

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

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

To: The Commission

**Comments of  
National Religious Broadcasters**

National Religious Broadcasters (“NRB”), through undersigned counsel, hereby files comments in response to the Commission’s July 13, 2018 *Notice of Proposed Rulemaking* in the above-captioned matter.<sup>1</sup>

*Background*

National Religious Broadcasters (NRB) is a non-profit association that exists to keep the doors of electronic media open and accessible for religious broadcasters. NRB’s many members include full power and Class A television broadcasters that must comply with the FCC’s children’s television programming rules, as well as numerous programmers and ministries that address or have expertise in children’s learning and education.

NRB welcomes the Commission’s *NPRM* and supports an overhaul of the FCC’s current children’s television programming regulatory scheme that will empower broadcasters with the flexibility and discretion to innovate in this arena. The existing

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<sup>1</sup> Notice of Proposed Rulemaking, *Children’s Television Programming Rules*, FCC 18-93, rel. July 13, 2018 (hereinafter “*NPRM*”).

model incentivizes a checkbox approach that is out of touch with the reality of today's children's video programming trends.

**I. In a Rapidly Changing Children's Educational Video Programming Market, Flexibility, Deference and Discretion Should Replace Stringent, Quantitative Standards and Definitions.**

Today's fast-evolving changes in children's video programming delivery and viewing dictate a new "light touch" regulatory approach in the children's programming arena that is flexible, deferential and allows local broadcasters the creative discretion to craft effective programming or educational solutions for children.

The *NPRM* cites substantial evidence of the "major shift" in the way children are consuming and viewing video programming, particularly via non-broadcast platforms.<sup>2</sup> The FCC's children's television programming regulatory scheme has not kept pace with these changes. If anything, it may in fact be discouraging creative developments that could benefit children. The "require-it-and-they-will-watch" premise of the 1990s children's television regulatory approach – if it were ever valid – wastes valuable resources that could be redirected to benefit the important development of children.

A more nuanced and deferential regulatory approach will benefit children by giving broadcasters the leeway and discretion to determine how best to serve the educational and informational needs of children in their local viewing audiences. NRB supports such a model over the current quantitative regime,<sup>3</sup> one which recognizes that

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<sup>2</sup> *NPRM*, ¶16. NRB members echo these findings, facts and studies, both from broadcast members whose compliance burdens have either remained static or increased despite the market changes, and from its non-broadcast members whose internet-delivered video content achieves precise viewer-driven video program watching to select audiences.

<sup>3</sup> To be clear, NRB does not reject that the Commission should have certain regulatory authority in areas governing children's programming. For example, the current indecency safe harbor, grounded in the protection of children from age-inappropriate programming based on a community-standards determination, provides an important safeguard from video content that may harm children. But

local stations have the best vantage point to determine what programming or other efforts/activities will best meet children’s educational and informational needs.

**II. The burdensome quantitative model of the past twenty years is not effective and should be replaced with a “menu option” approach and a compliance certification.**

In the context of television station license renewal, the Children’s Television Act directs a review of a licensee’s “overall programming” to determine the extent to which a broadcaster has served the special needs of children.<sup>4</sup> A subset of that review includes programs that are specifically designed to serve such needs. The vast majority of the Commission’s children’s television regulation addresses this programming subset.<sup>5</sup>

Such heavy-handed regulation was never necessary. The CTA, though requiring a review of station programming, never imposed a minimum-hours processing standard or a pages-long form to be filed every three months. The Commission is therefore free to replace this quantitative scheme, which inherently promotes a least-risky approach to license renewal divorced from viewership trends or market reality, and has become a compliance burden without benefits.

NRB joins its voice to those describing the burdens of the current processing scheme as substantial. NRB member stations must dedicate staff to hours of administrative work to complete and file the quarterly Form 398, repeating redundant

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license renewal children’s television processing standards devoid of meaningful benefits for children, coupled with the plentiful amount of children’s programming available on noncommercial station networks, cable networks, and non-broadcast sources, dilutes any compelling governmental interest in regulating speech and clumsily tilt today’s children’s television regulatory scheme toward government-compelled speech that cannot withstand Constitutional scrutiny. The *NPRM* recognizes this risk. *See NPRM* ¶42.

<sup>4</sup> Children’s Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 USC §§303a, 303b, 394 (hereinafter, “CTA”).

<sup>5</sup> *See* 47 CFR §73.671.

information, using a system that is not always reliable, computing total hours of programming aired by digital stream, and confirming that programs listed meet all seven qualification criteria. A late-filed or missing Form 398 – a form never mandated by the CTA -- results in monetary fines.<sup>6</sup> All of this, despite a lack of proof that completing and filing the Form 398 is actually benefitting parents in identifying and locating programming for their children.

NRB supports replacing the Form 398 with a compliance certification from the broadcaster as is done with other FCC rules, such as the certification for compliance with children’s television commercial limits. Annual public-file certification to described programming and other non-broadcast support activities conducted by the broadcast station is more than adequate; complicated and repetitive forms are counterproductive and burdensome.

The public file certification would include details of actions taken by the station. Following a “menu option” model similar to the approach used in the broadcast EEO compliance context, the Commission would require stations to achieve a certain number or percentage of activities from a menu during a set period, with points for each possible activity. Examples of menu options might include (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

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<sup>6</sup> See e.g., In re: First Media Radio, LLC, *Notice of Apparent Liability for Forfeiture*, DA 13-1416, rel. June 21, 2013, assessing a \$6,000 fine for the late filing of three Form 398 reports, and In re: Specialty Broadcasting Corporation, *Notice of Apparent Liability for Forfeiture*, DA 13-1414, rel. June 21, 2013, assessing a \$9,000 fine for the late filing of ten Form 398 reports, and In Re: Byrne Acquisition Group, LLC, *Notice of Apparent Liability for Forfeiture*, DA 13-1415, rel. June 21, 2013, assessing a fine of \$18,000 for 23 missing Form 398 reports.

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.

Airing children’s programming would be one of the menu options, and to comply with the CTA, would need to be part of the station’s efforts over the course of a renewal term.<sup>7</sup> But the flexibility of including non-broadcast options in such a model would enable creativity and innovation from local broadcasters, while giving the Commission a less one-dimensional model.

The CTA, in addition to broadly considering programming efforts without arbitrary quantitative minimums, explicitly permits the Commission to consider non-broadcast efforts by a broadcast licensee, and importantly, does so *without prescribing the universe of those possibilities*.<sup>8</sup> One of the menu options could therefore easily be “other,” allowing a broadcaster to participate in and describe a unique additional way of serving children’s educational/informational needs. A description of the menu option,

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<sup>7</sup> As suggested in Section III, short-form video programming should be permissible, with a menu-option value based on the number of times such programming aired (i.e. full credit for “broadcast of short-form children’s programming at least 10 times during a month”). A certain number of “Core Programming” hours should not be required. Further, the digital channel transmitting the programming should not matter, though a channel with cable distribution might add value to that menu option. Requiring programming to satisfy certain criteria to count as children’s programming is also unnecessary. The CTA refers to “overall programming” on a station, and broadcasters should therefore be allowed the discretion to consider and count other programs whose purpose is not solely to serve children of a certain age.

<sup>8</sup> CTA, §303b(b).

the date it occurred or period it covers, and a brief description of the program or activity should be all that is necessary to certify compliance.<sup>9</sup>

The Form 398 is only one part of the burden for broadcasters. Stations must also (i) find and secure programming that meets the E/I standards, which is becoming particularly difficult for independent stations and often requires specific satellite receive equipment, (ii) locate and coordinate with publishers of program guides, or (iii) handle or negotiate technical issues with the E/I symbol required for such programming.

Without having to maneuver a wicket of disqualifying definitions, the universe of possible programming options available to stations would expand. Obligations to communicate with program guides should give way to the reality that parents in the internet age can easily search and find children's programming on their own. The elimination of E/I symbology requirements would let local broadcasters make reasonable children's programming choices that best serve their viewers.

### **III. NRB Supports Staff-Level Recognition of Collaborative Efforts With Non-Broadcasting Entities and Short-Form Programming Without Quantity or Length Specifications.**

One of the reasons broadcasters currently avoid claiming compliance using non-programming activities is because the FCC staff must refer such matters to the Commission for decision.<sup>10</sup> This added layer of bureaucracy should be unnecessary when compliance includes actual programming in combination with non-broadcast efforts as part of a menu-option compliance certification.

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<sup>9</sup> Even without a menu option approach, the Commission could recognize a certification of any reasonable efforts by a station to serve children's unique needs, so long as those efforts included some programming.

<sup>10</sup> See *1996 Report & Order*, 11 FCC Rcd at 10724, ¶135.

In a menu-option approach, for example, NRB's broadcast members could work with and support non-broadcast member organizations and ministries that provide internet-based video programming directly targeted at children. Broadcast licensees should be encouraged to support such programming, either periodically or regularly, through collaborations over content production, technical advice, programming ideas, distribution consultation, monetary support, personnel assistance, sponsorship and the like.

These relationships may present video content opportunities in the form of pre-existing video on children's educational activities at religious museums or theme parks, as well as general child-based religious teaching and information. E/I symbols should no longer be necessary for video content to qualify toward a station's children's television programming obligation. Nor should the "regular" scheduling of a program. These barriers only serve to limit the quality and availability of children's video programming content that stations can use.

NRB strongly supports the *NPRM's* suggestion that short form programming less than 30 minutes in length satisfy the CTA programming requirement. Such short-form content is often easier to produce and distribute, and can be more impactful. No specific quantity or length of such programming should be mandated. Stations should be allowed to air any children's directed programming (short or long-form) at whatever times of the day they deem appropriate to reach children in their audiences, without a defined time-window. Local broadcasters know best how to reach their children viewers, and should be allowed to craft their own plans for doing so without the threat of penalty or license renewal delay.

The CTA, in addition to broadly considering programming efforts without arbitrary quantitative minimums, explicitly permits the Commission to consider non-broadcast efforts by a broadcast licensee, and does so *without prescribing the universe of those possibilities*. The Commission should follow suit, and modify its rule to specify a menu of options recognizing any reasonable effort to serve children’s educational and informational needs. Commission staff should be authorized to review and approve compliance for license renewal when certification includes any programming.

Conclusion

The current children’s television regulatory scheme is overburdensome, disincentivizes creativity, and prioritizes the Commission’s judgment over broadcasters on how to best serve their local communities. A new menu-option certification approach that is less burdensome and promotes collaboration and creativity is a win-win for broadcasters and the children that the CTA sought to benefit in the first place. A new “light touch” approach to evaluating television stations’ efforts to serve children is the right reform. Less of a Commission role, and more of a local broadcaster role, is the correct answer.

Respectfully submitted:

National Religious Broadcasters



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