

educational programming to air.⁸² Some broadcasters also argued that the use of a quantitative processing guideline would be premature, attributing any dearth of available educational programming to the fact that the market needs time to place new programs on the air.⁸³ NAB and others further argued that in fact new programs were becoming available, and that the amount of available programming would continue to increase without a quantitative processing guideline.⁸⁴ Certain broadcasters contended that a requirement to increase the quantity of children's educational programming might undermine the quality of such programming by forcing, or providing an incentive to, licensees to abandon high-cost and perhaps high-quality shows in order to pay for a greater number of less expensive programs.⁸⁵ Commenters opposed to a quantitative processing guideline also contended that the adoption of such a guideline would violate the First Amendment and be contrary to the intentions expressed by Congress in enacting the CTA.⁸⁶

49. Those broadcasters who favored clearer guidance regarding the amount of programming required under the CTA generally advocated the establishment of a safe harbor, *i.e.*, an amount of programming that, if met, would establish compliance with the CTA and insulate licensees from further educational programming compliance review, as well as protect them from petitions to deny and competing applications. According to INTV's suggestion, stations that did not meet the safe harbor criteria could nonetheless demonstrate that they had complied with the CTA and thus could be granted their license renewal, although their applications would be subject to heightened scrutiny and they would not be protected from challenges related to their compliance with the statute's programming requirements. INTV also suggested that the Commission establish a safe harbor by issuing a policy statement rather than by adopting a processing guideline, arguing that a policy statement would have the advantage of informality and

⁸²See, e.g., NAB NOI Comments at 3, 16-17; NBC NOI Comments at 9.

⁸³See, e.g., NAB NOI Comments at 5-8, 10-12 and NOI Reply Comments at 2; Haley, Bader & Potts NOI Comments at 4-7. See also INTV NOI Comments at 3-4.

⁸⁴See, e.g., NAB NOI Comments at 5-8, 10-12, NOI Reply Comments at 2, and En Banc Reply Comments; CBS NOI Comments at 3-5, 8-20; Haley, Bader & Potts NOI Comments at 8-9. See also INTV NOI Comments at 4, NOI Reply Comments at 11-12, and En Banc Reply Comments.

⁸⁵See, e.g., Thirty-Six Broadcasters NOI Comments at 6-8; Westinghouse NOI Comments at 11; and Pulitzer NOI Reply Comments at 10.

⁸⁶See, e.g., ABC NOI Comments at 13-17 and En Banc Reply Comments at 2; NBC NOI Comments at 20-25; The Media Institute En Banc Comments at 2-4.

could be modified or abandoned more easily than a processing guideline as the marketplace begins to produce adequate children's programming.⁸⁷

50. Public interest commenters supported the idea of a quantitative processing guideline for children's programming. Among the suggestions made by these parties are the proposal of Peggy Charren of 7 hours per week of regularly scheduled "core" programs distributed throughout the week, the proposal of CME et al. of one hour per day of core programming, and CTW's proposal that licensees be required to air, at a minimum, the greater of: (1) a certain fixed amount per week of standard-length programming specifically designed to meet the educational and informational needs of children; and (2) an amount of such programming equal to a percentage of the total weekly amount of non-qualifying standard-length children's programming aired by the station.⁸⁸

51. Many commenters favoring the adoption of a quantitative guideline called for a daily minimum, and in particular a requirement of one hour per day.⁸⁹ In contrast, most broadcasters argued that, if a guideline were to be imposed, it should be a weekly guideline. NAB and ABC, for example, pointed out that network affiliates air the bulk of their children's programs on the weekend, while most independent stations, including Fox affiliates, broadcast children's programs on weekdays.⁹⁰ According to ABC, a

⁸⁷See INTV NOI Comments at 6-11. INTV and Tribune proposed that the Commission establish a safe harbor of 2 hours per week of educational children's programming. At least 1 hour would have to be standard-length programming designed to serve the educational and informational needs of children; the other hour could include entertainment and short-segment programming that serves the educational and informational needs of children. See INTV NOI Comments at 6, 10; Tribune NOI Comments at 12-15.

⁸⁸See Charren En Banc Comments at 12; CME NOI Comments at 21-24; CTW NOI Comments at 12-13 and En Banc Comments at 3.

⁸⁹See, e.g. The National PTA En Banc Comments at 8, 10; Interfaith En Banc Comments at 8; Maryland Campaign for Kid's TV En Banc Comments; CME En Banc Comments at 25; CME et al. En Banc Reply Comments at 23-26; Newton Minow En Banc Reply Comments at 3; UCC En Banc Reply Comments at 3.

⁹⁰ABC states that 90 percent of network affiliates (not including Fox affiliates) have no regular weekday children's programs, while most independent stations air children's programs during the weekday "early fringe" time period (3:00 p.m. to 6:00 p.m. Eastern time). ABC NOI Comments at 18-19 and En Banc Reply Comments at 3. NAB states that network affiliates are providing more general news and information during weekday morning and late afternoon/early evening time periods, and air children's programs on the weekends when children are not in school. NAB En Banc Reply Comments at 5.

weekday program requirement would force it to displace early morning and afternoon adult-oriented news and public affairs programs even though children's programs are available at these times on independent and public stations, as well as on cable channels.⁹¹ NAB argued that the current counter-programming practice of networks and affiliates should not be disturbed by a per-day educational programming requirement.⁹²

52. Discussion. We believe that it is important to collect additional and more precise data, particularly with respect to the amount of core programming as we propose to define it, before determining which additional step is necessary.⁹³ As discussed above, the studies submitted to us are inconclusive because their results are subject to question for various reasons. In addition, because the information presented in renewal applications is based on our current vague definition, it does not provide us with a clear picture of the amount of programming specifically designed to serve children's educational and informational needs on the air. As already noted, however, the results of the studies discussed above and the information in the renewal applications received to date do suggest that any increase in the amount of such programming being aired since passage of the CTA has been modest at best and that some further action on our part is warranted. We therefore set forth below three alternative options for further action: (1) Commission monitoring of the amount of educational and informational programming on the air during a specified period following adoption of measures to improve the flow of programming information to the public and a clarified definition; (2) adoption of a safe harbor processing guideline; and (3) adoption of a programming standard. We seek comment on which of these options should be implemented. We also invite comment on possible new license renewal procedures and program sponsorship rules that could be implemented if a processing guideline or programming standard is adopted.

53. In setting forth these options, we want to emphasize our concern that, although there is an abundant supply of general audience/entertainment programming that serves children's needs in some way, it appears that the market has not produced an adequate supply of programming specifically designed to serve the educational and informational needs of children. We have already proposed one approach to at least partially address this shortcoming – increasing and improving the flow of information to the public. Without adequate information about the relevant product (here, core programming), the market cannot respond in an efficient manner. In addition, the market's failure to provide more core programming can be attributed to the relatively

⁹¹ABC En Banc Reply Comments at 3-5. See also CBS NOI Comments at 24-25 and En Banc Comments at 7.

⁹²NAB En Banc Reply Comments at 5-6.

⁹³Data submissions should clearly identify the characteristics of the programs included in the data sets.

weaker buying power of children (compared to the general viewing populace) and the fact that such buying power derives from parents. Moreover, since the promotional efforts for children's programming have been directed largely at the children themselves rather than their parents, a portion of the critical information that facilitates market performance is lost. Finally, we observe that the structure of the broadcasting market does not have a mechanism for responding to the intensity of an individual viewer's desire for a particular program. Unlike the purchaser of products in a retail setting, the home viewer cannot pay more to register the intensity of his or her preference for a particular product. Rather, the primary mechanism for assessing demand in the television broadcast market is the tabulation of numbers of viewers. When dealing with a small audience pool – here, viewers of children's core programming – the absence of a market-based mechanism for registering intensity of preference can result in a critical loss of programming. While we believe that our proposals for increasing the flow of information to the public and for clarifying the definition of educational and informational programming will help promote the goals of the CTA more effectively, to the extent that these efforts may not suffice to address the marketplace dynamic described above, we ask whether some quantitative regulation may be warranted.

54. We recognize that the Commission has previously stated that a quantitative standard would be contrary to Congressional intent.⁹⁴ However, upon reexamining the CTA and its legislative history, we note that the CTA itself does not prohibit quantitative programming standards. Moreover, the legislative history makes clear that, while Congress did not intend itself to require such a standard, the House and Senate Reports do not preclude the Commission from adopting one.⁹⁵ Thus, we believe that it is within the Commission's discretion to decide how the objectives of the CTA may best be effectuated.

1. Monitoring Broadcaster Performance

55. One option would be for the Commission to monitor the programming performance of licensees for a specified period of time – for example, three years – to determine whether or not our proposed efforts to improve the dissemination of information to the public and clarify our definition of educational and informational

⁹⁴Report and Order, 6 FCC Rcd at 2115; Memorandum Opinion and Order, 6 FCC Rcd at 5100.

⁹⁵See House Report at 17 ("The Committee does not intend that the FCC interpret this section as requiring or mandating a quantification standard governing the amount of children's educational and informational programming that a broadcast licensee must broadcast. . . ."); Senate Report at 23 ("The Committee does not intend that the FCC interpret this section as requiring a quantification standard governing the amount of children's educational and informational programming that a broadcast licensee must broadcast. . . .").

programming do in fact result in a significant increase in programming specifically designed to serve children's educational and informational needs. To accomplish such monitoring, we suggest that the Commission would require stations to submit annually to the Commission a description of their educational and informational programming. We also believe that, for such monitoring to be meaningful, it would be essential for licensees to include in their annual submissions sufficient information for the Commission to measure the average weekly amount of core programming on the air. At the end of the specified period, the Commission would decide whether licensees were meeting the CTA's objectives or whether stronger regulatory measures were needed to achieve the statute's goals. We seek comment on whether the Commission should implement this option and, if so, how long the monitoring period should be. We also ask for suggestions regarding how the Commission should collect information from licensees, and what kinds of information should be required.

2. Safe Harbor Processing Guideline

56. A second option would be to establish a safe harbor quantitative processing guideline. Such a guideline would specify an amount of core programming that would represent one means of satisfying the CTA's programming obligation and permit staff approval of the children's programming portion of a license renewal application. Thus, it would be similar to the kind of safe harbor proposed by INTV and others and the processing guideline proposed by CME et al. in that, if a licensee aired the prescribed amount of programming, its license renewal application would not be reviewed further for CTA programming compliance. The only challenges to a licensee's children's programming performance that would be entertained would be those questioning the bona fides of a licensee's claim to have met the processing guideline. A licensee that did not meet the processing guideline would have its application referred to the Commission for consideration and would have the opportunity to demonstrate that it had complied with the CTA in other ways. The Commission would then evaluate such a licensee's performance based on its overall efforts and other circumstances. Failure to meet the guideline would result in greater review of the application, but would not constitute a violation of the Commission's rules.

57. Given the results of the studies submitted to us, and allowing for the possibility that these studies may be somewhat flawed,⁹⁶ we are currently inclined to think that, if a processing guideline is adopted, it should be set at 3 hours per week of core programming, at least initially. According to NAB, the average amount of educational programming aired by commercial stations in the fall of 1993 was 3.6 hours per week. According to INTV, the average amount of such programming aired by independent stations and Fox affiliates in the first quarter of 1994 was 4.64 hours per

⁹⁶See id. para. 18.

week.⁹⁷ Although it is not clear how much of this programming would meet our proposed definition of core programming, some portion of it would meet this definition. Thus, a requirement of 3 hours of core programming per week should not be difficult for the vast majority of stations to meet, particularly since the market has had time to produce more children's programming since NAB and INTV conducted their studies and both organizations assert that more programming is becoming available.⁹⁸ We seek comment on these observations and suggestions.

58. In addition, we invite comment on whether, if we adopted a processing guideline, we should increase it in stages over time. Such an approach would enable us to encourage stations to increase their core programming while allowing for long-term factors such as existing programming contracts, schedule planning, and program promotion. Moreover, if we were to institute a safe harbor processing guideline, we would want to avoid creating any potential incentives for stations airing more than 3 hours per week of core programming to reduce those amounts. If we adopted a phased-in processing guideline, what should the ultimate level of the guideline be, and over what period of time should it be phased in? One possibility would be to increase the guideline by increments of one half hour each year until reaching a level of 5 hours of core programming per week.

3. Programming Standard

59. A third option would be to establish a standard requiring that every station be responsible for the airing of a minimum amount of core programming in its market. Stations meeting this requirement would qualify for staff approval of the children's programming portion of their license renewal application. Those not meeting the standard would have their applications referred to the Commission for determination of the appropriate remedy. Notwithstanding failure to meet the standard, the Commission could hold that the licensee had in fact complied with the CTA's requirements. However, a licensee failing to meet a standard would have a much heavier burden to show that it complied with the CTA than would be the case if it did not meet a processing guideline. Thus, a licensee failing to meet a standard would have to make a compelling showing that the qualifying programming it did air, along with any of its other programming-related activities in its market, served the educational and informational needs of children in that market as well as or better than an additional amount of programming specifically designed to serve the educational and informational needs of children.

⁹⁷See *supra* para. 16.

⁹⁸See NAB NOI Comments at 5-8, 10-12; INTV NOI Comments at 4 and En Banc Reply Comments at 2-3.

60. As discussed above in connection with a safe harbor processing guideline, we believe that, given the current level of programming documented by the data submitted to us, the appropriate level of a programming requirement would be 3 hours of core programming per week, at least initially. Even allowing for any problems inherent in the results of the NAB, INTV, and Kunkel studies, it should be feasible for the vast majority of licensees to meet a 3-hour-per-week requirement, since this level is below the average figures produced by those studies and stations have had more time to respond to the CTA since the studies were conducted. We seek comment on this suggestion and, as with the option of a processing guideline, we invite interested parties to comment on whether it would be appropriate to increase the requirement by, for example, one half hour each year until a requirement of 5 hours of core programming per week is established.

61. A formal standard has certain advantages over a processing guideline, but it also can be more restrictive. A standard is a clear statement that a specified level of core programming or the equivalent is both necessary and sufficient to have complied with the CTA. A processing guideline, on the other hand, merely states that an amount of programming, or its equivalent performance, is sufficient, but not necessary to determine compliance with the CTA. Use of a rule rather than a processing guideline may also be easier to administer and give the Commission a broader range of sanctions with which to address failures to comply with the CTA. We request comment on these observations, and on other considerations commenters believe differentiate a processing guideline from a standard.

4. Certain Issues Relevant to a Safe Harbor Processing Guideline and a Programming Standard

62. There are a number of questions on which we seek comment that are raised by both the option of a safe harbor processing guideline and that of a programming standard. First, we think that any processing guideline or programming requirement that might be adopted should be expressed in terms of hours per week, rather than hours per day. By this, we wish to leave broadcasters flexibility to determine their program schedules. We also think that the weekly amount should be averaged over a specified period of time. We do, however, express some concern about broadcasters who show the majority of children's educational programs during the early morning weekend hours and request comment on this concern. We seek comment on our suggestion of a weekly processing guideline or programming standard averaged over a specified period, and we ask for ideas as to the period of time over which a guideline or standard should be averaged. We also seek comment on the extent to which repeats during a weekly

schedule and later reruns of programs should be counted toward fulfillment of any processing guideline or programming requirement that we might adopt.⁹⁹

63. Second, we seek comment as to whether a processing guideline or programming requirement should be the same for all stations regardless of station type or market size. While a uniform guideline or requirement would be simple and evenly applied, it could have a disproportionate impact on stations in small markets. The impact on stations in small markets could indeed be very different from the effect on stations in large markets if we also permit stations to meet the guideline or requirement by sponsoring programming on other stations, as discussed below, because stations in small markets would not have as many sponsorship options available to them. On the other hand, small markets – which are often rural – may be precisely those markets in which television is most important as an educational resource for children, and therefore it might not serve the needs of children to establish a lower guideline or requirement for small markets.

64. Third, it has been publicly suggested that to give stations an incentive to air high-quality programming, a programming requirement should be based entirely on a certain amount of rating points.¹⁰⁰ Under such an approach, a licensee would be free to determine how it attained the prescribed number of rating points, whether with a few highly popular shows or with many less popular ones. We invite comment on this suggestion and whether it would be appropriate for either a processing guideline or a programming standard. We are interested to know in particular whether a guideline or requirement based on ratings would provide incentives to air programs of high quality or whether it would give stations an unintended incentive to claim credit for programs that do not clearly qualify under a definition of programming specifically designed to meet children's educational and informational needs. We are also concerned that consideration of rating points could make a processing guideline or programming requirement effectively unattainable for small stations that may not have the economic ability to produce or purchase highly rated programs.

65. Finally, we wish to have the fullest information possible regarding the effect of either a quantitative processing guideline or standard on broadcasters and the overall operation of the market. In particular, we seek to quantify, as much as possible, the economic costs of meeting a guideline or standard. Thus, we request that interested parties provide us with detailed information regarding any potential opportunity costs (i.e., the difference in profits from children's educational programming and from other

⁹⁹The term "repeat" generally refers to rebroadcasts aired within the same week, while rebroadcasts during later time periods are called "reruns."

¹⁰⁰Richard Frank, then Chairman of Walt Disney Television & Telecommunications, made this suggestion in a speech delivered on March 3, 1995, to Children Now.

programming that might be aired instead) for broadcasters that would be created by the implementation of a processing guideline or programming requirement set at various levels. Anecdotal evidence alone from individual station owners as to their particular economic circumstances will not enable us to make an informed judgment as to the potential industry-wide costs of any particular guideline or requirement and its impact on the industry's ability to serve the public interest. We therefore ask commenters to provide us with one or more studies that quantify any such costs on stations in different sized markets, as well as on the broadcasting industry as a whole. We also urge commenters to ensure that the sample data used to develop estimates of any opportunity costs that stations might face are representative and that the methodology used to develop the estimates is clearly explained.

5. First Amendment Issues

66. In weighing alternatives for further Commission action, we must consider any limitations imposed by the First Amendment of the Constitution. Even assuming that these proposals were found to be content-based restrictions on speech, some restrictions on content have been judged permissible when applied to broadcasting because of the scarcity of frequencies and broadcasters' concomitant duty to provide public service. It is well established that because the radio spectrum is not available to all, broadcasters have a unique duty to act as fiduciaries for the public,¹⁰¹ and may be required to provide programming to meet important public needs.¹⁰² The Commission therefore is permitted to "place limited content restraints, and impose certain affirmative obligations, on broadcast licensees"¹⁰³ where such restrictions are "narrowly tailored to further a substantial governmental interest."¹⁰⁴

67. We tentatively conclude, and the case law suggests, that the government has a substantial interest in furthering the education and welfare of children through implementation of the CTA. The courts have held that there is a compelling government interest in "safeguarding the physical and psychological well being of a minor."¹⁰⁵ The

¹⁰¹Red Lion v. FCC, 395 U.S. 367, 388-89 (1969).

¹⁰²Metro Broadcasting In. v. FCC, 497 U.S. 547, 567 (1990) (citing FCC v. League of Women Voters of California, 468 U.S. 364, 377 (1984)).

¹⁰³Turner Broadcasting Inc. v. FCC, 114 S.Ct. 2445, 2457, reh'g denied, 115 S.Ct. 30 (1994), (Turner).

¹⁰⁴FCC v. League of Women Voters of California, 468 U.S. 364 (1984) (League of Women Voters).

¹⁰⁵Action for Children's Television v. FCC, 852 F.2d 1332, 1343 n. 18 (D.C. Cir. 1988) and Supreme Court Cases cited therein.

legislative history of the CTA states that "[i]t is difficult to think of an interest more substantial than the promotion of the welfare of children who watch so much television and rely upon it for so much of the information they receive."¹⁰⁶

68. The "narrowly tailored" standard described above is similar to the traditional intermediate scrutiny test that the Supreme Court has applied to non-content regulation of non-broadcasters in United States v. O'Brien, 391 U.S. 367 (1968). In that context, the Court has described the narrowly tailored part of the test as not requiring the "least restrictive means," but rather that "the means chosen [must] not burden substantially more speech than is necessary to further the government's legitimate interest." Turner, 114 S.Ct. 2445, 2469 (1994). The Court further explained that this test is met "so long as the . . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." Id., quoting Ward v. Rock Against Racism, 491 U.S. 781, 799 (1988) (internal quotation marks omitted).¹⁰⁷

69. We seek comment on whether each of the proposed alternatives for improving implementation of the CTA is narrowly tailored to further the CTA's interest in furthering the education and welfare of children. The answer will depend, in part, on the facts contained in the record.¹⁰⁸ In an effort to develop an appropriate record we seek, as noted earlier, submission of additional studies concerning whether and by how much children's programming, especially "programming specifically designed to serve the educational and informational needs of children," as we have proposed to define that term, has increased since enactment of the CTA and whether the amount of such children's programming is in fact insufficient to fulfill the requirements and purposes of the Act. The answers to these questions are critical in developing a record that will

¹⁰⁶Senate Report at 17; see also House Report at 11.

¹⁰⁷The Court's decision in Turner lends support to the argument that, even if the "scarcity rationale" noted in League of Women Voters is abandoned, strict scrutiny will not be applied. That demanding standard is applied generally to rules that "distinguish favored speech from disfavored speech on the basis of the ideas or views expressed." 114 S.Ct. at 2459. It does not appear that a standard requiring a certain amount of programming aimed at children's educational and informational needs is not biased in favor of any particular viewpoints. The Court also made clear in Turner that "[i]t would be error to conclude . . . that the First Amendment mandates strict scrutiny for any speech regulation that applies to one medium (or a subset thereof) but not others." Id. at 2468. Thus, a special rule aimed at broadcasters might not be subjected to strict scrutiny as long as separate treatment is "justified by special characteristics" of broadcasting. In that connection, as noted above, broadcasters are given use of the spectrum and "broadcasting is uniquely accessible to children, even those too young to read." FCC v. Pacifica Foundation, 438 U.S. 726, 749 (1978).

¹⁰⁸See Sable Communications v. FCC, 492 U.S. 115 (1989).

permit the Commission to determine whether the existing approach to implementation of the CTA is overcoming the failure of the marketplace to produce a sufficient quantity of children's programming that led to the enactment of the CTA¹⁰⁹ and whether a modified regulatory approach is needed. We also seek comment on which of the various options proposed here would be a more effective means to implement the substantial governmental interest in furthering the education and welfare of children that underlies the CTA.

70. Subject to our further analysis of the record, each alternative proposed here appears to be less intrusive than the ban on editorializing on non-commercial stations that the Supreme Court held unconstitutional under the First Amendment in League of Women Voters. The Court distinguished the ban on editorializing from other valid broadcasting restrictions including the fairness doctrine and the reasonable access provisions of section 312(a)(7). According to the Court, these restrictions "left room for editorial discretion and simply required broadcasters to grant others access to the microphone. . . ." League of Women Voters, 468 U.S. at 385. The Court further said that the goals of the editorializing ban could be met by requiring more speech, rather than less. Id. at 395.

71. In addition, in League of Women Voters, the Court noted that it had upheld the fairness doctrine because there was "no threat that a broadcaster would be denied permission to carry a particular program or to publish its own views." Id. at 378. We also ask for comment on whether any of these mechanisms would "tend to transform broadcasters into common carriers and . . . intrude unnecessarily upon the editorial discretion of broadcasters." League of Women Voters, 468 U.S. at 379. Finally, the Court emphasized that its decision rejecting the ban on editorializing was a "narrow" one and that "[w]e do not hold that the Congress or the FCC is without power to regulate the content, timing or character of speech" Id. at 402. Here, Congress has directed the Commission to take action with respect to children's programming. We ask for comment on the relevance of that direction to our First Amendment analysis.

72. We further note that a question exists whether quantitative standards, processing guidelines, or monitoring are more intrusive than the Commission's current, more subjective, approach to implementation of the CTA. We request comment on whether the constraints on broadcasters' discretion are greater or lesser when they have a clear quantitative standard with which to comply (or explicit information in the form of processing guidelines on how to assure routine, staff processing of their applications for

¹⁰⁹In enacting the CTA, Congress found that: "Market forces have not worked to increase the educational and informational programming available to children on commercial television." Senate Report at 9. Congress also indicated that the CTA is intended to increase the "amount of educational and information broadcast television programming available to children. . . ." Id. at 1.

renewal, or an expectation of ongoing monitoring) than when they run the risk of having their applications for license renewal denied for non-compliance with a general, subjective standard. We also request comment on whether any of the mechanisms proposed here is overly intrusive. In addition, we also seek comment on whether our proposals would be consistent with elimination of the fairness doctrine.¹¹⁰

73. We seek comment on this preliminary analysis with respect to each of the options proposed here.

b. License Renewal Procedures

74. As we have indicated, we wish through our proposed rule revisions to encourage the public, especially parents, to take an active role in urging stations to comply with the CTA, and to reduce the government's role in reviewing such compliance. One way to encourage members of the public to take an active role in monitoring licensees' compliance with the CTA, and to engage in an ongoing dialogue with stations, would be to require that any challenger filing a petition to deny show that he or she had first attempted to resolve the alleged problem with the station in question. As with any other challenge to a licensee's renewal application, a challenge based on a station's children's programming performance could be raised only by a party within the station's viewing area. Beyond this, we seek comment on whether challengers to a license renewal should be required to submit evidence that they contacted the licensee regarding any alleged failure to comply with the CTA, and asked the licensee to correct its alleged noncompliance. How would such a requirement work in conjunction with a processing guideline, as opposed to a programming standard? Could this requirement be utilized even if the Commission opts to monitor programming and not to adopt a guideline or standard? How and when would the challenger have to communicate alleged problems to the licensee? If, for example, we instituted a programming standard of 3 hours of core programming per week averaged over a one-year period, would it be appropriate to require a challenger to notify a station of any alleged violation of the standard within one year of the close of that one-year period? Should the challenger be required to submit his or her complaint to the licensee in writing, and what information should the complaint contain? Finally, we seek comment on what procedures should be put in place to allow the licensee to correct instances of noncompliance brought to its attention by a member of its audience.

¹¹⁰See Syracuse Peace Council, 2 FCC Rcd 5043 (1987), aff'd on other grounds, 867 F.2d 654 (D.C. Cir. 1989), cert. denied, 493 U.S. 1019 (1990). Report and Inquiry into Section 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees, 102 FCC 2d 143 (1985), petition for review dismissed as moot, Radio-Television Directors Ass'n v. FCC, 831 F.2d 1148 (D.C. Cir. 1987).

75. Keeping in mind our objective of reducing the government's role in reviewing CTA compliance, we seek comment on whether, if we implement a safe harbor processing guideline or a programming standard, licensees should be permitted to certify whether they have aired the prescribed amount of core programming. In the absence of a challenge to their license renewal, licensees would not be required to submit materials documenting their programming performance, but only to retain them in their public inspection files. We also seek comment on the following preliminary views. If we instituted a certification procedure in the case of either a safe harbor processing guideline or a programming standard, we believe that stations should be allowed to certify both to airing a sufficient amount of programming themselves and to sponsoring programming in conformance with our sponsorship proposal described below. A certification scheme should not diminish the duty of each licensee to provide full information about its children's programming to the public because we think it is important for parents, educators, and others to have the fullest programming information possible. We believe that full information for the public would assist parents and others in providing a check on licensees' certifications. Of course, if we opt to monitor licensees' programming performance, a certification procedure would be unworkable because we would need to collect programming information from all licensees.

76. We note that when we adopted our current rules, we stated that the legislative history of the CTA suggests that we should review the licensee's children's programming records, and that certification of compliance with the CTA's programming requirement would not provide us with enough information to perform the type of review apparently intended by Congress.¹¹¹ We believe, however, that it may be consistent with Congressional intent to require submission of documentation only from those stations that are unable to certify compliance with either a processing guideline or a programming standard. We also believe that our conclusion on this point is buttressed by the steps we are also proposing to take with respect to requiring the improved provision of information to parents. We seek comment on whether every licensee, or only those not meeting a numerical guideline or standard, should be required to submit children's programming information for FCC review.

¹¹¹We stated in our Report and Order: "In order for the Commission to review a licensee's renewal application in accordance with the manner intended by Congress . . . we must receive sufficient information to determine the extent to which the licensee has responded to the educational and informational needs of children. Moreover, the legislative history strongly suggests that we should review the licensee's children's programming records in evaluating renewal applications." Report and Order, 6 FCC Rcd at 2116.

7. Program Sponsorship

77. As explained above, a third principle we wish to follow is, if we further define a licensee's obligations, to permit licensees to allow the marketplace to determine, to the greatest extent possible, the means available to stations for fulfilling their programming obligation. Thus, if we adopt either a safe harbor processing guideline or a programming standard, we will consider the adoption of "program sponsorship" rules that would give licensees the option of either themselves airing the entire prescribed amount of children's programming, or airing a portion of the prescribed amount themselves and taking responsibility for the remainder by providing financial or other "in-kind" support for programming aired on other stations in their market. At license renewal time, the station sponsoring educational programming shown elsewhere (the "sponsor station") would take credit for the programs it had funded on the other station (the "host station"). We seek comment on this idea, as well as the suggestions set forth below for implementing it and any advantages or disadvantages it might have for the children's programming marketplace.

78. Because the CTA refers to "a licensee's programming" and states that efforts to support programming on other stations may be considered "in addition" to the licensee's own programming, we conclude that the CTA precludes us from allowing a licensee to meet either a processing guideline or a programming standard entirely by sponsoring programming on other stations in the same market.¹¹² We therefore suggest that, if we adopt any level of processing guideline or programming standard, each station should be required to air at least 1 hour of core educational and informational programming itself and that each be allowed to fulfill the remaining hours of the guideline or standard by sponsoring core programming on other stations. Thus, if an initial processing guideline of an average of 3 hours of core programming per week were adopted, a station could meet it by airing 1 hour of qualifying programming itself and sponsoring 2 hours of qualifying programming on other stations. Similarly, if an ultimate guideline of an average of 5 hours of core programming per week were adopted, a station could meet it by airing 1 hour of qualifying programming itself and sponsoring 4 hours of qualifying programming on other stations. In the alternative, should the amount of qualifying programming aired by the station itself be a percentage of the amount specified by the guideline or standard, e.g., one third?

¹¹²The CTA states in pertinent part: "In addition to consideration of the licensee's programming as required under subsection (a) of this section, the Commission may consider—(1) any special nonbroadcast efforts by the licensee which enhance the educational and informational value of such programming to children; and (2) any special efforts by the licensee to produce or support programming broadcast by another station in the licensee's marketplace which is specifically designed to serve the educational and informational needs of children. 47 U.S.C. § 303b(b).

79. We believe that a program sponsorship system could provide licensees with more options in meeting either a processing guideline or a programming requirement and lead to more efficient production of core educational programming by encouraging entities with more expertise in and commitment to children's educational programming to take responsibility for the production and distribution of more such programming. An increase in the efficiency of children's program production and distribution could, in turn, result in more core children's programming of higher quality. A program sponsorship system could also serve to minimize any economic cost of meeting a processing guideline or programming requirement. The opportunity costs of airing core educational programming will vary from station to station depending upon differences in a number of factors, including program costs, audience size, and advertising rates. A program sponsorship system would enable stations to minimize the opportunity costs of meeting a processing guideline or programming requirement by permitting stations with the greatest such costs to finance the production of programming to be shown on stations with lower opportunity costs. We recognize, of course, that the net result of such arrangements might be to shift a large portion of the available educational programming off the more popular stations in a market and concentrate them on the least popular stations, which could be an argument against permitting program sponsorship. On the other hand, such a result could in fact have the advantage of creating a channel on which children and parents would be sure of finding educational and informational programming. We seek comment on these issues.

80. In particular, we ask interested parties to comment on whether antitrust law would limit the extent to which stations in a market may cooperate through program sponsorship efforts. In this regard, we believe that a "rule of reason" analysis would generally apply to such arrangements.¹¹³ It is our tentative conclusion that broadcasters' collective efforts to satisfy their educational and informational children's programming obligations through program sponsorship do not create any inherent antitrust problems. As mentioned previously, the CTA is predicated on the failure of the market to provide a sufficient amount of educational and informational programming for children. Thus, Congress has decided to supplant the free operation of the market with respect to children's programming. In addition to the production and distribution efficiencies

¹¹³A "rule of reason" analysis weighs all the circumstances of a particular case before determining whether a practice is an antitrust violation. See Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 36 (1977); FTC v. Indiana Federation of Dentists, 476 U.S. 447 (1986). In certain circumstances, where cooperation between competitors leads to greater productivity or other benefits, the Supreme Court has undertaken this rule of reason analysis. See, e.g., NCAA v. Board of Regents of University of Oklahoma, 468 U.S. 85 (1984) (applying rule of reason analysis to agreement that restricted televising of college football games); Broadcast Music, Inc. v. Columbia Broadcasting System, Inc., 441 U.S. 1 (1979) (applying rule of reason analysis to agreement among competitors to provide and set price for a "blanket license" to air copyrighted music).

discussed above, another important consideration in this regard is that broadcasters would not be permitted to fulfill their entire programming obligation under the CTA by sponsoring programs on other stations. This residual requirement decreases the likelihood that one station would be able to acquire purchasing power in the children's programming production market.

81. We also seek comment on the tentative views set forth below regarding how a program sponsorship system should work. The CTA and our rules already permit stations to receive credit at license renewal time for supporting educational programming on another station in their market.¹¹⁴ Indeed, we have held that if one station produces or buys children's programs broadcast on another station, so as to qualify under 47 U.S.C. § 303b(b)(2), both stations may rely on such programming in their license renewal applications.¹¹⁵ We now seek comment on whether that holding was correct, or whether it undermines the CTA by permitting "double counting." If applied to either a processing guideline or a programming requirement, such double counting could lead to a substantial reduction in existing levels of children's educational programming. It therefore appears that, at least for the purpose of meeting a processing guideline or programming requirement, host stations should not be permitted to claim credit for sponsored programming.

82. It is also our view that a station should be allowed to sponsor programs for the purpose of meeting a processing guideline or programming requirement only on host stations that serve largely the same potential viewers. Otherwise, audiences in some markets might end up with little or no educational children's programming. In addition, broadcasters' obligations to serve the public interest applies to the market in which they are licensed to operate. On the other hand, we do not believe that we should require sponsor and host stations to serve exactly the same area because such a requirement would unduly limit the program sponsorship options available in many markets. Taking into account these competing considerations, it would seem sensible to require that, when any portion of a station's programming that is claimed to satisfy a processing guideline or programming requirement consists of programming shown on another station, the signal of the host station cover 80 percent of either the community of license or the area encompassed within the grade A or grade B contour of the sponsor station. We seek comment on these ideas and also ask how we should evaluate sponsored programming when the 80 percent threshold is not met, whether the sponsored programming is relied upon to meet a processing guideline, relied upon to meet a programming requirement, or used by the licensee to satisfy its overall programming obligation under the CTA. We also ask whether commercial stations should be allowed to sponsor educational programs on noncommercial stations, and how such sponsorship

¹¹⁴Cf. 47 U.S.C. § 303b(b)(2) and 47 C.F.R. § 73.671(b).

¹¹⁵Report and Order, 6 FCC Rcd at 2115.

would support the purposes underlying both the CTA and the noncommercial educational licenses.

83. If we adopt program sponsorship rules, it appears to us that stations involved in program sponsorship should be required to list and describe in their public children's programming reports programs shown on other stations as a result of their financial or in-kind contributions. At a minimum, a station should include a description of all sponsored programs, identify the host station on which each program was aired, and provide the time the program aired. We ask for comment on the feasibility of this proposal and how it should be implemented, as well as any other information about sponsored programs that should be provided to the public.

84. To further provide for public accountability, we also think that the host station should identify the sponsor station of every sponsored program at the time it is aired. This would ensure that the sponsor's good name stands behind the sponsored program. We seek comment on this idea.

85. In addition to seeking comment on any other necessary aspects of a program sponsorship system not identified herein, we invite commenters to identify alternatives to our suggested approach to program sponsorship, including alternative definitions of the relevant market for sponsorship agreements. We also welcome the submission of data regarding the economic feasibility of a program sponsorship system and whether such a system would in fact reduce the overall cost of airing educational programming. More specifically, we invite commenters to include in the industry-wide studies of the costs of providing educational children's programming, described in paragraph 65, information regarding how program sponsorship arrangements might affect those costs.

D. Reexamination of Rules

86. If we adopt either a processing guideline or a programming standard, we would intend that the resulting regulatory changes would be made on a provisional or experimental basis, rather than as permanent changes. It is our hope that any such guideline or standard, together with the other changes we propose, will effectuate a significant improvement in television broadcasters' service to children, and also will enable parents to monitor the performance of stations in their communities and ensure through their actions that the CTA's objectives are met.

87. In accordance with these expectations, and to ensure periodic review of the necessity and efficacy of a guideline or standard, we seek comment on whether we should sunset any regulatory changes related to the possible implementation of either of these two options, absent additional Commission action, on December 31, 2004, unless affirmatively extended by the Commission. This date is one year after the close of the renewal cycle for the last group of stations to come up for renewal after rules would be adopted in this proceeding, and would allow the Commission, prior to the sunset, the

opportunity to evaluate fully the effects of any rules adopted here. Thus, it would be our intention to undertake a review prior to the sunset date.

IV. CONCLUSION

88. With this proceeding, we intend to provide the public with a greater ability to monitor station compliance with the CTA, clarify our rules and policies governing educational programming for children to provide licensees with greater certainty as to the scope of their children's programming obligation, and to ensure that the amount of educational and informational programming provided by television broadcasters comports with the goals of the CTA. We believe that we can achieve these objectives by increasing the flow of information to the public about the children's programming that stations are broadcasting, and by adopting a definition of programming "specifically designed" to serve children's educational and informational needs. In addition, we intend to take further action – in the form of instituting monitoring procedures, processing guidelines or a programming standard – in order to ensure that all children have access, as Congress intended, to an adequate supply of educational and informational programming specifically designed for them. We seek comment on all aspects of our proposals, and welcome other ideas commenters may have to achieve the objectives outlined herein.

V. ADMINISTRATIVE MATTERS

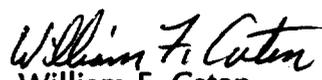
89. Ex Parte Rules - Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. See 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

90. Comment Information. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before **June 16, 1995** and reply comments on or before **July 17, 1995**. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

91. Initial Regulatory Flexibility Analysis. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document, set forth in Appendix C. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq., (1981)).

92. Additional Information. For additional information regarding this proceeding, contact Diane Conley or Kim Matthews, Mass Media Bureau, Policy and Rules Division, (202) 776-1653.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

APPENDIX A

The following parties filed formal comments in response to the FCC's Notice of Inquiry:

Act III Broadcasting, Inc.
American Academy of Pediatrics
American Psychological Association
Associated Broadcasters, Inc., and Galloway Media, Inc.
Association of Independent Television Stations, Inc.
Cannell Communications, L.P.; Cosmos Broadcasting Corporation; Cox Broadcasting;
Great American Television and Radio Co., Inc.; Midcontinent Media, Inc.; Multimedia
Broadcasting Company; River City Broadcasting, L.P.; Scripps Howard Broadcasting
Company; Tak Communications, Inc.; Wabash Valley Broadcasting Corp.
Capital Cities/ABC, Inc.
CBS Inc.
Center for Media Education; American Association of School Administrators; Association
for Library Service to Children/American Library Association; Center for the Study of
Commercialism; Peggy Charren; Consumer Federation of America; Council of Chief
State School Officers; Dr. Vincent Hutchins, MD, MPH; National Association for Better
Broadcasting; National Association of Child Advocates; National Association of
Elementary School Principals; National Association for Families and Community
Education; National Black Child Development Institute, Inc.; National Council of La
Raza; National Education Association; and National PTA
Children's Television for the '90s
Children's Television Workshop
The Connecticut Broadcasters Association; The Illinois Broadcasters Association; The
Iowa Broadcasting Association; The Michigan Association of Broadcasters; The Minnesota
Broadcasters Association; The Missouri Broadcasters Association; The Nebraska
Broadcasters Association; The New Hampshire Association of Broadcasters; The
Oklahoma Association of Broadcasters; The Tennessee Association of Broadcasters; The
Washington State Association of Broadcasters; The West Virginia Broadcasters
Association; The Wisconsin Broadcasters Association
Duhamel Broadcasting Enterprises
Fox Children's Network
Haley, Bader & Potts
Dr. Dale Kunkel, University of California, Santa Barbara
National Association of Broadcasters
National Association for the Education of Young Children
National Broadcasting Company, Inc.
National Coalition on Television Violence
New York State Board of Regents and Thomas Sobol, President of
the University of the State of New York and Commissioner of Education
South Florida Preschool PTA

Thirty-Six Television Stations: KBSD, Ensign, KS; KBSH, Hays, KS; KBSL, Goodland, KS; KEYT, Santa Barbara, CA; KFYR, Bismarck, ND; KGAN, Cedar Rapids, IA; KMOT, Minot, ND; KOVR, Stockton, CA; KQCD, Dickinson, ND; KSTS, San Jose, CA; KTMD, Galveston, TX; KTVO, Kirksville, MO; KUMV, Williston, ND; KVDA, San Antonio, TX; KVEA, Corona, CA; KWCH, Hutchison, KS; WATM, Altoona, PA; WAXA, Anderson, SC; WCFT, Tuscaloosa, AL; WDAM, Laurel, MS; WETM, Elmira, NY; WGGB, Springfield, MA; WGME, Portland, ME; WHTM, Harrisburg, PA; WICS, Springfield, IL; WKAQ, San Juan, PR; WLOS, Asheville, NC; WLUC, Marquette, MI; WNJU, Linden, NJ; WPBN, Traverse City, MI; WSCV, Ft. Lauderdale, FL; WSTM, Syracuse, NY; WSYX, Columbus, NC; WTMJ, Milwaukee, WI; WTOM, Cheboygan, MI; WWCP, Johnstown, PA

Tribune Broadcasting Company

United States Catholic Conference

The Walt Disney Company

Ellen Wartella, University of California, Santa Barbara, and University of Illinois, Urbana-Champaign; and Norma Pecora, Emerson College

Westinghouse Broadcasting Company, Inc.

WTTE, Channel 28 Licensee, Inc.

The following parties filed formal reply comments in response to the FCC's Notice of Inquiry:

American Psychological Association

The Arizona Broadcasters Association; The Maryland/District of Columbia/Delaware Broadcasters Association; The North Dakota Broadcasters Association

Association of Independent Television Stations, Inc.

Center for Media Education; American Association of School Administrators; Association for Library Service to Children/American Library Association; Center for the Study of Commercialism; Peggy Charren; Consumer Federation of America; Council of Chief State School Officers; Dr. Vincent Hutchins, MD, MPH; International Reading Association; National Association for Better Broadcasting; National Association of Child Advocates; National Association of Elementary School Principals; National Association for Families and Community Education; National Black Child Development Institute, Inc.; National Council of La Raza; National Education Association; and National PTA

Children's Television for the '90s

Haley, Bader & Potts

Dr. Dale Kunkel, University of California, Santa Barbara

National Association of Broadcasters

National Broadcasting Company, Inc.

Frank Allen Philpot

Pulitzer Broadcasting Company

Turner Broadcasting System, Inc.

The Walt Disney Company

APPENDIX B

The following parties gave oral testimony at our en banc hearing on children's television:

Panel 1 – Educational and Informational Programming: Will We Know It When We See It?

Capital Cities/ABC, Inc. – Jeanette B. Trias, President, ABC Children's Entertainment
Children Now – James P. Steyer, President
Children's Television Workshop – David V.B. Britt, President and CEO, and Sheldon Turnipseed, actor in CTW "Ghostwriter" series
Fox Children's Network – Margaret Loesch, President
National Broadcasting Company, Inc. – Dr. Karen Hill-Scott, independent consultant
National Education Association – Dr. Gary D. Watts, formerly Senior Director of NEA's National Center for Innovation and Assistant Executive Director of NEA's Center for Teaching and Learning
The National PTA – Catherine A. Belter, Vice President for Legislative Activity
The Walt Disney Company – Kenneth D. Werner, Senior Vice President of Business Affairs, Walt Disney Television, and Bill Nye, Creator and Host, "Disney Presents: Bill Nye the Science Guy"
World African Network – Phyllis Tucker Vinson Jackson, Executive Vice President

Panel 2 – Educational and Informational Programming: How Much Is Enough?

American Psychological Association – Dr. Dale Kunkel, Dept. of Communications, University of California, Santa Barbara
Peggy Charren, Founder, Action for Children's Television
Millicent Green, 7th-grade student and correspondent for Children's Express
Interfaith Broadcasting Commission – Dr. Richard McCartney, Chairman
Maryland Campaign for Kids' TV – Charlene Hughins Uhl, Director, Ready At Five
National Association of Broadcasters – Paul A. La Camera, Vice President and General Manager, WCVB-TV, Boston, MA
National Association of Television Program Executives – Bruce Johansen, President and COO of NATPE International
Squire Rushnell, former Vice President of Children's Television, ABC

Panel 3 – The Economics of Providing Educational and Informational Programming for Children

Association of Independent Television Stations, Inc. – Peter Walker, Vice President and General Manager, WGN-TV, Chicago, IL
CBS, Inc. - Johnathan Rodgers, President, CBS Television Stations Division
Center for Media Education – Dr. Kathryn Montgomery, President

Corporation for Public Broadcasting – Sheila Burke Tate, Chairman, CPB Board of Directors
Hastings College Social Research Center – Dr. James H. Wiest, Professor of Sociology and
Director, HCSRC, and Dr. Ronald Davis, Associate Professor of Broadcasting and
Director of Telecommunications, Hastings College
KIDSNET – Karen W. Jaffe, Executive Director
Shari Lewis
Nickelodeon – Geraldine Laybourne, President
The Univision Television Network – Jaime Davila, Chairman

(Panel participants also submitted written comments and/or summaries of their remarks.)

The following parties did not give oral testimony but submitted formal comments in connection with the en banc hearing:

Act III Broadcasting, Inc.
American Academy of Children's Entertainment
Jok Church
Nancy Kroll
The Media Institute
National Basketball Association
National Stuttering Project
Radio-Television News Directors Association and The Reporters Committee for Freedom of the Press

The following parties submitted formal reply comments in connection with the en banc hearing:

Association of Independent Television Stations, Inc.
Capital Cities/ABC, Inc.
Center for Media Education; American Association of School Administrators; Center for the Study of Commercialism; Peggy Charren; Consumer Federation of America; Council of Chief State School Officers; National Association of Child Advocates; National Association of Elementary School Principals; National Association for Families and Community Education; National Black Child Development Institute; National Council of La Raza; National Education Association; and National PTA.
Children's Television Workshop
Hastings College Social Research Center – Dr. James H. Wiest and Dr. Ronald D. Davis
National Association of Broadcasters
National Broadcasting Company, Inc.

Newton N. Minow with Craig L. LaMay, for the Public-Service Television Project of the
American Academy of Arts and Sciences
Office of Communication of the United Church of Christ
Radio-Television News Directors Association and The Reporters Committee for Freedom
of the Press

APPENDIX C

Initial Regulatory Flexibility Analysis

I. Reason for the Action: This proceeding was initiated to explore ways to implement the Children's Television Act of 1990 more effectively.

II. Objective of This Action: The actions proposed in this Notice are intended to give licensees clear, simple, and fair guidance regarding their children's programming obligation; to increase the flow of programming information to the public to facilitate enforcement of the Children's Television Act of 1990; and to allow the marketplace to determine to the fullest extent possible the means that licensees use to meet their programming obligation. Other objectives are to increase the amount of available television broadcast programming that meets the educational and informational needs of children and to promote efficiency in the production and distribution of such programming.

III. Legal Basis: Authority for the actions proposed in this Notice may be found in Sections 1 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 303; and Section 103 of the Children's Television Act of 1990, 47 U.S.C. § 303b.

IV. Number and Type of Small Entities Affected by the Proposed Rules: Approximately 1,200 existing commercial television broadcasters of all sizes may be affected by the proposals contained in this Notice.

V. Reporting, Record-keeping, and Other Compliance Requirements Inherent in the Proposed Rule: The Notice seeks comment on modifying current record-keeping and reporting requirements to include a requirement that licensees demonstrate compliance with proposed rule changes in their children's programming report, and seeks comment on requiring licensees to make programming information more accessible to the public. The Notice seeks comment on whether stations should be required to separate their children's programming reports from other material in the public inspection file and broadcast announcements to alert the public of the existence of such reports. It also seeks comment on a certification requirement that would replace the current requirement for submission of detailed documentation to the Commission for those stations able to certify that they have met a safe harbor processing guideline or programming standard.

VI. Federal Rules Which Overlap, Duplicate, or Conflict with the Proposed Rule: None.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives of the Action: The proposals contained in this Notice are designed to encourage television broadcast programming that satisfies the requirements of the Children's Television Act of 1990, while minimizing the impact on small entities.