

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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 OF THE NETWORK COMMENTERS

CBS Corporation, NBCUniversal Media, LLC (on behalf of the NBC and Telemundo Networks and the NBCUniversal Owned Television Stations), 21st Century Fox, Inc., and Univision Communications Inc. (collectively, the “Network Commenters”) file these comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding, which proposes to revise the children’s television programming rules. The NPRM notes that its goal is “to modify outdated requirements and to give broadcasters greater flexibility in serving the educational and informational needs of children.”¹ The Network Commenters, who have long produced and/or distributed children’s television programming for their owned and/or affiliated stations, including high-quality educational and informational programming, strongly support that goal.

As the Commission correctly states, “there have been dramatic changes in the way television viewers, including younger viewers, consume video programming” in the more than two decades since the Commission first adopted the children’s programming rules and the nearly 30 years since Congress enacted the Children’s Television Act of 1990 (“CTA”).² Specifically,

¹ *In re Children’s Television Programming Rules*, Notice of Proposed Rulemaking, FCC 18-93 at ¶ 1 (rel. July 13, 2018) (hereinafter “NPRM”).

² *Id.*

appointment viewing has declined dramatically as viewers increasingly use time-shifting technology to access video programming on a variety of devices, and there is now a “vast array” of children’s programming available on non-broadcast platforms—including full-time children’s cable channels, over-the-top platforms serving both original and previously-aired children’s programming, and numerous online sites that provide educational and informational content for children.³ The availability of this vastly increased storehouse of content, which is available 24/7 via linear channels and on-demand, has dramatically affected children’s video programming viewing patterns.

The children’s programming boom has been accompanied by a correspondingly steep decline in children’s viewing of linear broadcast television and a shift to other media platforms. Focusing solely on broadcast viewing trends, since the 1987-88 television season, viewership by children ages 2 to 17 has plunged by 88% for total day viewing.⁴ For children ages 2 to 11, viewing on Saturday mornings across the four major English-language networks has declined 71% since 2007 despite the addition of educational and informational programming on all multicast channels.⁵ Notably, these trends are true of both English- and Spanish-speaking households.⁶ Moreover, daily video viewing time by children ages 2 to 16 on linear *broadcast*

³ NPRM at ¶ 16. Indeed, the Network Commenters themselves provide children’s programming on these multiple platforms and services.

⁴ Data is sourced from Nielsen NTI Live.

⁵ Source: Nielsen (NTI); 09/24/2007-07/27/2008 vs. 09/25/2017-07/29/2018, Saturday 8:00 a.m. to 12:00 p.m. (the percentage decline is the same for both Live and Live+SameDay).

⁶ Data compiled by Univision Communications Inc. shows that the available broadcast television audience among Hispanic children ages 2 to 11 has declined by 28 percent since 2007, and this same group’s average weekly broadcast television viewing has declined from 7 hours and 44 minutes to 5 hours and 14 minutes during the same time period. Source: Nielsen, NPM-H (09/25/2017-08/26/2018 vs. 09/24/2007-08/31/2008) Mon-Sun 7am-2am, Kids 2-11, time period data, Live+7.

television *decreased* from a daily average of 1 hour and 55 minutes in 2000 to just 34 minutes in 2017.⁷ Yet, among this same group of children during this same time period, viewing across all platforms (including broadcast and pay TV) *increased* from an average of 4 hours and 19 minutes to an average of 4 hours and 30 minutes. In addition, children’s viewing via Internet-connected devices and services increased from two *minutes* per day in 2000 to more than two *hours* per day in 2017.

The Network Commenters therefore agree with the Commission that the time is right to modernize children’s programming rules to account for these changes in a manner that will improve broadcasters’ ability to continue to serve the educational and informational needs of children, as mandated by the CTA. The Network Commenters are members of the National Association of Broadcasters (“NAB”), and as such have reviewed the comments that NAB intends to submit in response to the NPRM. We agree with and support in their entirety the views expressed in NAB’s comments.

I. REVISITING THE CORE PROGRAMMING REQUIREMENTS

The Network Commenters support the NPRM’s proposals to modernize the “Core Programming” requirements, which have remained largely unchanged since their adoption in 1996.⁸ The current definition of Core Programming requires, among other elements, that such programming be at least 30 minutes in length, air between 7:00 a.m. and 10:00 p.m., constitute a regularly scheduled weekly program, and adhere to certain identification and reporting requirements. We agree with the Commission’s tentative conclusions that these requirements are

⁷ Data is sourced from Nielsen NPower & Cross Platform.

⁸ NPRM at ¶ 19.

long overdue for an update to reflect modern children’s viewership patterns.⁹ These rules were well-intentioned, but no longer reflect the realities of how children today consume video programming, and therefore do not best serve the interests of children as mandated by the CTA.

A. The Scheduling Requirements Should Be More Flexible to Reflect Modern Viewing Patterns

We agree with the NPRM’s tentative conclusion that the requirements that Core Programming be at least 30 minutes in length and constitute regularly scheduled weekly programming should be modified. These requirements reduce the variety of children’s programming and therefore do not serve the public interest.¹⁰ As the NAB has explained, the exclusion of short-form programming from the Core Programming definition has “predictably driven other types of educational programs from the air,” which does not promote the public interest or serve the educational and informational needs of children.¹¹

Similarly, the requirement that Core Programming must meet a rigid definition of “regularly scheduled weekly programming” does not serve the public interest given the substantial decline in appointment viewing since these rules were adopted.¹² With the widespread availability today of on-demand, time-shifted, and online children’s programming available at any time from an array of sources, the fact that programming airs on a regularly scheduled weekly basis no longer bears any reasonable relationship to whether it serves the educational and informational needs of children. Moreover, this rigid requirement ignores the educational and informational value of long-form family-oriented specials, such as live musicals,

⁹ *Id.*

¹⁰ *Id.* at ¶ 20.

¹¹ Comments of the National Association of Broadcasters, MB Docket No. 17-105 at 31 (filed July 5, 2017); *see also* NPRM at ¶ 20.

¹² NPRM at ¶ 24.

holiday specials, and other limited-edition programs, and may create a disincentive to invest in such programs despite their broad appeal to households with children. The current rules preclude qualifying these programs as Core Programming because they are not “regularly scheduled,” even though they often serve the “intellectual/cognitive and/or social/emotional needs” of children that the rules were intended to address.¹³ The Network Commenters therefore support the Commission’s tentative conclusion to eliminate these outdated requirements. Doing so would boost incentives for broadcasters to air a wider variety of children’s programming.

With respect to time-of-day requirements, the rules require that Core Programming air between 7:00 a.m. and 10:00 p.m. As the NPRM states, this timeframe was adopted because data in 1996 showed that there was a “relatively small percentage” of children watching television prior to 7:00 a.m. and a considerable drop-off in children viewing television after 10:00 p.m.¹⁴ The rule therefore originally reflected the laudable goal of incentivizing children’s programming to air during the times when children were most likely to be watching. But newer data compiled by the Network Commenters establishes that the decades-old data underpinning the current rules no longer reflects children’s viewership patterns, at least in the morning hours, as tens of millions of children ages 2 to 15 are awake and tuning into television (both cable and broadcast) between the hours of 5:00 a.m. and 7:00 a.m.¹⁵ We therefore support the Commission’s proposal to allow the Core Programming hours to begin at 5:00 a.m., thereby giving the Network Commenters and other broadcasters the flexibility to air educational

¹³ See 47 C.F.R. § 73.671(c).

¹⁴ NPRM at ¶ 23.

¹⁵ In particular, recent data from Nielsen NPower shows that approximately 32 to 44 million children ages 2 to 15 are tuned into television (cable and broadcast) for some portion of the time between 5:00 a.m. and 7:00 a.m.

programming for the substantial number of children who tune in to watch television during those hours.¹⁶

B. The Reporting Requirements Should Be Revised to Eliminate Unnecessary Burdens

The Network Commenters also support the NPRM's tentative conclusions to revisit the reporting requirements with respect to children's programming and to "eliminate unnecessary burdens and redundancies."¹⁷ The burden of tracking children's television programming, keeping the required records, and completing quarterly programming reports is significant, with no corresponding public interest benefits.

In particular, the requirement to file quarterly reports detailing each program that aired in the prior quarter (including detailed information on each preempted and rescheduled or un-rescheduled episode) *as well as* the programs expected to air in the next quarter imposes an unnecessary burden on broadcasters, whose competitors are not subject to this requirement, and shifts resources away from efforts that could actually serve the educational and informational needs of children. The time commitment required to file these reports begins long before they are filed. Stations must track and review the weekly program grids issued by their networks or syndicators. Each week, broadcasters must record the program title, origination, days and times aired, total times aired, length of program, target age, and educational objective, in addition to confirming that each program did in fact air with the requisite E/I symbol. They must also

¹⁶ Given the prevalence of on-demand and time-shifted viewing today, and the accompanying decline in appointment viewing by children in particular, the Network Commenters would also support a Commission decision to remove the time frame requirement entirely. *See* NPRM at ¶ 23. This step would make sense particularly if, for instance, there is no longer a substantial link between when a program airs on broadcast television and when children actually view that program.

¹⁷ NPRM at ¶ 29.

record changes in programming during the quarter and preemptions of programming for live news and sporting events.¹⁸

At the same time that these reports impose substantial costs and burdens, the filing of quarterly reports does not appear to “serve[] any useful purpose today.”¹⁹ To the extent these reports were intended to help parents identify educational programming suitable for their children, there are numerous more readily accessible sources of information available to parents today to locate upcoming educational and informational programs, such as program listings published in newspapers and on station websites, Internet searches, and interactive guides on televisions or other devices. In short, the requirement to file quarterly reports is all cost and no benefit. Accordingly, in the absence of data suggesting that parents routinely rely on the Children’s Television Programming Reports for information about children’s programming, the Network Commenters support streamlining these reports to allow broadcasters to report annually rather than quarterly and by certifying compliance with children’s programming requirements instead of providing detailed information in reports.²⁰

II. MODERNIZING THE PROCESSING GUIDELINES FOR DETERMINING COMPLIANCE WITH THE CHILDREN’S PROGRAMMING RULES

In addition to revisiting the Core Programming requirements, the Network Commenters support the NPRM’s proposals to modernize the processing guidelines governing the Media Bureau’s review of a broadcaster’s compliance with children’s programming requirements—particularly with respect to the guidelines’ treatment of multicasting. We agree with the

¹⁸ While the FCC Licensing and Management System (“LMS”) database does populate new forms with information from the previous quarter, this is of little benefit when programs change, and the cumbersome system does not allow for new programs to be inserted in a particular order.

¹⁹ NPRM at ¶ 30.

²⁰ NPRM at ¶ 30, 33.

Commission’s tentative conclusion that “neither Section 336 nor the CTA mandates that a station fulfill its obligation to serve the educational and informational needs of children through its primary programming stream,” and we support the proposal to eliminate the additional processing guidelines for multicast channels and allow each station the flexibility to choose the free over-the-air (“OTA”) streams on which it broadcasts all or a portion of three hours per week of Core Programming.²¹

For households reliant on free OTA broadcasting, programs offered on multicast channels are just as accessible to them as programming offered on the primary channel. These channels enjoy the same OTA signal strength and geographical coverage as primary channels and typically can be found with a single “channel up” click of the TV remote (*e.g.*, a single click of the channel-up button to switch from primary 4.1 to multicast 4.2). Many network affiliated stations already utilize this flexibility in prime time when breaking news or a late-scheduled Presidential address interrupts regularly scheduled network programming, which under the current rules may be shifted to a multicast channel to accommodate coverage of such time-sensitive events—but otherwise the current rules refuse to recognize that children’s educational and informational programming that is made available on a multicast channel is just as valuable as content made available on a primary channel. The proposed update to the rules would allow broadcasters greater flexibility to air children’s programming on multicast channels during times when children are more likely to be watching, even when such programming would conflict with popular news, public affairs, and live sports programming on primary programming streams.

²¹ NPRM at ¶¶ 49–51.

Indeed, increased flexibility to air Core Programming on multicast channels could allow stations to offer *more* news and public affairs programming on their primary channels.²²

Finally, with respect to preemption rules for children’s programming, the Network Commenters support the NAB’s proposal to eliminate the “second home” policy and instead permit stations to air preempted programs at the time and on the OTA stream that, in the broadcaster’s judgment, is most appropriate. To be sure, it is reasonable to expect the broadcaster to provide adequate notice of the rescheduled time of a preempted program, but given the changes in appointment viewing and other evolutions in children’s viewing patterns, the rigid requirement for a “second home” for preempted programs is outdated and does not serve the educational and informational needs of children.

CONCLUSION

The Network Commenters share a common goal with the Commission and with parents across the country: to ensure that children’s programming is appropriate for its audience and that there continues to be incentives to produce and distribute such programming. To accomplish that goal, the Network Commenters strongly support the Commission’s efforts to modernize the children’s programming rules in light of the vast shifts in the video marketplace since the rules were adopted more than two decades ago. The steps proposed in the NPRM would align the children’s programming rules with the manner in which children actually consume video today, and therefore would better incentivize content creators to continue to create educational and

²² For example, when the NBC Network presents the highly popular live soccer games from the English Premier League on Saturdays, it truncates the Saturday edition of the TODAY Show by 30 minutes in order to accommodate both the Core Programming offered by the network and the local news programs offered by the individual stations.

informational children's programming in a manner and format that children are most likely to view and benefit from it.

Respectfully submitted,

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