

June 29, 2018

Commissioner Michael O’Rielly
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Dear Commissioner O’Rielly,

The undersigned organizations and individual urge you to change the proposed draft Notice of Proposed Rulemaking (NPRM) on Children’s Television Programming Rules, MB Docket No. 18-202, circulated on June 21 to a Notice of Inquiry (NOI).

We agree that major changes have taken place in the video marketplace and that it is appropriate for the FCC to take a fresh look at its rules in light of these changes. But the draft NPRM appears to be a wish-list for broadcasters, which does nothing to serve the needs of children. It makes numerous “tentative conclusions” based on no evidence. Finalizing these “tentative conclusions” would effectively eliminate the existing rules, and as a result, many children would lose access to educational programming designed to serve their needs. Children of color and those whose families are of limited means will especially be harmed by adopting these tentative conclusions, because they are less able to afford cable, satellite, or broadband (even if available), tend to watch more television, and may have fewer opportunities to learn in other ways.¹ Changing the draft to a NOI would allow the Commission to obtain the necessary evidence and to craft proposals in light of that evidence.

For close to fifty years the Commission has recognized that broadcasters have a “special obligation to serve children” by providing educational and informational programming.² In 1990, Congress enacted the Children’s Television Act (CTA) to ensure broadcasters were meeting their obligation to serve “the educational and informational needs of children through the licensee’s overall programming, including programming specifically designed to serve such needs.”³ The FCC’s rules implementing the CTA, adopted in 1996 and amended in 2004, allow broadcast

¹ In the Children’s Television Act of 1990, Congress found “it has been clearly demonstrated that television can assist children to learn important information, skills, values, and behavior, while entertaining them and exciting their curiosity to learn about the world around them.” Pub. L. No. 101-437, §101(1).

² *1974 Policy Statement*, 50 F.C.C.2d 1, at 6.

³ Children’s Television Act of 1990, §103(a), codified at 47 U.S.C. 303b(a).

television stations to satisfy their obligations under the CTA by meeting a processing guideline.⁴

To count toward the processing guideline, children’s programming must meet certain requirements regarding educational purpose, length, scheduling and so on. Programs meeting these requirements are referred to as educational/informational (“E/I”) or “core” programming.⁵ The amount of programming needed to meet the guideline depends on the number of hours that a station broadcasts. Stations that provide only one channel of programming must provide three hours per week. Stations that multicast must air three hours on their primary channel, and depending on the number of hours they multicast, a comparable amount of E/I programming on the multicast channels. While stations have alternative ways to demonstrate compliance with their statutory obligations, in practice, most opt to meet the processing guideline.

The draft NPRM makes eleven tentative conclusions, seeks comments on other proposed changes, and asks many questions. The lack of a specific proposal makes it difficult for the public to comment effectively. Nonetheless, it is clear that finalizing the tentative conclusions would make it easier for stations to meet the processing guideline and more difficult for the public, and the Commission, to determine if stations have complied with the CTA. Implementing these tentative conclusions would also reduce the amount of E/I programming available to kids. Thus, the fact that no evidence supports these tentative conclusions is a major concern. For example:

- The draft (§ 52) claims it is no longer necessary to require more than three hours per week of E/I programming because children’s educational programming is available on other platforms. Thus, it tentatively concludes that the Commission should eliminate the requirement that a broadcast station providing multiple program streams provide additional hours of E/I programming. However, the draft provides no data on the impact of this change on the availability of E/I programming on broadcast stations. Since television stations offer more than 5,500 digital multicast channels, this change would substantially reduce the amount of E/I programming produced and made available on broadcast television.

⁴ 47 CFR § 73.671 (2018); *Policies and Rules Concerning Children’s Television Programming*, Report and Order, 11 FCC Rcd 10660 (1996); *Children’s Television Obligations of Digital Broadcasters*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943 (2004), recons. 21 FCC Rcd 11065 (2006).

⁵ 47 CFR § 73.671 (2018).

- The draft (§ 16) provides no data to support its claim that non-broadcast sources provide ample E/I programming. No media other than broadcasters are required to provide E/I programming. Moreover, it fails to consider that the reduction in E/I programming on broadcast television could reduce E/I programming on platforms such as Amazon, Netflix, and YouTube that show children’s programs that originate on broadcast stations.
- The draft (§ 49) tentatively decides to eliminate the requirement that three hours of core programming be available on a station’s primary channel. As a result, many children living in homes relying on cable or satellite, which are not required to carry the multicast channels, would lose access to this programming. The draft does not attempt to quantify the effect of this change.
- In addition to allowing stations to put all core programming on multicast channels, the draft (§ 49) tentatively decides to eliminate the requirement that, in order to count toward the processing guideline, core programming must be on a channel with comparable carriage on cable and satellite as the primary channel. This change could deprive children living in households that subscribe to cable or satellite of access to any E/I programming, yet the draft neither recognizes this possibility nor attempts to assess the impact of this change on the amount and diversity of children’s educational programming.
- The draft (§ 23) tentatively concludes children’s educational programming need not be regularly scheduled to count toward the guideline due to the decline in appointment viewing by adults and the availability of DVRs. However, it cites no evidence for the assumption that appointment viewing by children has changed and no information as to the prevalence of DVRs or other television recording technology in broadcast-only homes. The draft fails to explain how parents and children will be able to find programming that is not regularly scheduled, a problem exacerbated by the proposal to eliminate the requirement that broadcasters identify E/I programming to publishers of program guides (§ 28).
- The draft (§ 20) tentatively concludes that programming no longer needs to be full length (30 minutes) to qualify as core programming. This could allow stations to meet the guideline simply by airing PSAs, or other short segments. The draft cites no evidence concerning the relative benefits of full-length and short segment programs, and instead, asks if there are any studies of this issue (§ 21). Nor does it consider how parents or children might find and watch PSAs or short segments, which are usually not listed in program guides.

- The draft (§ 25) tentatively decides to eliminate the requirement that public broadcasters display the E/I icon on programs that are designed to educate children. It asserts that the E/I symbol is sufficiently familiar to parents that there is no benefit to requiring noncommercial stations to keep displaying it. This makes no sense. If the symbol is familiar to parents, then its use is having the desired effect, and should continue.
- The draft claims (§ 29), without citing any evidence, that the quarterly children's television reports, known as Form 398, serve no useful purpose. Thus, it tentatively concludes (§ 30) that Form 398 should require less information about past programming and no information about future programming, should be filed annually instead of quarterly, and tentatively concludes as well that stations would not have to tell the public about the availability of these reports.

Given the vast number of unsupported claims and unanswered questions, as well as the numerous negative effects on children, we strongly urge the Commission not to adopt the NPRM at its July meeting, and instead, to issue a NOI. We do not oppose updating the children's television rules for the changed new media environment, nor do we oppose changing regulations that are unduly burdensome. But we want to ensure that any changes that give broadcasters greater flexibility do not come at the expense of our nation's children. A NOI would give the Commission a chance to gather the data needed to make an informed decision on how to best modernize the rules while meeting the statutory obligations of the CTA.

cc: All Commissioners and Staff

Respectfully submitted,

Campaign for a Commercial Free Childhood
 Center for Digital Democracy
 Common Sense Media
 Benton Foundation
 Berkeley Media Studies Center
 Color of Change
 Free Press
 National Hispanic Media Coalition
 Parent's Television Council
 Dr. Jenny Radesky, MD, Lead author,
 American Academy of Pediatrics policy
 statement for children 0-5 years *Media
 and Young Minds*
 United Church of Christ, OC Inc.