

ALERT

Draft NPRM Proposes Momentous Changes to the Children's Television Programming Rules

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The Federal Communications Commission (Commission or FCC) has released a draft Notice of Proposed Rulemaking proposing sweeping changes to the current children's television programming rules (NPRM). The Commission is expected to officially adopt the NPRM at its next open meeting on July 12, 2018.

In the draft NPRM, the Commission proposes to modify its "outdated" children's programming rules to provide greater flexibility to broadcasters to choose how they serve the educational and informational needs of children. Recognizing that the Children's Television Act (CTA) requires television stations to provide some amount of programming specifically designed to meet the educational and informational needs of children - which the FCC has labeled "Core Programming" - the agency does not propose a wholesale repeal of its children's programming requirements. However, the draft NPRM appears to put every aspect of the Commission's current rules up for discussion. Specifically, comments are sought on proposals to (i) revise the FCC's definition of Core Programming, (ii) relax the agency's renewal processing guidelines, (iii) revisit the Commission's rules that require Core Programming on multicast channels, and (iv) reconsider the agency's preemption policies.

CORE PROGRAMMING

The Commission seeks comment on revisions to each element of its Core Programming definition. The changes, if adopted, would allow for broadcasters to meet their programming requirement with shorter length specials (e.g., School House Rock segments or after school specials).

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The Commission tentatively concludes that it should eliminate its current requirements that Core Programming:

- be at least 30 minutes in length;
- be regularly scheduled; and
- be identified on-screen by noncommercial stations with an E/I symbol. (The draft NPRM also asks whether commercial stations should be exempt from this obligation.)

The draft NPRM seeks comment on:

- whether the time period during which Core Programming must air should be expanded outside of 7:00 am – 10:00 pm; and
- whether the FCC should retain the requirement that broadcasters provide their Core Programming schedules to publishers of program guides.

The Commission also seeks guidance on methods to streamline broadcasters' Core Programming reporting requirements by:

- tentatively concluding that reporting (via the Form 398 Children's Television Programming Report) be provided on an annual rather than quarterly basis;
- tentatively concluding that only reporting on current programming is necessary, not on programs scheduled to be aired in the future;
- seeking comment on whether reporting about target age groups is necessary;
- seeking comment on other methods to streamline reporting; and
- tentatively concluding that it should eliminate the requirement to publicize the Form 398.

RENEWAL PROCESSING GUIDELINES

The Commission's current rules provide two methods for a station to satisfy the requirement to meet the educational and informational needs of children. The "safe-harbor" option allows Media Bureau staff to grant a station's license renewal if the broadcaster can demonstrate that it provided an average of three-hours per week of Core Programming during the license term. Alternatively, if the station relied on other methods (sponsored programming, off-air initiatives), the station's renewal application must be considered by the full Commission.

In the draft NPRM, the Commission seeks comment on whether it should retain the three-hour "safe harbor" standard or adopt another standard. It also asks if it should continue to require quarterly reporting or replace this structure with an annual report or certification.

The agency also questions whether it should keep its alternative option to demonstrate compliance during the license renewal process. If it does retain this structure, it asks for comment on how to provide more certainty for stations that choose to use the "alternative" option. The draft NPRM proposes to allow the Media Bureau to approve license renewal applications for stations that use the alternative option.

MULTICASTING STATIONS

The Commission proposes to eliminate the requirement that a station air additional Core Programming on its multicast digital streams. The agency tentatively concludes that the CTA does **not** require that a station air Core Programming on its primary stream. If adopted, this change would allow a station the flexibility to air its required Core Programming on any of its free over-the-air multicast streams.

The Commission tentatively concludes that its current requirement that a station can only move programming between digital streams with comparable MVPD carriage is no longer necessary. In practice, this means that—if adopted—these rule changes could result in Core Programming airing only on an over-the-air stream, rather than one with MVPD carriage.

The FCC asks how these rule changes would impact the ATSC 3.0 rules that were recently adopted. For example, the Commission asks whether it needs to build into the ATSC 3.0 rules the flexibility for a broadcaster to air Core Programming on only its 1.0 or 3.0 stream, rather than requiring that the programming air on both.

PREEMPTIONS

As any station that has aired the World Cup or Olympics knows, preempted Core Programming (and specifically, the make-goods) can throw a carefully structured broadcast schedule into chaos. The Commission asks if it should revise its preemption policies or if the other rule changes it proposes will eliminate the need for preemptions. For example, if Core Programming can be short-form and does not need to be regularly scheduled, would that give a station enough flexibility to work the programming around news and sports such that it would not be preempted.

There may be some changes to these proposals before the Commission votes on the NPRM next month. We will advise you once the NPRM is adopted and comment dates are set.