

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Children’s Television Programming Rules	)	MB Docket No. 18-202
	)	
Modernization of Media Regulation Initiative	)	MB Docket No. 17-105

**REPLY COMMENTS OF THE ABC TELEVISION AFFILIATES ASSOCIATION, CBS TELEVISION NETWORK AFFILIATES ASSOCIATION, FBC TELEVISION AFFILIATES ASSOCIATION, AND NBC TELEVISION AFFILIATES**

The ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (collectively, the “Affiliates Associations”) submit these reply comments in response to the Notice of Proposed Rulemaking (“NPRM”) in the above-captioned dockets addressing modernization of the Commission’s children’s programming requirements.<sup>1</sup>

**I. INTRODUCTION**

Each of the Affiliates Associations is a non-profit trade association whose members consist of local television broadcast stations throughout the country that are affiliated with the major broadcast television networks. Collectively, the Affiliates Associations represent over 500 local television stations in markets of all sizes. These local network-affiliated stations form the backbone of the American television broadcasting system, providing thousands of hours of local news, weather, emergency, entertainment, and information programming every week. Together,

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<sup>1</sup> See Children’s Television Programming Rules, Modernization of Media Regulation Initiative, *Notice of Proposed Rulemaking*, MB Docket Nos. 18-202 and 17-105, FCC 18-93 (rel. July 13, 2018).

these local television stations invest millions of dollars every year in their communities to support their broadcasting operations.

The Affiliates Associations agree with the substantial majority of commenters that support the Commission's initiatives to bring its children's programming rules into the twenty-first century. As the comments in this proceeding demonstrate, the media landscape has changed significantly since the Commission adopted rules governing children's programming on television nearly 30 years ago. The changes more than justify the rule changes proposed by the Commission, and supported by most of the comments, because they will serve the public interest.

## **II. THE MEDIA LANDSCAPE HAS CHANGED DRAMATICALLY SINCE THE COMMISSION ADOPTED ITS CURRENT CHILDREN'S PROGRAMMING RULES.**

Commenters in this proceeding have definitively shown that children today have numerous choices when it comes to children's programming. For example, access to linear programming options has greatly expanded. As described in NAB's Comments, Kagan estimates that MVPD penetration in 1990 was less than 58%; today, that number is over 75% when including virtual MVPDs.<sup>2</sup> Moreover, today's subscribers have access to hundreds of channels through their MVPDs, compared to the few dozen that subscribers received in the early 1990s.<sup>3</sup> And, as a result of the DTV transition, viewers have access to hundreds of new over-the-air digital multicasts that did not exist in 1990. In addition, non-linear options are widely available. Sixty-nine percent of U.S. households subscribe to Netflix, Amazon Prime, and/or Hulu – each with hundreds of hours of on-demand educational and informational programming

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<sup>2</sup> See Comments of the National Association of Broadcasters, MB Docket Nos. 18-202, 17-105 at 6 (filed Sept. 24, 2018) ("NAB Comments").

<sup>3</sup> See S. Rep. No. 102-92, at 3 (1991), *as reprinted in* 1992 U.S.C.C.A.N. 1133, 1135.

with a target audience of children 16 years of age or less. Nielsen estimates that just 0.5% of all TV households with children ages 2-17 have neither Internet nor multichannel video service.<sup>4</sup>

The increase in the types and flexibility of available media have resulted in sweeping changes in the way children watch video programming. When the Commission first adopted its children's programming rules, Saturday morning was reserved for children to enjoy entertainment, educational and informational programs, most often provided by broadcast television stations. Children knew when and on what channel their favorite programs would air, and they would plan around those programs. Those days are gone, as children now demand programs on their schedule and on the device of their choosing.

As NAB noted in its Comments, in 2000, children spent four hours and eight minutes per day (96.1% of their total daily viewing) watching over-the-air or pay television content on television and just ten minutes a day on the Internet or watching DVDs (3.9% of their total daily viewing).<sup>5</sup> Today, even though the total amount of time that children spend watching video programming has grown, children spend far less time watching linear programming sources.<sup>6</sup> In fact, even though most broadcasters offer two to four times the amount of free over-the-air programming that they did in 1992, total daily viewership of persons ages 2-17 plummeted 85% from 4.0 million during the 1991-1992 television season to only 600,000 in the 2017-2018 television season.<sup>7</sup> To be clear, this is not the number of children that watched Core Programming. This is children watching any programs offered by broadcasters, including local news and sports.

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<sup>4</sup> See NAB Comments at 7 (citing Nielsen's National Panel between the dates of April 26, 2018 and May 23, 2018).

<sup>5</sup> See *id.* at 8.

<sup>6</sup> See *id.*

<sup>7</sup> See *id.* at 8-9 (citing Nielsen: Sept-May seasons through 17/18).

As all of the evidence filed in this proceeding shows, viewing habits of children have shifted markedly over the past three decades. It follows that the Commission's rules governing broadcaster obligations for airing and reporting on children's programming should change as well.

**III. THE COMMISSION SHOULD REVISE ITS RULES TO PROVIDE BROADCASTERS THE FLEXIBILITY TO DETERMINE HOW BEST TO SERVE THEIR VIEWERS.**

Today, the Commission's processing guidelines for license renewal applications provides that the Media Bureau staff is authorized to approve the children's programming portion of a licensee's renewal application when the licensee has aired at least an average of three hours per week (as averaged over a six month period) of Core Programming on each of its full-time programming streams.<sup>8</sup> Core programming is defined as programming that, among other things, is at least 30 minutes in length, is aired between the hours of 7:00 a.m. and 10:00 p.m., is a regularly scheduled weekly program, and has "serving the educational and informational needs of children ages 16 and under as a significant purpose."<sup>9</sup> The Affiliates Associations agree with the Commission and the majority of commenters in this proceeding that the Commission's rules must change.

- a. Broadcasters should have the latitude to air children's programming of any length without a regular schedule.*

The Affiliates Associations encourage the Commission to adopt its tentative conclusion to permit licensees to air educational and informational children's programming of any length. Currently, the Commission requires Core Programming to be at least thirty minutes in length.

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<sup>8</sup> See Policies and Rules Concerning Children's Television Programming, Revision of Programming Policies for Television Broadcast Stations, *Report and Order*, 11 FCC Rcd 10660, 10718 ¶ 120 (1996).

<sup>9</sup> See 47 C.F.R. § 73.671; see also 47 U.S.C. § 303b(b).

This means that broadcasters have less incentive to air any educational or informational programming that is shorter than thirty minutes. In other words, the Commission's requirement that Core Programming be at least thirty minutes long suggests that longer form programs best serve children. However, as the Commission recognized in the NPRM and as stated in multiple comments, programming need not be thirty minutes or more in length to serve the best interest of children.<sup>10</sup> Indeed, studies have shown that children learn better from short-form video programming.<sup>11</sup> The Commission should not limit broadcasters' efforts to produce or acquire programming that best serves the needs of children. Instead, broadcasters should be allowed to choose the programming that in their judgment best serves the youth in their community.

Additionally, children today do not wait for their favorite show to air. Children often watch recorded programming or prefer to begin programs and finish them at a later time. Children often also prefer to "binge watch" programming. Thus, the Commission's requirement that programs be regularly scheduled may needlessly frustrate the interests and preferences of children. In fact, children might watch more children's programming from broadcasters if

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<sup>10</sup> See, e.g., *NPRM* at ¶ 20-21; NAB Comments at 15-18; Comments of Nexstar, Inc., MB Docket Nos. 18-202, 17-105 at 6-7, filed Sept. 24, 2018; Comments of Gray Television, Inc., MB Docket Nos. 18-202, 17-105 at 5-6, filed Sept. 24, 2018 ("Gray Comments"); Comments of the Network Commenters, MB Docket Nos. 18-202, 17-105 at 4, filed Sept. 24, 2018; Comments of Block Communications, Inc., MB Docket Nos. 18-202, 17-105 at 8-9, filed Sept. 24, 2018 ("Block Comments").

<sup>11</sup> See NAB Comments at 15-16 citing *Behavior Management Important Facts, The Student Coalition for Action in Literacy Education* available at <http://www.unc.edu/depts/scale/Member/trainings/BehaviorManagementImportantFacts.pdf> (suggesting an appropriate formula for determining a child's attention span for learning is "chronological age + 1," so, for example, an 8-year-old child would have a 9-minute attention span for learning (8+1=9)) and David Vawter, *Mining the Middle School Mind, National Association of Elementary School Principals*, at 2 (March 2009) available at [https://www.naesp.org/sites/default/files/resources/2/Middle\\_Matters/2009/MM2009v1\\_7n4a2.pdf](https://www.naesp.org/sites/default/files/resources/2/Middle_Matters/2009/MM2009v1_7n4a2.pdf) ("The attention span of the average middle school student is 10-12 minutes, and there is little evidence that their brains can be trained to develop a longer span.").

broadcasters had the flexibility to schedule programming to fit children's expectations, rather than the Commission's.

Giving broadcasters more flexibility on program length and scheduling also would allow broadcasters to experiment with different types of programs that may appeal to different types of viewers, including children. For example, as Gray described, "instead of three-hour blocks of children's programming on Saturday mornings, the station may air three-hour blocks of debates or other interview programming and shift its children's programming to after-school specials."<sup>12</sup> Similarly, Block Communications stated in its comments that it has not produced additional local sports programming because it simply does not have the capacity to air that programming and still meet its children's programming requirements.<sup>13</sup> As these examples show, with more flexibility, broadcasters would be able to continue to provide children's programming as well as other valuable content that broadcasters cannot provide today because of the more rigid children's educational and informational programming requirements.

*b. The Commission Must Change its Treatment of Core Programming on Multicast Streams.*

The Affiliates Associations support the Commission's tentative conclusion to remove the additional Core Programming requirement applicable to digital stations that multicast.<sup>14</sup> As discussed above, today's children have access to numerous broadcast and non-broadcast sources of video content produced specifically with children in mind. Commenters have shown that children's programming requirements displace other types of local programming and that stations frequently do not air local ads for fear of violating the Commission's rules on

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<sup>12</sup> See Gray Comments at 6.

<sup>13</sup> See Block Comments at 5-6.

<sup>14</sup> See *NPRM* at ¶ 51.

commercial limits. Stations, therefore, not only lose the opportunity to air programming that is in demand in their local markets, but also sacrifice revenue that could be reinvested in station operations.

The Affiliates Associations therefore agree with other commenters who suggest the Commission expand the Core Programming hours to 5:00 a.m. to 10:00 p.m. and permit broadcasters to air their Core Programming on any free over-the-air stream. First, limiting broadcasters' ability to air Core Programming in the window between 7:00 a.m. and 10:00 p.m. unnecessarily restricts the ability of broadcasters to schedule programming that is of interest to a station's viewers. Young children often are awake and watching television prior to 7:00 a.m.<sup>15</sup> Even assuming children preferred to watch programming at the time it aired, the Commission's rules needlessly restrict when broadcasters can air Core Programming.

Stations also need flexibility to choose on which stream to air their Core Programming. Currently, network affiliates most often air their children's programming on Saturday and Sunday mornings. This causes scheduling problems as stations try to expand their own locally-produced programming, including local news and sports. For affiliates located in the Pacific and Mountain time zones, the problem is exacerbated, because in addition to wanting to air their own locally-produced programming, those stations also must accommodate national sports programs that often begin early on weekend mornings.

The Affiliates Associations agree with the Commission's statement in the NPRM that "children's educational and information programming requirements for multicast streams are not necessary for the protection of the public interest, convenience and necessity."<sup>16</sup> To alleviate the

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<sup>15</sup> See NAB Comments at 18. See also Comments of Meredith Corporation, MB Docket Nos. 18-202, 17-105 at 2-3 (filed Sept. 24, 2018); Network Comments at 5-6; Gray Comments at 7.

<sup>16</sup> See NPRM at ¶ 52.

congestion on a station's primary stream, broadcasters should have the option of airing their children's programming on any free over-the-air stream.

Finally, stations that choose to continue to air their Core Programming on the primary stream also should have the option to make good any preemptions on a multicast stream. While the need to make good preemptions (or prevent them in the first place) could be alleviated if the Commission extended the timeframe during which Core Programming could air, stations still need additional flexibility so they are not forced to forgo programming that may be of interest to a broader population simply to meet the Commission's processing guidelines.<sup>17</sup>

#### **IV. THE COMMISSION'S PROPOSALS WILL NOT HAVE A DETRIMENTAL EFFECT ON LOW-INCOME FAMILIES.**

Some commenters incorrectly suggest that shifting children's programming to multicast streams will cause low-income families to lose their ability to access high-quality children's programming.<sup>18</sup> Those commenters suggest that low-income households often are over-the-air-only households, and because those households do not have access to MVPD or online sources of programming, they have disproportionately less access to quality children's programming. As the Commission knows well, over-the-air only households can access any of the multicast streams that a broadcast television station offers. Accordingly, shifting programming from a

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<sup>17</sup> As discussed in the Reply Comments that certain of the Affiliates Associations previously filed in the Commission's Modernization of Media Regulation Initiative, the Affiliates Associations also support NAB's proposal to eliminate the formalistic, restrictive "second home" policy. *See* Reply Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, and FBC Television Affiliates Association, MB Docket No. 17-105 (filed Aug. 4, 2017).

<sup>18</sup> Comments of Common Sense Kids Action, MB Docket Nos. 18-202, 17-105 at 9 (filed Sept. 24, 2018); Comments of the Institute for the Study of Knowledge Management in Education, Projected, Evolved, and Explorer at Large, MB Docket Nos. 18-202, 17-105 at 13-16 (filed Sept. 24, 2018).



primary stream to a multicast stream will not reduce the amount of programming available to over-the-air viewers. Moreover, because many MVPDs retransmit both primary and multicast streams that broadcast television stations offer, MVPD subscribers will not necessarily will lose access to children's programming that is moved to a multicast stream.

**V. THE COMMISSION SHOULD STREAMLINE REPORTING OF CHILDREN'S TELEVISION PROGRAMMING.**

The Affiliates Associations agree with the consensus of commenters that support simplifying the reporting requirements for children's programming.<sup>19</sup> Broadcasters today often spend hours each quarter preparing each station's onerous reports. The reports include detailed information about which children's programs a station aired in the prior quarter, when those programs aired, and information about programs the station plans to air in the next quarter. Those detailed reports today have little meaningful purpose. Members of the public seldom, if ever, review the reports, and most of the information included in the reports can be more easily obtained through other sources by a quick Internet search. Clearly, the quarterly children's programming reports have outlived their usefulness as tools to educate the public.

The Affiliates Associations, therefore, urge the Commission to adopt its tentative conclusion to allow broadcasters to file annually information concerning a station's children's programming. Specifically, the Affiliates Associations agree that a simple annual certification from broadcasters is the only information the Commission needs to process renewal applications. In fact, requiring broadcasters to complete dozens of pages of children's programming reports each quarter forces the Commission to spend its limited resources to review each of those reports

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<sup>19</sup> See Block Comments at 9, Meredith Comments at 3-4; Comments of National Religious Broadcasters, MB Docket Nos. 18-202, 17-105 at 4, filed Sept. 24, 2018; Cadillac Telecasting Company at 4; Network Comments at 6-7; Gray Comments at 2-5.

as it considers a licensee's license renewal application. Streamlining a station's reporting requirements will not only reduce the burden on Commission staff, it also will allow the staff to more quickly process license renewal applications.

## **VI. CONCLUSION**

The Affiliates Associations appreciate and support the Commission's initiative to modernize its outdated children's programming rules. For the reasons stated above, the Affiliates Associations urge the Commission adopt the changes to the children's programming rules requested herein.

Respectfully submitted,

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