



Mary C. Lovejoy  
Vice President of Regulatory Affairs  
American Cable Association  
2415 39<sup>th</sup> Place, NW  
Washington, DC 20007

[mlovejoy@americancable.org](mailto:mlovejoy@americancable.org)  
(202) 603-1735

July 2, 2018

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Ex Parte Communication of the American Cable Association; Children's Television Programming Rules, MB Docket No. 18-202; Modernization of Media Regulation Initiative, MB Docket No. 17-105.**

Dear Ms. Dortch:

On June 28, 2018, Ross Lieberman, Sr. Vice President of Government Affairs, American Cable Association, and the undersigned met separately with Brooke Ericson, Chief of Staff for Commissioner O'Rielly, and with Alison Nemeth, Media Advisor to Chairman Pai, and interns Kevin Costello and Justin McCuen. On June 29, we met with Kate Black, Policy Advisor, Media, to Commissioner Rosenworcel, and on July 2 with Evan Swarztrauber, Policy Advisor to Commissioner Carr, to discuss the draft Notice of Proposed Rulemaking ("NPRM") on the Children's Television Programming Rules. In the meetings, ACA applauded the Commission's commitment to modernizing its media regulations and urged the Commission to continue its efforts to reduce unnecessary regulatory burdens, particularly for small entities. To that end, ACA suggested that the Commission seek comment in the NPRM on ways to reduce burdensome recordkeeping requirements on cable operators without altering or otherwise disturbing the existing limits on commercial matter in children's television programming.

ACA explained that recordkeeping requirements for children's commercial limits are extraordinarily burdensome for cable operators. Section 76.1703 of the Commission's rules requires cable operators to "maintain records sufficient to verify compliance with § 76.225 and make such records available to the public."<sup>1</sup> To meet this obligation, the Commission demands that cable operators 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

---

<sup>1</sup> 47 C.F.R. § 76.1703. Section 76.225 refers to the Commission's rules on commercial limits in children's programming. 47 C.F.R. § 76.225.

by the Children's Television Act of 1990.<sup>2</sup> To comply with the rule, cable operators must update their records “no later than the tenth day of the quarter following the quarter in which they aired.”<sup>3</sup>

As explained in ACA’s comments on the Commission’s Modernization of Media Regulation Initiative, “[t]he administrative burden of this requirement is substantial, and has in fact been made worse by the transition of the public file to the Commission’s online database.”<sup>4</sup> Operators must not only obtain quarterly paper certifications for the hundreds of channels offered on each of their systems, but they must ensure that they are formatted as readable text files and upload them to each of their online public inspection files. In practice, hundreds of operators are each uploading over 100 pages of paper certificates into thousands of online public files every twelve weeks. This burdensome process is made more so when programmers are delinquent in providing such certifications. Moreover, it is disproportionately burdensome for smaller providers who operate with very small staffs. To illustrate the extent of the burden imposed by this recordkeeping requirement on individual operators, ACA provided a copy of one small cable system’s quarterly children’s programming documentation, which comprises well over one hundred pages of certifications.<sup>5</sup> The collective burden that this recordkeeping requirement imposes on the cable industry is also remarkable, ACA noted, given that cable operators carry most of the same programming and therefore each ends up posting the same certificates.

In light of the heavy burdens and redundancies that Section 76.1703 imposes on cable operators, particularly smaller ones, ACA encourages the Commission to seek comment in the NPRM on how this obligation could be made less onerous and duplicative without altering or otherwise disturbing the existing limits on commercial matter in children’s television programming. To this end, the NPRM should inquire about the extent to which the recordkeeping obligations, as opposed to the substantive liability imposed by Section 225, influence cable operators to contract with programmers to ensure compliance with the limits on commercial programming. What is the best way to reduce the recordkeeping burdens without affecting compliance with existing commercial limits? Should the Commission forego requiring cable operators to post programmers’ certificates in their public file, and only require the production of such certificates in response to a complaint or investigation? Alternatively, can the Commission rely on certifications collected and posted by only the largest cable operators to audit the amount of commercial programming carried on each programming network? If so, should the Commission exempt mid-sized and smaller cable operators from the reporting requirement? As another approach, should the Commission require cable operators to collect and post such certificates on an annual basis instead of quarterly? How much does the Commission or the public rely on recordkeeping by cable operators to monitor compliance with the substantive limitations on commercial programming?

Because this record keeping requirement is overly burdensome and redundant, and because it can be modified or eliminated without changing the rules regarding limits on commercial matter in children’s television programming, Section 76.1703 is ripe for immediate review as part of the Commission’s present reexamination of the children’s programming requirements. ACA therefore urges the Commission to seek comment on whether and how it should amend its recordkeeping rules to alleviate unnecessary burdens while still ensuring that children remain protected from potentially harmful commercial programming.

---

<sup>2</sup> *Policies and Rules Concerning Children's Television Programming; Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 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.

<sup>3</sup> Children’s Television Programming Order, ¶ 23.

<sup>4</sup> *Modernization of Media Regulations Initiative*, MB Docket No. 17-105, Comments of the American Cable Association at 17-18 (filed Jul. 5, 2017).

<sup>5</sup> See Attachments A & B.

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary C. Lovejoy".

Mary C. Lovejoy

Attachments

cc: Brooke Ericson  
Alison Nemeth  
Kate Black  
Evan Swarztrauber  
Kevin Costello  
Justin McCuen