

*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**  
**Center for Digital Democracy**  
**Campaign for a Commercial-Free Childhood**  
**Color of Change**  
**Common Sense Kids Action**  
**Benton Foundation**  
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## Summary

The Center for Digital Democracy, Campaign for a Commercial-Free Childhood, Common Sense Kids Action, Color of Change, Dr. Jenny Radesky, and the Benton Foundation (collectively, “Child Advocates”) asked the FCC in June to convert the draft NPRM in this proceeding to an NOI because of the “vast number of unsupported claims and unanswered questions, as well the numerous negative effects on children.”<sup>1</sup> While FCC did not make this change, Commissioner O’Rielly wrote separately to “reemphasize that the launch of this rulemaking is the *beginning* of the process, not the end. That means everyone will have plenty of time to provide the requisite analysis of the proposed rule changes I just outlined before the Commission moves forward on any final decision.”<sup>2</sup>

Having now reviewed the comments, Child Advocates believe that the record supports retention of the current guidelines. The record does not show that non-broadcast platforms provide significant *educational* programming for children. In addition, many families continue to rely on over-the-air broadcasting and cannot afford the alternatives. And despite changes in viewing habits, large numbers of children still watch broadcast television.

The current guidelines already afford broadcast stations great flexibility in meeting their statutory obligations to provide programming specifically designed to educate and inform children. Reducing the number of hours required to meet the guidelines and allowing all children’s educational programming to be shown on multicast channels as broadcasters propose, would lead to fewer children watching E/I programming and less E/I programming being shown.

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<sup>1</sup> Letter to Chairman Pai from Americans For Tax Reform et al, (June 21, 2018), <https://ecfsapi.fcc.gov/file/106222242601905/Coalition%20ltr%20Media%20Modernization%20062118.pdf>.

<sup>2</sup> *Children’s Television Programming Rules*, NPRM, MB Dkt. No. 18-202, 44 (2018) (O’Rielly, concurring).

It would also eliminate any economic incentive to produce high-quality educational programming. Indeed, the broadcasters candidly admit they would rather air other types of programming that is more lucrative.

It is especially important that the FCC continue to require that stations make reports on their children's educational programming available to the public. Neither broadcasters nor MVPDs should be allowed to simply certify compliance with the CTA when there is no viable way to verify their compliance.

Child Advocates support the proposal of Sesame Workshop to convene experts and stakeholders to update the CTA to take account of changes in the media landscape and to take advantage of the educational potential of alternative platforms. But until this occurs, the FCC should keep the current guidelines in place to ensure that the most vulnerable children continue to have some access to educational programming.

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**I. The record supports retention of the current guidelines for assessing whether broadcast television stations are meeting their public interest obligations to children**

Child Advocates agree that the media landscape has changed dramatically over the past twenty years. However, as explained in our comments, broadcast television stations have a duty under the Communications Act to serve the educational needs of children through their programming in exchange for their free use of the public airwaves.<sup>3</sup>

Assuming for purposes of argument, however, that the FCC has the legal authority to relieve broadcasters from this responsibility, it would not be in the public interest to do so unless all children would still have access to a diversity of high-quality educational programming. Here, the record show that this is not the case.

**A. Non-broadcast children’s programming is generally not designed to educate or inform children**

The record does not support the claim, as NAB asserts, that the “vast majority of children today have access to a plethora of educational content offered by a wide variety of broadcast, cable, satellite and over-the-top outlets and accessible via a collection of devices.”<sup>4</sup> NAB provides no support for this broad claim beyond citing ¶55 of the NPRM.<sup>5</sup> The NAB again cites only the NPRM to support its claim that “[c]hildren today have access to far more educational programming choices than they did when Congress passed the CTA in 1990.”<sup>6</sup>

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<sup>3</sup> Comments of Center for Digital Democracy, et al., MB Dkt. No. 18-202, at 5 (filed Sept. 24, 2018) (“CDD, CCFC & Benton Comments”).

<sup>4</sup> Comments of National Association of Broadcasters, MB Dkt. No. 18-202, at 20 (filed Sept. 24, 2018) (“NAB Comments”).

<sup>5</sup> *Id.* at 20 & n.54.

<sup>6</sup> *Id.* at 27.

NTCA asserts that cable networks “provide thousands of hours of high-quality children’s programming annually . . . and are committed to providing a safe space to entertain and educate children twelve years old and younger.”<sup>7</sup> But NTCA too makes no effort to quantify how much of this children’s programming has education as a significant purpose. Indeed, it points out that cable networks are not required to provide a minimum amount of “core” educational and informational programming. NCTA states “unlike broadcasters they have no separate reason to distinguish ‘education and informational’ programming from the other children’s programming they provide on related channels.”<sup>8</sup>

Further industry commenters argue that the alternatives to broadcast and cable, such as social media, provide children with enough programming that young audiences no longer depend on broadcast television.<sup>9</sup> This is blatantly false and fails to differentiate between entertaining programming, educational programming, and forms of interactive entertainment—namely, social media— which aren’t programming at all. Social media and OTT providers are focused on entertainment and under no obligation to offer educational content.<sup>10</sup> Much of the children’s programming offered on Hulu Kids, Amazon, YouTube and Netflix was originally produced for cable television by companies such as Disney, Nickelodeon and Cartoon Network, and is not designed with educating children as a specific purpose.

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<sup>7</sup> Comments of the Internet & Television Association, MB Dkt. No. 18-202, at 1 (filed Sept. 24, 2018) (“NCTA Comment”).

<sup>8</sup> See *Policies and Rules Concerning Children’s Television Programming*, MM Docket No. 93-48, Report and Order, 11 FCC Rcd 10660 (1996) at ¶ 4 (“1996 Order”).

<sup>9</sup> NAB Comments at 6-7; *id.* at 11-12.

<sup>10</sup> Kathy Hirsh-Pasek, Jennifer M. Zosh, Roberta Michnick Golinkoff, James H. Gray, Michael B. Robb & Jordy Kaufman, *Putting Education in “Educational” Apps: Lessons from the Science of Learning*, PSYCHOLOGICAL SCIENCE IN THE PUBLIC INTEREST, Vol. 16(1) 3-34, Association For Psychological Science (2015) at 3-5 (Finding that apps are largely unregulated and untested and while there are many entertaining apps, “only a handful of apps are designed with an eye toward how children actually learn.”).

In sum, only broadcast television has a statutory obligation to provide educational programming for children. While other platforms certainly have the potential to provide such programming, there is no evidence in the record that quantifies or describe the extent of educational children's programming available on cable, satellite, YouTube, Netflix or other streaming services.

### **B. Many families continue to watch and rely on over-the-air broadcasting**

The record also shows that many families continue to watch over-the-air broadcasting. *Broadcasting and Cable* reports that “[d]espite the industry’s focus on streaming and on-demand video, linear TV dominates Americans’ time spent viewing and is on the rise.”<sup>11</sup> Similarly, a new study by SmithGeiger found that live TV viewing is up 26% from last year, with TV viewers spending an average of 3 hours and 13 minutes per day watching live TV.<sup>12</sup>

Nielsen’s Total Audience Report Q1 2018 reports that on average, 81% of TV households use a multichannel service, 6% are broadband only, and 13% of households rely exclusively on over-the-air broadcasting, as shown in the charts below.<sup>13</sup>

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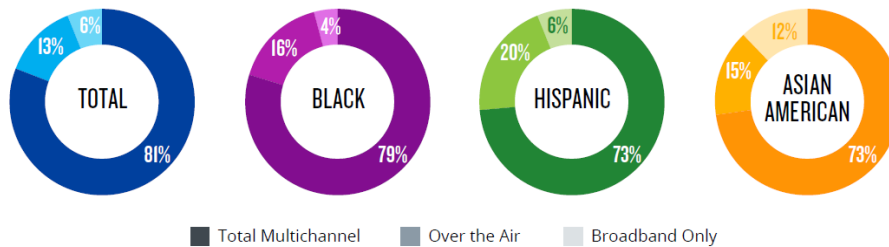
<sup>11</sup> See Jon Lafayette, *Linear TV Dominates Time Spent Watching Video: Nielsen*, Broadcasting & Cable (Jul. 31, 2018), <https://www.broadcastingcable.com/news/linear-tv-dominates-time-spent-watching-video-nielsen>.

<sup>12</sup> Wayne Friedman, *TV Dominates, but Digital Media is a Fixture*, Mediapost (Apr. 17, 2018), <https://www.mediapost.com/publications/article/317716/tv-dominates-but-digital-media-is-a-fixture.html>; Cynthia Littleton, *Survey: Local Broadcast TV Still Dominate source of News in ‘Fake News’ Era*, Variety (Apr. 8, 2018), <https://variety.com/2018/tv/news/nab-local-tv-broadcast-fake-news-survey-1202747108/>.

<sup>13</sup> Nielsen, *The Nielsen Total Audience Report: Q1 2018* 11 (2018), <https://www.nielsen.com/us/en/insights/reports/2018/q1-2018-total-audience-report.html>.

## MARCH 2018 TELEVISION DISTRIBUTION STATUS

% OF TV HOUSEHOLDS



Note: Total Multichannel, Over the Air and Broadband only breaks are mutually exclusive. Homes with virtual providers (vMVPDs) are included within Total Multichannel.

Since there are approximately 119.6 TV million households in the US,<sup>14</sup> this means that about 15,548,000 million households rely exclusively on over-the-broadcasting. Nielsen found that the percentage of minority households that relied on over-the-air television was higher than the national average. For Black households it was 16%, for Asian-American households it was 15%, and for Hispanic households it was 20%.<sup>15</sup>

In contrast to this published report, several commenters claim that the percentage of households relying on over-the-air broadcasting is much lower. Americans for Tax Reform *et al.*, for example, asserts that “[a]ccording to Nielsen, there are only 2.5% of households without cable or internet access in the home. Of those homes, only 20% have a child between the ages of two and 17. That leaves **only .5% of households with children that don’t have cable or**

<sup>14</sup> Nielsen Estimates 119.6 million TV home in the US for the 2017-18 season, Nielsen Insights (Aug. 25, 2017), <https://www.nielsen.com/us/en/insights/news/2017/nielsen-estimates-119-6-million-us-tv-homes-2017-2018-tv-season.html>.

<sup>15</sup> At a recent Hispanic TV Summit, panelists emphasized that Spanish language networks are increasingly dependent on old-fashion linear channels for the core of their business. Mike Farrell, *Hispanic TV Summit: Linear Isn’t Dead for Hispanic Channels*, Multichannel News (Oct. 4, 2018), <https://www.multichannel.com/news/hispanic-summit-linear-isnt-dead-for-hispanic-channels>.



**internet in the home. . .**<sup>16</sup> NAB cites these same statistics, i.e., that “*only 0.5 percent* of TV households (or about 582,000 households) have neither internet nor multichannel video service *and* include children ages 2-17.”<sup>17</sup>

While both Americans for Tax Reform *et al.* and the NAB say these numbers came from Nielsen, Child Advocates were not able to verify them,<sup>18</sup> and believe that they are much too low. As discussed above, the Nielsen Total Audience Report found that 13% of households (15,548,000) rely exclusively on over-the-air broadcasting. US Census figures for 2017 show that there are 49,756,000 households with children under age 18 (or almost 42%).<sup>19</sup>

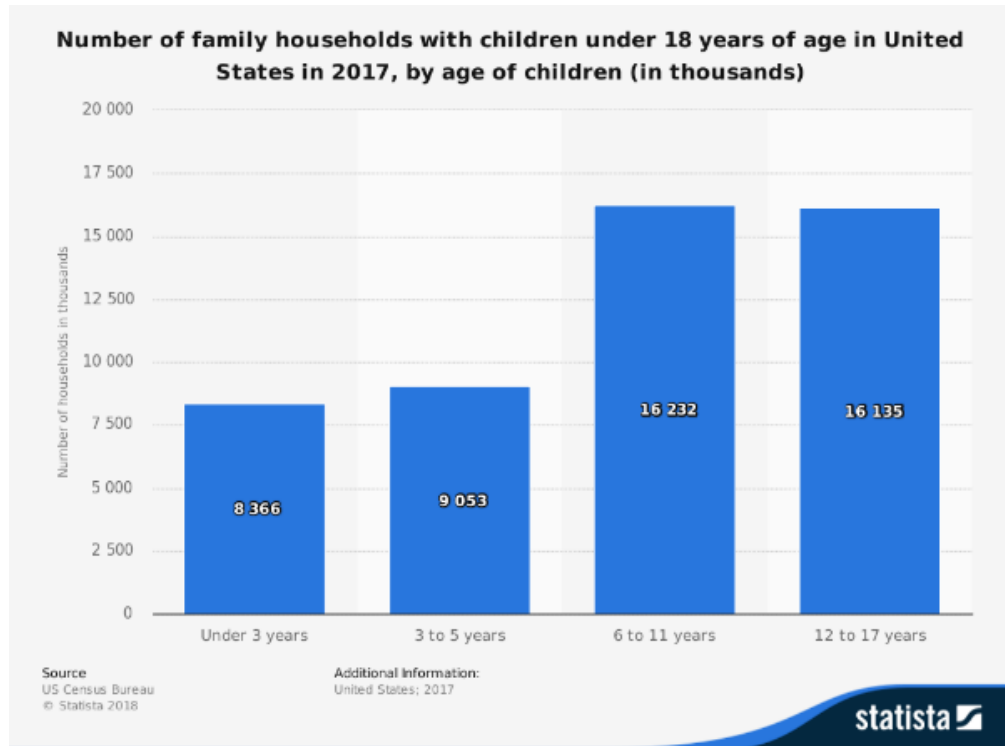
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<sup>16</sup> Letter to Chairman Pai from Americans for Tax Reform et al, (June 21, 2018), <https://ecfsapi.fcc.gov/file/106222242601905/Coalition%20ltr%20Media%20Modernization%20062118.pdf>. (emphasis in original).

<sup>17</sup> NAB Comments at 3; *id.* at 7; *id.* at 10.

<sup>18</sup> The only specific source Americans for Tax Reform et al and NAB cite is Nielsen’s National Panel between 04/26/18- 05/23/18, which does not seem to be publicly available.

<sup>19</sup> *Number of family households with children under 18 years of age in the United States in 2017, by age of children (in thousands)*, Statista, <https://www.statista.com/statistics/679812/number-of-households-with-children-by-age/>.



This suggests that the number of households with children that rely on over-the-air broadcasting is approximately 6,530,160 (42% of 15,548,000), or 11 times more than the number estimated by the NAB.

### **C. Many families are unable to afford non-broadcast alternatives**

As further evidence that many more households continue to rely on broadcast television, the record shows that alternatives to broadcast television are expensive and out of reach for many low-income families.<sup>20</sup> Imagine, for example, a family of 4 living in rural Kansas. To access cable or DBS, the family would have to pay a monthly cable subscription of \$60.<sup>21</sup> To use an

<sup>20</sup> See Comments of CDD, CCFC & Benton at 17-22; Comments of Common Sense Media, MB Dkt. No. 18-202, at 1-2 (filed Sept. 24, 2018) (“CSM Comment”); Comments of National Hispanic Media Coalition, MB Dkt. No. 18-202, at 1,7 (filed Sept. 24, 2018) (“NHMC Comment”).

<sup>21</sup> For families living in Lindsborg, Kansas, DBS service costs a minimum of \$60/month, while cable service cost \$59.99/month. These prices were found online at

OTT provider like Netflix, the family would need pay around a \$10/month subscription fee plus subscribe to a broadband service, which (if available at all) would cost at least \$40/month with a \$19.95 activation fee.<sup>22</sup> If the family wanted to bundle the internet and cable, they would have to pay at least \$75/month.<sup>23</sup> These totals, ranging between \$50 and \$75 per month, are simply too high for many families to afford. Common Sense Media and the National Hispanic Media Coalition (“NHMC”) found that many lower-income families do not have access to cable or internet alternatives.<sup>24</sup>

#### **D. Many children watch broadcast television**

While NAB argues that broadcasters have lost much of its child audience to other platforms, the statistics it cites actually show that many children still watch broadcast television. NAB states, for example, that “total viewership of persons ages 2-17 on any given day dropped from 4.0 million in the 1991-1992 television season to 600,000 in the 2017-2018 season.”<sup>25</sup> But 600,000 viewers per day is still a lot of viewers. Similarly, NAB asserts that children ages 2-16 watched only 34 minutes per day of broadcast television in 2017 compared to 115 in 2000.<sup>26</sup> But again, 34 minutes per day is a lot of time spent watching broadcast television.

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[https://www.usdish.com/packages?kbid=85105&utm\\_source=cabletv.com&utm\\_medium=affiliate](https://www.usdish.com/packages?kbid=85105&utm_source=cabletv.com&utm_medium=affiliate) and <https://www.attsavings.com/availability/uverse/ks/lindsborg>).

<sup>22</sup> The AT&T Internet Basic plan, AT&T, <https://www.attsavings.com/internet/internet-basic-5>.

<sup>23</sup> AT&T bundle costs \$75/month (<https://www.attsavings.com/availability/uverse/ks/lindsborg>); Comcast Xfinity bundle costs \$89.99/month (<https://www.cabletv.com/xfinity/bundles>).

<sup>24</sup> Common Sense Media, *The Common Sense Census: Media Use by Kids Age Zero to Eight* (2017) (28% of 0-to 8-year olds in lower-income families do not have a home computer, 26% lack access to high-speed internet at home, and 39% do not have cable subscriptions); *see also* NHMC Comments at 7.

<sup>25</sup> NAB Comments at 8-9.

<sup>26</sup> *Id.* at 8.

NAB also claims that Saturday morning viewership of the four networks by children ages 2-11 has declined by 71% in the last ten years.<sup>27</sup> It is not surprising that viewership on Saturday morning by younger children has dropped off given the fact the four major networks provide *no* programming on Saturday or any other day designed to educate children ages 2-11.<sup>28</sup> But the fact remains that a large number of children are still watching a great deal of broadcast television throughout the week. These children would benefit from having high quality educational programming designed for them. Broadcasters' unwillingness to produce or purchase educational programming and to air it at times when young audiences are available is not a reason to relieve them of their public interest obligations.

In conclusion, while broadcast television may be losing young viewers to YouTube and OTT services, unless and until the FCC finds that these sources provide a sufficient amount of high quality educational programming that all children can access, it should not eliminate or substantially modify the current guidelines.

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<sup>27</sup> *Id.* at 10.

<sup>28</sup> See Comments of Litton Entertainment, MB Dkt. No. 18-202, at ii (filed Sept. 24, 2018) ("Litton Comments"); *id.* at 5. A single company, Litton Entertainment, provides three hour programming targeted for teens to ABC, CBS, NBC, CW, and Telemundo stations. See also David Robb, *Preteen Saturday Morning Kid's Shows Abandoned by Broadcast Networks*, Deadline (June 20, 2016), <https://deadline.com/2016/06/kids-tv-shows-saturday-mornings-fccloophole-advertising-1201774658/>.

## **II. The current children’s programming guidelines already provide stations with great flexibility**

Child Advocates agree with NHMC, that the 3 hours per week of core programming does not impose significant burdens on broadcasters.<sup>29</sup> And contrary to NAB, the current guidelines are not “one-size-fits-all.”<sup>30</sup>

Neither category A or B dictates the subject matter, program format or scheduling of E/I programming (other than it must air between 7 AM and 10 PM). Broadcasters that would prefer not to satisfy Category A by airing on average 3 hours of E/I programming per week, may opt for Category B. Under Category B,

Broadcasters that air somewhat less than three hours per week of core programming will also receive staff-level approval if they show that they have aired a package of different types of educational and informational programming that demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming.<sup>31</sup>

Under Category B, the FCC takes into account “specials, regularly scheduled non-weekly programs, short-form programs, and PSAs with significant purpose of educating and informing children ages 16.”<sup>32</sup> It explained that it created Category B so that broadcasters that did not offer 3 hours of regularly scheduled E/I programming could still “qualify for routine staff processing of their applications.”<sup>33</sup> Thus, commenters who blame the guidelines for their decision not to air short form programming or specials, are simply wrong.<sup>34</sup> In fact, short form programming, like

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<sup>29</sup> See NHMC Comments at 4; *see also* 1996 Order at ¶ 4. In adopting the guidelines, the FCC found that three hours per week was minimal when compared against a station’s many weekly broadcast hours.

<sup>30</sup> NAB Comments at 4.

<sup>31</sup> 1996 Order at 10723-24.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> NAB Comments at 31 n. 71; NPRM at ¶¶ 20, 24.

ABC Afterschool specials and Schoolhouse Rock, would not exist if not for pressure from FCC commissioners. In the 1970s, facing pressure from the FCC and children's advocates to improve their children's programming, networks like ABC created specials designed for children.<sup>35</sup> In fact, what doomed Schoolhouse Rock was a weakening of children's television guidelines.<sup>36</sup> The FCC repealed advertising and other restrictions on children's television shows with an order in 1984 and one year later, ABC canceled Schoolhouse Rock.<sup>37</sup> Not only was FCC regulation not responsible for the demise of children's short-form programming, regulatory pressure had actually facilitated its creation in the first place.

Ultimately, Broadcasters that do not fall within either Category A or B, still

have a full opportunity to [show they complied with the CTA] by, for example, . . . relying in part on sponsorship of core educational and 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 nonbroadcast efforts which enhance the value of children's educational and informational television programming.<sup>38</sup>

While the NAB complains that “[r]equiring full Commission review of the renewal applications of stations engaging in sponsorships effectively discourages any station from exploring such an option,”<sup>39</sup> it does not propose specific criteria for the staff to use in assessing the sufficiency of

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<sup>35</sup> Meg Schumm, *Menudo, Mary Lou Retton, and "Schoolhouse Rock": Making the Case for a New Children's Television Act*, Common Sense Media (July 11, 2018), <https://www.common sense media.org/kids-action/blog/menudo-mary-lou-retton-and-schoolhouse-rock-making-the-case-for-a-new-childrens#>.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> 1996 Order at 10724.

<sup>39</sup> NAB Comments at 33.

these efforts.<sup>40</sup> Unless and until specific criteria are adopted, the FCC cannot and should not delegate this task to the Media Bureau.

### **III. Granting broadcasters more “flexibility” would result in reduction of educational children’s programming**

Despite the fact that the current E/I guidelines give broadcaster a great deal of flexibility, they seek even more. Specifically, the NAB and Network Commenters want to limit the requisite amount of children’s educational programming to a mere 156 hours per year,<sup>41</sup> while others want to eliminate any quantitative guideline.<sup>42</sup> The NAB further proposes to count toward the guideline, programming that is

- shown only on multicast channels, which have minimal viewership and are not available to many households;
- not regularly scheduled and not identified in program guides so that parents could locate and record it;
- programming that is shorter than 30 minutes;
- programming that is aired as early as 6 am or as late as 11 pm when children are unlikely to be watching.<sup>43</sup>

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<sup>40</sup> See Comments of National Religious Broadcasters Comments, MB Dkt. No. 18-202, at 1 (filed Sept. 24, 2018) (“NRB Comments”); *id.* at 4. The NRB’s proposed solution is to replace form 398 with a compliance certification that requires stations to achieve a certain number or percentage of activities from a menu option model. The NRB provides the following vague menu options: “(i) hiring an intern to seek out collaborative ways to reach and serve children through video programming, (ii) initiating a survey of local viewers on ways to better serve children through station programming, (iii) enabling a children’s programming link on the station’s website to provide both broadcast and non-broadcast resources and links for parents, (iv) periodic emails, texts or other communications directly to viewers promoting children’s educational and informational events, activities or programming, or (v) sharing station production equipment with, or providing production training to, individuals or entities seeking to produce children’s programming.”

<sup>41</sup> NAB Comments at 5.

<sup>42</sup> Comments of Marantha Broadcasting Company, MB Dkt. No. 18-202, at 4 (filed Sept. 24, 2018) (“Marantha Comments”).

<sup>43</sup> *E.g.*, NAB Comments at 5; *see also* Comments of Network Commenters, MB Dkt. No. 18-202, at 5 (filed Sept. 24, 2018) (“Network Commenters”). Network Commenters advocate for the programming to be aired starting at 5 am.

If the FCC were to adopt this approach, it would deprive many children of access to educational children's E/I programming.

**A. Adopting the NAB safe harbor would reduce the amount, viewership and advertising revenues from children's educational programming, making production uneconomical**

Adopting the NAB proposal would allow television broadcasters to make even greater profits from their free use of the public airwaves. But it would do so by substantially reducing the quantity and quality of E/I programming for children. For example, WRC-TV, the NBC-owned station in Washington D.C., aired 3 hours of core programming on its primary channel and 3 additional hours on multicast channels, according to its Form 398 for the third quarter of 2018.<sup>44</sup> These amounts satisfy the current guidelines. However, under NAB's proposal however, they would only need 3 hours on any channel instead of 12 (3 primary) to meet the guideline.

NAB also wants stations to be able to place all children's core programming on multicast channels. While households that rely on over-the-air television can access the multicast channels, it appears that these channels have very low viewership. Unless Broadcasters demonstrate that a substantial number of children watch the multicast channels, they should not be permitted to put all of the E/I programming on these channels.

Low viewership of multicast channels is due in part because, as NAB points out, the FCC's must-carry requirements apply only to a station's primary channel.<sup>45</sup> As such, families that subscribe to cable, especially the less expensive packages, are unlikely to have access to the non-primary channels. None of the cable providers provide any information suggesting the many of their subscribers have access to the multicast channels.

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<sup>44</sup> *Third Quarter of 2018 Children's TV Programming Report Amendment*, NBC Telemundo License, LLC (WRC-TV), FRN: 0019509470 (submitted Oct. 10, 2018) ("Form 398").

<sup>45</sup> NAB Comments at 3; *id.* at 20.



Litton Entertainment's comments, however, demonstrate that viewership of children's educational programming is much lower on multicast channels than on primary channels. It reports that when its E/I programming is shown on multicast streams rather than the primary channel, advertising revenues drop by 98 percent.<sup>46</sup> It explains that

Allowing stations to satisfy their E/I obligations by moving programming to a multicast stream will destroy the economics of producing E/I programming, resulting in producers relying on reruns and stale programming to provide to stations. New E/I programming would likely disappear, and any newly produced programming would be of greatly inferior quality.<sup>47</sup>

Litton's concern about the lack of child viewership on multicast channels is echoed by Marantha Broadcasting, which opposes having to put any children's E/I programs on multicast channels because children are less likely to watch "'specialized channels' . . . [like] soap opera channels, channels devoted to old movies, nostalgia television, news channels, or even static billboard channels with music."<sup>48</sup> Accordingly, letting broadcasters air all children's E/I programming on multicast channels would result in fewer hours of such programming, much lower viewership, and cheaper, lower quality programming.

**B. There is no merit to NAB's claims about the benefits of putting all children's educational programming on multicast channels**

NAB attempts to bolster its argument to allow all E/I programming to be shown on multicast do not withstand closer examination. For example, NAB argues that allowing stations to place all E/I programming on multicast channels would eliminate the need to pre-empt children's core programming for live sports. It cites as an example a Fox affiliate complaining

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<sup>46</sup> Litton Comments at ii; *id.* at 14.

<sup>47</sup> *Id.* at ii-iii; *id.* at 16.

<sup>48</sup> Marantha Comments at 3-4.

that it must preempt 7:00 am Saturday and Sunday newscasts about 24 times per year, to air E/I programs that that been preempted by live network sports programming.<sup>49</sup> However, nothing in the children’s television rules requires children’s programs be aired on Saturday and Sunday morning.<sup>50</sup>

The broadcasters’ real motivation for seeking “flexibility” is so that they can make more money. Indeed, the general manager for the Fox affiliate described above explains that preempting local news for children’s E/I programming “costs his station advertising dollars that cannot be recouped.”<sup>51</sup> NAB also cites an example of a network affiliate that could make a lot more money if it did not need to air E/I programming.<sup>52</sup> That station claims that the syndicated show that it airs on weekdays generates about \$1,000 per day more in ad revenues than the adjacent E/I program.<sup>53</sup> Similarly, Block Communications claims that it has been “thwarted” from airing pre-game shows to talk about important Saturday basketball games, estimating that if it could air local news on Saturday mornings instead of children’s programming, it could save enough money to hire 14 additional employees.<sup>54</sup> Besides the fact that Block could easily resolve its issues under the current guidelines by simply airing its children’s programs on the weekdays,

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<sup>49</sup> NAB Comments at 25.

<sup>50</sup> Section 102(b), codified at 47 USC §303b. In fact, the CTA incentivizes stations to air more programming on weekdays by allowing an extra one minute and 30 seconds of advertising per hour. “[E]ach commercial television broadcast licensee shall limit the duration of advertising in children’s television programming to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays.”

<sup>51</sup> NAB Comments at 25-26.

<sup>52</sup> *Id.* at 29-30.

<sup>53</sup> *Id.* at 29-30. NAB cites several other similar examples.

<sup>54</sup> Comments of Block Communications, MB Dkt. No. 18-202, at 5-6 (filed Sept. 24, 2018); *see also* Remarks of FCC Commissioner O’Rielly, 2018 Kentucky Broadcasters Association Conference (Oct. 9, 2018), <https://www.fcc.gov/document/orielly-remarks-kentucky-broadcasters-association-conference>.

there is no guarantee that Block, or any other broadcaster, would use the “savings” it may receive to better serve the public or hire additional employees. Ultimately, greater flexibility would let stations make more money, but would reduce educational programming for children.

#### **IV. Broadcasters, Cable and DBS Operators must maintain publicly accessible records sufficient to verify compliance**

The FCC created Form 398, the Children’s Television Programming Report to implement the CTA’s directive to consider a television station’s program service for children, as part of the license renewal process.<sup>55</sup> These reports are placed in stations’ online public inspection files on a quarterly basis so that both the FCC and members of the public can assess the adequacy of their service to children. Cable and other MVPD operators are not required to carry programs specifically designed to educate and inform children, and so do not file Form 398. They do, however, need to place documentation in their online public files sufficient to show that they complied with the advertising limits on programs intended for children under age 13. These filings continue to be necessary for the FCC to carry out Congress’ directives.

##### **A. The Commission should not eliminate the Children’s Television Program Reports**

Broadcasters complain that the filing Form 398 serves no useful purpose and that no one views them.<sup>56</sup> This is simply not true. United Church of Christ (UCC) church members and UCC’s counsel analyzed Form 398s for television stations serving Washington, D.C., and Cleveland, Ohio, as well as stations in Texas, Arizona, Oklahoma and Nebraska. Information from the Form 398s served as the basis for filing petitions to deny the renewal of two stations in

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<sup>55</sup> See 47 USC §303b; 1996 Order at 10660-10661.

<sup>56</sup> See Network Commenters at 6; Comments of Meredith Corporation, MB Dkt. No. 18-202, at 4 (filed Sept. 24, 2018); Comments of Nexstar at 5, MB Dkt. No. 18-202, (filed Sept. 24, 2018) (“Nexstar Comments”).

Washington, DC and two in Cleveland for failing to provide a sufficient quantity of programming specifically designed to educate and inform children.

Based on UCC's petition to deny the Univision station in Cleveland, FCC staff reviewed the Form 398s for all 24 Univision licensees, and found that the Univision stations failed to provide sufficient core programming to fulfill the 3-hour core guideline.<sup>57</sup> As a result, Univision entered into a consent decree with the FCC in which it agreed to detailed plan to ensure future compliance with the CTA and to pay \$24 million to the US Treasury.<sup>58</sup> In the case of the other Cleveland station and the two Washington, D.C stations, the Commission granted the renewals noting that "it appears that the objections by the petitioners were successful in precipitating a review by all of the stations of the programs at issue."<sup>59</sup> Ultimately, the information in the Form 398s is both used and useful.

Some commenters ask the FCC to reduce the level of detail in the Form 398s and require them to be filed on an annual, rather than a quarterly, basis.<sup>60</sup> While Child Advocates believe that the current reporting requirements are not nearly as burdensome as broadcasters claim,<sup>61</sup> Child Advocates do not oppose reducing some of the details and the frequency of filing. Child Advocates do, however, strongly oppose proposals to eliminate the reports and to rely on certifications of compliance.<sup>62</sup> If stations were not required to identify what programs they consider to be E/I programs and when they were aired, the public would not be able to determine

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<sup>57</sup> *Shareholders of Univision Communications, Inc.*, 22 FCC Rcd 5842 ¶41 (2007).

<sup>58</sup> *Id.* at ¶42.

<sup>59</sup> Letter from the FCC regarding Petitions to Deny, DA 15-273, (March 2, 2015).

<sup>60</sup> NAB Comments at 5.

<sup>61</sup> *See* Comments of Gray Television, MB Dkt. No. 18-202, at 2-3 (filed Sept. 24, 2018) ("Gray Comments"); NAB Comments at 37.

<sup>62</sup> *See, e.g.*, Nexstar Comments at 9; Gray Comments at 3-4.

if a station actually complied with its public interest obligations, let alone have information sufficient to file a petition to deny.<sup>63</sup> Similarly, the FCC would lack the information necessary to determine whether a station had met the requirements of the CTA.

**B. Cable and satellite operators must continue to provide documentation showing compliance with advertising guidelines in their online public inspection files**

For similar reasons, Child Advocates oppose the proposals of cable and direct broadcast satellite (DBS) that the FCC eliminate the requirement that they place documents in their online public inspection files to show they complied with the commercial time limits for children's programming.<sup>64</sup> Such documentation is necessary to enforce the rules. For example, a routine audit of cable system's public files by FCC staff in 2004 found two cable networks had exceeded the commercial limits on children's programs. Viacom-owned Nickelodeon admitted to violating the ad restrictions nearly 600 times over approximately 10 months and agreed to pay a \$1 million. Disney paid \$500,000 for exceeding ad limits on its ABC Family Channel.<sup>65</sup> If cable and DBS providers were only required to certify compliance with the ad limits, violations like those that occurred in 2004 might never be discovered.

**Conclusion**

The FCC should not change the children's television rules at this time. Broadcasters already have a great deal of flexibility under the 1996 guidelines. Affording them additional

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<sup>63</sup> Comments of AT&T, MB Dkt. No. 18-202, at 2 (filed Sept. 24, 2018) ("AT&T Comments"); American Cable Association at 1, MB Dkt. No. 18-202, at 1 (filed Sept. 24, 2018). ("ACA Comments").

<sup>64</sup> NCTA Comments at 12; AT&T Comments at 1; ACA Comments at 3.

<sup>65</sup> Lisa de Moraes, *FCC Fines 2 Networks for Violating Limits on Kids' Show Ads*, Washington Post (Oct. 22, 2004), <http://www.washingtonpost.com/wp-dyn/articles/A53132-2004Oct21.html>; see also Geraldine Fabrikant, *Viacom and Disney to Pay \$1.5 Million for Violating F.C.C. Rules*, N.Y. Times (Oct. 22, 2004), <https://www.nytimes.com/2004/10/22/business/media/viacom-and-disney-to-pay-15-million-for-violating-fcc-rules.html>.

flexibility would lead to a reduction in children’s educational programs that would be detrimental to all children, but especially those that cannot afford alternative sources. Moreover, the record fails to show that even children with access to nonbroadcast platforms are well served by a variety of educational (as opposed to entertaining) programs.

Child Advocates recognize that children’s viewing habits have changed as the media landscape has evolved. New media platforms could provide educational content for children, and it may no longer makes sense to require only broadcast television stations to provide educational and informational programming for children. But Child Advocates acknowledge that the FCC’s ability to regulate non-broadcast platforms is limited. For this reason, we support Sesame Workshop’s call for the FCC to work with Congress and Executive Branch to build a new vision and framework for a modernized and more effective CTA.<sup>66</sup> A new CTA should recognize today’s multiplatform world and address challenges in closing educational gaps and promoting equitable digital opportunities.<sup>67</sup> It should also provide protections for children against excessive commercialism and manipulative and unfair advertising practices across all forms of children’s media. Until a new framework is put in place, however, the FCC should keep the current guidelines to ensure that the most vulnerable children continue to have some access to educational programming.

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<sup>66</sup> Comments of Sesame Workshop, MB Dkt. No. 18-202, at 9 (filed Sept. 24, 2018).

<sup>67</sup> *Id.* at 5.

\* These comments were also drafted by Lindsey Barrett, IPR Teaching Fellow, with assistance from Bridget O’Connell and Krista Pontzer, law students in the Institute for Public Representation Communications & Technology Clinic.

Respectfully submitted,

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