\_u=L%2bdJqA4GMeY%3d](http://kidscreen.com/2019/06/20/what-does-amazons-kids-shift-mean-for-producers/?utm_source=newsletter&utm_medium=email&utm_campaign=what-does-amazons-kids-shift-mean-for-producers&_u=L%2bdJqA4GMeY%3d) (Foster, *Amazon’s Kids Shift*)). We note, however, that the article cited by IPR and other media reports indicate that Amazon plans to continue producing existing original children’s programming and licensing previously-aired children’s programming. See Foster, *Amazon’s Kids Shift*; Wendy Lee, *Amazon Pulls Back from Original Kids Programming*, Los Angeles Times (June 17, 2019), <https://www.latimes.com/entertainment/la-fi-ct-amazon-pulls-back-from-original-kids-programming-20190617-story.html>.

<sup>67</sup> PTV Comments at 4-5; NAB Comments at 28-29; NAB Media Modernization Comments at 26 n.56; CBS

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sources for evaluating children’s programming, including Common Sense Media.<sup>75</sup> Further, some OTT platforms and online sites such as YouTube have extensive libraries of previously-aired children’s educational and informational programming, including many popular and highly-acclaimed educational and informational PBS programs.<sup>76</sup>

16. Several commenters also assert that online programming is not an appropriate substitute for educational and informational children’s programming on broadcast television because online sources of media content are not subject to the FCC’s indecency rules or limits on advertising in children’s programming and may raise privacy concerns for children.<sup>77</sup> We acknowledge that Internet-based content may present risks to children that are not present on broadcast television. We do not believe, however, that the presence of such risks means that we should disregard the vast and diverse selection of educational content available for children on the Internet and the reality discussed below that children are viewing an ever-increasing amount of that content. Parents can monitor and take appropriate steps to safeguard their children’s Internet use. And parents who lack the resources or technical knowledge to do so or who are simply concerned about exposing their children to potential online threats will still have an abundant supply of children’s educational and informational programming from which to choose, including programming on free, over-the-air television.

17. There has been a major change in the way children consume video programming as well. Children’s live viewing of broadcast television has decreased substantially, as children’s viewing of video content on other media platforms has risen.<sup>78</sup> Nielsen data cited by NAB indicate that in 2000, children ages two to 16 spent an average of four hours and 19 minutes per day watching video content, including one hour and 55 minutes watching broadcast television (live and time-shifted), two hours and 14 minutes watching pay/cable television (live and time-shifted), eight minutes watching DVD content, and two minutes watching Internet-based content.<sup>79</sup> The Nielsen data further indicate that in 2013, children ages two to 16 spent an average of four hours and 35 minutes per day watching video content, including 53

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Corporation, The Walt Disney Company, 21<sup>st</sup> Century Fox, Inc., and Univision Communications, Inc. Comments, MB Docket No. 17-105, at 5 (rec. July 5, 2017).

<sup>68</sup> PTV Comments at 4.

<sup>69</sup> *Id.* See <https://whut.pbslearningmedia.org/>.

<sup>70</sup> One commenter asserts that “it is not surprising that viewership on Saturday morning by younger children has dropped off given the fact the four major networks provide *no* programming on Saturday or any other day designed to educate children ages 2-11.” Center for Digital Democracy, Campaign for a Commercial-Free Childhood, Common Sense Kids Action, Color of Change, Dr. Jenny Radesky, and the Benton Foundation Reply at 8 (Child Advocates) (emphasis in original). We note that our rules define “educational and informational programming” as “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.” 47 CFR § 73.671(c). Broadcasters may target their children’s programming toward any age range as long as it meets this definition.

<sup>71</sup> NAB Reply at 3.

<sup>72</sup> *Id.* at 17-18. See also Block Comments at 3 (asserting that viewership numbers for children’s programming have been dropping for many years on most network affiliate stations).

<sup>73</sup> CDD *et al.* Comments at 17; Common Sense Comments at 10-11; Litton Comments at 12; NHMC Comments at 11-12; Child Advocates Reply at 2; Hearst Television Inc. Reply at ii (Hearst); Litton Reply at 3; Steve Rotfeld Productions Reply at 4 (SRP).

<sup>74</sup> NAB Reply at 33.

<sup>75</sup> Common Sense Media, the “leading nonprofit organization dedicated to helping kids and families thrive in a world of media and technology,” rates and recommends by age group educational programs for children that are available on broadcast networks, cable children’s networks, general cable networks, OTT platforms, and online sites. See *Educational TV Shows for Kids*, <https://www.commonsensemedia.org/lists/educational-tv-shows-for-kids>; *Best Preschool TV Shows*, <https://www.commonsensemedia.org/lists/best-preschool-tv-shows>; *STEM: Apps, TV*, (continued....)

minutes watching broadcast television (live and time-shifted), two hours and 50 minutes watching pay/cable television (live and time-shifted), four minutes watching DVD/Blu-ray content, and 48 minutes watching Internet-based content.<sup>80</sup> In 2017, children ages two to 16 spent an average of four hours and 30 minutes per day watching video content, including 37 minutes watching broadcast television (live and time-shifted), one hour and 49 minutes watching pay/cable television (live and time-shifted), one minute watching DVD/Blu-ray content, and two hours and three minutes watching Internet-based content.<sup>81</sup> So to summarize, from 2000 to 2017, children's viewing of broadcast television has dropped from an average of 115 minutes to 37 minutes per day while their viewing of Internet-based content has increased from an average of two minutes to 123 minutes per day. Commenters also assert that the type of video programming children access has changed in recent years, with young viewers today preferring video on demand, particularly in shorter segments.<sup>82</sup> NCTA cites data indicating that in households with children between the ages of five to seven, 49% of the online video programming that parents watch with their children are non-traditional, short videos on YouTube and that 72% of children between the ages of eight to 11 prefer YouTube videos over traditional broadcast television.<sup>83</sup> Data provided by NAB shows that in 2017, children ages two to 16 spent an average of 47 minutes per day watching YouTube/short-form videos.<sup>84</sup>

18. Furthermore, the record reflects a change in the hours during which children consume video content. Specifically, the record indicates that a significant number of children today are watching television programming or viewing video content earlier than 7:00 a.m. Nielsen data provided by NAB and Network Commenters indicate that during an average week from January 1, 2017, to June 30, 2018, 11.5 million unique children ages two to 15 (or 20.7%) used their TV between 6:00 a.m. and 7:00 a.m.<sup>85</sup> NAB also cites a recent survey in which 65% of teens reported watching video content before school or work.<sup>86</sup>

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and More for Science, Tech, Engineering, and Math, <https://www.common sense media.org/lists/stem-apps-tv-and-more-for-science-tech-engineering-and-math>; *Best Kids' TV Shows on Netflix in 2019*, <https://www.common sense media.org/lists/best-kids-tv-shows-on-netflix>; *Best Kids' TV on Hulu*, <https://www.common sense media.org/lists/best-kids-tv-on-hulu>; *Best Kids' TV Shows on Amazon Prime Instant Video*, <https://www.common sense media.org/lists/best-kids-tv-shows-on-amazon-prime-instant-video>; *Best Websites: Our Recommendations for Families*, <https://www.common sense media.org/website-lists>; *Best for Learning: Our Recommendations for Families*, <https://www.common sense media.org/best-for-learning-lists> (all sites last visited Apr. 4, 2019); Jeff Knutson, *9 Top YouTube Channels to Boost Classroom Lessons*, Common Sense Media (Jan. 24, 2019), <https://www.common sense.org/education/articles/9-top-youtube-channels-to-boost-classroom-lessons>; See also Liz Heinecke, *11 STEAM and STEM TV Shows for Kids*, Scholastic Parents (July 13, 2018), <https://www.scholastic.com/parents/school-success/learning-toolkit-blog/kids--steam-programming.html>; Saroj Kumar, *10 Top Educational Apps For Kids*, eLearning Industry (May 4, 2018), <https://elearningindustry.com/10-top-educational-apps-for-kids>; Sarah Green, *27 More Educational TV Shows Available on Netflix*, Supporting Education (Aug. 18, 2016), <http://www.supportingeducation.org/2016/08/18/27-educational-tv-shows-available-netflix/>; Brightly, *Watch and Learn: 11 TV Shows That Promote Literacy*, <https://www.readbrightly.com/11-tv-shows-that-promote-literacy/> (last visited Apr. 4, 2019).

<sup>76</sup> See, e.g., *Best Kids' TV Shows on Netflix in 2019*, <https://www.common sense media.org/lists/best-kids-tv-shows-on-netflix>; *Best Kids' TV on Hulu*, <https://www.common sense media.org/lists/best-kids-tv-on-hulu>; *Best Kids' TV Shows on Amazon Prime Instant Video*, <https://www.common sense media.org/lists/best-kids-tv-shows-on-amazon-prime-instant-video>; *Best Websites: Our Recommendations for Families*, <https://www.common sense media.org/website-lists> (all sites last visited Apr. 4, 2019); Jeff Knutson, *9 Top YouTube Channels to Boost Classroom Lessons*, Common Sense Media (Jan. 24, 2019), <https://www.common sense.org/education/articles/9-top-youtube-channels-to-boost-classroom-lessons>.

19. Nevertheless, while it is clear that the media landscape has evolved dramatically since the children's programming rules were adopted, we recognize that not all children, particularly children in minority and low-income households, have access to the wealth of children's educational programming available on non-broadcast platforms. Nielsen data indicate that as of May 2018, more than 14% of television households in the U.S. (over 16 million households) are over-the-air households (i.e., they do not subscribe to cable or satellite television).<sup>87</sup> Of these over-the-air households, 41% are traditional over-the-air households, without any streaming service provider.<sup>88</sup> These traditional over-the-air households are more likely to be minority households.<sup>89</sup> In addition, children from low-income families are more likely to rely on over-the-air television and watch live rather than time-shifted programming.<sup>90</sup> According to a 2017 Common Sense Media report, among lower-income families with children ages zero to eight, only 74% have high-speed Internet (compared to 96% among higher-income families), 58% have an Internet-connected television set (compared to 82% among higher-income families), 61% have cable or satellite subscriptions (compared to 70% among higher-income families), 60% have subscription video service such as Netflix, Amazon, or Hulu (compared to 77% among higher-income families), and 32% have DVR service (compared to 52% among higher-income families).<sup>91</sup>

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<sup>77</sup> IPR June 27, 2019 *Ex Parte* Letter at 1; CDD *et al.* Comments at 23-31; Common Sense Comments at 9-10; NHMC Comments at 11-12; Hearst Reply at 3.

<sup>78</sup> NAB Comments at 7-8; Network Commenters Comments at 2-3; Nexstar Comments at 2; NAB Reply at 2-3.

<sup>79</sup> NAB Comments at 8 (citing data sourced from Nielsen NPower and Cross Platform). *See also* Network Commenters Comments at 2-3 (“[D]aily video viewing time by children ages 2 to 16 on linear *broadcast* television *decreased* from a daily average of 1 hour and 55 minutes in 2000 to just 34 minutes in 2017. Yet, among this same group of children during this same time period, viewing across all platforms (including broadcast and pay TV) *increased* from an average of 4 hours and 19 minutes to an average of 4 hours and 30 minutes.”) (citing data sourced from Nielsen NPower and Cross Platform) (emphasis in original).

<sup>80</sup> NAB Comments at 8.

<sup>81</sup> *Id.* *See also* NCTA Comments at 4 (noting that the average audiences on children's programming networks are half what they were six years ago and have declined an additional 20% in just the last two years). While several

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20. The revisions to the children’s programming rules set forth below are intended to strike a balance between our interest in modernizing our rules to reflect the growth in the amount of children’s educational programming available on broadcast and non-broadcast platforms and the decline in appointment viewing among children, with the reality that some children in minority and low-income households still rely on live, over-the-air broadcast television. We conclude that the revisions we are adopting will afford broadcasters greater flexibility in serving the educational and informational needs of children, while ensuring that quality educational programming continues to be available to all children.

### C. Core Programming

21. As discussed below, we modify the requirements applicable to Core Programming to provide broadcasters greater flexibility in meeting their children’s programming obligations in light of the changes in the media landscape since these requirements were originally adopted. Specifically, we expand the Core Programming time frame to give broadcasters additional scheduling flexibility and help avoid the need for preemptions. Additionally, while we continue to require that the substantial majority of Core Programming aired by broadcast stations be provided on a regularly scheduled weekly basis and be at least 30 minutes in length, we provide broadcast stations additional flexibility under our revised safe harbor processing guidelines to air programming that is not regularly scheduled on a weekly basis, including educational specials, as well as short-form programs, during a limited portion of their total Core Programming hours.

#### 1. Core Programming Hours

22. We expand the 7:00 a.m. to 10:00 p.m. Core Programming time frame to allow broadcast stations to begin airing Core Programming one hour earlier, at 6:00 a.m., as proposed by several commenters.<sup>92</sup> The end of the time frame during which Core Programming must be aired remains unchanged at 10:00 p.m.<sup>93</sup> Commenters overwhelmingly favor expanding the Core Programming hours.<sup>94</sup>

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commenters cite alternative data on live television viewing, we find that these data do not support the assertions for which they are cited or are not relevant to our analysis. ISKME cites an article analyzing live TV viewing and movie habits which purportedly “notes that young viewers will nevertheless continue to watch ‘9-and-a-half hours per week [of broadcast Television] in Q2 2018.’” Institute for the Study of Knowledge Management in Education, ProjectED, EvolvED, and Explorer at Large Comments at 7 (ISKME) (citing 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/>). However, the cited article indicates that the “young viewers” were actually 18 to 24-year-olds, not children. In addition, it appears that the underlying Nielsen data referenced in the article is for all live television viewing (i.e., including live pay television viewing), not just live broadcast television viewing. ISKME also asserts that data confirm “the importance of broadcast television for young audiences,” citing a Common Sense Media report which found that “among teens ‘half (50 percent) of all TV- and video-viewing time consists of watching TV programming on a TV set at the time it is broadcast.’” ISKME Comments at 11 (citing Common Sense Media, *The Common Sense Census: Media Use by Tweens and Teens at 15* (2015), <https://www.common Sense Media.org/research/the-common-sense-census-media-use-by-tweens-and-teens> (Media Use by Tweens and Teens)). We note, however, that the questionnaire used by Common Sense to gather data for that report did not define “watching TV on a TV set” to mean watching only on *broadcast* television. Media Use by Tweens and Teens at 87-97. Child Advocates cite a 2018 study by SmithGeiger, which “found that live TV viewing is up 26% from last year, with TV viewers spending an average of 3 hours and 13 minutes per day watching live TV.” Child Advocates Reply at 3 (citing Wayne Friedman, *TV Dominates, but Digital Media is a Fixture*, Mediapost (Apr. 17, 2018), <https://www.mediapost.com/publications/article/317716/tv-dominates-but-digital-media-is-a-fixture.html>); Cynthia Littleton, *Survey: Local Broadcast TV Still Dominate Source of News in ‘Fake News’ Era*, Variety (Apr. 8, 2018), <https://variety.com/2018/tv/news/nab-local-tv-broadcast-fake-news-survey-1202747108/> (Littleton, *Survey*). However, the SmithGeiger study surveyed 1,007 people in the 18-54 age group, not children. Littleton, *Survey*.

<sup>82</sup> Block Comments at 3 (“Children no longer gather after school or on Saturday mornings to view the next episode of their favorite programs. Instead, children expect their programs to be available on demand when they want them, such as through video services like Netflix or Amazon.”); NAB Comments at 10 (“The fact is that today’s viewers – (continued....)

The current Core Programming time frame was adopted in 1996 because data showed that there was a “relatively small percentage” of children watching television prior to 7:00 a.m. and a considerable drop-off in children viewing television after 10:00 p.m.<sup>95</sup> As discussed above, recent data reflect that a significant percentage of children ages 16 and under now watch television programming or view video content earlier than 7:00 a.m.<sup>96</sup> Expanding the Core Programming hours will give broadcasters the flexibility to air educational programming for those children who are watching television between 6:00 a.m. and 7:00 a.m.<sup>97</sup> Providing an additional seven hours a week to air Core Programming will also help broadcast stations avoid preemptions.<sup>98</sup>

23. However, we decline to eliminate the Core Programming hours at this time.<sup>99</sup> As discussed above, the one-hour per day expansion of the Core Programming hours will provide broadcasters additional flexibility. Moreover, while two commenters suggest that Core Programming hours may no longer be necessary given the prevalence today of on-demand and time-shifted viewing and the accompanying decline in appointment viewing by children,<sup>100</sup> a number of U.S. households, particularly minority and low-income households, still rely on live, over-the-air television.<sup>101</sup> Accordingly, we find that expanding the Core Programming hours, rather than eliminating them altogether, is preferable to ensure that Core Programming is available during time periods when a substantial number of children, particularly children that rely exclusively on live, over-the-air television, are watching video programming.

## 2. Regularly Scheduled Weekly Programming Requirement

24. We require broadcast stations to continue to air the majority of their Core Programming on a regularly scheduled weekly basis, but we give broadcast stations the option of airing a limited amount of programming that is not regularly scheduled weekly programming and count that programming as Core Programming. While the *NPRM* tentatively concluded that the regularly scheduled weekly programming requirement should be eliminated altogether,<sup>102</sup> as explained below, the record has

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and especially young ones – expect to be able to access programming when and where they want via a range of devices.”); NAB Reply at 3 (“Today, very few children and teens rely on commercial broadcast TV E/I programming, or on broadcast TV more generally. Instead, they are watching short-form, on-demand programming from their connected TVs, computers, smartphones and tablets, across a range of platforms, including websites and apps.”).

<sup>93</sup> NCTA Comments at 4 (citing *KidSay TrendTracker - Moms 2018 Report*).

<sup>94</sup> NAB Comments at 8 (citing data sourced from Nielsen NPower & Cross Platform).

<sup>95</sup> Letter from Rick Kaplan, General Counsel and Executive Vice President, Legal and Regulatory Affairs, NAB, and Anne Lucey, Senior Vice President for Regulatory Policy, CBS Corp., to Marlene H. Dortch, Secretary, FCC, at 1-2 (filed May 13, 2019) (citing data sourced from Nielsen NPower). *See also* Block Comments at 8 (asserting that teenagers are more likely to be watching television in the early morning and late evening hours because of the rigorous demands of modern school life); Meredith Comments at 2 (noting that some PBS stations air children’s programming on their primary stream prior to 7:00 a.m., which indicates that they believe children are watching prior to 7:00 a.m.); Hearst Reply at 10 (asserting that children watch television programming in significant numbers outside the current Core Programming hours). The reference to “unique” children in the Nielsen data provided by NAB and Network Commenters means that no child is counted more than once. For example, a child who watched television at 6:00 a.m. on Monday, Tuesday, and Friday morning is counted just once, the same as a child who watched television only on Friday morning at 6:00 a.m.

<sup>96</sup> NAB Comments at 18 (citing Acumen Report, Youth Video Diet, DEFY Media, at 8 (2017), [http://www.newsroom-publicismedia.fr/wp-content/uploads/2017/06/Defi-media-acumen-Youth\\_Video\\_Diet-mai-2017.pdf](http://www.newsroom-publicismedia.fr/wp-content/uploads/2017/06/Defi-media-acumen-Youth_Video_Diet-mai-2017.pdf)).

<sup>97</sup> The Nielsen Local Watch Report 2Q 2018, The Evolving Over-The-Air Home, at 4,

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convinced us not to adopt that tentative conclusion.

25. As we explain in more detail below in the Processing Guidelines Section, under Category A of the safe harbor processing guidelines, a broadcast station will be able to demonstrate compliance with the children's programming rules by airing either (i) three hours per week (as averaged over a six-month period) of Core Programming, all of which is regularly scheduled weekly programming, or (ii) a total of 156 hours of Core Programming annually, including a minimum of 26 hours per quarter of regularly scheduled weekly programming and up to 52 hours annually of Core Programs of at least 30 minutes in length that are not regularly scheduled on a weekly basis. Such programs may include, for example, educational specials and other non-regularly scheduled programming, as well as regularly scheduled non-weekly programs. All such programs must be specifically designed to serve the educational and informational needs of children and, as stated, must be at least 30 minutes in length. Under Category B of the processing guidelines, a broadcast station will be able to demonstrate compliance by airing a total of 156 hours of Core Programming annually, including a minimum of 26 hours per quarter of regularly scheduled weekly programming. The remaining Core Programming hours under Category B (up to 52 hours annually) may consist of Core Programs that are not aired on a regularly scheduled weekly basis, including educational specials, other non-regularly scheduled programming, and regularly scheduled non-weekly programming, and short-form programming. Short-form programs are programs less than 30 minutes in length, including PSAs and interstitials (i.e., programming of brief duration that is used as a bridge between two longer programs),<sup>103</sup> that are specifically designed to serve the educational and informational needs of children. The key distinction between Category A and Category B is that short-form programming will be permitted only under Category B. Under both Category A and B, a minimum of 26 hours per quarter of Core Programming

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<https://www.nielsen.com/us/en/insights/reports/2019/nielsen-local-watch-report-the-evolving-ota-home.html> (Nielsen Local Watch Report 2Q 2018). Several commenters cite Nielsen data indicating that 13% of U.S. households rely exclusively on over-the-air broadcast television. ISKME Comments at 10; NHMC Comments at 8; Child Advocates Reply at 3; NHMC Reply at 7 (all citing Nielsen, *The Nielsen Total Audience Report: Q1 2018*, at 11 (2018), <https://www.nielsen.com/us/en/insights/reports/2018/q1-2018-total-audience-report.html>). We note, however, that the Nielsen data we cite above are more current and also take into account that some of those over-the-air households subscribe to online streaming services.

<sup>88</sup> Nielsen Local Watch Report 2Q 2018 at 5.

<sup>89</sup> *Id.* at 5-6.

<sup>90</sup> Common Sense Comments at 2, 9. *See also* CDD *et al.* Comments at 17 (asserting that many families cannot afford non-broadcast alternatives); ISKME Comments at 13 (“Those in households earning less than \$30,000 are more likely than others to say they rely on a digital antenna for TV viewing. Some 14% say this, compared with just 5% who live in households earning \$75,000 or more.”) (quoting Pew Research Center, *About 6 in 10 young adults in U.S. primarily use online streaming to watch TV* (Sept. 13, 2017), <https://www.pewresearch.org/fact-tank/2017/09/13/about-6-in-10-young-adults-in-u-s-primarily-use-online-streaming-to-watch-tv/>).

<sup>91</sup> Common Sense Media, *The Common Cause Census: Media Use by Kids Zero to Eight* at 21, 32 (2017), <https://www.common Sense Media.org/research/the-common-sense-census-media-use-by-kids-age-zero-to-eight-2017> (Media Use by Kids Zero to Eight). For purposes of this report, “lower income” is defined as < \$30,000 and “higher income” is defined as > \$75,000. *Id.* In addition, ISKME cites data showing that children in lower-income households watch more television than children in higher-income households. ISKME Comments at 14 (citing Media Use by Kids Zero to Eight at 16 and Media Use by Tweens and Teens at 35. ISKME asserts that the important role that over-the-air broadcast television continues to play in low-income households underscores the need to ensure that an adequate supply of high-quality educational and informational programming remains available to families that rely on over-the-air television. ISKME Comments at 16. NHMC asserts that “[b]y the Commission’s own estimates, ‘nearly 30 million Americans cannot reap the benefits of the digital age,’ meaning they lack meaningful access to broadcast alternatives.” NHMC Comments at 8 (citing FCC, *Bridging the Digital Divide*, <https://www.fcc.gov/about-fcc/fcc-initiatives/bridging-digital-divide-allamericans>).

<sup>92</sup> Block Comments at 8; Cadillac Comments at 7; Litton Comments at 26; Hearst Reply at 10. We note that several (continued....)

aired by broadcast stations must be regularly scheduled weekly programming.

26. We conclude that this approach will ensure that children are able to reap the benefits of viewing educational and informational programming on a regularly scheduled weekly basis, while also providing broadcasters greater scheduling flexibility and the opportunity to offer a greater variety of educational programming. The Commission adopted the regularly scheduled weekly programming requirement in 1996, finding 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.”<sup>104</sup> We continue to believe that viewing educational programming on a regularly scheduled weekly basis can provide valuable benefits to children. As Common Sense notes, numerous studies have demonstrated that children learn and retain lessons better by watching the same show or different episodes of the same series than by watching one-off videos or singly aired specials.<sup>105</sup> Common Sense explains that regularly scheduled weekly programming gives children an opportunity to learn from familiar characters and similar situations by watching different episodes of the same show from week to week, increasing children’s comprehension and retention of the lessons contained in the programming when compared to singly aired specials.<sup>106</sup> Common Sense also observes that regularly scheduled weekly programming allows parents to plan ahead regarding children’s media use, as recommended by the American Academy of Pediatrics and other health and childhood organizations.<sup>107</sup> Given the clear educational benefits to children of watching regularly scheduled weekly programming, we find that the public interest will be served by continuing to require broadcasters to air the majority of their Core Programming on a regularly scheduled weekly basis.

27. At the same time, we recognize that the marketplace for children’s programming has evolved since the regularly scheduled weekly programming requirement was adopted in 1996. Broadcasters correctly note that appointment viewing among children has declined and many children now prefer to binge-watch<sup>108</sup> or watch video on demand.<sup>109</sup> In today’s on demand world, where multiple

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commenters proposed that we extend the Core Programming hours to 5:00 a.m. NAB Comments at 18; Gray Comments at 7; Network Commenters Comments at 5. We note, however, that the 6:00 a.m. start to the Core Programming hours will ensure that children’s programming is aired outside of the 10:00 p.m. to 6:00 a.m. broadcast indecency safe harbor period. *See* 47 CFR § 73.3999(b) (“No licensee of a radio or television broadcast station shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent.”).

<sup>93</sup> Several commenters suggested extending the evening portion of the Core Programming hours from 10:00 p.m. to 11:00 p.m. Block Comments at 8; Cadillac Comments at 7; Litton Comments at 26; Nexstar Comments at 6; Hearst Reply at 10. However, these commenters did not provide any data showing how many children are watching television between 10:00 p.m. and 11:00 p.m. Accordingly, we decline to extend the Core Programming hours past 10:00 p.m.

<sup>94</sup> Block Comments at 8; Cadillac Comments at 7; Network Commenters Comments at 5-6; Gray Comments at 7; Litton Comments at 26; Meredith Comments at 2; NAB Comments at 18; Nexstar Comments at 6; National Religious Broadcasters Comments at 7 (NRB); Hearst Reply at 10.

<sup>95</sup> *1996 Report and Order*, 11 FCC Rcd at 10706-10709, paras. 99-101. Specifically, the Commission found that data showed that during four sample weeks in November 1995, less than 5% of children ages 2 to 17 (1.3 million) were watching television at 6:00 a.m. Monday through Friday, and between 12.5% and 14% of children ages 2 to 11 (5.1 million) were watching television by 7:00 a.m. With respect to weekend viewing, the data showed that less than 4% of children ages 2 to 17 were watching television from 6:00 a.m. to 6:30 a.m. on Saturday, and by 7:00 a.m. the percentage of children ages 2 to 11 watching television had risen to between about 5% and 7%. *Id.* at 10706-07, para. 99.

<sup>96</sup> *See supra* para. 18.

<sup>97</sup> NAB Comments at 18-19; Network Commenters Comments at 5-6. NAB Comments at 18-19; Network Commenters Comments at 5-6.

episodes of video programs “drop” at the same time on OTT providers such as Netflix and Amazon, broadcasters assert that they should have the flexibility to offer educational and informational programs other than weekly series of uniform length episodes and to offer blocks of several different episodes of the same Core Program on a single day.<sup>110</sup> Additionally, broadcasters observe that viewership of regularly scheduled children’s educational programming on commercial stations has declined, as the educational program offerings available to children on broadcast and non-broadcast platforms have exploded.<sup>111</sup> We agree with broadcasters that programming that is not regularly scheduled on a weekly basis can serve the educational and informational needs of children.<sup>112</sup> We also acknowledge that the regularly scheduled weekly programming requirement may create a disincentive for broadcasters to invest in innovative programming, such as educational specials, if such programming may not be counted toward compliance with the children’s programming rules.<sup>113</sup> Accordingly, we conclude that it is appropriate to give broadcasters the option of airing a limited amount of Core Programming that is not regularly scheduled on a weekly basis.

28. Several commenters express concern that it will be difficult for parents and children to identify and locate programming that is not regularly scheduled on a weekly basis.<sup>114</sup> We expect that most such programming will be listed in program guides and TV listings available in print and online, as well as in any TV listings posted on a station’s website. Moreover, we agree with NAB that broadcasters have strong incentives to ensure that as many viewers as possible watch their programs and thus will make it as easy as possible for children and parents to find their educational and informational programs.<sup>115</sup> Therefore, we find that it is unnecessary to mandate specific promotional requirements for Core Programming that is not aired on a regularly scheduled weekly basis. Rather, we encourage broadcast stations to undertake efforts to inform their intended audiences when such programming will air beyond listing it in program guides and TV listings.

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<sup>98</sup> Meredith Comments at 3.

<sup>99</sup> See *NPRM*, 33 FCC Rcd at 7052, para. 23 (seeking 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).

<sup>100</sup> Meredith Comments at 2; Network Commenters Comments at 6 n.16.

<sup>101</sup> See *supra* para. 19.

<sup>102</sup> *NPRM*, 33 FCC Rcd at 7053, para. 24.

<sup>103</sup> See *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, MM Docket No. 95-176, Report and Order, 13 FCC Rcd 3272, 3345, para. 151 (1997) (defining “interstitial announcements”).

<sup>104</sup> *1996 Report and Order*, 11 FCC Rcd at 10711, para. 105.

<sup>105</sup> Common Sense Comments at 6-7. For example, Common Sense cites one study that found that children who had watched the same episode of *Blue’s Clues*, an educational children’s program in which an animated dog named Blue provides three clues for the host and the pre-school audience to figure out what Blue wants to do that day, every day for a week had a much higher level of comprehension of the show’s messages than children who had seen the show once. *Id.* at 6 (citing *Effects of Repeated Exposures to a Single Episode of the Television Program Blue’s Clues on the Viewing Behaviors and Comprehension of Preschool Children*, J. of Ed. Psychology, 630-37 (1999)). Common Sense notes that other studies have verified that these results apply to different episodes of a series, consistently finding that repetition reinforces comprehension in children. Common Sense Comments at 6-7 (citing *Media and Young Children’s Learning*, *The Future of Children*, Vol. 18 No. 1, 39-61, 51 (Spring 2008), Fisch, Shalom, *Children’s Learning from Educational Television: Sesame Street and Beyond*, 32-3 (2004)).

<sup>106</sup> Common Sense Comments at 7.

<sup>107</sup> *Id.* at 7.

<sup>108</sup> “Binge-watching” means watching many or all episodes of a television series in rapid succession. See

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### 3. Requirement that Core Programming Be At Least 30 Minutes in Length

29. We require that a majority of Core Programming be at least 30 minutes in length, but we permit a limited portion of the programming to be short-form programming and still count as Core Programming. The *NPRM* tentatively concluded that the requirement that Core Programming be at least 30 minutes in length should be eliminated altogether,<sup>116</sup> but, as we explain below, the record has convinced us not to adopt that tentative conclusion. Specifically, under Category B of the processing guidelines, a broadcast station will be permitted to air up to 52 hours annually of Core Programming that is not regularly scheduled on a weekly basis, including educational specials and regularly scheduled non-weekly programs, and short-form programs, including PSAs and interstitials.<sup>117</sup> Allowing broadcasters to air a limited amount of short-form programs will enable them to produce or acquire a diverse array of original, innovative, and high quality short-form content that appeals to young audiences.<sup>118</sup> It will also give broadcasters additional scheduling flexibility.

30. The record shows that short-form programs can be used effectively to educate and inform children. NAB asserts that numerous sources conclude that children's attention spans for learning are short.<sup>119</sup> Moreover, as discussed above, data show that many children today prefer video on demand in shorter segments.<sup>120</sup> Thus, we agree with NAB that children have a demonstrated interest in diversity of programming and formats and may be more engaged by educational and informational programming of different lengths and greater variety.<sup>121</sup>

31. We are not persuaded by NHMC's assertion that allowing broadcast stations to air short-form programming will "compromise[] the cognitive development of American children."<sup>122</sup> NHMC contends that the 30-minute length requirement is "backed by science," asserting that 30-minute programming is more effective than short-form programming because it provides more content, allows for the development of a theme, and permits educational messages to be told in the form of a story.<sup>123</sup> NHMC maintains that during the 1996 revisions to the children's programming rules, the Commission

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Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/binge-watch/>.

<sup>109</sup> Block Comments at 8; Cadillac Comments at 8; Gray Comments at 6; Meredith Comments at 1-2; NAB Comments at 15; Network Commenters Comments at 4; Nexstar Comments at 7; NAB Reply at 31. *See also supra* para. 17.

<sup>110</sup> Block Comments at 8; Cadillac Comments at 8; NAB Comments at 15; NAB Reply at 31.

<sup>111</sup> Block Comments at 3; Meredith Comments at 2; NAB Reply at 16-17; Network Commenters Comments at 4; Nexstar Comments at 7. *See also supra* para. 14.

<sup>112</sup> Cadillac Comments at 9; Gray Comments at 6; Meredith Comments at 2; NAB Comments at 15; Network Commenters Comments at 4-5. *See also 1996 Report and Order*, 11 FCC Rcd at 10711, para. 107 (recognizing that "educational and informational specials with a significant purpose of serving the educational and informational needs of children ages 16 and under can help accomplish the objectives of the CTA").

<sup>113</sup> Cadillac Comments at 9; NAB Comments at 15; Network Commenters Comments at 4-5; Nexstar Comments at 7.

<sup>114</sup> CDD *et al.* Comments at 15; Common Sense Comments at 7; NHMC Reply at 9-10.

<sup>115</sup> NAB Comments at 21.

<sup>116</sup> *NPRM*, 33 FCC Rcd at 7051, para. 20.

<sup>117</sup> *See infra* para. 42.

<sup>118</sup> Cadillac Comments at 8 (observing that smartphones, animation software, and free and/or open source video-editing technology have made it easy for just about anyone to create short-duration educational/instructional programming, which in turn makes it easier for broadcasters to buy the rights to air a wider variety of original programming); NAB Comments at 17 (stating that one of its members currently has a regular short-form television series that features high school students talking about their experiences and lives but is unable to rely on this series

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found this “scientifically-backed argument” more persuasive than the unsubstantiated argument for short-form programming based on the notion children have short attention spans.<sup>124</sup> We note that in adopting the requirement that Core Programming be at least 30 minutes in length, the Commission relied primarily on the fact that the dominant broadcast television format was 30 minutes or longer in length.<sup>125</sup> The Commission found it reasonable that the children’s programming rules, which are intended to promote the accessibility of children’s educational and informational programming, reflect this current industry practice because programs in the standard 30 minute or longer format are more likely than shorter programming to be regularly scheduled and to be listed in program guides and thus are easier for parents to identify for their child’s viewing.<sup>126</sup>

32. To be sure, we do not dispute, as the Commission found in 1996, that programs that are 30 minutes or longer allow more time for educational content to be presented and may be particularly beneficial to children.<sup>127</sup> Furthermore, as NHMC points out, the dominant broadcast television format is still 30 minutes or longer in length.<sup>128</sup> Nevertheless, there is evidence in the record that short-form video content may be more effective for engagement and that many children in fact prefer short-form programming.<sup>129</sup> Moreover, the Commission recognized in 1996 that “some short segments have significant public interest benefits” and “encourage[d] all broadcasters to continue to provide a diverse mix of educational and informational programming, including short segments and PSAs, toward their overall obligation to provide programming for children.”<sup>130</sup> Broadcasters confirm, however, that the requirement that educational and informational programming be at least 30 minutes in length to count as Core Programming under our current rules strongly discourages the production of quality short-form programs.<sup>131</sup> While short-form programs and PSAs can count toward the processing guidelines under existing Category B when broadcasters air somewhat less than three hours per week of Core Programming, the uncertainty as to how much Core Programming must be provided under existing Category B has deterred broadcasters from utilizing this option.<sup>132</sup> The approach we are adopting in this

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to satisfy its children’s programming obligations because the programs are seven to 10 minutes in length); Nexstar Comments at 6 (asserting that allowing broadcasters to air short segment programs “would create 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”); NRB Comments at 7 (asserting that short-form content is often easier to produce and distribute).

<sup>119</sup> NAB Comments at 15 (citing *Behavior Management Important Facts*, The Student Coalition for Action in Literacy Education, <http://www.unc.edu/depts/scale/Member/trainings/BehaviorManagement-ImportantFacts.pdf> (suggesting an appropriate formula for determining a child’s attention span for learning is “chronological age + 1,” so, for example, an 8-year-old child would have a 9-minute attention span for learning (8+1=9)); David Vawter, *Mining the Middle School Mind*, National Association of Elementary School Principals, at 2 (March 2009), [https://www.naesp.org/sites/default/files/resources/2/Middle\\_Matters/2009/MM2009v17n4a2.pdf](https://www.naesp.org/sites/default/files/resources/2/Middle_Matters/2009/MM2009v17n4a2.pdf) (“The attention span of the average middle school student is 10-12 minutes, and there is little evidence that their brains can be trained to develop a longer span.”)). NAB also cites a 2014 large-scale study of more than 6.9 million video-watching sessions across four Massive Open Online Courses, which found that short-form video content (about six minutes in length) is more effective for engagement than longer videos even among older students. NAB Comments at 16 (citing Philip J. Guo, *et al.*, *How Video Production Affects Student Engagement: An Empirical Study of MOOC Videos*, at 3 (2014), <http://up.csail.mit.edu/other-pubs/las2014-pguo-engagement.pdf> (concluding that “[v]ideo length was by far the most significant indicator of engagement,” with the median engagement time being “at most 6 minutes, regardless of total video length”)).

<sup>120</sup> See *supra* para. 17.

<sup>121</sup> NAB Comments at 16. See also Adrienne LaFrance, *The Algorithm That Makes Preschoolers Obsessed with YouTube*, The Atlantic (July 25, 2017), <https://www.theatlantic.com/technology/archive/2017/07/what-youtube->

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order clarifies this issue and recognizes that programs that are at least 30 minutes in length and short-form programs *both* may provide valuable educational benefits to children.

33. While commenters raise concerns that it will be difficult for parents to identify and locate short-form programs,<sup>133</sup> as discussed above, we believe that broadcasters have strong incentives to ensure that children and parents are able to find their educational and informational programs easily in order to increase their audience size.<sup>134</sup> Therefore, we find that it is unnecessary to mandate specific promotional requirements for short-form programs aired by broadcast stations. Instead, we encourage broadcasters to promote their short-form programs.

34. We acknowledge that short-form programming may not necessarily be video-described.<sup>135</sup> In this regard, Litton asserts that due to budgetary constraints, it is unlikely that short-form children's educational and informational programming will be video-described.<sup>136</sup> However, the fact that we are providing broadcasters greater flexibility with regard to program length has no impact on the total number of hours that must be video-described under our rules.<sup>137</sup> Further, as explained below, broadcasters will be required to air the substantial majority of their Core Programming on their primary streams.<sup>138</sup>

#### **D. Processing Guidelines**

35. We modify the safe harbor processing guidelines for determining compliance with the CTA in order to provide broadcasters greater flexibility to address scheduling demands and better serve the needs of children in the current media environment. As we outline above, the marketplace for children's programming has changed considerably since the Commission adopted the processing guidelines more than two decades ago. There is a vast array of children's educational and informational programming available on broadcast stations and non-broadcast platforms and many children today prefer

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[reveals-about-the-toddler-mind/534765/](https://www.fcc.gov/reveals-about-the-toddler-mind/534765/) (“It’s sort of like rapid-fire channel surfing,” says Michael Rich, a professor of pediatrics at Harvard Medical School and the director of the Center on Media and Child Health. “In many ways YouTube Kids is better suited to the attention span of a young child—just by virtue of its length—than something like a half-hour or hour broadcast program can be.”).

<sup>122</sup> NHMC Comments at 15-17.

<sup>123</sup> *Id.* at 17.

<sup>124</sup> *Id.*

<sup>125</sup> *1996 Report and Order*, 11 FCC Rcd at 10713, para. 110.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 10713, para. 110.

<sup>128</sup> NHMC Comments at 16.

<sup>129</sup> *See supra* para. 30.

<sup>130</sup> *1996 Report and Order*, 11 FCC Rcd at 10713-14, paras. 111-112.

<sup>131</sup> Network Commenters Comments at 4; NAB Comments at 15; Nexstar Comments at 6-7; NAB Reply at 29-30.

<sup>132</sup> *NPRM*, 33 FCC Rcd at 7059, para. 41.

<sup>133</sup> CDD *et al.* Comments at 15; Litton Comments at 10; Natalie Brennan Comments at 2-3 (Brennan).

<sup>134</sup> *See supra* para. 28.

video on demand over live viewing of broadcast television.<sup>139</sup>

36. In addition, the record indicates that the current three-hour per week processing guideline presents significant scheduling challenges for many broadcasters. When Congress enacted the CTA in 1990, few stations offered local newscasts on weekend mornings; broadcast networks offered fewer hours of national morning news shows; and network affiliated stations offered far less live sports coverage.<sup>140</sup> In response to consumer demand, broadcasters have increased their local and national news, public affairs programming, and sports programming.<sup>141</sup> NAB states that these types of “DVR-resistant” live programming help broadcasters stay competitive with online and on-demand services, but the growth in such live programming on broadcast television has severely limited the windows during which stations can consistently schedule children’s educational and informational programming.<sup>142</sup> For example, during the third quarter when Major League Baseball, the National Football League, and college football all have daytime games on the weekends, stations outside of the Eastern time zone routinely have their children’s educational and informational programming preempted due to live network sports, which in turn leads to conflicts between rescheduled Core Programs and other programming, including local news.<sup>143</sup> Broadcasters cite numerous instances where stations either have preempted or declined to air local news and public affairs programming due to children’s programming obligations.<sup>144</sup> Commenters assert that preempting or foregoing local news and public affairs programming because of children’s programming obligations results in lost advertising and sponsorship revenues for the stations.<sup>145</sup> We find that these scheduling challenges along with the marketplace changes noted above warrant revision of the safe harbor processing guidelines.

37. The revised safe harbor processing guidelines we adopt today will give broadcasters greater flexibility in today’s competitive marketplace to schedule their children’s educational programs around programming with strong local interest, including news, live sports, and coverage of local events. At the same time, these guidelines will ensure that an ample supply of educational and informational programming is available to children throughout the year.<sup>146</sup> As set forth below, Category A of the

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<sup>135</sup> Hearst suggests that short-form programming also may not be closed captioned because of certain exemptions from the Commission’s closed captioning requirements. Hearst Reply at 19 (citing 47 CFR § 79.1(d)(6), (8)). We are not convinced this is categorically correct. All educational and information programming, including short-form programming, is subject to the Commission’s closed captioning requirements unless it qualifies for or has been granted an exemption. 47 CFR § 79.1(d). With respect to the first exemption Hearst cites, the short-form programming would need to be 10 minutes or less in duration to qualify for an exemption, and the programming must be “interstitial material” (something that appears between two other things, or a gap or a break in something that is generally continuous), a “promotional announcement” (which may conflict with the commercial limits permitted for children’s programming), or a “public service announcement.” 47 CFR § 79.1(d)(6). To qualify for the second closed captioning exemption Hearst cites, the short-form programming would need to be locally produced by the broadcast station, have no repeat value (i.e., be aired only once), be of local public interest, not news programming, and not able to be captioned using the “electronic news room” technique. 47 CFR § 79.1(d)(8). Regardless, we strongly encourage closed captioning even for a short segment program that is exempt, in order to ensure that the informational and educational needs of children with disabilities are met.

<sup>136</sup> Litton Comments at 23. Under the video description rules, commercial television broadcast stations affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC) and licensed to a community located in one of the top 60 DMAs are required to air at least 87½ hours of video-described programming per calendar quarter, of which 50 hours must be prime time programming and/or children’s programming. 47 CFR § 79.3(b)(1). For purposes of the video description rules, the term “children’s programming” refers to any programming that has a target audience of persons 16 years of age and younger, and it is not limited to children’s educational and informational programming. 47 CFR § 79.3(a)(8).

<sup>137</sup> See *supra* note 136.

<sup>138</sup> See *infra* para. 44.

processing guidelines will provide broadcast stations enhanced flexibility by allowing them to choose between the existing three-hours per week guideline and a new 156-hour annual guideline. We are also revisiting Category B of the processing guidelines to provide clarity on the extent to which broadcasters may count educational specials and short-form programming toward their total Core Programming hours.

38. *Category A.* We revise Category A of the processing guidelines to provide broadcasters two separate options for demonstrating compliance with the children's programming requirements. Specifically, Media Bureau staff will be authorized to approve the children's programming portion of a broadcaster's license renewal application if the station airs either (i) three hours per week (as averaged over a six-month period) of Core Programming that is regularly scheduled on a weekly basis, or (ii) 156 hours of Core Programming annually, including a minimum of 26 hours per quarter of regularly scheduled weekly programming.<sup>147</sup> Under both of these options, a Core Program must be at least 30 minutes long, as is the case under our Category A processing guideline today. We are expressly retaining the existing three hour per week option because we believe that other revisions we are making in this proceeding, including the expanded Core Programming hours and the ability to air 13 hours per quarter of regularly scheduled weekly programming on a multicast stream,<sup>148</sup> may provide sufficient scheduling flexibility such that some broadcasters may wish to continue offering three hours per week (as averaged over a six-month period) of Core Programming. For example, some broadcasters, particularly small broadcasters, may prefer the certainty and simplicity of scheduling an average of three hours per week of Core Programming, instead of having to decide how to allocate their Core Programming hours every quarter and continually track their Core Programming hours to ensure they are in compliance with our children's programming rules. In addition, some broadcasters may decide that it would better serve the needs of their local communities to continue providing an average of three hours per week of Core Programming throughout the year.

39. The second option under revised Category A is an annual guideline that will allow a

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<sup>139</sup> See *supra* paras. 11-17.

<sup>140</sup> NAB Comments at 22.

<sup>141</sup> *Id.* NAB notes that in 2004, television stations aired, on average, 1.4 hours of local news on Saturdays, 1.3 hours of local news on Sundays and 3.7 hours on weekdays. In 2017, stations aired, on average, 2.2 hours of local news on both Saturdays and Sundays and 5.6 hours on weekdays; stations in large markets (ranked 1-50) aired even more local news, averaging around 3.5 hours of local news on Saturdays and Sundays and about 6.7 hours on weekdays. NAB also asserts that network affiliated stations today air expanded amounts of national news and public affairs programming on weekends and weekdays. In addition, in 2017, more than 134,000 hours of sports programming were available for viewing in the U.S., up from 31,000 hours in 2002. *Id.* at n.58.

<sup>142</sup> *Id.* at 23.

<sup>143</sup> *Id.* at 26 n.63. See also Nexstar Comments at 5 (asserting that stations are often confronted with how to resolve network sports preemptions and it is frequently local programming that is sacrificed in order for the station to meet its children's television programming obligations).

<sup>144</sup> For example, NAB reports that:

About twenty-five percent of Nexstar's general managers surveyed reported that they have declined to air local programming because of their E/I obligations. For instance, one station declined to run a six-week Saturday morning community forum on the opioid crisis discussing how and where people in their community could get help. Another Nexstar station is the only one in its market not offering local news on Saturday and Sunday mornings due to children's TV obligations. A third station stopped airing local Sunday religious services to accommodate E/I programming. Similarly, Griffin Communications reported that on several occasions, while airing extended weather coverage, it stopped coverage to air children's programming.... Griffin's Tulsa station was also unable to air the annual Susan G. Komen Race for the Cure because of its children's TV obligations, and it had to cut short its coverage of a Saturday morning parade celebrating the opening of a \$400 million public park because the station's E/I programming was

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broadcast station to demonstrate compliance with the children's programming rules by airing 156 hours of Core Programming annually, including a minimum of 26 hours per quarter of regularly scheduled weekly programs that are at least 30 minutes long.<sup>149</sup> As NAB notes, airing 156 hours per year of Core Programming is equivalent to the current requirement of airing three hours per week on a full-time program stream.<sup>150</sup> By requiring broadcast stations to air at least 26 hours per quarter of regularly scheduled weekly programming, this option will ensure that children have access to free, over-the-air educational and informational programming on a regularly scheduled weekly basis throughout the year.<sup>151</sup> It will also ensure that children can obtain the educational benefits of viewing the same Core Program on a weekly basis. As discussed above, studies have shown that watching the same show or different episodes of the same series helps children learn and retain lessons.<sup>152</sup>

40. The remaining hours of Core Programming under Category A (up to 52 hours annually)<sup>153</sup> may consist of Core Programs of at least 30 minutes in length that are not regularly scheduled on a weekly basis, including educational specials, other non-regularly scheduled programming, and regularly scheduled non-weekly programming, which the station will have the discretion to air at any time during the year. For example, a station may wish to air educational specials or blocks of a Core Program during school breaks when more children are likely to be watching. Permitting stations to tailor their programming lineups to times when children are more likely to be at home and air increased amounts of educational and informational programming over shorter time periods (e.g., during spring break or summer vacation) could potentially have a strong educational impact.<sup>154</sup> Or, a station may want to schedule these Core Programming hours during periods of the year when they will not interfere with the airing of live network or non-network sports programs that may cause children's programming to be preempted.<sup>155</sup> By allowing stations to air up to 52 hours annually of Core Programs that are not regularly scheduled on a weekly basis, this option should help to alleviate the scheduling difficulties that many stations experience, particularly during periods of heavy coverage of live sports events.<sup>156</sup> Repeats and reruns of Core Programming will continue to be counted toward fulfillment of the processing guideline

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regularly scheduled to start at 10:00 a.m.... A Fox affiliate in the Central time zone moreover reported that, over the course of a year, it must preempt 7:00 a.m. Saturday and Sunday newscasts on its main channel about two dozen times to "make good" E/I programs that had been preempted by live network sports programming.

NAB Comments at 24-25. Nexstar states that more than 75% of its general managers report not airing local sports programs, health specials, parades, and debates as well as preempting their stations' local news or not producing additional local news programs due to children's programming obligations. Nexstar Comments at 5. Block states that one of its stations recently declined to air pre-game shows to talk about college basketball games that were of great local interest because of the problems caused by preempting children's programming. Block Comments at 5-6.

<sup>145</sup> Block Comments at 5-6; NAB Comments at 25-26; Nexstar Comments at 5. For example, Block estimates that the pre-game college basketball shows that one of its stations declined to air due to children's programming obligations could have grossed as much as \$9,000 per show, revenue which would have gone back into station personnel, capital purchases, and additional local programming. Block Comments at 5-6.

<sup>146</sup> See *supra* para. 19.

<sup>147</sup> As discussed below, we will no longer require broadcast stations to air an additional three hours per week of Core Programming for each free 24-hour multicast stream. See *infra* para. 48.

<sup>148</sup> See *infra* para. 44.

<sup>149</sup> NAB Comments at 13-14 (proposing an annual processing guideline under which broadcasters would qualify for Media Bureau approval of the children's TV portion of their license renewal applications if they air a total of 156 hours of Core Programming annually, with at least 25 hours each quarter).

<sup>150</sup> *Id.* at 14.

under Category A.<sup>157</sup> To help children who are blind or visually impaired have access to Core Programs that are not regularly scheduled on a weekly basis that are video described, we strongly encourage broadcast stations to ensure their programming schedules are publicized with appropriate metadata indicating which programs will include video description.<sup>158</sup>

41. *Category B.* We also modify Category B of the safe harbor processing guidelines to make it a viable alternative to compliance with Category A. Under the existing Category B guideline, Media Bureau staff will approve the children’s programming portion of a licensee’s renewal application where the licensee makes a showing that the station 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.<sup>159</sup> Specials, short-form programs and PSAs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children can count toward the processing guidelines under existing Category B.<sup>160</sup> However, due to uncertainty as to how much Core Programming a licensee is expected to provide, licensees have rarely attempted to demonstrate compliance with the children’s programming rules under Category B.<sup>161</sup> The modifications we adopt today will bring clarity to Category B and make it a viable option for broadcasters.

42. Under revised Category B, Media Bureau staff will be authorized to approve the children’s programming portion of a broadcaster’s license renewal application if the broadcast station airs 156 hours of Core Programming annually, including a minimum of 26 hours per quarter of regularly scheduled weekly programs that are at least 30 minutes long. The remaining hours of Core Programming (up to 52 hours annually) may include Core Programs that are not regularly scheduled on a weekly basis, such as educational specials, other non-regularly scheduled programming, and regularly scheduled non-weekly programming, as well as short-form programs. Category B is distinct from the second option of Category A in that short-form programming, including PSAs and interstitials, will be permitted only

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<sup>151</sup> *Id.* See *supra* para. 19.

<sup>152</sup> See *supra* para. 26.

<sup>153</sup> The requirement to air a minimum of 26 hours per quarter of regularly scheduled weekly programming adds up to at least 104 hours of regularly scheduled weekly programming per year. Thus, the remaining hours of Core Programming will add up to no more than 52 hours (156 hours per year minus 104 hours of regularly scheduled weekly programming per year).

<sup>154</sup> NAB Reply at 28 n.99. NAB notes that according to Nielsen, the 2017 persons-using-television ratings for children ages 2-11 increased by several points on Mondays through Fridays from 9:00 a.m. to 3:00 p.m. during the third quarter, which overlaps with traditional school summer breaks. *Id.* (citing Nielsen NPower, Time Period Report, PUT, 3Q 2017 (06/26/16-09/24/17); 4Q17 (09/25/17-12/31/17); 1Q18 (01/01/19-04/01/18); 2Q18 (04/02/18-07/01/18)).

<sup>155</sup> Common Sense expresses concern that an annual processing guideline may encourage broadcasters to “stack” all their required Core Programming into one week a year. Common Sense asserts that children cannot internalize the lessons from educational programming if they only get to see the programs once over the course of a year and that it is more likely that busy parents will miss Core Programming if they have only one chance a year to get their children to view it, instead of weekly opportunities. Common Sense Comments at 7. We believe it is unlikely that stations will stack their programming so heavily into a single period, such as one week. Among other things, this would cause significant disruptions to the rest of their schedules. While we acknowledge that some broadcasters could air most or all of the 52 hours of non-regularly scheduled programming all at once, as discussed above, broadcasters will still have to air the majority of their Core Programming on a regularly scheduled weekly basis. See *supra* para. 2424. Thus, children will continue to have access to an ample supply of free, over-the-air children’s educational and informational programming throughout the year.

<sup>156</sup> NAB Comments at 4-5 (asserting that increased flexibility in scheduling will help to prevent disruptive preemptions of both Core Programming and other popular and local programming on stations’ primary channels,

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under Category B.<sup>162</sup> The requirement to air a minimum of 26 hours per quarter of regularly scheduled weekly programming will ensure that children have access to free, over-the-air educational and informational programming throughout the year and that children can obtain the educational benefits of viewing the same Core Program on a weekly basis.<sup>163</sup> Allowing broadcast stations to air up to 52 hours of Core Programs that are not regularly scheduled on a weekly basis and short-form programs will provide broadcasters additional scheduling flexibility and give them the opportunity to offer a wide array of innovative programming of varying lengths that will appeal to children.<sup>164</sup>

43. We decline to eliminate quantitative processing guidelines for determining compliance of television licensees with the children’s programming rules.<sup>165</sup> Only two commenters advocate elimination of quantitative processing guidelines.<sup>166</sup> In contrast, several commenters express concern that eliminating quantitative processing guidelines entirely would lead to a severe decline in the amount of children’s educational and informational programming available on free, over-the-air television.<sup>167</sup> These commenters suggest that absent a quantitative guideline, broadcasters will have little or no financial incentive to air children’s educational and informational programming.<sup>168</sup> As we explain above, the media landscape has changed dramatically since the children’s programming rules were first adopted, as reflected by the multitude of children’s educational programming now available on non-broadcast platforms and the sharp decline in live viewing of broadcast television among children.<sup>169</sup> The record, however, indicates that some children in minority and low-income households still rely exclusively on live, over-the-air broadcast television.<sup>170</sup> It is unclear from the record how much children’s educational and informational programming broadcasters would choose to air in the absence of specific quantitative

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including news, live sports and special events, thereby benefitting all viewers), 14 (asserting that an annual processing guideline will give stations greater flexibility in scheduling their educational and informational programs around other programming with strong local interest, including news, live sports, coverage of local events and specials).

<sup>157</sup> *1996 Report and Order*, 11 FCC Rcd at 10723, para. 132. We note, in explaining the purposes of the regularly scheduled weekly programming requirement, the Commission stressed that “programs that air regularly can reinforce lessons from episode to episode” and “can develop a theme which enhances the impact of the educational and informational message.” *Id.* at 10711, para. 105. The Commission also noted that television series typically air in the same time slot for 13 consecutive weeks and that it would leave to the staff to determine, with guidance from the Commission when necessary, what constitutes regularly scheduled programming. *Id.* at 10711, para. 106. Thus, the Commission has made clear that regularly scheduled weekly programming was intended to be comprised of different episodes of the same program, not repeats of a single-episode special. *See also Beach TV Properties, Inc. Licensee of Stations KNOV-CD, New Orleans, LA WCAY-CD, Key West, FL; WDES-CA Destin, FL; WPFN-CA Panama City, FL; WPCT(TV), Panama City, FL; and WAWD(TV), Fort Walton Beach, FL and Beach TV of South Carolina, Inc. Licensee of Stations WGSC-CD, Murrells Inlet, SC and WGSJ-CD, Murrells Inlet, SC*, Order and Consent Decree, 30 FCC Rcd 7674 (2015).

<sup>158</sup> *See Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report to Congress, 29 FCC Rcd 8011, 8023-24, para. 27 (MB 2014) (reporting concerns about viewers not being able to easily locate information on video described programs); *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Notice of Proposed Rulemaking, 31 FCC Rcd 2463, 2477, para. 32 (2016) (noting that some consumers report difficulty in finding information in programming guides on video described programs).

<sup>159</sup> 47 CFR § 73.671(e)(1); *1996 Report and Order*, 11 FCC Rcd at 10723, para. 133.

<sup>160</sup> 47 CFR § 73.671(e)(1); *1996 Report and Order*, 11 FCC Rcd at 10723-24, para. 133.

<sup>161</sup> NAB Reply at 30 n.106 (asserting that since 1996, virtually no stations have utilized the Category B option, given its vagueness and uncertainty).

<sup>162</sup> The Commission’s commercial limits rules and policies apply to children’s programming, including short-form programming. Among other requirements, commercial television broadcast licensees and cable operators must limit the duration of advertising in children’s programming to not more than 10.5 minutes per hour on weekends and not

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guidelines, although PTV and ION state that they would continue to air far more children's educational and information programming than is currently required by the Commission. We conclude therefore that the public interest is best served by retaining quantitative processing guidelines to ensure that an adequate supply of quality educational programming continues to be available to all children.

## **E. Airing of Core Programming**

### **1. Requirement to Air Core Programming on Primary Stream**

44. We require broadcast stations to air the substantial majority of their Core Programming hours under either Category A or B on their primary program streams, but we permit broadcast stations under either Category A or B to air up to 13 hours per quarter of their regularly scheduled weekly programming on a multicast stream.<sup>171</sup> Thus, we require broadcast stations to air at least two-thirds of their total annual Core Programming hours (i.e., 104 hours) on their primary streams and no more than one-third of their total Core Programming (i.e., 52 hours) hours on a multicast stream. All Core Programming that is not regularly scheduled weekly programming aired under Category A or B must be aired on a station's primary stream. We believe that this approach strikes an appropriate balance between the benefits of airing educational and informational programming on primary program streams and the benefits of providing stations that multicast with additional flexibility to air valued programming such as local newscasts on their primary streams.<sup>172</sup>

45. This framework is also appropriate because it takes into account, as we discuss in detail above, that there is a tremendous wealth of children's programming available today on both broadcast and non-broadcast platforms.<sup>173</sup> Each of the 330 PBS member stations is required by its membership to offer a minimum of seven hours of children's educational and informational programming each weekday (35 hours per week); the 24/7 PBS KIDS multicast stream is available to 95% of U.S. TV households; and ION currently airs 111 hours per week of children's educational and informational programming on its 24/7 multicast stream, Qubo, which receives 67% national coverage.<sup>174</sup> Further, there are 682 more free,

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more than 12 minutes per hour on weekdays. 47 U.S.C. § 303a; 47 CFR §§ 73.670(a), 76.225(a). The Commission also has several longstanding policies that are designed to protect children from confusion that may result from the intermixture of program and commercial material in children's television programming. *See Sponsorship Identification Rules and Embedded Advertising*, MB Docket No. 08-90, Notice of Inquiry and Notice of Proposed Rulemaking, 23 FCC Rcd 10682, 10687, para. 6 (2008); *1991 Memorandum Opinion and Order*, 6 FCC Rcd at 5094-99, paras. 3-34; *1991 Report and Order*, 6 FCC Rcd at 2111-13, paras. 2-1. With respect to the limits on the amount of commercial matter in children's programming, the Commission prorates application of the commercial limits to program segments of five minutes or longer in duration where such segments are not part of an hour's block of children's programming. *1991 Memorandum Opinion and Order*, 6 FCC Rcd at 5096, para. 14. Thus, a five-minute program, being 1/12 of an hour, could contain up to 1/12 of the allotted commercial matter for an hour of children's programming, or up to one minute of commercial matter for programming aired on weekdays. *Id.* at n.40. While program segments of less than five minutes are not currently subject to the commercial limits in sections 73.670(a) and 76.225(a), we intend to monitor such programming and may reconsider that decision if necessary to ensure that the goals underlying the CTA and the commercial limits are being met.

<sup>163</sup> NAB Comments at 14. *See supra* para. 26.

<sup>164</sup> *See supra* paras. 27, 32. In the *Further Notice of Proposed Rulemaking* set forth below, we solicit further 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. We also tentatively conclude that Media Bureau staff, rather than the full Commission, should be permitted to approve the children's programming portion of renewal applications of licensees relying in part on special sponsorship efforts. Pending further action on these issues, broadcasters that do not fall within either Category A or B of the processing guidelines will have their renewal applications referred to the full Commission to consider whether they have complied with their obligations under the CTA.

<sup>165</sup> *See NPRM*, 33 FCC Rcd at 7059-60, paras. 42-43 (seeking comment on whether there is still a need at all for a

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over-the-air television stations than there were when the CTA was adopted in 1990, all of which must provide children's programming.<sup>175</sup> In addition to the vast array of children's programming available on free, over-the-air television, there is a surplus of educational content available for children on cable children's networks, over-the-top video providers, and online sites.<sup>176</sup> Given the substantial increase in the amount of educational programming choices available to children today, we conclude that it is appropriate to reduce the amount of Core Programming that must be aired on a station's primary stream, while still requiring that most Core Programming be aired on a station's primary stream. Allowing broadcasters to air a minority of their Core Programming hours on a multicast stream will enable them to offer viewers more programming options on their primary streams, including more news and programming of local community interest.<sup>177</sup>

46. We acknowledge that multicast streams do not have the same level of viewership among children as primary streams.<sup>178</sup> As Hearst explains, this is due in part to the fact that MVPDs are not obligated to carry multicast streams.<sup>179</sup> Some commenters express concern that, given this lower level of viewership of multicast streams, allowing broadcast stations to move their programming to multicast streams would be expected to have a significant adverse effect on advertising revenue for such programming,<sup>180</sup> which in turn would adversely impact the production of high quality educational and informational programming.<sup>181</sup> In this regard, Litton asserts that moving as little as one hour per week of Core Programming to multicast streams would adversely affect the market for quality children's programming because Litton is able to subsidize the production costs of some of its programming by spreading its production costs across the six half-hour programs it produces for each network.<sup>182</sup> According to Litton, because of the substantially lower advertising revenue a producer would earn on programming moved to a multicast stream, its ability to spread the overall production costs would be reduced from six half-hour programs to four, resulting in a decrease in production budgets and, in turn, a decline in the quality of children's programming.<sup>183</sup>

47. We acknowledge that allowing broadcasters to air up to 13 hours of regularly scheduled

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quantitative processing guideline for determining compliance of television licensees with the children's programming rules).

<sup>166</sup> NRB Comments at 5 n.7; FreedomWorks Foundation Comments at 2.

<sup>167</sup> CDD *et al.* Comments at 11; Common Sense Comments at 4; Litton Comments at 11-12; NHMC Comments at 4; Child Advocates Reply at 1; NHMC Reply at 4; Letter from Jack Hanna to Chairman Pai, FCC, MB Docket No. 18-202, at 1 (Sept. 18, 2018) (Hanna *Ex Parte* Letter).

<sup>168</sup> CDD *et al.* Comments at 12-13; Litton Comments at 11-12; NHMC Comments at 4. Common Sense also notes that a 2011 GAO Report that found an increase in Core Programming between 1998 and 2010 was attributable to the existence of the processing guideline. Common Sense Comments at 4 (citing *Children's Television Act: FCC Could Improve Efforts to Oversee Enforcement and Provide Public Information*, GAO Report to the Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate (2011), at 10).

<sup>169</sup> *See supra* paras. 11-17.

<sup>170</sup> *See supra* para. 19.

<sup>171</sup> In the *NPRM*, the Commission sought comment on how to apply the children's programming rules to stations broadcasting in ATSC 3.0 if broadcasters were allowed to choose on which of their free OTA streams to air any Core Programming. *NPRM*, 33 FCC Rcd at 7064-65, para. 54. The Commission noted that the ATSC 3.0 local simulcast requirement applies only to the primary stream, not any multicast streams. *Id.* (citing *Authorizing Permissive Use of the "Next Generation" Television Transmission Standard*, GN Docket No. 16-142, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930, 9937-38, para. 13 (2017)). Therefore, 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, but a Next Gen TV broadcaster that chooses to air its Core Programming on a multicast 3.0 stream would not be required to simulcast that Core Programming in 1.0 format, potentially resulting in a loss of Core Programming to 1.0 viewers. *Id.* We

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weekly programming per quarter on multicast streams may impact Litton's current business model.<sup>184</sup> We find it speculative, however, the extent to which, if at all, the overall quality of children's programming will be affected. We note, for example, that Litton makes no attempt to quantify the impact of the change and their claims are based on a series of assumptions that may or may not be accurate. Moreover, under our revised rules, broadcasters will be able to produce or acquire a wider variety of innovative children's programming, such as educational specials and short-form programming, that may attract more young viewers and therefore more advertising dollars, thus leading to an increase in program quality.<sup>185</sup> Furthermore, new business models may emerge that improve the quality of children's programming. Further, as NAB observes, broadcasters will be required to air 156 total hours of Core Programming annually, two-thirds of which must be aired on their primary streams, so there will continue to be a strong demand from broadcasters for children's educational and informational programming.<sup>186</sup> Moreover, while multicast streams do not have the same level of viewership as primary streams, a station's multicast streams have the same over-the-air coverage area as its primary stream. Therefore, any Core Programming moved to a multicast stream will remain available to young viewers that rely exclusively on free, over-the-air television.<sup>187</sup> In sum, we believe that our approach is a reasonable one that appropriately balances competing concerns and reflects the significant changes that have taken place in the children's programming market.<sup>188</sup>

## 2. Elimination of Processing Guideline Applicable to Multicast Streams

48. Consistent with the tentative conclusion in the *NPRM*, we eliminate the additional Core Programming processing guideline applicable to digital stations that multicast, which requires broadcasters providing streams of free video programming in addition to their primary program stream to air additional Core Programming based on the amount of programming that is aired on their multicast streams.<sup>189</sup> We agree with commenters that neither the CTA nor section 336 of the Act requires that the Commission impose additional children's programming requirements on multicast streams.<sup>190</sup> The CTA

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agree with NAB that it would be premature at this time to decide how to apply children's programming rules to stations that broadcast in ATSC 3.0 and shift some of their Core Programming to a multicast stream that may not be simulcast in ATSC 1.0. As NAB states, broadcasting in ATSC 3.0 is voluntary, and it remains to be seen how ATSC 3.0 stations will handle their children's programming obligations once stations commence ATSC 3.0 broadcasting on a non-experimental basis. NAB Comments at 20. We may revisit this issue in the future after we gain more experience with ATSC 3.0.

<sup>172</sup> See *supra* para. 36.

<sup>173</sup> See *supra* paras. 11-14.

<sup>174</sup> See *supra* paras. 11-12.

<sup>175</sup> See *supra* para. 13.

<sup>176</sup> See *supra* para. 14.

<sup>177</sup> Gray Comments at 7; NAB Comments at 20; NAB Reply at 25.

<sup>178</sup> Litton Comments at 13, 27, and Exhibit 1 (Declaration of Dave Morgan, CEO of Litton) at para. 23 (asserting that viewership of its current children's programming on multicast streams is 95% lower than on a station's primary channel). See also NHMC Comments at 14; Child Advocates Reply at 12; Hearst Reply at 24-25; SRP Reply at 2; Letter from Patricia E. Mooradian, President and CEO, The Henry Ford, to Chairman Ajit Pai, FCC, MB Docket No. 18-202, at 2 (filed Sept. 24, 2018) (Ford *Ex Parte* Letter); Hanna *Ex Parte* Letter at 1; Letter from Steve Rotfeld Productions, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 17-105 and 18-202, at 1 (filed Sept. 5, 2018) (SRP *Ex Parte* Letter).

<sup>179</sup> Hearst Reply at 6.

<sup>180</sup> Litton Comments at 13; Hearst Reply at 24-25; Child Advocates Reply at 13; Litton Reply at 14; SRP Reply at 2; SRP *Ex Parte* Letter at 1.

<sup>181</sup> Litton Comments at 13-17; Litton Reply at 14; SRP Reply at 4; Ford *Ex Parte* Letter at 2; Hanna *Ex Parte* Letter (continued....)

directs the Commission to consider at renewal whether a television licensee has served the educational and informational needs of children through its “programming,” but it does not mandate that the Commission assess such programming on a stream-by-stream basis.<sup>191</sup> Section 336, which establishes the statutory framework for the DTV transition, provides that the Commission “shall prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.”<sup>192</sup> For the reasons set forth below, we conclude that additional children’s programming requirements for multicast streams are not necessary for the protection of the public interest, convenience, and necessity.

49. We acknowledge that elimination of the additional processing guideline will result in a reduction in the overall amount of Core Programming available on free, over-the-air television but find that overall the costs of the additional processing guideline outweigh the benefits to children.<sup>193</sup> In adopting the additional processing guideline for digital stations that multicast, the Commission stated that “any increase in multicasting channel capacity that broadcasters choose to implement as a result of digital technology should translate to a commensurate increase in the amount of educational programming available to children.”<sup>194</sup> However, as we explain in detail above, the marketplace for children’s programming has changed dramatically in recent years. There is a wealth of educational and informational programming available to children today on both broadcast and non-broadcast platforms.<sup>195</sup> Even in households that lack access to both MVPD and Internet services, children now have access to considerably more free, over-the-air educational and informational programming than when the Commission adopted the additional processing guideline for multicast streams.<sup>196</sup> Moreover, the record reflects that live viewing of broadcast television by children has decreased substantially, while children’s viewing of video content on other media platforms and time-shifted viewing has risen.<sup>197</sup> Nexstar also asserts that “[t]he burden of providing an additional 3.0 average hours of children’s television for every stream disincentivizes broadcasters from expanding their program offerings to all other viewers beyond their primary station,” which “results in the inefficient use of spectrum and a restriction of programming choices.”<sup>198</sup> On balance, we think that the benefit to children of the additional processing guideline for

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at 1; SRP *Ex Parte* Letter at 1.

<sup>182</sup> Litton Comments at 17.

<sup>183</sup> *Id.* at 17-18.

<sup>184</sup> Using sponsorship to help underwrite production costs, Litton provides its children’s programming to networks and individual stations free of charge, in exchange for allowing Litton to sell limited, designated advertising within the programs. *Id.* at 4. Litton states that in many instances, stations receive a share of the advertising revenue. *Id.* at n.14.

<sup>185</sup> *See, e.g.*, NAB Comments at 17 (asserting that broadcasters would be expected to take advantage of increased flexibility to produce more creative and varied educational content for young audiences and noting that broadcasters have successfully experimented with informational programming geared to young viewers on platforms where they are not hampered by FCC restrictions as to length, format, and scheduling); Nexstar Comments at 6 (asserting that allowing broadcasters to air short segment programs “would create 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”); Cadillac Comments at 8 (observing that smartphones, animation software, and free and/or open source video-editing technology have made it easy for just about anyone to create short-duration educational/instructional programming, which in turn makes it easier for broadcasters to buy the rights to air a wider variety of original programming); NRB Comments at 7 (asserting that short-form content is often easier to produce and distribute).

<sup>186</sup> NAB Reply at 25-26.

<sup>187</sup> We recognize that allowing broadcasters to air a minority of their Core Programming on multicast streams could impact the availability of educational and informational programming that is accessible to children with visual or hearing disabilities. Litton Comments at 17-24; Hearst Reply at 19-20; Litton Reply at 19; NHMC Reply at 11;

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multicast streams is outweighed by the burden that this requirement imposes on broadcasters. Accordingly, we conclude that elimination of the additional processing guideline and related rules is justified.

### 3. MVPD Comparable Carriage Requirement

50. We adopt our proposal to eliminate the MVPD comparable carriage requirement.<sup>199</sup> Under this requirement, the Commission has allowed stations that multicast to air all of their additional Core Programming (beyond the three hours per week of Core Programming that must be aired on the primary stream) on any free over-the-air stream only where the stream has MVPD carriage comparable to the stream whose programming generated the Core Programming obligation.<sup>200</sup> Given that we are eliminating the additional processing guideline and will require broadcasters to air a majority of their Core Programming on their primary streams, we conclude that the MVPD comparable carriage requirement is no longer necessary.

#### F. Preemptions

51. We anticipate that the added flexibility afforded to broadcasters by the rule changes that we adopt in this proceeding will reduce the need for preemptions. In particular, we believe that the expanded Core Programming hours and the processing guideline options detailed above will enable broadcasters to schedule their Core Programming more easily so that it does not conflict with live programming content, such as sports, local and national news, and public affairs programming. Nevertheless, we conclude that revision of our policies governing preemptions is warranted to ensure that broadcasters have sufficient flexibility to reschedule any preempted Core Programming and still count that programming toward compliance with our processing guidelines.<sup>201</sup>

52. We eliminate the “second home” policy. Under this policy, a station that preempts an

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Letter from Kirk Adams, President & CEO, American Foundation for the Blind, to Chairman Ajit Pai, FCC, MB Docket No. 18-202, at 1 (filed Oct. 9, 2018) (AFB *Ex Parte* Letter); Hanna *Ex Parte* Letter at 1. Programming aired on multicast channels does not count toward the Commission’s requirement for video-described programming. See 47 CFR § 79.3(b)(1) (requiring commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC) and licensed to a community located in the top 60 Designated Market Areas to provide 50 hours of video description per calendar quarter, either during prime time or on children’s programming, and 37.5 additional hours of video description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each programming stream on which they carry one of the top four commercial television broadcast networks). In addition, the closed captioning rules provide an exemption for program streams with gross revenues of less than \$3,000,000. 47 CFR § 79.1(d)(12) (“No video programming provider shall be required to expend any money to caption any channel or stream of video programming producing annual gross revenues of less than \$3,000,000 during the previous calendar year other than the obligation to pass through video programming closed captioned when received pursuant to paragraph (c) of this section. For the purposes of this paragraph, each programming stream on a multicast digital television channel shall be considered separately for purposes of the \$3,000,000 revenue limit.”). Commenters suggest that there are few multicast streams that have reached the \$3,000,000 gross revenues threshold. Litton Comments at 24; Hearst Reply at 19. However, as discussed above, there is a wealth of children’s educational and informational programming available today on free, over-the-air broadcast television, and each broadcast station will still be required to air at least two-thirds of its Core Programming on its primary stream. Therefore, we expect that there will still be a plentiful supply of educational and informational programming that is accessible to children with visual or hearing disabilities. Indeed, there will be more such programming available on broadcast television overall than there was following adoption of the Commission’s first children’s television rules. As noted above, there are 682 over-the-air broadcast television stations today that did not exist when Congress passed the CTA in 1990, all of which provide children’s programming. See *supra* para. 13. We strongly encourage program producers and broadcasters to make this programming accessible whenever possible. In addition, we note that all educational programming on PBS KIDS and Qubo multicast streams is closed-captioned and that PBS also voluntarily provides video description for approximately 80% of its currently available catalog of children’s programming on PBS KIDS. Letter from Talia S. Rosen, Assistant General Counsel and Senior Director, Standards & Practices, PBS, to Marlene H. Dortch,

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episode of a Core Program for any reason other than breaking news is required to air the rescheduled program in a previously-selected substitute time slot or “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 guidelines.<sup>202</sup> No commenters expressly support retaining the “second home” policy. Commenters aver that requiring broadcasters to keep “second home” windows available for rescheduling preempted Core Programs needlessly restricts their ability to schedule programming in a manner that best serves the needs of their communities.<sup>203</sup> While stations may still choose to use a second home as a strategy for rescheduling preempted children’s programming, we agree that for many this policy is unnecessarily burdensome and accordingly eliminate it as a requirement for counting rescheduled children’s programming toward compliance with the processing guidelines.

53. In order to provide broadcasters greater scheduling flexibility, we permit a station that preempts an episode of a regularly scheduled weekly program on its primary stream to air the rescheduled episode on its primary stream at any time during Core Programming hours (i.e., between 6:00 a.m. and 10:00 p.m.) within seven days before or seven days after the date the episode was originally scheduled to air. The broadcast station must provide an on-air notification of the schedule change during the same timeslot as the preempted episode.<sup>204</sup> If a station intends to air the rescheduled episode within the seven days *before* the date the preempted episode was originally scheduled to air, the station must make the on-air notification during the same timeslot as the preceding week’s episode of that program. If the station intends to air the rescheduled episode within the seven days *after* the date the preempted episode was originally scheduled to air, the station must make the on-air notification during the timeslot when the preempted episode was originally scheduled to air. The on-air notification must include the alternate date and time when the preempted program will air.<sup>205</sup> Preempted Core Programs that are rescheduled in this

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Secretary, FCC, MB Docket Nos. 18-202 and 17-105, at 1 (filed July 9, 2019); Letter from Terri M. Santisi, Executive Vice President, ION Media Networks, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 18-202 and 17-105, at 1 (filed July 9, 2019).

<sup>188</sup> Several consumer groups raise concerns that allowing broadcasters to air short-form programming during a limited portion of their Core Programming hours and to air up to 13 hours per quarter of regularly scheduled weekly programming on a multicast stream may reduce the amount of educational programming accessible to children with visual or hearing disabilities. Letter from Blake Reid, Director, Samuelson-Glushko Technology Law & Policy Clinic at Colorado Law, Counsel to Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 18-202 and 17-105, CG Docket No. 05-231, at 2-3 (June 27, 2019). As discussed throughout this *Report and Order*, we highly encourage broadcasters to ensure that programming remains accessible to children with disabilities and are confident that there will remain ample educational programming available to such children. See *supra* para. 40, notes 135 & 187. However, to monitor the extent to which Core Programming remains accessible to children with disabilities, we direct the Media Bureau to issue a Public Notice no later than two years after the effective date of these revisions to our children’s programming rules seeking information from the broadcast industry and viewers on the extent to which short-form programming and Core Programming aired on multicast streams is closed-captioned and/or video-described, including on multicast channels like PBS KIDS and Qubo that provide captioning today. Such information will enable us to assess the state of educational children’s programming in terms of its accessibility to children with visual or hearing disabilities.

<sup>189</sup> 47 CFR § 73.671(e)(2)(i); *NPRM*, 33 FCC Rcd at 7064, paras. 51-52. See *supra* para. 6.

<sup>190</sup> Cadillac Comments at 5; Meredith Comments at 3; NAB Comments at 31; Network Commenters Comments at

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manner will count toward a station's total number of Core Programming hours under the processing guidelines. We also permit a station that preempts a regularly scheduled weekly program on a multicast stream to air the rescheduled episode on that same multicast stream at any time during Core Programming hours within seven days before or seven days after the date the episode was originally scheduled to air, provided it follows the announcement requirement set forth earlier in this paragraph.

54. As proposed by NAB, we also expand the breaking news exemption, under which broadcast stations are permitted to preempt Core Programs for breaking news without rescheduling them,<sup>206</sup> to permit a station to preempt an episode of a regularly scheduled weekly program in order to air non-regularly scheduled live programming produced locally by the station without any requirement to reschedule the episode.<sup>207</sup> We emphasize that this exception to the requirement that preempted Core Programming be rescheduled in order to count toward a broadcaster's children's programming obligations applies only to "non-regularly scheduled live programming." Examples of "non-regularly scheduled live programming" include but are not limited to non-breaking live news, such as coverage of an elected official swearing-in ceremony, public affairs specials on issues of interest to the local community, live coverage of a local parade, a local election debate, or live coverage of a local sports team's playoff or championship game.<sup>208</sup> Furthermore, the programming must be produced locally by the station to serve the community where the station is located.<sup>209</sup> This exception will promote localism by providing viewers greater access to programming that is of interest to their local community. The very limited nature of this exception will ensure that it cannot be used to circumvent the children's programming requirements.

55. Finally, we no longer require networks seeking preemption flexibility to file an annual request for such flexibility with the Media Bureau.<sup>210</sup> We note that licensees are required to provide detailed information in their Form 398 reports regarding each Core Program that was preempted during the most recent reporting period, including the date and time the program was rescheduled (if rescheduled), the reason for the preemption, and whether promotional efforts were made to notify the public of the rescheduled date and time.<sup>211</sup> We conclude that there is little practical utility or public

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7-8; Nexstar Comments at 8; Hearst Reply at 6; NAB Reply at 22.

<sup>191</sup> 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 stations that multicast was "consistent with the objective of the CTA," not mandated by the CTA).

<sup>192</sup> 47 U.S.C. § 336(b)(5). *See also id.* § 336(d) ("Nothing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity.").

<sup>193</sup> CDD *et al.* Comments at 10-11 (noting that a review of the Children's Television Programming Reports filed by full power commercial television stations in seven different size DMAs indicated that between 69 and 87% of the Core Programming aired by stations in those DMAs was aired on multicast streams); Common Sense Comments at 4 (noting, for example, that in the New York, DMA, 14 networks aired 229 additional hours of Core Programming per week on their multicast streams compared to 53 hours of Core Programming per week on their primary channels).

<sup>194</sup> *2004 Report and Order*, 19 FCC Rcd at 22950, para. 17.

<sup>195</sup> *See supra* paras. 11-14.

<sup>196</sup> *See supra* paras. 11-13.

<sup>197</sup> *See supra* para. 17.

<sup>198</sup> Nexstar Comments at 8.

<sup>199</sup> *NPRM*, 33 FCC Rcd at 7066, para. 55.

<sup>200</sup> 47 CFR § 73.671(e)(2)(ii). *See supra* para. 6.

<sup>201</sup> As discussed above, the existing preemption policies apply to network stations. Non-network stations are

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benefit to requiring licensees both to submit information about expected future preemptions in an annual request for preemption flexibility and to submit information about preemptions that occurred during the reporting period in the Form 398. Accordingly, we eliminate the duplicative requirement to file an annual preemption flexibility request.

## **G. Public Information and Reporting Requirements**

### **1. On-Air Notification Requirement**

56. We no longer require noncommercial stations to identify their Core Programming with the “E/I” symbol at the beginning of the program and display this symbol throughout the program, consistent with the tentative conclusion in the *NPRM*.<sup>212</sup> 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.<sup>213</sup> Although noncommercial stations previously were exempt from the on-air identification requirement in view of their strong commitment to children’s educational and informational programming, the Commission determined that requiring all stations to display the E/I symbol throughout the program would help “reinforce viewer awareness of the meaning of this symbol.”<sup>214</sup>

57. We conclude that elimination of the requirement that noncommercial stations identify their Core Programming by displaying the E/I symbol throughout the programming is warranted. PTV asserts that “[t]he [E/I] symbol is added to programming prior to delivery to stations and it would be cost prohibitive to later adjust its display on broadcast or any other distribution platform, including mobile devices where PTV now live streams all of its educational children’s content for free. As a result of limited resources, the existing requirement on public stations is effectively transferred to all new and emerging platforms.”<sup>215</sup> Moreover, no commenter specifically objects to eliminating this requirement for

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presumed under the existing policies to be complying with the Core Programming safe harbor processing guideline and do not need to request broad preemption relief. *See supra* para. 7. Nevertheless, we note that non-network stations have reported preemptions in their Form 398s, and it appears from these reports that non-network stations have a legitimate need to preempt children’s programming on occasion. Given changes in the industry since 2006, particularly the digital transition and growth of new networks, we find that the Commission’s prior presumption only serves to place the diminishing number of non-network stations at a competitive disadvantage compared to network stations by denying them the same flexibility to preempt children’s programming to air live programming, including local news and sports programming. As discussed above, such “DVR resistant” programming helps broadcasters to stay competitive. *See supra* para. 36. Therefore, we will no longer limit our preemption policies to network stations. Rather, we extend our new preemption rules to both network and non-network stations. *See infra* paras. 53 and 54; *see also* 47 CFR § 73.671(e).

<sup>202</sup> *See supra* para. 7.

<sup>203</sup> NAB Comments at 23-24, 27; Litton Comments at 26; Network Commenters Comments at 9; Nexstar Comments at 10; Hearst Reply at 16; Litton Reply at 13.

<sup>204</sup> Network Commenters Comments at 9 (“[I]t is reasonable to expect the broadcaster to provide adequate notice of the rescheduled time of a preempted program.”). Common Sense asserts that if the Commission decides to eliminate the second home policy, it should impose new, strong notification requirements for rescheduled programming, on-air, on digital program guides created by cable providers, and on station websites. Common Sense Media Comments at 8. We conclude that the on-air notification requirements we are adopting are the most effective means of ensuring that parents and children are informed of scheduling changes when regularly scheduled weekly programming is preempted. We note that, to the extent that preemptions are known in advance, broadcast stations will be required to provide information about the rescheduled programming to publishers of program guides, consistent with the program guide requirements discussed below. *See infra* para. 59. We also encourage broadcast

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noncommercial stations. Given the educational nature of most programming on noncommercial stations,<sup>216</sup> it is reasonable to expect that parents will know that a children's program on a noncommercial station is specifically designed to meet the educational and informational needs of children.<sup>217</sup> In addition, given that much of the children's educational and informational programming aired on noncommercial stations is targeted to pre-school and elementary school aged children and is familiar to parents, we do not believe that it will be difficult for parents to distinguish programming aired on noncommercial stations that is specifically designed to educate and inform children from programming aired on noncommercial stations that may be educational or informative but is intended for general audiences. We also note that PBS member stations, which make up 90% of all noncommercial stations, identify and provide detailed descriptions of their educational and informational children's programs on their websites.<sup>218</sup>

58. We retain the on-air notification requirement for commercial stations. Contrary to NAB's suggestion,<sup>219</sup> we find that the fact that the E/I symbol is now familiar to parents does not mean that it is not necessary to display the symbol during Core Programs aired on commercial stations. As noted by commenters, some parents continue to rely on the E/I symbol to identify educational programming for their children.<sup>220</sup> Further, noncommercial stations generally air far more children's educational programming than commercial stations,<sup>221</sup> whereas it is more difficult for parents to locate children's educational programming in commercial stations' more varied line-ups. Parents also may have more uncertainty as to whether a program aired on a commercial station is intended to be educational than they will for PBS programming, given the overall educational mission of PBS.<sup>222</sup> Accordingly, we conclude that it is important to continue to require commercial stations to display the E/I symbol throughout Core Programs to help parents identify educational programming for their children.<sup>223</sup>

## 2. Program Guides

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stations to post information regarding such schedule changes on their websites.

<sup>205</sup> We strongly encourage broadcast stations to provide on-air notifications that are both audible and visible to ensure that they are accessible to individuals who have vision or hearing disabilities.

<sup>206</sup> One broadcaster suggests that its stations have been unable to air breaking news due to children's programming obligations. Nexstar Comments at 5 (“[M]ore than 75 percent of Nexstar's general managers report not airing local sports programs, health specials, parades, debates and national breaking news as well as preempting their stations' local news or not producing additional local news programs – all due to the FCC's current KidVid requirements.”). As Litton points out, however, our current preemption policy clearly allows stations to preempt Core Programs for breaking news without rescheduling the Core Programs. Litton Reply at 13. See *2004 Report and Order*, 19 FCC Rcd at 22957, para. 39. We continue to believe that it is critical that broadcasters be permitted to air time-sensitive news, such as news about weather and other local emergencies and national breaking news, without concern that they might not be able to fit preempted Core Programs into their schedules.

<sup>207</sup> NAB June 13, 2019 *Ex Parte* Letter at 4.

<sup>208</sup> *Id.* at 5. In contrast, live coverage of all of a local sports team's or local sports league's regular games would not be considered “non-regularly scheduled live programming,” even if the scheduling of the games varies somewhat from week to week and is only aired during a set portion of the year. We will not treat a seasonal (e.g., annual or semi-annual) preview of a sports team as a recurring program. We also will not treat as a recurring program an occasional, multipart series of a special program of local interest to the community, such as a series on opioid addiction in the community. *Id.*

<sup>209</sup> *Id.* (asserting that this approach is in line with the way the Commission described locally produced programming in its *Closed Captioning and Video Description Order*) (citing *Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176, Order on Reconsideration, 13 FCC Rcd 19973, 20000, para. 61 (1998).

<sup>210</sup> See *supra* para. 7.

<sup>211</sup> See FCC Form 2100, Schedule H, Children's Television Programming Report, <https://transition.fcc.gov/Forms/Form2100/2100H-screens.pdf>.

59. We retain the requirement that broadcasters provide information identifying programming specifically designed to educate and inform children to publishers of program guides. 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.<sup>224</sup> We recognize that publishers of program guides are not obligated to include children’s programming information provided by stations in their guides.<sup>225</sup> Nevertheless, commenters indicate that some parents continue to rely on program guides to make informed decisions about educational and informational programming for their children.<sup>226</sup> Further, we find that it is not a significant burden for broadcasters to provide information identifying programming specifically designed to educate and inform children to program guide publishers.<sup>227</sup> Moreover, given that broadcast stations will have the flexibility to air a limited amount of programming that is not regularly scheduled on a weekly basis under the revised processing guidelines,<sup>228</sup> we think that it will remain important for broadcasters to provide information identifying such programming to publishers of program guides to assist parents in locating this programming for their children. However, we will no longer require broadcasters to provide program guides publishers an indication of the age group intended to watch their educational and informational programming since it appears that very few program guides include this information. We are confident that parents can decide whether a particular Core Program is age-appropriate for their children based on the description of the program or by watching the program with their children.

### 3. Reporting Requirements

60. We revise the children’s programming reporting requirements to streamline them and eliminate unnecessary and burdensome requirements. As discussed above, commercial television broadcasters currently are required to file a Children’s Television Programming Report on FCC Form 398 on a quarterly basis providing detailed information regarding efforts made during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children.<sup>229</sup>

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<sup>212</sup> *NPRM*, 33 FCC Rcd at 7053, para. 25.

<sup>213</sup> *2004 Report and Order*, 19 FCC Rcd at 22958-59, paras. 43-46.

<sup>214</sup> *Id.* at 22960, para. 47. We note that noncommercial stations are not otherwise subject to the reporting requirements and the public information initiatives applicable to commercial stations. *1991 Reconsideration Order*, 6 FCC Rcd at 5101, paras. 44-45.

<sup>215</sup> PTV Comments at 3 n.10.

<sup>216</sup> 47 CFR § 73.621(a) (“Except as provided in paragraph (b) of this section, noncommercial educational broadcast stations will be licensed only to nonprofit educational organizations upon a showing that the proposed stations will be used primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service.”).

<sup>217</sup> We also note that since PBS has its own 24/7 multicast stream for kids, PBS KIDS, it should be easy for parents to locate this programming. *See supra* para. 11.

<sup>218</sup> *See, e.g.*, <https://weta.org/kids/programsatoz> (last visited Apr. 26, 2019).

<sup>219</sup> NAB Comments at 19 n.50.

<sup>220</sup> Litton Comments at 28; NHMC Comments at 14-15; NHMC Reply at 9-10.

<sup>221</sup> *See supra* note 51.

<sup>222</sup> *See, e.g.*, PBS Mission Statement, <http://www.pbs.org/about/about-pbs/mission-statement/> (“As America’s largest classroom, PBS is available to all of America’s children – including those who can’t attend preschool – and offers educational media that help prepare children for success in school. PBS is committed to bringing the power of media into the classroom - helping educators to engage students in new and different ways.”). In addition, PBS

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The record reflects that compiling these reports places significant burdens on stations, particularly smaller stations with limited staff resources.<sup>230</sup> Further, it appears that some of the information required by these reports has little practical utility or benefit to the public today.<sup>231</sup> Our revisions will reduce reporting burdens on broadcasters, while ensuring that Commission staff and the public still have sufficient information to verify stations' compliance with the children's programming rules.

61. We require that broadcasters file the reports on an annual rather than quarterly basis, consistent with the tentative conclusion in the *NPRM*.<sup>232</sup> We concur with commenters that quarterly reporting places an undue burden on stations, especially smaller stations.<sup>233</sup> Broadcasters assert that the level of granularity and redundant information required by the current form requires that stations devote a significant amount of time and resources to compiling these reports each quarter.<sup>234</sup> NAB notes, for example, that in the first quarter of 2018, the reports of the 16 television stations owned by one NAB member station group totaled 492 pages, with an average of nearly 31 pages per station, and that based on the first quarter's numbers, this group expected to file an estimated total of 1,968 pages in 2018 detailing its children's programming.<sup>235</sup> Another NAB member station group reported that each quarter, its stations' legal, programming, and operations departments spend a combined 30 hours compiling information for the reports, submitting the reports to the Commission, and updating station records to reflect that the work was completed.<sup>236</sup> Gray asserts that staff at its stations in the smaller markets of Charlottesville, Virginia, and Sioux Falls, South Dakota, spend up to six or seven hours per quarter preparing the reports.<sup>237</sup>

62. Moreover, while the quarterly reporting requirement was intended to "provide[] more current information about station performance and encourage[] more consistent focus on educational programming efforts,"<sup>238</sup> it does not appear that requiring broadcasters to file these reports on a quarterly basis serves any useful purpose today. Broadcasters confirm that there is little variation in the reports from quarter to quarter.<sup>239</sup> Further, while the record reflects that some interested parties examine the reports at license renewal time to verify stations' compliance with the CTA,<sup>240</sup> there is no evidence in the

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member stations are required as a condition of membership to broadcast at least seven hours of educational children's content per weekday on the station's primary video channel. PTV Comments at 4.

<sup>223</sup> We note that if a commercial broadcaster believes that displaying the E/I symbol throughout a Core Program would present technical challenges when the programming is viewed on smaller screens (e.g., mobile devices), the broadcaster may seek a waiver of the on-air notification requirement under section 1.3 of the Commission's rules. See 47 CFR § 1.3. The on-air notification requirement applies only to Core Programming that is broadcast over-the-air and does not apply when such programming is streamed online, such as to devices with smaller screens (e.g., mobile devices). However, if the E/I symbol is added to Core Programming at the time of production, it may be difficult or cost prohibitive to subsequently remove the E/I symbol before it is streamed to devices with smaller screens. Furthermore, as ATSC 3.0 rolls out, new technology is expected to facilitate the over-the-air distribution of broadcast television to mobile and portable devices. See Daniel Frankel, *Sinclair Launches ATSC 3.0 Chips at CES*, Multichannel News (Jan. 8, 2019), <https://www.multichannel.com/news/sinclair-launches-atsc-chips> (noting that Sinclair Broadcast Group has debuted an ATSC 3.0 chip designed for mobile and portable devices that will permit the over-the-air distribution of NextGen TV to such devices). To the extent that the E/I symbol presents particular technical challenges when displayed on Core Programming streamed or broadcast over-the-air to smaller screens (e.g., the E/I symbol does not properly display on smaller screens), the Commission will entertain requests from broadcasters for waiver of the on-air notification requirement.

<sup>224</sup> *1996 Report and Order*, 11 FCC Rcd at 10714, para. 113.

<sup>225</sup> Letter from Robert J. Folliard, III, Vice President, Government Relations & Distribution, Gray Television, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 18-202 and 17-105, at 2 (filed July 2, 2019) (Gray July 2, 2019 *Ex Parte* Letter) (asserting that most major guide publishers do not provide any information about educational and informational programming); Gray Comments at 4 (noting that program guide publishers are not obligated to include children's programming information provided by stations in their guides and that some major program guides do not include this information); NAB Comments at 40 n.109 (noting that broadcast stations provide

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record that the public regularly uses the reports on a quarterly basis to monitor station compliance with the CTA or for any other purpose.<sup>241</sup> In addition, most programming information is readily available on the Internet and will likely be available through at least some program guides. Accordingly, we conclude that 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.

63. We require that broadcasters file their annual Form 398 within 30 days after the end of the calendar year, rather than ten days after the end of the reporting period as is currently required.<sup>242</sup> We agree with NAB that a 30-day deadline will provide broadcasters sufficient time to prepare and file the reports without unduly delaying the posting of the reports in stations' online public files.<sup>243</sup> Broadcasters may begin filing their reports on January 1, and we encourage broadcasters to implement processes to ensure accurate completion and timely filing of their annual reports.

64. We also modify Form 398 to eliminate the need for broadcasters to submit duplicative and unnecessary information and to both simplify and streamline the form. We eliminate the requirement that reports include information on the educational and informational programming that a broadcast station intends to air during the next reporting period. As NAB observes, there is no evidence that parents or children consult the reports to plan their future viewing.<sup>244</sup> Further, as discussed above, there is little change in programming over the course of the year.<sup>245</sup> Moreover, information about upcoming programming is available in program guides and online.<sup>246</sup> Thus, there appears to be no public benefit to requiring stations to report in detail on the programming they expect to air in the future.

65. In addition, we no longer require stations to describe the educational and informational objective of each Core Program and how it meets the definition of Core Programming. This requirement was intended to ensure that licensees devote attention to the educational and informational goals of Core Programming and allow parents and other interested parties to participate more actively in monitoring licensee compliance with the CTA.<sup>247</sup> As Nexstar points out, however, "the act of providing a program

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information about their educational and informational programming to program guides because they want as many viewers as possible, but program guide services have no obligation to include this information in their guides).

<sup>226</sup> NHMC Comments at 14-15; Brennan Comments at 3. Gray suggests that "[p]arents looking for information about children's programs are more likely to turn to the internet than to consult a newspaper programming guide. Indeed, the information available online is far more comprehensive than that provided in a programming guide." Gray Comments at 4. *See also* Cadillac Comments at 4 (asserting that "any parent who wishes to know exactly what a station is broadcasting at any given time can easily search any number of publicly-available, free web-sites"). Our program guide rule does not distinguish between print and online program guides. *See* 47 CFR § 73.673 ("Each commercial television broadcast station licensee shall provide information identifying programming specifically designed to educate and inform children to publishers of program guides."). We agree that many parents may turn to the Internet to identify and locate children's programming and encourage broadcast stations to provide information identifying programming specifically designed to educate and inform children to a variety of program guides, both print and online.

<sup>227</sup> Gray July 2, 2019 *Ex Parte* Letter at 13 (arguing that "[i]t is self-evident that forcing broadcasters to provide specific information to program guide publishers imposes some burden on broadcasters" and noting that broadcasters may be subject to substantial forfeitures for failing to provide information to program guide publishers).

<sup>228</sup> *See supra* paras. 38-42.

<sup>229</sup> 47 CFR § 73.3526(e)(11)(iii). The report requires licensees to specify the average weekly number of hours of Core Programming aired by the station on its primary program stream and any 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, including 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

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narrative does not necessarily incentivize broadcasters to ‘devote attention to the goals of Core Programming.’ Indeed, since broadcasters generally purchase Core compliant children’s television programming packages, the narratives are usually provided by the program provider.”<sup>248</sup> Thus, requiring stations to include this narrative in their reports does not appear to serve the intended purpose of ensuring that licensees devote attention to the educational and informational goals of Core Programming. Further, as discussed above, it does not appear that the public routinely relies on the programming descriptions contained in the reports to monitor station compliance or to identify and locate programming for their children.<sup>249</sup> Rather, we expect that parents today are more likely to rely on online sources, such as online TV listings and programming guides and program producers’ websites, to find program descriptions.<sup>250</sup> Given that descriptions of Core Programming are readily available from numerous other sources, we conclude that eliminating this information from the Form 398 will reduce reporting burdens on broadcasters without impairing the ability of the public or Commission staff to monitor stations’ compliance with their children’s programming obligations. We retain the requirement to identify the target age of Core Programming in the Form 398. The purpose of this requirement is to ensure that Core Programs effectively target a specific child audience and to provide information to parents regarding the appropriate age for Core Programs.<sup>251</sup> While it does not appear that the public routinely uses this information to monitor station compliance or to identify programming for their children, the Commission uses this information in determining a station’s compliance with the commercial limits in children’s programming.<sup>252</sup> Since the commercial limits apply only to programming intended for children 12 years old and younger,<sup>253</sup> we streamline the Form 398 to allow licensees to check a box on the form indicating whether programming is designed to serve the educational and informational needs of young children (ages 12 and under) or teenage viewers (ages 13 to 16). This will be sufficient to ensure that Core Programs target a specific child audience and provide the Commission with the information it needs to determine compliance with the commercial time limits while decreasing reporting burdens.

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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 E/I symbol. In addition, the report requires licensees to certify that at least 50% 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; 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. See FCC Form 2100, Schedule H, Children’s Television Programming Report, <https://transition.fcc.gov/Forms/Form2100/2100H-screens.pdf>.

<sup>230</sup> See, e.g., Gray Comments at 2; Block Comments at 9; Cadillac Comments at 3-4; Network Commenters at 6; Meredith Comments at 3; NAB Comments at 36-37; NRB Comments at 3-4; Nexstar Comments at 8-9; Hearst Reply at 21; ION Reply at 4.

<sup>231</sup> See *infra* note 241.

<sup>232</sup> *NPRM*, 33 FCC Rcd at 7055, para. 30.

<sup>233</sup> Gray Comments at 2; Block Comments at 9; Cadillac Comments at 3-4; Network Commenters at 6; Meredith Comments at 3; NAB Comments at 36-37; NRB Comments at 3-4; Nexstar Comments at 8-9; Hearst Reply at 21; ION Reply at 4. See also Child Advocates Reply at 16 (asserting that while it does not believe that the reporting requirements are burdensome, it does not object to reducing the frequency of filing).

<sup>234</sup> Block Comments at 9; Cadillac Comments at 3; Gray Comments at 2; NAB Comments at 36; Nexstar Comments at 8-9; NRB Comments at 3-4; Hearst Reply at 21; ION Reply at 4. According to Network Commenters, “[t]he time commitment required to file these reports begins long before they are filed. Stations must track and review the weekly program grids issued by their networks or syndicators. Each week, broadcasters must record the program title, origination, days and times aired, total times aired, length of program, target age, and educational objective, in addition to confirming that each program did in fact air with the requisite E/I symbol. They must also record changes in programming during the quarter and preemptions of programming for live news and sporting events.” Network Commenters Comments at 6-7.



66. Furthermore, we modify the form to eliminate the requirement to identify which program guide publishers were sent information identifying each Core Program aired on the station. There is no evidence that the public uses this information and, as noted by commenters, program guide publishers are not obligated to include children's programming information provided by stations in their guides.<sup>254</sup> Broadcasters are still required to certify that they sent the required information to program guide publishers.

67. We also make other modifications to Form 398 as needed to conform the form with the revisions to the children's programming rules we are adopting in this proceeding, including the changes to the processing guidelines and preemption policies.<sup>255</sup> We direct the Media Bureau to make the necessary changes to Form 398 to implement our revised rules and policies in a manner that is consistent with this *Report and Order*.

68. We decline, however, to further streamline the report to permit broadcasters to certify their compliance with the children's programming requirements, instead of providing detailed information documenting their compliance, a proposal on which we sought comment in the *NPRM* and which is supported by a number of commenters.<sup>256</sup> We believe that the modifications we are making to the reporting requirements and Form 398, as discussed above, are warranted to provide broadcasters relief from unnecessary reporting burdens. We conclude, however, that it continues to be necessary to require broadcasters to provide certain details concerning their Core Programming to enable Commission staff and the public to verify their compliance with the children's programming rules. Child Advocates note, for example, how information from past reports served as the basis for petitions to deny the renewal applications of two stations in Washington, DC, and two stations in Cleveland, Ohio, for failing to provide a sufficient quantity of programming specifically designed to educate and inform children.<sup>257</sup> We agree with Child Advocates that if stations were not required, at a minimum, to identify their Core Programs and when they were aired, the public would not be able to determine if a station actually

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<sup>255</sup> NAB Comments at 37. *See also* Nexstar Comments at 8-9 (asserting that these reports often run 30-40 pages in length); ION Reply at 4 (asserting that ION's first quarter 2018 reports for its 65 television stations totaled more than 2,600 pages, averaging 41 pages per station).

<sup>256</sup> NAB Comments at 37.

<sup>257</sup> Gray Comments at 2.

<sup>258</sup> *1996 Report and Order*, 11 FCC Rcd at 10693, para. 68.

<sup>259</sup> Block Comments at 9; Cadillac Comments at 3; Nexstar Comments at 8-9.

<sup>260</sup> *See infra* para. 68.

<sup>261</sup> Gray Comments at 3 (asserting that it is unaware of any viewer who uses the quarterly reports to monitor a station's CTA compliance); NAB Comments at 36 (asserting that there is no evidence that parents routinely use quarterly reports to guide their children's viewing or for any other purpose); Network Commenters Comments at 7 (asserting that "[t]o the extent the quarterly reports were intended to help parents identify educational programming suitable for their children, there are numerous more readily accessible sources of information available to parents today to locate upcoming educational and informational programs, such as program listings published in newspapers and on station websites, Internet searches, and interactive guides on televisions or other devices"); NRB Comments at 3 (asserting that there is no proof that the Form 398 helps parents identify and locate programming for their children); Hearst Reply at 21 (arguing that the quarterly reports are of limited if any practical utility to parents in the viewing audience); ION Reply at 4 (arguing that the quarterly reports are difficult to read and understand and that it is highly unlikely that many (if any) parents make use of them when making programming choices for their children); NAB Reply at 32 (asserting that parents do not rely on stations' quarterly children's TV reports to find educational and informational programming).

<sup>262</sup> Cadillac Comments at 3; Meredith Comments at 3; NAB Comments at 36; Hearst Reply at 21.

<sup>263</sup> NAB Comments at 36.

complied with its public interest obligations, let alone have information sufficient to file a petition to deny, and Commission staff would likewise lack the information necessary to determine whether a station had satisfied its children's programming obligations.<sup>258</sup> Particularly considering the revisions to the Core Programming requirements and processing guidelines we are making in this proceeding to provide broadcasters additional flexibility, we think it is necessary that Commission staff and the public have the ability to effectively monitor stations' compliance with the children's programming rules.

69. Finally, consistent with the tentative conclusion in the *NPRM*, we eliminate the requirement that licensees publicize the existence and location of their Form 398s.<sup>259</sup> This requirement was originally intended to "heighten awareness of the CTA and invite members of the public to take an active role in monitoring compliance."<sup>260</sup> As NAB notes, this requirement predates the hosting of television stations' public files, which include the children's programming reports, on the Commission's website.<sup>261</sup> Given that television stations are now required to provide a link to their Commission-hosted online public files from the home page of their own websites, this requirement serves little purpose today.<sup>262</sup> Additionally, there is no evidence in the record that this requirement encourages viewers to seek out stations' Form 398s or to take an active role in monitoring stations' compliance with the CTA.<sup>263</sup>

#### 4. Recordkeeping Requirements for Commercial Limits

70. We revise our rules to require broadcasters, cable operators, and DBS providers to place records sufficient to demonstrate compliance with the limits on commercial matter in children's programming in their public files on an annual basis, rather than on a quarterly basis as is currently required.<sup>264</sup> We agree with commenters that collecting documentation from programming networks to verify compliance with the commercial limits on a quarterly basis is burdensome for cable operators and DBS providers that must collect such documentation from dozens, if not hundreds, of programming networks.<sup>265</sup> ACA states that its members, most of which are small cable operators, report spending 16 to 20 hours per quarter—a total of 64 to 80 hours per year—attempting to collect the necessary documents.<sup>266</sup> Further, we conclude that permitting these entities to post their records demonstrating

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<sup>244</sup> *Id.* at 39. *See supra* note 241.

<sup>245</sup> *See supra* para. 62.

<sup>246</sup> *See supra* para. 59.

<sup>247</sup> *1996 Report and Order*, 11 FCC Rcd at 10704, para. 93.

<sup>248</sup> Nexstar Comments at 9. *See also* Litton Comments at 26 n.79 (stating that Litton actually provides the substantive content for the Form 398 for all stations to which Litton provides programming).

<sup>249</sup> *See supra* para. 64.

<sup>250</sup> Network Commenters Comments at 7 (asserting that there are numerous sources of information available to parents today to locate upcoming educational and informational programs, such as program listings published in newspapers and on station websites, Internet searches, and interactive guides on televisions or other devices); Nexstar Comments at 9 (asserting that "program content information or summaries are generally available on the internet for parental consideration"). We also note that many producers of children's educational and informational programming have websites which include detailed descriptions of each episode of their programming. *See, e.g.*, <http://www.litton.tv/television>; <https://www.rotfeldproductions.com/tv-shows/>.

<sup>251</sup> *1996 Report and Order*, 11 FCC Rcd at 10704-05, para. 95.

<sup>252</sup> While broadcast stations are required to certify their compliance with the commercial limits, these certifications do not list the Core Programs or target ages of the Core Programs. Commission staff uses the information on the Form 398s when it receives complaints alleging violations of the commercial limits.

<sup>253</sup> 47 CFR § 73.670 Note 2 ("For purposes of this section, children's programming refers to programs originally produced and broadcast primarily for an audience of children 12 years old and younger.").

<sup>254</sup> Gray Comments at 4; NAB Comments at 40 n.109.

compliance with the commercial limits in their public files annually rather than quarterly will not result in any loss of accountability or transparency. We reject a proposal by AT&T and NCTA that cable operators and DBS providers be permitted to file documentation demonstrating compliance with the commercial limits only in the event of a complaint.<sup>267</sup> We find that this proposal is outside the scope of this proceeding.

71. We also extend the deadline for broadcasters, cable operators, and DBS providers to post to their public files the documents demonstrating compliance with the commercial limits to 30 days after the end of the calendar year.<sup>268</sup> Commenters assert that it is unnecessarily burdensome to collect, scan and upload hundreds of certifications within ten days of the close of a reporting period, as is currently required.<sup>269</sup> We agree and find that there is no reason to believe that granting broadcasters, cable operators, and DBS providers an additional 20 days to post this documentation in their public files would undermine the purpose of the recordkeeping obligation. We decline, however, to give these entities 45 days from the end of the calendar year to post the documentation to their public files, as requested by ACA.<sup>270</sup> We expect that 30 days will provide sufficient time for broadcasters, cable operators, and DBS providers to collect and post the required documentation. We also decline to adopt ACA's proposal to make clear that "the Media Bureau will not adopt an official Notice of Apparent Liability for Forfeiture against any small or medium-sized cable operator for violating the children's programming recordkeeping requirement if that operator can demonstrate in response to a Bureau inquiry that it made a good faith effort to collect and post to [its] online file all necessary programmer certificates and program lists by the Commission's deadline."<sup>271</sup> ACA's proposal is outside of the scope of this proceeding. Nevertheless, we note that any good faith efforts to comply with this requirement would be taken into account as a mitigating factor in a forfeiture proceeding.<sup>272</sup>

72. Finally, we also reject requests by commenters for revision of the website display rules, which permit the display of website addresses during programs directed to children ages 12 and under only if the website meets certain criteria.<sup>273</sup> These requests raise issues that are beyond the scope of this

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<sup>255</sup> For example, because we are eliminating the additional processing guidelines applicable to stations that multicast, we will eliminate the requirement to certify in Form 398 that at least 50% of the Core Programming counted toward meeting the additional programming guideline did not consist of program episodes that had already aired within the previous seven days either on the station's main program stream or on another of the station's free digital program streams. 47 CFR § 73.671(e)(3).

<sup>256</sup> *NPRM*, 33 FCC Rcd at 7057, para. 33 (seeking 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); Block Comments at 9; Cadillac Comments at 4; Gray Comments at 3; Meredith Comments at 3; NAB Comments at 41; NRB Comments at 4; Hearst Reply at 21.

<sup>257</sup> Child Advocates at 15-16.

<sup>258</sup> *Id.* at 16.

<sup>259</sup> 47 CFR § 73.3526(e)(11)(iii); *NPRM*, 33 FCC Rcd at 7058, para. 35.

<sup>260</sup> *1996 Report and Order*, 11 FCC Rcd at 10693, para. 67.

<sup>261</sup> NAB Comments at 40. *See* 47 CFR § 73.3526(b)(2)(ii) ("A station must provide a link to the public inspection file hosted on the Commission's Web site from the home page of its own Web site, if the station has a Web site, and provide contact information on its Web site for a station representative that can assist any person with disabilities with issues related to the content of the public files."); *see also* Gray Comments at 4 (stating that it supports the elimination of the requirement that stations publicize their Form 398s).

<sup>262</sup> NAB Comments at 40.

<sup>263</sup> *See id.* (asserting that there is no evidence that viewers rely on stations' efforts to publicize their Form 398s).

<sup>264</sup> We note that the *NPRM* sought comment on whether to change the recordkeeping requirements for commercial

(continued...)

proceeding.

#### H. Effective Date of Revised Children's Programming Rules

73. The revised children's programming rules we adopt in this proceeding will become effective 30 days after publication in the *Federal Register*, except for those requirements involving Paperwork Reduction Act issues, which shall become effective on the effective date announced in the *Federal Register* notice announcing OMB approval. If a broadcast station chooses to switch from the current safe harbor processing guideline of three-hours per week (as averaged over a six-month period) to one of the new annual processing guidelines for the remainder of 2019 after the effective date of the new guidelines, we will apply the current and new processing guidelines on a pro-rated basis to the periods before and after the effective date in determining whether the station satisfied the processing guidelines for 2019. We direct the Media Bureau to issue a public notice before the effective date of the new processing guidelines detailing how the pro-rated guidelines will apply.

74. In addition, we note that the current eight-year license terms for broadcast television stations will start to expire in 2020.<sup>274</sup> In this renewal cycle (i.e., for renewal applications filed between June 1, 2020 and December 1, 2023), license renewals will cover licensee performance that both pre-dates and post-dates the effective date of the revised children's programming rules. Licensee performance during the period of the license term that pre-dates the effective date of the revised rules will be evaluated under the standards existing at that time and licensee performance that post-dates the effective date of the revised rules will be evaluated in accordance with the provisions as revised herein.

### IV. FURTHER NOTICE OF PROPOSED RULEMAKING

#### A. Introduction

75. In this *Further Notice of Proposed Rulemaking (FNPRM)*, we seek further comment on

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limits from a quarterly to an annual requirement for "broadcasters and cable operators." *NPRM*, 33 FCC Rcd at 7056, para. 30. Because DBS is subject to the same rules regarding commercial limits that apply to cable operators, our revision of the recordkeeping requirement for cable operators necessarily applies to DBS as well. *DBS Public Interest Obligations Second Order on Reconsideration*, 19 FCC Rcd at 5668, para. 48 ("[W]e will require DBS providers to comply with the rules regarding commercial limits on children's programming that apply to cable operators.").

<sup>265</sup> American Cable Association Comments at 3 (ACA); AT&T Services, Inc. Comments at 3 (AT&T); NCTA Comments at 12. Nexstar, the only broadcaster to address this issue, also supports making this an annual rather than quarterly requirement. Nexstar Comments at 9.

<sup>266</sup> ACA Comments at 4-5. ACA explains that while some program groups provide a single document that covers all of their networks, most create separate documents for each network, such that cable operators are responsible for tracking down, collecting, and processing well over one hundred individual files. Most programmers do not send their documentation to cable operators directly, but rather make their certificates or program lists available for download on a website accessible to cable operators with whom they have a carriage agreement. In addition, many programmers do not make their documents available until very close to (or even after) the date that cable operators are required to post them to their online public file. Few programmers inform a cable operator that the documentation has been posted, so operators must spend time checking and re-checking programmers' websites, as well as attempting to communicate with them via telephone or email to inquire after their status. *Id.* at 3-4.

<sup>267</sup> AT&T Comments at 2; NCTA Comments at 12.

<sup>268</sup> AT&T Comments at 3 (asserting that the Commission should allow DBS providers and cable operators up to 30 days after the close of the calendar year to upload programmer certificates to their online public files).

<sup>269</sup> ACA Comments at 5; AT&T Comments at 3.

<sup>270</sup> ACA Comments at 5; Letter from Mary C. Lovejoy, Vice President of Regulatory Affairs, ACA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-202, at 1 (March 8, 2019) (*ACA Ex Parte Letter*).

the creation of a framework under which a broadcaster could satisfy its children's programming obligations by relying in part on special efforts to produce or support Core Programming aired on another station or stations in the market.<sup>275</sup> The CTA permits the Commission to consider special sponsorship efforts, in addition to consideration of a licensee's programming, in evaluating whether a licensee has served the educational and informational needs of children.<sup>276</sup> In the *NPRM*, the Commission noted that "few, if any, broadcasters have taken advantage of this opportunity to date" because the rules require the full Commission to approve the children's programming portion of renewal applications relying on such special efforts and there is little guidance on how such special efforts will be counted.<sup>277</sup> The Commission accordingly invited comment on the establishment of a framework that would make the use of special sponsorship efforts a more viable option for broadcasters.<sup>278</sup> We received very few comments on this issue. As NAB asserts, however, "[n]o broadcaster . . . will increase the risk to its license renewal by relying on a vague, uncertain option for fulfilling its children's TV obligations. To encourage stations to explore sponsorships, the standards for this option must be clear."<sup>279</sup> Because the current record does not provide an adequate foundation for the Commission to adopt a clear standard for special sponsorship efforts, this *FNPRM* aims to create a more robust record and to solicit industry proposals for a detailed framework for evaluating special sponsorship efforts.

## B. Discussion

76. We invite commenters to submit proposals detailing a specific framework under which special sponsorship efforts may be considered as part of a broadcaster's license renewal. We tentatively conclude that such proposals should include, at a minimum, the following three elements: (1) the station must sponsor programming on a noncommercial television broadcast station located in the same DMA; (2) the proposal must establish a benchmark for how much funding a sponsoring station would be required to provide based on the size or circumstances of the sponsoring station; and (3) the sponsorship must result in the creation of new Core Programming or expanded hours of an existing Core Program. We discuss these three elements and seek comment on our tentative conclusions below.

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<sup>271</sup> ACA Comments at 6; ACA *Ex Parte* Letter at 1.

<sup>272</sup> 47 CFR 1.80(b), Section II. Adjustment Criteria for S503 Forfeitures (listing "good faith" compliance efforts as a downward adjustment criteria in potential forfeiture actions).

<sup>273</sup> NAB Comments at 34-35 (asserting that the website display rules make it unlikely that broadcasters will experiment with educational and informational programming on online platforms because these rules did not anticipate the ubiquitous presence of banner ads on websites, or the huge role of mobile apps and app stores, where, mixed among free educational apps, there are other apps that must be purchased); NCTA Comments at 8-11 (asserting that the website display rules diminish program networks' ability to use the web in creative ways to enhance the appeal to children of their child-friendly linear programming). See 47 CFR §§ 73.670(b), 76.225(b) (both providing that "[t]he display of Internet website addresses during program material is permitted only if the website: 1) offers a substantial amount of *bona fide* program-related or other noncommercial content; 2) is not primarily intended for commercial purposes, including either e-commerce or advertising; 3) the website's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and 4) the page of the website to which viewers are directed by the website address is not used for e-commerce, advertising, or other commercial purposes").

<sup>274</sup> See Broadcast Television License Renewals by STATE, <https://www.fcc.gov/media/television/broadcast-television-license-renewal-dates-by-state>.

<sup>275</sup> See *NPRM*, 33 FCC Rcd at 7061-63, paras. 44-48.

<sup>276</sup> 47 U.S.C. § 303b(b).

<sup>277</sup> *NPRM*, 33 FCC Rcd at 7061, para. 44.

<sup>278</sup> *Id.*

<sup>279</sup> NAB Comments at 33.

77. First, we tentatively conclude that a proposed framework for special sponsorship efforts should require that the station sponsor programming on an in-market noncommercial station. We think that it would be beneficial to foster sponsorship of children's educational and informational programming on stations that are more likely to attract child audiences. Noncommercial stations in general, and PBS stations in particular, have a demonstrated commitment to serving the educational and informational needs of children and therefore may be more likely to attract larger audiences for their children's programming.<sup>280</sup> NAB states that public television's experience with the 24/7 PBS KIDS channel illustrates that fostering more educational content on child-focused stations or program streams could boost viewership, as children's viewing of PBS has increased 47% among low-income families and 32% in broadcast-only homes since the inception of PBS KIDS.<sup>281</sup> We seek comment on our tentative conclusion. Should we require that there be significant overlap between the coverage area of the sponsoring station and that of the noncommercial station? Are there other benefits to promoting sponsorship of children's programming on noncommercial stations? For example, is it reasonable to expect that it would be easier for parents to identify and locate Core Programming aired on noncommercial stations?<sup>282</sup> Alternatively, should we consider a framework that also would permit special sponsorship efforts on in-market commercial stations?

78. Second, we tentatively conclude that a proposed framework for special sponsorship efforts should include a funding benchmark that takes into account the size or circumstances of the sponsoring station. Specifically, we tentatively conclude that large broadcast stations and/or stations with greater resources should be required to undertake more substantial sponsorship efforts (i.e., by providing a higher level of funding) than small broadcast stations and/or stations with less resources in order to receive sponsorship credit. We seek comment on this tentative conclusion. In addition, we seek comment on how to define or categorize sponsoring stations for purposes of such a requirement. For example, should sponsoring stations be categorized based on annual revenues, network affiliation and market size, or some other measure that appropriately factors the size and resources of the station? How many separate categories of sponsoring stations should there be? Further, we seek comment on how much funding a station in each of these categories should be required to provide to receive credit for sponsoring programming on an in-market noncommercial station. Should such funding levels be defined as a percentage of the cost to produce the Core Program for a noncommercial station, a percentage of the sponsoring station's annual revenues, a percentage of the sponsoring station's advertising revenues for the timeslot "freed up" as a result of the sponsorship, or should such funding levels be based on some other measure?

79. Third, consistent with the Commission's previous guidance on this issue, we tentatively conclude that a proposed framework for special sponsorship efforts must require that the sponsorship result in the creation of new Core Programming or expand the hours of an existing Core Program on the in-market noncommercial station.<sup>283</sup> We think that a licensee should receive credit only where its

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<sup>280</sup> PBS member stations, which make up 90% of all noncommercial television stations, are required as a condition of membership to broadcast at least seven hours of educational children's content per weekday on the station's primary video channel. PTV Comments at 4. *See 1991 Reconsideration Order*, 6 FCC Rcd at 5101, para. 45 (recognizing the commitment noncommercial stations in general have demonstrated to serving children).

<sup>281</sup> NAB Reply at 37.

<sup>282</sup> *See* MBC Comments at 2 (asserting that if the Commission's goal is to reach the most children with quality educational and informational programming, it makes sense to consolidate such programming in fewer, more easily locatable places).

<sup>283</sup> *See 1996 Report and Order*, 11 FCC Rcd at 10725, para. 138 ("To receive credit under this provision 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.").

sponsorship results in a net increase in the amount of Core Programming on the in-market noncommercial station. We seek comment on this tentative conclusion.

80. We invite commenters to address the costs and benefits of the proposed framework discussed above and to suggest alternatives. In particular, we invite noncommercial stations to provide input on how this or any alternative proposed framework would be effective in facilitating the sponsorship of children's educational and informational programming on noncommercial stations. We reiterate that without a clear framework for evaluating the sponsorship efforts of broadcast stations, broadcasters are unlikely to risk their license renewals by pursuing this option; thus, we urge commenters to offer detailed proposals so that we are able to provide specific guidance on how special sponsorship efforts will be evaluated.

81. We seek comment on how a station's sponsorship efforts should be attributed to its overall Core Programming hours. We tentatively conclude that a sponsored Core Program that satisfies each element of the proposed framework discussed above should be counted on a minute-for-minute basis (i.e., count each minute of a sponsored program as the equivalent of a minute of Core Programming). We request comment on this tentative conclusion and invite commenters to suggest alternative proposals for quantifying sponsorship efforts. Should multiple stations in the same market be permitted to jointly sponsor a Core Program on an in-market noncommercial station? If so, how should each station's individual sponsorship efforts count toward its overall Core Programming hours?

82. As noted above, the CTA states that special sponsorship efforts may be considered only "in addition to considering the licensee's [educational] programming."<sup>284</sup> Thus, we think it is clear that the statute requires that each broadcast station air some amount of Core Programming on its own station. We seek comment on whether broadcasters that sponsor Core Programs on in-market noncommercial stations should have the flexibility to decide how much Core Programming to air on their own stations, provided that their Core Programming hours when combined with their special sponsorship efforts are the equivalent of 156 annual Core Programming hours under the revised processing guidelines, or whether we should establish a minimum number. Additionally, we seek comment on how special sponsorship efforts will work in conjunction with our revised processing guidelines. We tentatively conclude that a station that sponsors programming on an in-market noncommercial station should treat all such sponsored programming as regularly scheduled weekly programming for purposes of the processing guidelines. Thus, for example, if a station sponsors a half hour per week of Core Programming on an in-market noncommercial station for 52 weeks, the station will be credited with airing 26 hours of regularly scheduled weekly programming. The station could then satisfy the processing guidelines by complying with either Category A or B for the remaining hours. We seek comment on this tentative conclusion.

83. Finally, we tentatively conclude that Media Bureau staff, rather than the full Commission, should be permitted to approve the children's programming portion of renewal applications of licensees relying in part on special sponsorship efforts that satisfy the proposed framework discussed above. We tentatively conclude that requiring full Commission review of the renewal applications of stations engaging in sponsorship efforts effectively discourages any station from exploring such an option.<sup>285</sup> We seek comment on this tentative conclusion. In addition, we note that FCC Form 398, Children's Television Programming Report, requires stations to provide certain information regarding each Core Program sponsored on another station.<sup>286</sup> We request comment on any changes to this portion of the form that may be necessitated as a result of guidance on special sponsorship efforts provided in this proceeding.

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<sup>284</sup> 47 U.S.C. § 303b(b).

<sup>285</sup> NAB Comments at 33.

<sup>286</sup> See FCC Form 2100, Schedule H, Children's Television Programming Report, <https://transition.fcc.gov/Forms/Form2100/2100H-screens.pdf>.

## V. PROCEDURAL MATTERS

84. *Ex Parte Rules.* The proceeding the *Further Notice of Proposed Rulemaking* initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>287</sup> 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.

85. *Comment Filing Procedures.* 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 that 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.
  - All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room 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 12<sup>th</sup> Street, SW, Washington DC 20554.

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<sup>287</sup> 47 CFR §§ 1.1200 – 1.1216.



- 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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

86. *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 12<sup>th</sup> 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.

87. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix C. Written public comments are requested in the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the *Further Notice of Proposed Rulemaking*, as set forth on the first page of this document and have a separate and distinct heading designating them as responses to the IRFA.

88. *Final Regulatory Flexibility Act Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, as amended,<sup>288</sup> the Commission's Final Regulatory Flexibility Analysis of the *Report and Order* is attached as Appendix B.

89. *Paperwork Reduction Analysis.* The *Report and Order* contains either new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).<sup>289</sup> It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. The Commission will publish a separate document in the *Federal Register* at a later date seeking these comments. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. We have described impacts that might affect small businesses in the FRFA in Appendix B.

90. The *Further Notice of Proposed Rulemaking* may result in new or 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 (PRA).<sup>290</sup> Public and agency comments are due 60 days after publication of this document in the *Federal Register*. 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."

91. *Congressional Review Act.* The Commission will send a copy of the *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

92. *Additional Information.* —For additional information on this proceeding, contact Kathryn Berthot of the Media Bureau, Policy Division, (202) 418-7454, or Jonathan Mark of the Media Bureau, Policy Division, (202) 418-3634.

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<sup>288</sup> 5 U.S.C. § 603.

<sup>289</sup> Pub. L. No. 104-13.

<sup>290</sup> *See* Paperwork Reduction Act of 1995, Public Law 104-13.

**VI. ORDERING CLAUSES**

93. Accordingly, **IT IS ORDERED**, pursuant to the authority contained in sections 303, 303b, 307, 335, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 303, 303b, 307, 335, and 336, that this *Report and Order and Further Notice of Proposed Rulemaking* **IS ADOPTED**.

94. **IT IS FURTHER ORDERED** that the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix A and such rule amendments shall be effective 30 days after publication in the *Federal Register*, except for those requirements involving Paperwork Reduction Act burdens, which shall become effective on the effective date announced in the *Federal Register* notice announcing OMB approval.

95. **IT IS FURTHER ORDERED** that the Media Bureau is hereby directed to make all necessary changes to FCC Form 2100, Schedule H, to implement the changes adopted in the *Report and Order*.

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

97. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of the *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****Final Rules**

The Federal Communications Commission amends 47 CFR part 73 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, 155, 301, 303, 307, 309, 310, 334, 336, and 339.

2. Amend §73.671 to revise paragraphs (c), (d), and (e) 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 6:00 a.m. and 10:00 p.m.;
- (3) It is a regularly scheduled weekly program, except that a licensee may air a limited amount of programming that is not regularly scheduled on a weekly basis, including educational specials and regularly scheduled non-weekly programming, and have that programming count as Core Programming, as described in § 73.671(d);
- (4) It is at least 30 minutes in length, except that a licensee may air a limited amount of short-form programming, including public service announcements and interstitials, and have that programming count as Core Programming, as described in § 73.671(d);
- (5) 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;
- (6) The target child audience is specified in writing in the licensee's Children's Television Programming Report, as described in § 73.3526(e)(11)(iii); and
- (7) Instructions for listing the program as educational/informational are provided by the licensee to publishers of program guides, as described in § 73.673.

(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 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 if it 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), or a total of 156 hours of Core Programming annually, including at least 26 hours per quarter of regularly scheduled weekly

programming and up to 52 hours annually of Core Programming of at least 30 minutes in length that is not regularly scheduled weekly programming, such as educational specials and regularly scheduled non-weekly programming. A licensee will also be deemed to have satisfied this obligation and be eligible for such staff approval if it has aired a total of 156 hours of Core Programming annually, including at least 26 hours per quarter of regularly scheduled weekly programming and up to 52 hours of Core Programming that is not regularly scheduled on a weekly basis, such as educational specials and regularly scheduled non-weekly programming, and short-form programs of less than 30 minutes in length, including public service announcements and interstitials. Licensees that multicast are permitted to air up to 13 hours per quarter of regularly scheduled weekly programming on a multicast stream. The remainder of a station's Core Programming must be aired on the station's primary stream. Licensees that do not meet these processing guidelines will be referred to the Commission, where they will have full opportunity to demonstrate compliance with the CTA 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 non-broadcast efforts which enhance the value of children's educational and informational television programming.

(e) A station that preempts an episode of a regularly scheduled weekly Core Program will be permitted to count the episode toward the processing guidelines set forth in paragraph (d) as follows:

(1) A station that preempts an episode of a regularly scheduled weekly Core Program on its primary stream will be permitted to air the rescheduled episode on its primary stream at any time during Core Programming hours within seven days before or seven days after the date the episode was originally scheduled to air. The broadcast station must make an on-air notification of the schedule change during the same time slot as the preempted episode. If a station intends to air the rescheduled episode within the seven days before the date the episode was originally scheduled to air, the station must make the on-air notification during the same timeslot as the preceding week's episode of that program. If the station intends to air the rescheduled episode within the seven days after the date the preempted episode was originally scheduled to air, the station must make the on-air notification during the timeslot when the preempted episode was originally scheduled to air. The on-air notification must include the alternate date and time when the program will air.

(2) A station that preempts an episode of a regularly scheduled weekly Core Program on a multicast stream will be permitted to air the rescheduled episode on that same multicast stream at any time during Core Programming hours within seven days before or seven days after the date the episode was originally scheduled to air. The broadcast station must make an on-air notification of the schedule change during the same time slot as the preempted episode. If a station intends to air the rescheduled episode within the seven days before the date the episode was originally scheduled to air, the station must make the on-air notification during the same timeslot as the preceding week's episode of that program. If the station intends to air the rescheduled episode within the seven days after the date the preempted episode was originally scheduled to air, the station must make the on-air notification during the timeslot when the preempted episode was originally scheduled to air. The on-air notification must include the alternate date and time when the program will air.

(3) A station that preempts an episode of a regularly scheduled weekly Core Program to air non-regularly scheduled live programming produced locally by the station will not be required to reschedule the episode.

4. Amend §73.673 by deleting the second sentence to read as follows:

§ 73.673 Public information initiatives regarding educational and informational programming for children.

Each commercial television broadcast station licensee shall provide information identifying programming specifically designed to educate and inform children to publishers of program guides.

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

§ 73.3526 Local public inspection file of commercial stations.

(e) \* \* \*

(11)

(ii) *Records concerning commercial limits.* For commercial TV and Class A TV broadcast stations, records sufficient to permit substantiation of the station's certification, in its license renewal application, of compliance with the commercial limits on children's programming established in 47 U.S.C. 303a and 47 CFR 73.670. The records for each calendar year must be filed by the thirtieth day of the succeeding calendar year. These records shall be retained until final action has been taken on the station's next license renewal application.

(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 electronically filed with the Commission by the thirtieth (30) day of the succeeding calendar year. A copy of the Report will also be linked to the station's online public inspection file by 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. 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. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

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## APPENDIX B

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)<sup>1</sup> the Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking (NPRM)* released in this proceeding.<sup>2</sup> The Federal Communications Commission (Commission) sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The Commission received no comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objectives of, the Report and Order**

2. The *Report and Order* modernizes the children's television programming rules to relieve unnecessary burdens on broadcasters, allow broadcasters to offer more diverse and innovative educational programming, and provide broadcasters greater flexibility in serving the educational and informational needs of children. The *Report and Order* revises the Core Programming requirements to expand the time frame during which Core Programming must be aired to 6:00 a.m. to 10:00 p.m.; require that a majority of Core Programming be regularly scheduled weekly programming, but permit broadcast stations to air a limited amount of programming that is not regularly scheduled on a weekly basis, including educational specials and regularly scheduled non-weekly programming, and have it count as Core Programming; and require that a majority of Core Programming be at least 30 minutes in length, but permit broadcast stations to air a limited amount of short-form programming, including public service announcements and interstitials, and have it count as Core Programming.

3. In addition, the *Report and Order* modifies the safe harbor processing guidelines for determining compliance with the children's programming rules. Under Category A of the revised guidelines, Media Bureau staff will be authorized to approve the children's programming portion of a broadcaster's license renewal application if the broadcast station airs either (i) three hours per week (as averaged over a six-month period) of Core Programming, or (ii) 156 hours of Core Programming annually, including a minimum of 26 hours per quarter of regularly scheduled weekly programming and up to 52 hours of Core Programs that are not regularly scheduled weekly programs. Under Category B, Media Bureau staff will be authorized to approve the children's programming portion of a broadcaster's license renewal application if the broadcast station airs 156 hours of Core Programming annually, including a minimum of 26 hours per quarter of regularly scheduled weekly programming. The remaining hours of Core Programs (up to 52 hours) may consist educational specials, other non-regularly scheduled programming, and regularly scheduled non-weekly programming, as well as short-form programming, including public service announcements and interstitials. The difference between Category A and Category B is that innovative short-form programming is permitted under Category B. Under both Category A and Category B, broadcast stations that multicast will be permitted to air up to 13 hours per quarter of regularly scheduled weekly programming on a multicast stream. The remainder of a broadcast station's Core Programming must be aired on the station's primary stream. The *Report and Order* eliminates the additional processing guideline applicable to stations that multicast and the MVPD comparable carriage requirement.

4. The *Report and Order* also modifies the Commission's policies addressing when a station can count preempted Core Programming toward meeting the processing guidelines. The *Report and*

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<sup>1</sup> 5 U.S.C. § 603. The RFA, 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).

<sup>2</sup> *Children's Television Programming Rules; Modernization of Media Regulation Initiative*, MB Docket Nos. 18-202 and 17-105, Notice of Proposed Rulemaking, 33 FCC Rcd 7041, 7072-78, Appx. B (2017).

<sup>3</sup> 5 U.S.C. § 604.

*Order* eliminates the “second home” policy, under which a station that preempts an episode of a Core Program for any reason other than breaking news is required to air the rescheduled program in a previously-selected substitute time slot or “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 guidelines. Instead, a station that preempts an episode of a regularly schedule weekly program on its primary stream will be permitted to air the rescheduled episode on its primary stream at any time during Core Programming hours (6:00 a.m. to 10:00 p.m.) within seven days before or seven days after the date the episode was originally scheduled to air, provided that the station makes an on-air notification of the schedule change. Similarly, a station that preempts an episode of a regularly schedule weekly program on its multicast stream will be permitted to air the rescheduled episode on the same multicast stream at any time during Core Programming hours within seven days before or seven days after the date the episode was originally scheduled to air, provided that the station makes an on-air notification of the schedule change. Additionally, the *Report and Order* expands the breaking news exemption to the requirement that preempted Core Programs be rescheduled to permit a broadcast station to preempt an episode of a regularly scheduled weekly program in order to air non-regularly scheduled live programming produced locally by the station without any requirement to reschedule the episode. These preemption rules will apply to both network and non-network stations.

5. Finally, the *Report and Order* revises the public information and reporting requirements as follows:

- Eliminates the requirement that noncommercial broadcast stations identify their Core Programming with the “E/I” symbol at the beginning of the program and display this symbol throughout the program;
- Retains the requirement that broadcasters provide information identifying programming specifically designed to educate and inform children to publishers of program guides but eliminates the requirement that broadcasters provide program guide publishers an indication of the intended age group of their educational and informational programming;
- Modifies the children’s programming reporting requirements by requiring Children’s Television Programming Reports (FCC Form 398) to be filed annually rather than quarterly; requiring the filing of the reports within 30 days after the end of the calendar year; eliminating the requirements that the reports include information describing the educational and informational purpose of each Core Program aired during the current reporting period and each Core Program that the licensee expects to aired during the next reporting period; eliminating the requirement to identify the program guide publishers who were sent information regarding the licensee’s Core Programs; eliminating the requirement to publicize Form 398; and otherwise streamlining and simplifying the report; and
- Revises the rules to permit broadcast stations, cable operators, and DBS operators to file their certifications of compliance with the commercial limits in children’s programming annually rather than quarterly and to permit the filing of these certifications within 30 days after the end of the calendar year.

**B. Summary of Significant Issues Raised in Response to the IRFA**

6. No comments were filed in response to the IRFA.

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

7. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those

comments.<sup>4</sup> The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

**D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

8. 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.<sup>5</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>6</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>7</sup> 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.<sup>8</sup>

9. 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.

10. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”<sup>9</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>10</sup> 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 million or less in annual receipts.<sup>11</sup> 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.<sup>12</sup> Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

11. The Commission has estimated the number of licensed commercial television stations to be 1,383.<sup>13</sup> Of this total, 1,257 stations had revenues of \$38.5 million or less, according to Commission

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<sup>4</sup> 5 U.S.C. § 604(a)(3).

<sup>5</sup> 5 U.S.C. § 603(b)(3).

<sup>6</sup> *Id.* § 601(6).

<sup>7</sup> *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.”

<sup>8</sup> *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.

<sup>9</sup> 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>.

<sup>10</sup> *Id.*

<sup>11</sup> 13 CFR § 121.201; 2012 NAICS Code 515120.

<sup>12</sup> 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](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~515120).

<sup>13</sup> *March 31, 2019 Broadcast Station Totals.*



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 378.<sup>14</sup> 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.

12. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations<sup>15</sup> 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.

13. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.<sup>16</sup> Industry data indicate that there are currently 4,600 active cable systems in the United States.<sup>17</sup> Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard.<sup>18</sup> In addition, under the Commission’s rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers.<sup>19</sup> Current Commission records show 4,600 cable systems nationwide.<sup>20</sup> Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.<sup>21</sup> Thus, under this standard as well, we estimate that most cable systems are small entities.

14. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that,

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<sup>14</sup> *Id.*

<sup>15</sup> “[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).

<sup>16</sup> 47 CFR § 76.901(e)

<sup>17</sup> Federal Communications Commission, Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; and Procedures for Assessment and Collection of Regulatory Fees, 80 Fed. Reg. 66815 (Oct. 30, 2015) (citing August 15, 2015 Report from the Media Bureau based on data contained in the Commission’s Cable Operations and Licensing System (COALS). See [www.fcc.gov/coals](http://www.fcc.gov/coals).

<sup>18</sup> See SNL KAGAN at <https://www.snl.com/interactiveX/MyInteractive.aspx?mode=4&CDID=A-821-38606&KLPT=8> (subscription required).

<sup>19</sup> 47 CFR § 76.901(c).

<sup>20</sup> Federal Communications Commission, Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; and Procedures for Assessment and Collection of Regulatory Fees, 80 Fed. Reg. 66815 (Oct. 30, 2015) (citing August 15, 2015 Report from the Media Bureau based on data contained in the Commission’s Cable Operations and Licensing System (COALS). See [www.fcc.gov/coals](http://www.fcc.gov/coals).

<sup>21</sup> *Id.*

directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”<sup>22</sup> There are approximately 52,403,705 cable video subscribers in the United States today.<sup>23</sup> Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>24</sup> Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.<sup>25</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>26</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

15. *Direct Broadcast Satellite (DBS) Service.* DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber’s location. DBS is now included in SBA’s economic census category “Wired Telecommunications Carriers.” The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>27</sup> The SBA determines that a wireline business is small if it has fewer than 1500 employees.<sup>28</sup> Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>29</sup> Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network.<sup>30</sup> DIRECTV and DISH

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<sup>22</sup> 47 CFR § 76.901(f) and Notes to Paragraph (f) 1, 2, and 3.

<sup>23</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, Notice of Proposed Rulemaking, 31 FCC Rcd 5757, 5790, Appx. E, para. 23 (2016) (*Regulatory Fees NPRM*) (citing Office of Management and Budget (OMB) Memorandum M-10-06, Open Government Directive, Dec. 8, 2009).

<sup>24</sup> 47 CFR § 76.901(f).

<sup>25</sup> *Regulatory Fees NPRM*, 31 FCC Rcd at 5790, Appx. E, para. 23.

<sup>26</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission’s rules. See 47 CFR § 76.901(f).

<sup>27</sup> See U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>28</sup> NAICS Code 517110; 13 CFR § 121.201.

<sup>29</sup> See U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012; 2012 Economic Census of the United States*, [http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodTtype=table](http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodTtype=table).

<sup>30</sup> See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, 10507, para. 27 (2013).

Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that internally developed FCC data are persuasive that in general DBS service is provided only by large firms.

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

16. In this section, we identify the reporting, recordkeeping, and other compliance requirements adopted in the *Report and Order* and consider whether small entities are affected disproportionately by any such requirements.

17. *Reporting Requirements.* The *Report and Order* streamlines the children's television reporting requirements. The quarterly reporting requirement is replaced with an annual reporting requirement and broadcast stations will be permitted to file their reports within 30 days after the end of the calendar year, rather than ten days after the end of the reporting period, as currently required. In addition, broadcast stations will no longer be required to include in their reports information describing the educational and informational purpose of each Core Program aired during the current reporting period and each Core Program that the licensee expects to aired during the next reporting period. The requirements that broadcast stations identify in their reports the program guide publishers who were sent information regarding the licensee's Core Programs and that broadcast stations publicize their reports are also eliminated. Furthermore, the reports will be simplified and revised consistent with other modifications to the children's programming rules made in this proceeding.

18. *Recordkeeping Requirements.* The rules are revised to permit broadcast stations, cable operators, and DBS operators to file their certifications of compliance with the commercial limits in children's programming on an annual rather than quarterly basis. In addition, broadcast stations, cable operators, and DBS operators will be permitted to file these certifications within 30 days after the end of the calendar year, rather than ten days after the end of the reporting period, as currently required.

19. *Other Compliance Requirements.* The processing guidelines for determining compliance with the children's programming rules are revised. Under Category A of the processing guidelines, Media Bureau staff will be authorized to approve the children's programming portion of a broadcaster's license renewal application if the broadcast station airs either (i) three hours per week (as averaged over a six-month period) of Core Programming, or (ii) 156 hours of Core Programming annually, including a minimum of 26 hours per quarter of regularly scheduled weekly programming and up to 52 hours annually of Core Programs of at least 30 minutes in length that are not regularly scheduled weekly programs. Under Category B of the processing guidelines, Media Bureau staff will be authorized to approve the children's programming portion of a broadcaster's license renewal application if the broadcast station airs 156 hours of Core Programming annually, including a minimum of 26 hours per quarter of regularly scheduled weekly programming. The remaining hours of Core Programs (up to 52 hours annually) may consist of educational specials, other non-regularly scheduled programming, and regularly scheduled non-weekly programming, as well as short-form programming, including public service announcements and interstitials. Under both Category A and Category B, a broadcast station that multicasts will be permitted to air up to 13 hours per quarter of regularly scheduled weekly programming on a multicast stream. The remainder of a broadcast station's Core Programming must be aired on the station's primary stream. The additional processing guideline applicable to stations that multicast is eliminated.

20. The Commission's policies governing preemption of children's programming are revised to eliminate the "second home" policy. Instead, a station that preempts an episode of a regularly schedule weekly program on its primary stream will be permitted to air the rescheduled episode on its primary stream at any time during Core Programming hours within seven days before or seven days after the date the episode was originally scheduled to air, provided that the station makes an on-air notification of the schedule change. Similarly, a station that preempts an episode of a regularly scheduled weekly program on its multicast stream will be permitted to air the rescheduled episode on the same multicast stream at any time during Core Programming hours within seven days before or seven days after the date the

episode was originally scheduled to air, provided that the station makes an on-air notification of the schedule change. Additionally, the breaking news exemption to the requirement that preempted Core Programs be rescheduled is expanded to permit a broadcast station to preempt an episode of a regularly scheduled weekly program in order to air non-regularly scheduled live programming produced locally by the station without any requirement to reschedule the episode. The revised preemption rules will apply to both network and non-network stations.

21. The revisions to the processing guidelines and the preemption policies will benefit all broadcasters, particularly small entities, by providing them additional flexibility in scheduling their children's programming.

**F. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

22. The RFA requires an agency to describe any significant 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.”<sup>31</sup>

23. The *Report and Order* modernizes the children's television programming rules by streamlining reporting and recordkeeping requirements, eliminating outdated and burdensome requirements, and providing broadcasters greater flexibility in scheduling their children's programming. The revised rules are expected to benefit affected entities, including small entities.

24. The changes in our Reporting Requirements (*see* paragraph 17, *supra*) will benefit all broadcast stations, including small entities, by relieving unnecessary reporting burdens and reducing costs. For example, one broadcaster noted that staff at two of its small market stations spend up to six or seven hours per quarter completing the reports. Replacing the quarterly reporting requirement with an annual reporting requirement and streamlining the reporting form is expected to significantly reduce the time and resources needed to complete and file the report.

25. The changes in our Recordkeeping Requirements (*see* paragraph 18, *supra*) will reduce recordkeeping burdens and costs on all affected entities, including small entities. For example, the American Cable Association, which represents hundreds of small cable operators, indicates that its members report spending 16 to 20 hours per quarter (a total of 64 to 80 hours per year) attempting to collect the required certifications of compliance from their programming networks. Replacing the quarterly requirement with an annual requirement will substantially ease the recordkeeping burden on these small entities.

**G. Report to Congress**

26. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>32</sup> In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>33</sup>

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<sup>31</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

<sup>32</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>33</sup> *Id.* § 604(b).

## APPENDIX C

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)<sup>1</sup> 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 *Further Notice of Proposed Rulemaking (FNPRM)*. 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 *FNPRM*. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

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

2. The Children's Television Act of 1990 (CTA)<sup>4</sup> 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."<sup>5</sup> The CTA provides that, in addition to considering the licensee's programming, the Commission also may consider in its review of television license renewals 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.<sup>6</sup> The Commission adopted rules implementing the CTA in 1991,<sup>7</sup> and revised these rules in 1996,<sup>8</sup> 2004,<sup>9</sup> and 2006.<sup>10</sup>

3. On July 12, 2018, the Commission released an *NPRM* seeking 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.<sup>11</sup> The Commission, however, received very few comments on this issue. Because the current record does not provide an adequate foundation for the Commission to adopt a clear standard for evaluating special sponsorship efforts, the *FNPRM* invites commenters to submit proposals detailing a specific framework under which special sponsorship efforts may be

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<sup>1</sup> 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).

<sup>2</sup> 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

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

<sup>5</sup> 47 U.S.C. § 303b(a)(2).

<sup>6</sup> *Id.* § 303b(b).

<sup>7</sup> *Policies and Rules Concerning Children's Television Programming*, MM Docket No. 90-570, Report and Order, 6 FCC Rcd 2111 (1991), *recon. granted in part*, 6 FCC Rcd 5093 (1991).

<sup>8</sup> *Policies and Rules Concerning Children's Television Programming*, MM Docket No. 93-48, Report and Order, 11 FCC Rcd 10660 (1996).

<sup>9</sup> *Children's Television Obligations of Digital Broadcasters*, MM Docket No. 00-167, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943 (2004).

<sup>10</sup> *Children's Television Obligations of Digital Television Broadcasters*, MM Docket No. 00-167, Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065 (2006).

<sup>11</sup> *Children's Television Programming Rules; Modernization of Media Regulation Initiative*, MB Docket Nos. 18-202 and 17-105, Notice of Proposed Rulemaking, 33 FCC Rcd 7041 (2018) (*NPRM*).

considered as part of a broadcaster's license renewal. The *FNPRM* tentatively concludes that such proposals should include, at a minimum, the following three elements: (1) the station must sponsor programming on a noncommercial television broadcast station located in the same DMA; (2) the proposal must establish a benchmark for how much funding a sponsoring station would be required to provide based on the size or circumstances of the sponsoring station; and (3) the sponsorship must result in the creation of new Core Programming or expanded hours of an existing Core Program. Further, the *FNPRM* tentatively concludes that Media Bureau staff, rather than the full Commission, should be permitted to approve the children's programming portion of renewal applications of licensees relying in part on special sponsorship efforts that satisfy the proposed sponsorship framework.

## **B. Legal Basis**

4. The proposed action is authorized pursuant to sections 303, 303b, 307, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 303, 303b, 307, and 336.

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

5. 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.<sup>12</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>13</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>14</sup> 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.<sup>15</sup>

6. 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.

7. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound."<sup>16</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>17</sup> 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 million or less in annual receipts.<sup>18</sup> The 2012 Economic Census reports that 751 firms in this category

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<sup>12</sup> 5 U.S.C. § 603(b)(3).

<sup>13</sup> *Id.* § 601(6).

<sup>14</sup> *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."

<sup>15</sup> *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.

<sup>16</sup> 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>.

<sup>17</sup> *Id.*

<sup>18</sup> 13 CFR § 121.201; 2012 NAICS Code 515120.

operated in that year. Of this number, 656 had annual receipts of \$25 million or less.<sup>19</sup> Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

8. The Commission has estimated the number of licensed commercial television stations to be 1,383.<sup>20</sup> 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 378.<sup>21</sup> 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.

9. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations<sup>22</sup> 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**

10. *Reporting Requirements.* The *FNPRM* may result in modifications to the special sponsorship efforts portion of FCC Form 398.

11. *Recordkeeping Requirements.* The *FNPRM* does not propose any new recordkeeping requirements.

12. *Other Compliance Requirements.* The *FNPRM* seeks further 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.

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

13. 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,

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<sup>19</sup> 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](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~515120).

<sup>20</sup> *March 31, 2019 Broadcast Station Totals.*

<sup>21</sup> *Id.*

<sup>22</sup> “[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).

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.<sup>23</sup>

14. The framework proposed in the *FNPRM* is intended to provide broadcasters, including small entities, greater flexibility in fulfilling their children's programming obligations. The *FNPRM* tentatively concludes that a proposed framework for special sponsorship efforts should include a funding benchmark that takes into account the size or circumstances of the sponsoring station and seeks comment on whether such a funding benchmark should be based on a station's annual revenues, network affiliation and market size, or some other measure. 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**

15. None.

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<sup>23</sup> 5 U.S.C. § 603(c)(1)-(4).



**STATEMENT OF  
CHAIRMAN AJIT PAI**

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.

The Children’s Television Act was enacted in 1990. And things have changed a lot in the 29 years since. Babies born when the Act was passed are now having children of their own. Media that did not exist in 1990, most notably the commercial Internet and online streaming services, have completely transformed what we watch, how we watch, and when we watch it. This explosion in choice of content and distribution has benefited children, who have access to far more educational programming across all these platforms than was imaginable in 1990.

It has also resulted in a massive shift in children’s viewing habits. As most parents (including me) know, rather than viewing programming live on broadcast TV, most children now watch educational content on non-broadcast platforms, and they prefer to do so. For example, the evidence in the record indicates that the educational programs aired on CBS and NBC owned-and-operated and affiliated stations average only 57,000 young viewers, which is less than one-tenth of one percent of the children in the United States. And in fact, about two-thirds of the viewers of these children’s shows are over the age of 55, which actually isn’t surprising if you’ve seen the commercials that air during these programs.

Unfortunately, one thing hasn’t changed to reflect the times: the FCC’s regulations implementing the Act, commonly referred to as our “KidVid” rules. Despite some revisions throughout the decades, the bulk of our KidVid rules remain trapped in amber, stuck in a time when classrooms had maps showing the Soviet Union and *Bill Nye the Science Guy* had yet to air a single episode.

Until today, that is. Thanks to Commissioner O’Rielly’s efforts, we are finally modernizing our KidVid rules to better reflect today’s media marketplace. This item gives broadcasters more flexibility in satisfying their obligations under the Act, while also ensuring that consumers who rely on over-the-air television can access educational programming. Indeed, even setting aside all of the children’s educational programming now available on cable television and over the Internet, there is now a plethora of such programming available over-the-air. PBS KIDS, for example, airs children’s programming over a multicast stream on a 24/7 basis, while ION airs 111 hours of children’s educational programming through its Qubo multicast stream. None of this existed when the Commission first adopted rules implementing the Children’s Television Act, and none of this will be impacted by our actions today.

Notably, the changes we make today are balanced and modest. For example, we allow broadcasters to satisfy some of their Core Programming obligations—the easiest way for them to comply with our children’s television rules—through specials and short-form programming. For those of us who remember ABC Afterschool Specials and Schoolhouse Rock, this hardly seems like a radical innovation. We are simply acknowledging that one-size-fits-all, 30-minute programming is not the only effective means to provide educational programming for children. (In fact, judging from the much-shorter episodes of streamed shows like Octonauts and StoryBots that my kids consume, they’re not even the primary means these days.)

We also allow broadcasters to use multicast streams to satisfy a minority of their Core Programming requirement. This makes sense because multicast channels are available for free to consumers who exclusively rely on over-the-air viewing—those who don’t have access to children’s educational programs on cable channels.

Another well-considered reform is moving up the time when Core Programming can begin to be aired from 7:00 AM to 6:00 AM. This reflects what the record shows and what most parents (again, including me) know: children are viewing TV earlier and before school. And we are also reducing reporting requirements that did nothing but generate make-work for broadcasters, who spend considerable time and money to produce reports that hardly anyone reads.

I welcome these common-sense reforms, which allow broadcasters flexibility to compete in today's marketplace while also serving the public interest. There is certainly more room to update our KidVid rules, but this is a positive first step forward.

I'd like to thank Commissioner O'Rielly for leading this project on behalf of the agency. And I'd like to give a special acknowledgement to the Commission staff who made this item possible. They're not just dedicated public servants; many are also parents—moms and dads—who go home each day to make the same choices about their children's TV consumption that I and millions of other Americans do. My thanks to Kathy Berthot, Michelle Carey, Martha Heller, Barbara Kreisman, Jonathan Mark, Evan Morris, and Sarah Whitesell from the Media Bureau, and Susan Aaron, David Konczal, and Bill Richardson from the Office of General Counsel.

**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,<sup>1</sup> 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.<sup>2</sup> And, I haven't even gotten to the 350 public broadcasting stations around the country that are each

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<sup>1</sup> *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>.

<sup>2</sup> *Id.* at ¶ 45.

required to air at least seven hours *per day* of children’s educational and informational programming.<sup>3</sup> 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 occurs<sup>4</sup>—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.<sup>5</sup> 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

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<sup>3</sup> *Id.* at ¶ 11 n.51.

<sup>4</sup> *Id.* at ¶ 54.

<sup>5</sup> *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.<sup>6</sup> 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.

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<sup>6</sup> *Id.* at ¶ 54.

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

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.*

In 1990, Congress passed the Children’s Television Act, which requires the FCC to consider whether broadcasters are serving “the educational and informational needs of children.” It also gives the FCC flexibility to determine the specific rules or safe harbors a broadcaster can meet to satisfy this requirement. And that flexibility is a good thing for two reasons.

For one, the market for children’s programming has expanded dramatically since 1990. Over-the-air broadcasters now provide many more hours of children’s programming than the three hours per week required by the FCC’s rules. For instance, Ion and PBS broadcast children’s programming for free 24 hours a day. In addition to broadcasters, cable channels like Baby First, Disney Junior, and Teen Nick, which have never been subject to KidVid rules, also provide 24/7 children’s programming. Not to mention over-the-top and online providers like YouTube, Amazon, and Hulu that offer a nearly limitless lineup of on-demand children’s programming. And broadcasters are now competing directly with those tech giants for the local ad dollars they need to stay on the air. So these significant marketplace changes are one reason for the FCC to update its approach.

Another reason? The FCC’s nearly 20-year-old rules are now producing unintended results. The record shows that our existing approach actually discourages broadcasters from airing and investing in well-recognized children’s programming. For instance, Schoolhouse Rock and other short-form programming don’t count as children’s television under the FCC’s rules, even though so many of today’s children have expressed a preference for programming that is less than 30 minutes in length. And the FCC’s requirement that programming be “regularly scheduled” has discouraged broadcasters from airing one-off, family-friendly programming like after-school specials or local parades. Moreover, the FCC’s inflexible approach to scheduling has prevented broadcasters from airing locally-focused programming like debates, community meetings, and high-school sports. Our rules should not be discouraging broadcasters from airing live and local programming that their audiences want to see.

So today, we provide broadcasters with the flexibility to meet the needs of their communities while also ensuring that they live up to their obligations under the Children’s Television act. In fact, for anyone that relies solely on over-the-air television, including low-income households that do not have cable or Internet service today, stations will still be required to air an average of three hours per week of children’s programming after today’s decision. In other words, 100 percent of households that receive free children’s television programming over the air today, as a result of our rules, will still receive that programming tomorrow.

In closing, I want to recognize and commend Commissioner O’Rielly for his leadership on this issue and his efforts to find common ground with stakeholders in this proceeding. And I want to recognize as well the hard-working staff of the FCC’s Media Bureau for their efforts on this item. It has my support.

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL  
DISSENTING**

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.

Take it from the only mother serving on the Federal Communications Commission, being a parent is not easy. My kids are my sweetest accomplishment and greatest source of joy. But they are also a reliable source of exhaustion. As every mother knows, every little thing that makes it easier to get through the day with your children healthy and safe is a thing you can get behind and support.

That is why I think the Children's Television Act is so important. It requires us to limit advertising and during the license renewal process consider how a station has served the educational and informational needs of children. To implement this law, the agency suggested stations provide three hours of children's content a week. For those keeping tabs, that is less than two percent of their total broadcast time.

I don't think that's burdensome. I think it's beneficial.

I know a lot has changed since this law was passed. Gone are the days of Saturday mornings when kids gathered around the glow of the television clad in pajamas, waiting for their favorite program to come on air. Today, many of us can call up a range of kid-focused content when we want it and where we want it. But shame on us for deciding that this has rendered children's television policies obsolete. Shame on us for using this as an excuse to cut children's television and make it harder for parents to find safe content on the screen.

That's what we do here. Today the FCC decides that we can cut these policies because in the internet age they are no longer needed. Nothing could be further than the truth.

We have a digital divide in this country. Broadband is not available everywhere. Our own statistics show that millions and millions of households have no access to the internet. That includes a quarter of the low-income households with children under 8 at home. Some of them live in rural areas, some of them simply cannot afford it. Remember that 8 in 10 Americans live paycheck to paycheck, many of them with young children in their homes. On top of that, many Americans who can afford this service have limitations—like data caps that prevent them from watching much video on their screens.

Plus, that internet viewing comes with its own problems. While there is quality content to be found, a whole lot of videos aimed at children are not so enriching and may be collecting information about the kids who are watching. In fact, our colleagues at the Federal Trade Commission are now investigating how online video providers may be violating the privacy of children. This follows on the heels of reports that automated recommendation systems can promote disturbing images of young children, rolling on the screen, one after another. I know, as a mother, I am not at ease when my kids sit down before the computer and rely on algorithms to deliver their next video. There is so much that is new and not easy to navigate as a parent in the digital age.

So I don't think there is anything wrong with this agency keeping in place the fundamentals of the Children's Television Act. I am open to modernizing these policies and had many conversations with my colleague, Commissioner O'Rielly, about just that. But in the end, I believe our policies should support the day-to-day challenges so many parents face to keep our kids safe. As a result, I am saddened that today's order slashes so much of our children's television policies. We make it harder for parents to

find content by reducing regularly scheduled programming. We shuttle off programming to multicast streams that most people don't watch and few parents are ever likely to locate. Then we issue another rulemaking, suggesting our effort to cut children's television is going to continue.

I am disappointed—as a policymaker and parent. I dissent.



**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS  
DISSENTING**

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.

As I begin my sixth month as a Commissioner, this item gave me a good opportunity to reflect on the role. Frequently, I am looking to the horizon of our technological future and trying to set forth rules to drive advancements that will get us there effectively and efficiently. Other times, I study where our rules have generated the right or wrong results, and whether the Commission needs to course-correct or hold wrongdoers accountable. And regardless of whether I’m looking forward or looking back, I am animated to ensure that our policies serve our core mission – protecting the public interest.

What is at stake today? We consider an item that, I believe, would severely curtail obligations placed on broadcasters concerning the amount of free, widely available, educational programming they should air for children.

I start with our guiding statute here, the Children’s Television Act. The CTA is grounded in a number of important truths: that free, over-the-air broadcast television has the potential to reach a vast portion of children in America with high-quality educational content, including children underserved by our educational system and other forms of media; that broadcasters are allowed to use our airwaves, a scarce public resource, for free, and as a result ought to be held to certain standards and have certain obligations; and that requiring broadcasters to air educational and informative children’s programming creates a market for such programming and encourages its production.

This baseline understanding of the table stakes here is as true today as it was when the CTA was passed and signed into law. While it is undeniable that some children have access to a new universe of content, our children’s television regulations, anchored by the CTA, still serve as a critical backstop for parents and children who do not or cannot access additional services, or who value a platform that is the gold-standard in terms of safety and trustworthiness.

I recognize that as times change we often find reason to revisit our rules. But as I have said before, even in modernizing our media landscape, I will look to the clear responsibilities that Congress has assigned to us.<sup>1</sup> In this instance, I certainly take the point of broadcasters and others who argue that the way all of us, including children, consume content is undergoing a period of great change.<sup>2</sup> And, in this instance, I can understand the steps that we take to remove burdens from noncommercial broadcasters and relieve certain paperwork obligations. And I hear loud and clear the chorus of calls for greater flexibility when it comes to covering breaking news or local events – content that viewers also value from local stations. Unfortunately, today’s item greatly reduces broadcasters’ current, modest obligations to air children’s programming, and does not adequately make the case that the action serves the public interest. For these reasons, I dissent.

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<sup>1</sup> *Elimination of Obligation to File Broadcast Mid-Term Report (Form 397) Under Section 73.2080(f)(2); Modernization of Media Regulation Initiative*, MB Docket Nos. 18-23 and 17-105, 34 FCC Rcd 668, 689 (2019) (Concurring Statement of Commissioner Geoffrey Starks).

<sup>2</sup> *Children’s Television Programming Rules*, MB Docket Nos. 18-202 and 17-105, Report and Order and Further Proposed Notice of Proposed Rulemaking, para. 11 (July 10, 2019).

So why do I think free, over-the-air educational programming remains important? A big reason is that many households, particularly Black, Latino, and Asian households, still rely exclusively on free, over-the-air television or lack access to the broadband connection required to take advantage of internet-based content platforms.<sup>3</sup> In fact, year over year, the number of households that rely on over-the-air television has grown.<sup>4</sup> Additionally, it is indisputable that many millions of Americans still lack access to broadband at home – a painful reality that the Commission is still working to address.<sup>5</sup> We’re simply not there yet. Low income families are more likely to rely on free over-the-air programming, rather than pay additional fees for cable or other video services, high-speed broadband, or the multiple devices required to support the viewing habits of a family.<sup>6</sup> Too many of us take effortless and ubiquitous connectivity for granted and may easily dismiss broadcasting as a relic of another age. For me, compelling data simply does not support that perception.

Moreover, not all content is created equal. The Commission has clear statutory authority to require broadcasters to limit commercialization on children’s television and ensure that programming is specifically made to serve children’s age-appropriate educational needs.<sup>7</sup> While some kids do currently utilize online outlets for children’s programming, as members of Congress and others have recognized, the current landscape for online children’s content is troubling for myriad reasons.<sup>8</sup> Much of the content online is entertainment driven rather than educational.<sup>9</sup> Some of this content is commercial in nature and designed to advertise to children instead of educate.<sup>10</sup> Some online outlets allegedly violate privacy laws.<sup>11</sup> And, any parent would be frightened by recent revelations showing that some of the content that ends up on these websites is wholly inappropriate for children to the point of being harmful.

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<sup>3</sup> Nielsen, *The Nielsen Total Audience Report, Q1 2019* at 22 (2019) (stating that 13.3 percent of all families with children rely exclusively on over-the-air television, including 22 percent of Latino families, 17.5 percent of Black families, and 14.5 percent of Asian families).

<sup>4</sup> *Id.* at 7.

<sup>5</sup> Pew Research Center, *Mobile Technology and Home Broadband 2019* (June 13, 2019), <https://www.pewinternet.org/2019/06/13/mobile-technology-and-home-broadband-2019/>.

<sup>6</sup> Common Sense Media, *The Common Sense Census: Media Use by Tweens and Teens* (Nov. 3, 2015), [https://www.commonsensemedia.org/sites/default/files/uploads/research/census\\_executivesummary.pdf](https://www.commonsensemedia.org/sites/default/files/uploads/research/census_executivesummary.pdf) (“Children in lower-income families are significantly less likely than their wealthier peers to live in homes with digital technologies.”).

<sup>7</sup> Children’s Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, 394.

<sup>8</sup> See Clean Slate for Kids Online Act of 2019, S. 748, 116<sup>th</sup> Cong. (2019); Children and Media Research Advancement Act, S. 783, 116<sup>th</sup> Cong. (2019); Press Release, Common Sense Media, Senator Ed Markey to Announce Legislation on Children’s Media at Common Sense Truth About Tech Conference (April 4, 2019), <https://www.commonsensemedia.org/about-us/news/press-releases/senator-ed-markey-to-announce-legislation-on-childrens-media-at-common>.

<sup>9</sup> Center for Digital Democracy, Campaign for a Commercial-Free Childhood, and the Benton Foundation Comments at 26-29.

<sup>10</sup> *Id.* at 23-25.

Unfortunately, we've seen too many instances of algorithms quickly guiding children from acceptable content to some of the darkest and most disturbing content that the internet has to offer.<sup>12</sup>

The point is this – parents and children must have a truly safe space to rely on for educational content, and the only place, as of now, is through broadcast. While I hope that one day internet platforms can be reliably used to supplement children's educational opportunities, the current digital landscape provides no justification for significantly repealing regulations that ensure the availability of reliable and safe children's educational programming.

I evaluated today's item with these thoughts in mind and, despite what I believe was a real effort by my colleagues to find common ground, particularly Commissioner O'Rielly, I am unable to support today's outcome. In my view, this item will significantly reduce the amount of free, over-the-air children's programming aired by broadcasters. On its face, it may appear that the item retains our old three-hours per week requirement. However, upon a closer look, our new rules will allow broadcasters to air less than one hour of regularly scheduled children's programming per month on their most widely viewed primary stream. One third of a broadcaster's annual hours can be moved to an unpopular multicast stream, and an additional third will not need to be regularly scheduled. What's more, broadcasters are given the new ability to preempt children's programming with an ill-defined category of live, locally produced programming not designed for children and still have that time count towards their core children's programming hours. And all of this is in addition to removing the requirement that each full-time multicast stream air its own three hours of children's programming. In theory, there is nothing in this item that would prevent a broadcaster from reducing the amount of regularly scheduled, 30-minute core programming aired on its primary stream to zero.

And, finally, I am concerned that allowing broadcasters to present the majority of their programming on multicast channels or through short-form programs could significantly harm children and parents with disabilities. Video description and captioning tools are used by deaf, hard of hearing, blind, visually impaired, or DeafBlind children, and by parents and family members with disabilities in order to engage in content with their children and further its educational purpose.<sup>13</sup> For instance, I heard the story of Marianne, who has a four-year-old grandson who is blind. He lights up when he hears an episode of his favorite educational television show come on that is described. Marianne told me, in particular, that the described episodes are more meaningful and engaging for her grandson and help to expand his language skills. I also heard the story of Dr. Christian Vogler, a deaf parent who relies on captions to watch educational programming with his five-year-old twins and discuss the concepts with them afterwards. While the item recognizes that the allowance of these program formats will likely have an impact on viewers with disabilities as captioning or video description tools are not required for short-form or multicast programming, it dismisses these concerns without proposing to fix this new problem of the Commission's making. This is unacceptable.

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<sup>11</sup>See Common Sense Media Comments at 10; See also Tony Romm, Elizabeth Dwoskin and Craig Timberg, *YouTube under federal investigation over allegations it violates children's privacy*, The Washington Post (June 19, 2019), [https://www.washingtonpost.com/technology/2019/06/19/facing-federal-investigation-youtube-is-consideringbroad-changes-childrens-content/?utm\\_term=.1e1f99ca5567](https://www.washingtonpost.com/technology/2019/06/19/facing-federal-investigation-youtube-is-consideringbroad-changes-childrens-content/?utm_term=.1e1f99ca5567).

<sup>12</sup> *Letter Re: Request for Investigation into Google's Unfair and Deceptive Practices in Connection with its YouTube Kids App*, Campaign for a Commercial-Free Childhood (May 19, 2015), [http://www.commercialfreechildhood.org/sites/default/files/FTC\\_youtube\\_update.pdf](http://www.commercialfreechildhood.org/sites/default/files/FTC_youtube_update.pdf).

<sup>13</sup> Litton Comments at 18-25; *Implementation of Video Description of Video Programming*, MM Docket No. 99-339, Report and Order, 15 FCC Rcd 15230, para. 10 (2000); Letter from Blake Reid, Director, Samuelson-Glushko Technology Law & Policy Clinic at Colorado Law, Counsel to Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 18-202 and 17-105, CG Docket No. 05-231 (June 27, 2019).

I hope that one day the vast universe of content available to children through all platforms is educational, age-appropriate, reliable, safe, and accessible. But we simply aren't there yet. I am not against updating our children's programming requirements to stay current with the times. However, we cannot dismantle our children's programming rules without guaranteeing we can maintain our commitment to children's educational needs. Today, we are moving from a system that has inspired and educated countless children to a landscape where quality children's programming may be hard for all children and parents to come by. And we are doing so with little understanding of the impact our actions will have on viewers, or the broader children's programming marketplace. In a sense, we are inexplicably snatching defeat from the jaws of victory and leaving kids, especially the most vulnerable, worse off than how we found them. I dissent.

Although I can't approve this item, I do thank the Media Bureau for its hard work.