

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

REPLY COMMENTS



The American Cable Association (“ACA”) hereby submits these reply comments in response to comments filed regarding the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking on Children’s Television Programming (“NPRM”).¹ In its initial comments, ACA explained that complying with Section 76.1703 of the Commission’s rules, which requires cable operators to “maintain records sufficient to verify compliance with § 76.225 and make such records available to the public,”² is

¹ *Children’s Television Programming*, Notice of Proposed Rulemaking, FCC 18-93, MB Docket Nos. 18-202; 17-105 (rel. Jul. 13, 2018) (“NPRM”).

² 47 C.F.R. § 76.1703. The Commission has interpreted this rule to mean that every quarter cable operators must post in their online public inspection files either a list of the number of commercial minutes per hour aired during identified children's programs, or certified documentation that each programming network carried by the operator, as a standard practice, formats and airs identified children's programs within limits established by the Children's Television Act of 1990. *Policies and Rules Concerning Children's Television Programming; Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*,

burdensome, particularly for small operators.³ As such, ACA urged the Commission to adopt its proposal to mitigate this burden by reducing the frequency with which cable operators must collect and post the necessary documentation.⁴ ACA also urged the Commission to provide additional relief by increasing the amount of time after the end of a reporting period that cable operators have to collect and post programmer certifications from 10 days to 45 days, and by making clear that the Media Bureau will not adopt an official Notice of Apparent Liability for Forfeiture against a small or medium-sized cable operator regarding its compliance with its recordkeeping obligations if it can show it's made good faith efforts to collect and post all necessary certifications.

The record in this proceeding supports ACA's position. Only two parties filed initial comments that touched specifically on the issue of MVPDs' recordkeeping requirements related to commercial limits in children's programming, and both urged the Commission to provide relief from this unnecessary burden.⁵ No parties objected to the proposal.⁶

Memorandum Opinion and Order, 6 FCC Rcd 5093, ¶ 22 (1991) ("Children's Television Programming Order"), *citing The Children's Television Act of 1990*, Pub. L. 101-437, 104 Stat. 996.

³ See *generally*, Children's Television Programming, MB Docket No. 18-202, Comments of the American Cable Association (filed Sep. 24, 2018).

⁴ NPRM, ¶ 30.

⁵ See *generally* Children's Television Programming, MB Docket No. 18-202, Comments of AT&T (filed Sep. 24, 2018) ("AT&T Comments"); see also Comments of NCTA – The Internet & Television Association at 12-13 (filed Sep. 24, 2018) ("NCTA Comments"). Both AT&T and NCTA urged the Commission to go even further, by permitting cable operators to provide relevant documentation from program networks only in the event of a complaint, a position that ACA also supports.

⁶ Many parties also expressed support for reducing the frequency of broadcast stations' recordkeeping requirements from annually to quarterly. See, e.g., Children's Television Programming, MB Docket No. 18-202, Comments of the National Association of Broadcasters at 36-39 (filed Sep. 24, 2018); Comments of Nexstar at 8 (filed Sep. 24, 2018); Comments of Block Communications at 8 (filed Sep. 24, 2018). The Commission originally adopted the quarterly recordkeeping requirement for cable operators because it

In its initial comments, ACA described in detail the lengthy and iterative process of searching for and collecting hundreds of children’s programming certifications. NCTA corroborates ACA’s account, explaining that “[i]n practice, each cable operator (and other MVPD) collects and uploads to system public files the same documents from dozens – if not hundreds – of programming networks certifying that the networks comply with the Commission’s rules,” and agrees that “this process is unnecessarily burdensome for both cable operators and programming networks.”⁷

AT&T further points out that “there is little to no practical utility to requiring hundreds of MVPDs to collect the same certificates each quarter,”⁸ and that “[t]here is no statutory requirement that cable operators file these certificates quarterly.”⁹ These factors make the children’s programming recordkeeping requirement an ideal candidate for reform under the Commission’s Modernization of Media Regulation Initiative. AT&T also states, in agreement with ACA, that MVPDs realistically need more than 10 days to collect and upload hundreds of certifications, and that “there is no reason to believe that granting [additional time] for this administrative undertaking would undermine the purpose of this obligation.”¹⁰

The difficulties faced by even large, nationwide MVPDs such as AT&T’s affiliate, DIRECTV, are greater for ACA members who operate with limited administrative

was “analogous to” broadcast stations’ children’s programming reporting requirements. See Children’s Television Programming Order, ¶ 23. Under that same rationale, if the Commission opts to reduce the recordkeeping requirements for broadcast stations, it should, for this reason (and for the reasons set for by ACA in its initial comments), do the same for cable operators.

⁷ NCTA Comments at 12.

⁸ AT&T Comments at 2-3.

⁹ *Id.* at 3.

¹⁰ *Id.*

resources and lack less bargaining power to ensure that programmers provide their certifications in a timely manner. ACA therefore urges the Commission to reduce the frequency of the recordkeeping requirement from quarterly to annually, to provide MVPDs extra time to collect and post their certifications, and to reassure small cable operators in particular that a small or mid-sized cable operator who can demonstrate, in response to an inquiry from the Media Bureau, that they made a good faith effort to collect and post to their online file all necessary programmer certificates and program lists by the Commission's deadline will not be subject to an official Notice of Apparent Liability for Forfeiture.

Respectfully submitted,



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October 23, 2018