



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[MB Docket Nos. 18-202, 17-105; FCC 19-67]**

**Children's Television Programming Rules; Modernization of Media Regulation Initiative**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission updates the children's television programming rules to reflect the changes to the media landscape since these rules were first adopted in the 1990s following passage of the Children's Television Act of 1990 (CTA). The revised rules will give broadcasters greater flexibility in serving the educational and informational needs of children, 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.

**DATES:** This rule is effective [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], except for amendatory instructions 3 (§ 73.671(c)(5) and (7) and (e)(1) and (2)), 4 (§ 73.673), and 5 (§ 73.3526(e)(1)(ii) and (iii)), which are delayed. The Commission will publish a document in the *Federal Register* announcing the effective date.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Kathy Berthot, [Kathy.Berthot@fcc.gov](mailto:Kathy.Berthot@fcc.gov), of the Media Bureau, Policy Division, (202) 418-7454.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, FCC 19-67, adopted on July 10, 2019 and released on July 12, 2019. The full text is available for public inspection and copying during regular business hours in the FCC Reference

Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. This document will also be available via ECFS <http://www.fcc.gov/cgb/ecfs/>.

Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

*Paperwork Reduction Act of 1995 Analysis:* This document contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the OMB to comment on the information collection requirements contained in the amendments to §§ 73.671(c)(5) and (7) and (e)(1) and (2), 73.673, and 73.3526(e)(11)(ii) and (iii) in a separate Federal Register document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13, *see* 44 U.S.C. 3507. 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 previously sought specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

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

## **Summary of the Report and Order**

### **I. INTRODUCTION**

1. In this *Report and Order*, 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. 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. 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.

## **II. BACKGROUND**

2. The CTA 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.” 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.

3. The Commission initially adopted rules implementing the CTA in 1991, and revised these rules in 1996, 2004, and 2006. 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.” 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 and informational objective and the target child audience are specified in writing in the licensee’s Children’s Television Programming Report (FCC Form 2100 Schedule H or Report).

4. 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. 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. Renewal applications are divided into two categories for purposes of staff-level CTA review. 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. 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. 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. 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.

5. 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. 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. 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. 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.

6. The existing rules also require broadcasters to submit detailed Reports on a quarterly basis on a standardized reporting form; to publicize the existence and location of their Reports; to provide a brief explanation in their Reports of how particular programs meet the definition of "Core Programming"; and to designate a liaison for children's programming and include the name and method of contacting that individual in the station's Reports. Moreover, the Commission has implemented a procedure to address when a station can count preempted Core Programming toward meeting the processing guideline. 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. The on-air notification must announce the alternate date and time when the preempted show will air. 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 the rescheduled time is the program's second home, and the network's plan to notify viewers of the schedule change. 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.

7. 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. 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.” The Commission initially adopted rules implementing this statutory provision in 1991, and extended these rules to DBS providers in 2004. 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.

8. On July 12, 2018, in response to comments received in the Modernization of Media Regulation Initiative proceeding, the Commission adopted a notice of proposed rulemaking (NPRM) (83 FR 35158, July 25, 2018) 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. 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. 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 children in low-income and minority households,

and the availability of video-described and closed-captioned children’s educational and informational programming.

### **III. DISCUSSION**

#### **A. Statutory Authority**

9. 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). 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. We agree with NAB that the CTA grants the Commission considerable discretion in its implementation, and that the statute does not mandate that the Commission adopt specific quantitative standards or any other particular requirements for children’s television programming. 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,” 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, 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.

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

10. 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. 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. 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. According to PTV, the PBS KIDS channel has performed especially well among underserved children. 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. 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. 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. 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. 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.

11. 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. 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. 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. 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."

12. 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. 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. All of these 682 additional stations currently provide children's programming.

13. Moreover, the record reflects that non-broadcast platforms today offer a wealth of options in children's educational programming. 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. Additionally, original and previously-aired children's programming is available on over-the-top (OTT) platforms such as Netflix, Amazon, and Hulu. 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, Funbrain, Coolmath, and Apple iTunes U. 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. 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. 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. 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. 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.

14. 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. 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.” Notably, there are many programs available on non-broadcast platforms that are recommended as educational programming for children by trusted sources for evaluating children’s programming, including Common Sense Media. 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.

15. 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. 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.

16. 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. 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. 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 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. 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. 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. 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. 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.

17. 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. NAB also cites a recent survey in which 65% of teens reported watching video content before school or work.

18. 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). Of these over-the-air households, 41% are traditional over-the-air households, without any streaming service provider. These traditional over-the-air households are more likely to be minority households. 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. 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).

19. 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**

20. 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**

21. 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. The end of the time frame during which Core Programming must be aired remains unchanged at 10:00 p.m. Commenters overwhelmingly favor expanding the Core Programming hours. 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. 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. 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. Providing an additional seven hours a week to air Core Programming will also help broadcast stations avoid preemptions.

22. However, we decline to eliminate the Core Programming hours at this time. 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, a number of U.S. households, particularly minority and low-income households, still rely on live, over-the-air television. 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**

23. 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, the record has convinced us not to adopt that tentative conclusion.

24. 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), 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 aired by broadcast stations must be regularly scheduled weekly programming.

25. 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.” 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. 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. 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. 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.

26. 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 or watch video on demand. In today’s on demand world, where multiple 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. 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. We agree with broadcasters that programming that is not regularly scheduled on a weekly basis can serve the educational and informational needs of children. 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. 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.

27. 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. 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. 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.

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

28. 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, 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. 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. It will also give broadcasters additional scheduling flexibility.

29. 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. Moreover, as discussed above, data show that many children today prefer

video on demand in shorter segments. 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.

30. 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." 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. NHMC maintains that during the 1996 revisions to the children's programming rules, the Commission found this "scientifically-backed argument" more persuasive than the unsubstantiated argument for short-form programming based on the notion children have short attention spans. 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. 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.

31. 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. Furthermore, as NHMC points out, the dominant broadcast television format is still 30 minutes or longer in length. 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. 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.” 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. 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. The approach we are adopting in this 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.

32. While commenters raise concerns that it will be difficult for parents to identify and locate short-form programs, 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. 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.

33. We acknowledge that short-form programming may not necessarily be video-described. 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. 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. Further, as

explained below, broadcasters will be required to air the substantial majority of their Core Programming on their primary streams.

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

34. 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 video on demand over live viewing of broadcast television.

35. 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. In response to consumer demand, broadcasters have increased their local and national news, public affairs programming, and sports programming. 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. 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. 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. 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. We find that these scheduling challenges along with the marketplace changes noted above warrant revision of the safe harbor processing guidelines.

36. 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. As set forth below, Category A of the 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.

37. 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. 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, 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.

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

39. The remaining hours of Core Programming under Category A (up to 52 hours annually) 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. 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. 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. Repeats and reruns of Core Programming will continue to be counted toward fulfillment of the processing guideline under Category A. 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.

40. 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. 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. 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. The modifications we adopt today will bring clarity to Category B and make it a viable option for broadcasters.

41. 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 under Category B. 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. 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.

42. We decline to eliminate quantitative processing guidelines for determining compliance of television licensees with the children's programming rules. Only two commenters advocate elimination of quantitative processing guidelines. 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. These commenters suggest that absent a quantitative guideline, broadcasters will have little or no financial incentive to air children's educational and informational programming. 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. The record, however, indicates that some children in minority and low-income households still rely exclusively on live, over-the-air broadcast television. 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 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**

43. 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. 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.

44. 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. 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. Further, there are 682 more free, over-the-air television stations

than there were when the CTA was adopted in 1990, all of which must provide children's programming. 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. 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.

45. We acknowledge that multicast streams do not have the same level of viewership among children as primary streams. As Hearst explains, this is due in part to the fact that MVPDs are not obligated to carry multicast streams. 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, which in turn would adversely impact the production of high quality educational and informational programming. 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. 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.

46. We acknowledge that allowing broadcasters to air up to 13 hours of regularly scheduled weekly programming per quarter on multicast streams may impact Litton's current business model. 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. 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. 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. 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.

47. 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. 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. 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.

## **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. 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. The CTA 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. 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.” 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. 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.” 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. 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. 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. 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.” On balance, we think that the benefit to children of the additional processing guideline for 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.

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. 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.

52. We eliminate the “second home” policy. Under this policy, 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. 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. 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. 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. Preempted Core Programs that are rescheduled in this 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, 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. 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. Furthermore, the programming must be produced locally by the station to serve the community where the station is located. 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. We note that licensees are required to provide detailed information in their 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. We conclude that there is little practical utility or public 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 Report. 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. 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. 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.”

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.” Moreover, no commenter

specifically objects to eliminating this requirement for noncommercial stations. Given the educational nature of most programming on noncommercial stations, 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. 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.

58. We retain the on-air notification requirement for commercial stations. Contrary to NAB's suggestion, 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. Further, noncommercial stations generally air far more children's educational programming than commercial stations, 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. 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.

## **2. Program Guides**

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. We recognize that publishers of program guides are not obligated to include children's programming information provided by stations in their guides. Nevertheless, commenters indicate that some parents continue to rely on program guides to make informed decisions about educational and informational programming for their children. 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. 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, 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 2100 Schedule H 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. The record reflects that compiling these reports places significant burdens on stations, particularly smaller stations with limited staff resources. Further, it appears that some of the information required by these Reports has little practical utility or benefit to the public today. 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. We concur with commenters that quarterly reporting places an undue burden on stations, especially smaller stations. 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. 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. 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. 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.

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,” 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. Further, while the record reflects that some interested parties examine the Reports at license renewal time to verify stations’ compliance with the CTA, there is no evidence in the record that the public regularly uses the Reports on a quarterly basis to monitor station compliance with the CTA or for any other purpose. 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 2100 Schedule H 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. 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. 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 2100 Schedule H 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. Further, as discussed above, there is little change in programming over the course of the year. Moreover, information about upcoming programming is available in program guides and online. 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. As Nexstar points out, however, “the act of providing a program 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.” 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. 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. Given that descriptions of Core Programming are readily available from numerous other sources, we conclude that eliminating this information from the Form 2100 Schedule H 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 2100 Schedule H. 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. 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. Since the commercial limits apply only to programming intended for children 12 years old and younger, we streamline the Form 2100 Schedule H 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.

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. Broadcasters are still required to certify that they sent the required information to program guide publishers.

67. We also make other modifications to Form 2100 Schedule H 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. We direct the Media Bureau to make the necessary changes to Form 2100 Schedule H 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. We believe that the modifications we are making to the reporting requirements and Form 2100 Schedule H, 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. 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 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. 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 Children’s Television Programming Reports. 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.” As

NAB notes, this requirement predates the hosting of television stations' public files, which include the Reports, on the Commission's website. 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. Additionally, there is no evidence in the record that this requirement encourages viewers to seek out stations' Reports or to take an active role in monitoring stations' compliance with the CTA.

#### **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. 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. 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. Further, we conclude that permitting these entities to post their records demonstrating 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. 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. 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. 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. 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." 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.

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. These requests raise issues that are beyond the scope of this 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. The Commission will publish a document in the Federal Register announcing the effective date for those requirements involving Paperwork Reduction Act issues that are awaiting 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. 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. Procedural Matters**

##### **A. Final Regulatory Flexibility Act Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the NPRM released in July 2018 in this proceeding. 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.

##### **B. 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 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 2100 Schedule H) 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 2100 Schedule H; 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.

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

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

**D. 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. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

**E. 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. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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. 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.

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

10. The Commission has estimated the number of licensed commercial television stations to be 1,383. 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. 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.

11. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations 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.

12. *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. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. 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. Thus, under this standard as well, we estimate that most cable systems are small entities.

13. *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, 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.” There are approximately 52,403,705 cable video subscribers in the United States today. 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. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. 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. 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.

14. 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. The SBA determines that a wireline business is small if it has fewer than 1500 employees. 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. 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. DIRECTV and DISH 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.

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

15. 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.

16. *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.

17. 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.

18. 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.

19. 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 scheduled 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.

20. 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.

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

21. 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.”

22. 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.

23. The changes in our reporting requirements 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.

24. The changes in our Recordkeeping Requirements 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.

#### **H. Report to Congress**

25. 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. 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.

#### **A. Paperwork Reduction Act of 1995 Analysis**

26. This *Report and Order* contains either new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the OMB for review under section 3507(d) of the PRA. The OMB, the general public, and other federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding.

#### **B. Additional Information**

27. For additional information on this proceeding, contact Kathy Berthot, Kathy.Berthot@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

#### **V. Ordering Clauses**

28. 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* IS ADOPTED.

29. IT IS FURTHER ORDERED that the Commission's rules ARE HEREBY

AMENDED as set forth in Final Rules and such rule amendments shall be effective 30 days after publication in the *Federal Register*. The Commission will publish a document in the Federal Register announcing the effective dates for the amendments to §§ 73.671(c)(5) and (7) and (e)(1) and (2), 73.673, and 73.3526(e)(11)(ii) and (iii), which contain new or modified information collection requirements that require approval by the OMB under the Paperwork Reduction Act.

30. 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*.

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

**List of Subjects in 47 CFR Part 73**

Cable television, Education, Reporting and recordkeeping requirements, Satellites,  
Television.

Federal Communications Commission.

**Marlene Dortch,**  
*Secretary.*

## Final Rules

For the reasons discussed in the preamble, 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, 339.

2. Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, amend §73.671 by revising paragraphs (c)(1) through (4) and (6), adding paragraph (d), and revising paragraph (e) to read as follows:

#### **§ 73.671 Educational and informational programming for children.**

\* \* \* \* \*

(c) \* \* \*

(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 paragraph (d) of this section;

(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 paragraph (d) of this section;

\* \* \* \* \*

(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

\* \* \* \* \*

(d) The Commission will apply the processing guideline in this paragraph (d) 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 the obligation in this paragraph (d) 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 the processing guidelines in this paragraph (d) 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) of this section as follows:

(1) - (2) [Reserved]

(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.

\* \* \* \* \*

3. Effective upon publication of a rule document in the Federal Register announcing the effective date, amend §73.671 by revising paragraphs (c)(5) and (7) and adding paragraphs (e)(1) and (2) to read as follows:

**§ 73.671 Educational and informational programming for children.**

\* \* \* \* \*

(c) \* \* \*

(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;

\* \* \* \* \*

(7) Instructions for listing the program as educational/informational are provided by the licensee to publishers of program guides, as described in § 73.673.

\* \* \* \* \*

(e) \* \* \*

(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.

\* \* \* \* \*

**§ 73.673 [Amended]**

4. Effective upon publication of a rule document in the Federal Register announcing the effective date, amend §73.673 by removing the second sentence.

5. Effective upon publication of a rule document in the Federal Register announcing the effective date, amend §73.3526 by revising paragraphs (e)(11)(ii) and (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 § 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 2100 Schedule H, 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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