

**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

COMMENTS

Block Communications, Inc. (“Block”), by its attorneys, hereby submits these comments in response to the *Notice of Proposed Rulemaking* in the Commission’s docket proposing modernization of the children’s programming rules.¹

I. INTRODUCTION

The Children’s Television Act (“CTA”) and the Commission’s rules governing children’s programming on television are now nearly thirty (30) years old. The rules created in the early 1990s to protect children watching analog television are simply inadequate and ineffective for achieving Congress’ goal of creating a safe space for children in the digital age. What began as an effort to protect children from inappropriate content and excessive advertising has ossified to the point that broadcasters are required to air programming that few children watch simply so they can check a box on their license renewal application. Block therefore applauds the

¹ *In the Matter of Children’s Television Programming Rules*, Notice of Proposed Rulemaking, MB Docket No. 18-202 (rel. July 13, 2018) (the “NPRM”).

Commission's efforts to rethink broadcasters' children's programming obligations to give broadcasters greater flexibility to actually serve the children in their viewing audience.

Block is a diversified, family-owned communications company with broadcast television, newspaper, cable, and telephony interests and nearly a century of experience in the media business. Block has been a television broadcaster since 1972, and currently owns and operates four full power and one Class A station in the heartland states of Ohio, Kentucky, Indiana and Illinois. Block embraces its statutory responsibility to serve all of its viewers, regardless of age. Block's stations are active in their local communities, and its stations are known for their civic engagement.² Block also strongly supports the mission of the CTA to improve appropriate television viewing opportunities for children. The digital age, however, requires new strategies for reaching young viewers, and those strategies have nothing to do with maintaining the antiquated model of appointment viewing on Saturday morning. To be successful, broadcast programming for children needs to be accessible to children and economical for television stations.

For these reasons, Block supports all proposals that would increase broadcasters' flexibility in scheduling children's programming and in satisfying their children's programming obligations. Giving broadcasters greater scheduling flexibility will allow stations to better tailor their children's programming to the needs of children in individual markets. Moreover, Block supports proposals to allow exclusive use of

² For example, Block's station WDRB in Louisville, Kentucky, broadcasts editorials hosted by the station general manager and other community leaders that take on important issues of interest to local viewers such as pension reform, state gambling laws, and freedom of the press.

multicast channels to deliver children’s programming. Allowing greater use of multicasts will keep children’s programming just as accessible over-the-air as it is today while eliminating obligations on the primary channel that broadcasters like Block find increasingly economically burdensome. Block also supports proposals to reduce the children’s programming reporting requirements, which today create needless compliance costs for broadcasters without improving children’s programming at all.

With the plethora of children’s programming available from multiple types of media outlets, the current FCC children’s programming rules are relics from a long past era. Block urges the Commission to adopt the changes requested herein.

II. THE CURRENT CHILDREN’S PROGRAMMING RULES ARE OUTDATED, INEFFICIENT, AND RIPE FOR REFORM.

The system established by the Commission’s children’s programming rules is broken. As the Commission recognized in the *NPRM*, the way children consume video programming has changed dramatically since the children’s programming rules were first adopted in 1991.³ Children no longer gather after school or on Saturday mornings to view the next episode of their favorite programs. Instead, children expect their programs to be available on demand when they want them, such as through video services like Netflix or Amazon. Or, they expect to be able to tune in to a 24-hour children’s network that offers children’s programming at any time of day, such as through the PBS kids multicast channel, ION’s Qubo network, or the Disney Channel. Since few children are interested in “regularly scheduled” programming, viewership numbers for children’s programming have been dropping for many years on most

³ NPRM at ¶1.

network affiliate stations, including the Block stations. The consequence of these changes in children's viewing habits is that programming aired to satisfy the Commission's rules is not actually benefitting children.

Unfortunately, the Commission's current rules, which focus on established viewing times and prescribed lengths and types of children's programs, actively discourage broadcasters from adapting programming strategies to address their youth audience's changing habits. As Commission staff is well aware, many broadcasters have faced significant penalties over the years for various violations of the children's programming rules.⁴ Accordingly, rather than trying to produce local children's programming, or running children's programming at times that might best fit local children's needs, many stations now run syndicated, pre-packaged blocks of children's programming, just to be safe. Further, with the very strict limits on advertising and the types and content of ads that can run during children's programming, stations have also learned they can face large fines if they run an improper ad or if they misunderstand what counts as an "hour" under the children's programming rules.⁵ The risk of running an improper ad, combined with low advertising revenues because of low viewership numbers, has resulted in many stations completely foregoing advertising revenue during children's programs – the potential revenue is not worth the potential risk. Many

⁴ See, e.g., *North Carolina Broadcasting Partners, Licensee of Television Station WCCB(TV) Charlotte, North Carolina*, Memorandum Opinion and Order and Forfeiture Order, 16 FCC Rcd 5627 (2001) (\$25,000 forfeiture for exceeding the hourly limits on commercial matter); *KTLA, Inc. Licensee of Station KTLA-TV, Los Angeles, California*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11424 (2007) (\$20,000 forfeiture for the airing of "program-length" commercials).

⁵ See, e.g., *Winston Broadcasting Network, Inc. Licensee of Station WBNX-TV, Akron, Ohio*, Forfeiture Order, DA 10-729 (rel. May 4, 2010) (\$16,000 forfeiture for violating the "host-selling" policy).

stations instead run PSAs in advertising slots in all of their children's programming on all of their primary and multicast streams. And so, rules that were designed to substantively improve viewing opportunities for children have instead produced a system of rules that encourages risk avoidance and ritualistic scheduling of "safe" children's programming that few children ever watch.

This problem alone justifies reform of the children's programming rules, but it is not the only problem with the current rules. The current rules also impose substantial economic burdens on broadcasters that impair the service broadcasters provide to their entire audience, young and old. For example, Block's WDRB(TV) recently changed its weekend schedule and now runs news on Saturday mornings from 6 AM to 9 AM. When this time slot included children's programming, the station received no revenue for the reasons discussed above. Today, the station makes about \$2,850 in revenue for the hour between 8 AM and 9 AM on a weekend morning. That is \$11,400 per month for just that one hour. Multiplied times three hours per weekend, the station could generate additional revenue of up to \$35,000 per month, allowing it to employ up to 14 people just for that three-hour news block.

Children's programming requirements also limit the stations' ability to produce other types of local programming. As another example, at WDRB(TV), the station has several Saturday basketball games coming up this season that are of great local interest (two Louisville games, one Kentucky game, and a few Indiana games). The station's viewers (and advertisers) would welcome a pre-game show to talk about the games before they are played. Such shows would employ a dozen station crewmembers. Advertisers clamor to be part of the program. The station estimates it

could gross as much as \$9,000 per pre-game show, revenue that would go right back into station personnel, capital purchases, and additional local programming. The station, however, currently does not plan to produce and run these pre-game programs because of the problems caused by pre-empting children's programming. Multiplied over an entire year, and over multiple years, the station's inability to produce local sports programming creates losses for many parties, including children who are budding sports fans.

This state of affairs cannot be what Congress intended when it adopted the CTA or what the Commission expected when it adopted its children's programming rules. No child is being served by impractically scheduled, unwatched children's programming. And no community is served when stations divert resources from serving viewers to satisfy outmoded rules designed for a thirty-year old marketplace that exists today only in history books.

III. THE COMMISSION SHOULD ADOPT NEW RULES THAT ENCOURAGE BROADCASTERS TO DEVELOP PROGRAMMING STRATEGIES THAT WILL ACTUALLY SERVE CHILDREN AND REDUCE NEEDLESS REGULATORY BURDENS.

Block firmly believes there is a better way to serve children and the communities that are raising them. The Commission should seek to reform its children's programming rules in a way that eliminates the current incentives to air unwatched programming and creates new incentives to develop programming strategies that will reach the children of today. In addition, the Commission should seek to remove the economic burdens created by rigid scheduling requirements and endless reporting obligations.

Unquestionably, the Commission has the authority to enact broad reforms to the children's programming rules in the interest of children. The CTA requires the Commission to consider the extent to which a station "has served the educational and informational needs of children through its overall programming, including programming specifically designed to serve such needs" as part of a station's license renewal review.⁶ Nothing in the CTA dictates how much programming must be provided, what the programs must contain, or on which program stream a station must air it. Block urges the Commission to use its broad discretion to create children's programming rules that give broadcasters the flexibility they need to serve their communities fully.

Block thus supports the Commission's proposal to give broadcasters the flexibility to air all children's programming on one of a station's multicast programming streams.⁷ Block agrees with the Commission's tentative conclusion that stations can continue to serve the public interest by providing children's educational and informational programming on a multicast channel. Any Commission "safe harbor" for the amount of children's programming aired by a station should count all programming aired on a station's multicast streams, regardless of whether that programming airs on the station's primary channel. Allowing stations to meet a safe harbor by running children's programming on multicast channels will give broadcasters more flexibility to schedule programming that serves all viewers, including children, in a way that is tailored to local viewers, local communities, and local stations.

⁶ See 47 U.S.C. Section 303b(a)(2).

⁷ "We tentatively conclude that a station can continue to serve the public interest by providing children's educational and informational programming on a multicast channel." NPRM at ¶50.

In addition, the Commission should loosen its requirements for regular scheduling of recurring children's programming and the children's programming time window. The notion of "regularly scheduled" weekly programming has declined to the point of vanishing. Children, like their parents, are more likely to "binge watch" programs than they are to wait patiently for next week's episode. If broadcasters want to serve this desire by offering blocks of several different episodes of the same program on a single day, the rules should not discourage that by refusing to count the programming towards a station's safe harbor requirements. Likewise, the current window of 7 AM to 10 PM is too narrow. Block submits that the Commission should credit programming aired between the hours of 6 AM and 11 PM. This expanded time frame would particularly serve the needs of teenagers who, because of the rigorous demands of modern school life, are more likely to be watching television in the early morning and late evening hours.

Block also requests that the Commission take a close look at what types of programming should count in satisfaction of broadcasters' children's programming obligations. Currently, only programs at least thirty minutes in length can count. The last generation to rely exclusively on television for daily video information and entertainment grew up watching *School House Rock*, one of the most successful pieces of children's programming in television history. If a modern version of that show aired today, it would not count as "children's programming" under the Commission's rules because each episode is short (usually three minutes in length). The Commission should update its rules to focus on substance over form. Shorter-form programming, child-focused news and information programming, issue-oriented programs about topics

like racism and family relationships, and other types of programming aimed at children should be recognized by the Commission in satisfaction of the rules.

Finally, Block supports replacing the current quarterly reporting of children's programming with a simple annual certification of compliance with the rules the Commission adopts. The current reporting requirements require hours of labor to produce retrospective and prospective accounts of each station's children's programming efforts. These reports are filed with the Commission but likely never read again by anyone, other than Commission staff at license renewal time. The reports are useless to children or their parents in identifying quality programming and no more useful than an annual certification would be to staff in determining compliance with the rules. Reforming the children's programming reporting requirements would allow broadcasters to devote the resources currently directed towards purposeless record keeping into actually serving children and their communities.

IV. CONCLUSION

Block appreciates and supports the Commission's initiative to modernize outdated regulatory requirements and give broadcasters the flexibility they need to

serve children efficiently and effectively in today's competitive media marketplace. For the reasons stated above, Block requests that the Commission adopt the changes to the children's programming rules requested herein.

Respectfully submitted,

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