

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re)	
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Children’s Television Programming Rules)	MB Docket No. 18-202
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105
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COMMENTS OF GRAY TELEVISION, INC.

Gray Television, Inc. (“Gray”) welcomes the Commission’s comprehensive reexamination of its children’s programming rules and policies in the above-referenced Notice of Proposed Rulemaking (the “NPRM”).¹ In the NPRM, the Commission proposes or seeks comment on various changes to its children’s programming rules and policies that not only reflect how children and their parents access content today, but also significantly reduce onerous reporting requirements that no longer serve the public interest. As detailed below, Gray enthusiastically supports these long-awaited, necessary reforms.

As the owner and/or operator of over 100 full-power and Class A television stations² that broadcast roughly 250 distinct program streams in 57 markets across the country, Gray is very familiar with the children’s programming rules. While Gray appreciates that the rules and policies developed by the Commission pursuant to the Children’s Television Act of 1990 (“CTA”) were well-intentioned when adopted over twenty years ago, the passage of time and

¹ *In re Children’s Television Programming Rules, Modernization of media Regulation Initiative*, Notice of Proposed Rulemaking, MB Docket Nos. 18-202, 17-105 (rel. July 13, 2018).

² Gray also owns or operates over 20 low power television stations, which are not subject to the children’s programming rules.

evolution of technology and viewing habits have made those rules and policies obsolescent. Rather than ensure the educational and informational needs of children are met, many of the rules and policies simply ensure that stations spend inordinate amounts of time filling out the children's programming report in the Commission's Licensing and Management System ("LMS").³ For example, staff at Gray's WCAV/WAHU stations in Charlottesville regularly spend up to six hours each quarter filling out the reports. Similarly, staff at KSFY in Sioux Falls, South Dakota can spend up to seven hours each quarter preparing reports for KSFY's three program streams and its two satellite stations. Station staff in smaller markets like Charlottesville and Sioux Falls already wear multiple hats, and the strain placed on them by the current reporting requirements is significant. Staff must also spend significant amounts of time and station funds securing specialized children's programming for each program stream. The time has come for the Commission to update and streamline its children's programming requirements and afford broadcasters greater flexibility in the programming they air.

I. CURRENT REPORTING REQUIREMENTS ARE BURDENSOME AND DO NOT SERVE THE PUBLIC INTEREST; STREAMLINED ANNUAL REPORTING IS SUFFICIENT TO MONITOR COMPLIANCE

In the NPRM, the Commission tentatively concludes that the children's programming report should be filed on an annual rather than quarterly basis.⁴ Gray agrees. Quarterly reporting places an undue burden on station staff, particularly given the level of granularity required by the current reports.⁵ In addition to detailed information about the days of the week, time of day, and number of times specific programs aired on stations' main and multicast

³ If the Commission elects not to significantly revise its rules as a result of this proceeding, it should nonetheless address the numerous technical issues that have been raised with staff regarding the functionality of the children's programming report in LMS. In addition to larger issues such as the inability to copy programming information between reports, smaller issues such as the system always reverting to the first page of a multi-page section when editing entries on later pages result in the form taking significantly longer to fill-out than necessary.

⁴ NPRM ¶ 30.

⁵ See 47 C.F.R. § 73.3526(e)(11)(iii).

channels, station staff must input information about preemptions and a list of the programs the station plans to air in the next quarter. The amount of information required results in reports that are often 30 pages long or longer.

Despite the time and care required to complete the quarterly reports, Gray is unaware of any viewer who uses them to monitor a station's CTA compliance.⁶ Indeed, the voluminous nature of the reports makes them difficult to interpret, to the point where they become nearly unintelligible to the average viewer. To the uninitiated viewer attempting to read the reports, it can be nearly impossible to determine the specifics of when a program aired or, most importantly, whether the station complied with the children's programming rules at all! Nevertheless, in the unlikely event that a viewer does monitor the reports, there is no reason why he or she could not do so on an annual rather than quarterly basis – streamlined annual reports would in fact substantially reduce the viewer's monitoring burden.

In addition to revising the timeline on which children's programming reports must be filed, Gray supports the creation of a certification-based report.⁷ If the reports are filed on an annual basis, there is little to no value in knowing the date the program aired, its educational purpose, or the target age of the audience.⁸ Similarly, Gray does not believe, as a general matter, that there is any benefit to the public of including preemption information in the reports, and certainly not to the level of detail currently required by the reports. Why would a viewer care, especially after the fact, that an episode of "Aqua Kids" was preempted on Saturday, September

⁶ NPRM ¶ 30.

⁷ NPRM ¶ 33.

⁸ See NPRM ¶ 31 ("[W]e tentatively conclude that the reports should only require broadcasters to provide information on the programs that they aired to meet their Core Programming requirement"). Moreover, although the educational and informational programming aired by any particular station may change from quarter to quarter, the change is often minor – with one program being substituted for another at the end of the quarter. However, even if a station's programming lineup were to change completely from one quarter to the next, Gray submits that there is no utility or public interest benefit to providing detailed programming information.

8th at 9:00 a.m. due to sports programming and made-up on Sunday, September 9th at 9:30 a.m.⁹

Moreover, Gray submits that it is no longer necessary to provide children's programming information to publishers of program guides.¹⁰ Information about children's programming is now widely available via other means, including online. Parents looking for information about children's programs are more likely to turn to the internet than to consult a newspaper programming guide. Indeed, the information available online is far more comprehensive than that provided in a programming guide. Moreover, Gray notes that publishers of program guides are not obligated to include in their guides the children's programming information provided by stations. In fact, Gray is aware of major guide publishers that do not provide the information. Thus, the practical utility of this rule is limited at best.

If a streamlined, certification-based report is adopted, broadcasters unable to make any of the required certifications would be required to disclose that fact and include an explanation. Media Bureau staff could verify broadcasters' compliance with the children's programming rules by requiring licensees to provide programming records in support of their certifications in response to a license renewal challenge or specific complaint.¹¹ Broadcasters should be required to upload their certifications to their respective online public files, but Gray supports the Commission's tentative conclusion that licensees should not otherwise be required to publicize the existence of the certifications.¹²

⁹ As discussed below, Gray supports elimination of the requirement that children's programming be broadcast on a station's primary programming stream. If that reform is adopted, it will obviate the need for preemptions in the first place and stations should not be required to report any information about preemptions.

¹⁰ NPRM ¶ 28.

¹¹ NPRM ¶ 33. *See also See In re Modernization of Media Regulation Initiative*, MB Dkt. No. 17-105, Comments of the National Association of Broadcasters (July 5, 2017) ("NAB Comments") at 13-14.

¹² NPRM ¶ 35. *See also* 47 C.F.R. § 73.3526(e)(11)(iii). The publicization requirement predates the online public file. Because TV stations now must provide a link to their FCC-hosted online public files from the home page of their own web sites, a separate and additional requirement to publicize children's programming reports is superfluous.

An annual, streamlined report would greatly reduce burdens on local stations in accordance with the Paperwork Reduction Act and the Regulatory Flexibility Act and would be consistent with the FCC’s “statutorily authorized” duty to reduce regulatory burdens.¹³ Moreover, such a report would not diminish the duty (or incentive) of broadcasters to serve their local communities – to the contrary, the time saved not having to fill out quarterly reports would allow station personnel more time to do so.

II. THE CHILDREN’S PROGRAMMING RULES SHOULD BE MODERNIZED TO ALLOW BROADCASTERS GREATER FLEXIBILITY AND REFLECT THE EXPECTATIONS AND NEEDS OF TODAY’S VIEWERS

When the Commission adopted its children’s programming rules in 1996, appointment viewing was the only way to access quality video programming.¹⁴ Today, more than two decades later, the programming landscape is very different. Linear TV viewing has declined as consumers routinely access content on multiple platforms via multiple devices.¹⁵ The internet in particular has dramatically expanded the universe of educational programming available for children.¹⁶ The time has come for the Commission to modernize its children’s programming rules to reflect today’s actual viewing habits and provide broadcasters with additional flexibility to serve the educational and informational needs of children.¹⁷

Accordingly, Gray supports the Commission’s tentative conclusions in the NPRM that it should eliminate its current requirements that “Core Programming” be at least 30 minutes in

¹³ NAB Comments at 5. *See also id.* at 7 (noting that the Commission has an affirmative duty under the PRA to “reduce information collection burdens on the public.”).

¹⁴ *Id.* at 24.

¹⁵ *Id.* at 24-25.

¹⁶ *Id.* at 26.

¹⁷ As the NAB notes in its comments, the rules adopted by the FCC pursuant to the CTA “went beyond the terms of the CTA in a number of ways. Perhaps most notably, the Commission essentially required TV broadcasters to provide three hours per week of ‘core’ educational/informational (E/I) children’s programming, which was subsequently expanded to require an additional three hours per week of core programming for each full-time multicast stream aired by a station.” *Id.* at 24.

length and regularly scheduled.¹⁸ When it began implementing the CTA in 1991, the Commission recognized that short-form programming, including PSAs and vignettes, can serve the educational and informational needs of children.¹⁹ The same is true today.²⁰ There is no “magic” to a program that is thirty minutes long or longer. Indeed, given their short attention spans, shorter programs may be just as or more effective at educating and informing children than longer-form programs. Anecdotally, children of the 80s and 90s are far more likely to remember how a bill becomes a law thanks to “Schoolhouse Rock” than they are to remember a lesson conveyed by “Saved by the Bell.”

Moreover, eliminating the regularly scheduled requirement as proposed by the Commission is consistent with the decline in appointment viewing and the manner in which children and their parents access programming today.²¹ By no longer requiring children’s programming to be regularly scheduled, the Commission would provide broadcasters with much-needed flexibility to adjust their programming schedules based on the needs of their communities. For example, in the month before an election, a station may determine that public forum discussions are of particular interest to its audience. Thus, instead of three-hour blocks of children’s programming on Saturday mornings, the station may air three-hour blocks of debates or other interview programming and shift its children’s programming to after-school specials. Of course, even if the Commission does modernize its rules, many broadcasters will continue to air regularly scheduled children’s programming. Elimination of the requirement would simply ensure that other, non-regularly scheduled programming is appropriately “counted” towards fulfilling a broadcaster’s children’s programming obligations.

¹⁸ NPRM ¶ 20.

¹⁹ *Id.* ¶ 20; *see also* NAB Comments at 31.

²⁰ NPRM ¶ 20 (“We agree with NAB that short segments can be used effectively to educate and inform children.”).

²¹ *Id.* at ¶ 24.

In addition, the Commission should revise its definition of “Core Programming” to expand the hours during which such programming may be aired to between 5:00 a.m. and 10:00 p.m.²² As any parent of young children knows, children often wake up well before 7:00 a.m., and it is perfectly reasonable to expect children to be in the audience at 5:00 a.m. Expanding the Core Programming hours would provide broadcasters with additional flexibility to meet the educational and information needs of children during time periods when the programming schedule is particularly tight, such as during the Olympics or in the wake of a major news event.

Gray further agrees with the Commission’s tentative conclusion that the CTA does not mandate that a station broadcast Core Programming on its *primary* stream and supports the Commission’s proposal to allow broadcasters the flexibility to choose on which of their free over-the-air streams to carry Core Programming.²³ As the Commission correctly notes, “This approach would provide broadcasters with more flexibility to air Core Programming during hours when children are most likely to be watching TV and alleviate the need for broadcasters to preempt Core Programming when it conflicts with content such as public affairs programming and live sports.”²⁴ For example, instead of preempting children’s programming on Sunday morning to broadcast the final rounds of a major golf tournament and rescheduling it for 1:00 p.m. when many young children are napping, a station could air the golf tournament on its primary stream and, simultaneously, the children’s program on its secondary stream. This approach also provides viewers with agency – instead of the station selecting which programming its viewers should watch Sunday morning, viewers can decide based upon their interests.

²² *Id.* at ¶ 22. See also 47 C.F.R. § 73.671(c).

²³ NPRM ¶ 49.

²⁴ *Id.* Under this proposal, broadcasters would not be required to air their Core Programming on their main program stream or on a stream that has comparable MVPD carriage as the main program stream. *Id.*

As to the total amount of Core Programming a station must air to comply with its children's programming rules, Gray supports modifying the rules to require stations to air 156 hours of children's programming per calendar year rather than three hours per week as averaged over six months. This will allow stations additional flexibility and will obviate the need for preemptions. To the extent the Commission elects not to adopt an annual children's programming benchmark, Gray supports modifying the three-hour per week safe harbor processing guideline to apply to only one programming stream.²⁵ Currently, the safe harbor is available only if a station airs three hours of children's programming on its primary stream and three hours on each of its 24-hour non-primary streams. This requirement is unduly restrictive, and limits broadcasters' ability to air other programming of interest to its viewers. Children's programming is important to many of Gray's viewers, but not all. Requiring *all* programming streams to carry three hours of children's programming is excessive and does not comport with viewers' expectations. For example, viewers do not expect to be able to watch live sports on each and every broadcast channel, and the same is true for children's programming. Thus, Gray submits that the three-hour safe harbor should be available to any station airing at least three hours of children's programming per week on any of its programming streams.

²⁵ *Id.* at ¶ 36.

III. CONCLUSION

Gray appreciates the Commission's on-going efforts to modernize and improve its broadcast rules. The Commission has proposed thoughtful revisions to its children's programming rules and policies that better reflect the needs and expectations of today's parents and children. Gray urges the Commission to move forward expeditiously with these timely and necessary updates.

Respectfully submitted,

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