

Broadcasters ("NABOB") supported requiring on-air identification of core programming.¹²⁴ Other broadcast commenters agreed with the goal of improving the information flow to the public, but argued the use of an on-air icon or announcement would be counterproductive by deterring rather than attracting child viewers.¹²⁵ This view was echoed by children's programming producer CTW, who reasoned that on-air identifiers could taint educational programs.¹²⁶ Warner Brothers noted that parents would often miss an announcement or icon aired only briefly at the beginning of a program.¹²⁷ Finally, *Cosmos et al.* argued that the Commission lacks jurisdiction or statutory authority over the methods that stations choose to promote programming, such as on-air identification.¹²⁸

51. NAB filed initial comments opposing the use of an on-air icon or announcement and disputing the Commission's jurisdiction to impose such requirements.¹²⁹ In supplemental comments, however, NAB supported the adoption of rules to require broadcasters to "identify core programs at the beginning of the program, in a form that is at the sole discretion of the licensee."¹³⁰

52. Discussion. We believe the on-air identification of core programs would greatly assist parents in planning their children's viewing and improve the children's

Broadcasting Services Act 1992, ¶ 122(1)(a).

¹²⁴See NABOB Reply Comments at 3. ALTV initially supported on-air identification. See ALTV Comments at 26. In its reply comments, however, ALTV stated that, in light of the mixed responses from commenters to this proposal, local stations should be permitted to determine the utility and effect of on-air identifiers themselves. See ALTV Reply Comments at 20.

¹²⁵See, e.g., Joint Comments of Cosmos Broadcasting Corp., Cox Broadcasting, Inc., First Media Television, L.P., Paxson Communications Corp., and River City Broadcasting, L.P. ("*Cosmos et al.*") at 8-9; Curators of the University of Missouri Comments at 7.

¹²⁶See CTW Comments at 13-14. See also Comments of The Walt Disney Company ("Disney") at 11-12. Although CEP stated that it believes that identification of educational programs is appropriate for pre-schoolers and their parents, it argued that such identification would not be appropriate for school-aged children, for whom the educational designation is likely to have a negative connotation. In addition, CEP advocated that the information stations provide to parents should include the "results" of the educational programming to allow parents to assess the merits of a station's claims regarding the educational value of their programming. CEP Comments at 8.

¹²⁷See Comments of Warner Brothers Television Network, Warner Brothers, and Time Warner, Inc. ("Warner Brothers") at 11-14.

¹²⁸See *Cosmos et al.* Comments at 8-9.

¹²⁹See NAB Comments at 24-33 & Attachment 5.

¹³⁰See NAB Supplemental Comments, Attachment at 5 (filed July 29, 1996). These supplemental comments were filed to "provide the Commission with the results of recent discussions between the NAB and the Clinton administration." Id. at 1.

programming marketplace at minimal cost to stations. Accordingly, we will require broadcasters to provide on-air identification of core programs, in a manner and form that is at the sole discretion of the licensee, at the beginning of the program. Just as we require stations to provide on air station identification and sponsor identification,¹³¹ we believe the public would be served by requiring broadcasters to identify programs specifically designed to educate and inform children on the air. On-air identifiers are likely to reach a larger audience than information printed in programs guides.¹³² Moreover, we note that there is no certainty that published guides will include such information. Identifiers will improve broadcaster accountability by publicizing the programs licensees identify as contributing to their obligation to air core programming.¹³³ An on-air identification requirement will make broadcasters more accountable to the public and further the goal of minimizing the possibility that the Commission would be forced to decide whether particular programs serve the educational and informational needs of children.

53. Some commenters speculated that on-air identifiers could deter children from watching educational programs.¹³⁴ No commenter, however, presented evidence that such an effect will occur. We will revisit our decision to require on-air identification if, after some experience, parties present us with evidence that they in fact have a deterrent effect. In the meantime, broadcasters will have full discretion to design their identifiers to minimize or avoid any such effect.

54. We disagree with the argument of Cosmos et al. that the FCC lacks the statutory authority to require broadcasters to provide on-air identification of core programs. The Commission has adequate statutory authority under the CTA and under the Communications Act to require broadcasters to provide information about their core programming to the public. The CTA seeks to increase the amount of educational and informational programming available to children. Requiring broadcasters to provide information concerning educational and informational programming will improve the children's television marketplace, thereby effectuating the goal of the CTA. In addition to our authority under the CTA, we have broad authority under the Communications Act of 1934 to regulate all communications services that use radio waves, including the authority to

¹³¹47 C.F.R. §§ 73.1201, 73.1212.

¹³²This is especially true for groups that use television more extensively than newspapers or other printed materials. For example, Huston & Wright stated in their comments that on-air information is likely to reach a larger audience than printed television guides or public files maintained by stations. They expressed the view that on-air identifiers would be more effective, particularly for adults and children in low-income and minority families because surveys indicate that these groups use television extensively and are more likely to use it for information than a newspaper. Huston & Wright Comments at 4.

¹³³See e.g., Minow and LaMay Comments at 156-157; Huston & Wright Comments at 3-4; CME et al. Comments at 31-32.

¹³⁴See supra paragraph 50.

establish the licensing procedures for broadcast stations. Section 303(r) of the Act provides that we have authority to "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of th[e] Act." Providing such information will aid parents and children in selecting programs and help hold broadcasters accountable for compliance with the CTA, thus aiding us in our mandatory review of such compliance during the renewal process. Indeed, our entire licensing scheme is premised on providing adequate information to the public to enable the public to exercise its statutory right to participate in our renewal proceedings. Providing on-air announcements about core programming will improve the functioning of the children's television market and make broadcasters more accountable to parents and other interested community members. Section 303(r) provides ample authority for the on-air identifier requirement because requiring on-air identifiers will help us make the Sections 309(a) and (k) determination that grant of a renewal application is in the public interest.

Program Guides

55. Comments. Public interest groups, programmers, and other commenters generally support stations providing information about core programs to program guides on the ground that it would provide parents with advance notice of the scheduling of educational programs.¹³⁵ The National Telecommunications and Information Administration ("NTIA") commented that this proposal is one of the most important improvements we proposed in the NPRM, and will empower American parents by providing information to help them find programs that are good for their children.¹³⁶ KIDSNET, a non-profit clearinghouse for information about educational programming, contended that providing information to program guides could increase audiences and program loyalty.¹³⁷ Disney advocated requiring licensees to provide information to program guide publishers, local newspapers, and any other publishers of material "reasonably calculated" to provide the identifying information to parents.¹³⁸ NBC suggested that the Commission encourage the adoption of a universal symbol for educational children's programs and urge broadcasters to include the symbol in information furnished to program listing services.¹³⁹ Broadcaster parties who favored our

¹³⁵See, e.g., AAP Comments at 1-2; CME et al. Comments at 31-32; Comments of the Children's Television Resource & Education Center ("C-TREC") at 1; CDF and BCCC Comments at 11.

¹³⁶See NTIA Reply Comments at 11.

¹³⁷See KIDSNET Comments at 4.

¹³⁸See Disney Comments at 11-12.

¹³⁹NBC Comments at 12-14. NBC noted that the parental advisory plan that was voluntarily adopted by the national broadcast networks, local stations, and national program distributors provides a model for this requirement. Under that system, participants provide to program guide services information indicating whether programs contain material that may be unsuitable for children. These programs are identified with a universal symbol ("PA") indicating they contain a parental advisory. Id. (citing Advance Parental Advisory Plan, A Four-Network Proposal

proposal argued generally that printed program information is preferable to on-air announcements or icons because it permits parents to pre-plan viewing.¹⁴⁰ Opponents claimed licensees should retain discretion over the means that they select to promote their educational programming.¹⁴¹ Cosmos et al. argued that we lack the statutory authority to require that information regarding specifically designed programming be provided to program guides.¹⁴²

56. NAB filed initial comments that opposed a requirement that broadcasters provide information on core programming to the program guides, stating that specially marked program listings would be likely to discourage viewing among older children who refer to program guides.¹⁴³ In supplemental comments, however, NAB set forth its support for adopting rules to require broadcasters to "provide to program guide publishers information identifying core programming, including an indication of the age group for which the program is intended."¹⁴⁴

57. Discussion. It is industry practice for broadcasters to provide programming information to program guides, which publish such information without cost to the broadcasters. Further, it has become a well-established practice to provide specialized information about programs, such as which programs are closed captioned for the hearing impaired. As broadcasters routinely provide such information about their programming to program guides and designate core programs for their public records, we believe it would require a minimum of effort, but have a major positive effect, for broadcasters to provide publishers of program guides and listings, information identifying core programs, and the age

for a Two-Year Test (ABC, CBS, NBC and Fox) (June 30, 1994)).

¹⁴⁰NBC stated that it voluntarily commits to furnishing to the listing services a universal symbol and related information regarding children's programming. NBC Comments at 12-14. ALTV supported providing instructions to program guides for identifying programs as educational. ALTV Comments at 26. ABC would encourage broadcasters to supply information on programming to publications but would not make this proposal mandatory. According to ABC, stations have a variety of options for promoting programs, including the Internet, but they have no control over whether the guides publish the information provided by stations. ABC Comments at 14-15. CBS supported providing information on regularly scheduled programs to program guides, but stated that it would be burdensome to do so for special programming. CBS Comments at 6 n.5.

¹⁴¹See, e.g., Cosmos et al. Comments at 6-8. The Named State Broadcaster Associations agreed that there must be a flow of information to the public about quality programming, but they argued that the free market and open press will accomplish this without government mandates and additional paperwork burdens. Comments of the Named State Broadcaster Associations at 6. See also CEP Comments at 8. CEP stated that identification in program guides is appropriate for pre-school children and their parents, but not for school-aged children for whom the designation is likely to have a negative connotation. Id.

¹⁴²See Cosmos et al. Comments at 4-5.

¹⁴³See NAB Comments at 24-25.

¹⁴⁴NAB Supplemental Comments, Attachment at 5 (filed July 29, 1996).

group for which, in the opinion of the broadcaster, the program is intended.¹⁴⁵ We recognize broadcasters cannot require guides to print this information. The information, however, is more likely to be in the program listings if broadcasters routinely provide it. We believe program guides are an effective means of providing parents with advance notice of scheduling of educational programs. This information will assist parents in finding suitable programs for their children and be useful to parents and others who wish to monitor station performance in complying with the CTA. We note that a number of broadcasters supported this proposal, and that the major networks now employ a voluntary parental advisory plan pursuant to which they provide to program guide services information indicating whether programs contain material that may be unsuitable for children. We believe that a universal symbol for educational programming would also be useful in readily identifying such programming to the public, and encourage broadcasters to adopt such a symbol.

58. We disagree with Cosmos et al. that we lack the statutory authority to require broadcasters to furnish this information to program guides. As noted in the discussion of our statutory authority to require on-air identifiers, supra, we have adequate statutory authority under the CTA and under the Communications Act to require broadcasters to provide information about their core programming to the public. Just as on-air identifiers are necessary to fulfill the mandate of the CTA, providing information to program guides will improve the functioning of the children's television market and make broadcasters more accountable to parents.

59. As with on-air identifiers, our broad authority under the Communications Act of 1934 to carry out the public interest requirement permits us to have broadcasters provide programming information where necessary to effectuate the public interest standard during the renewal process. Although we have not previously required broadcasters to furnish information to programming guides, we have required stations to broadcast certain on-air announcements,¹⁴⁶ to give public notice in a local newspaper for certain broadcast applications,¹⁴⁷ and to make available certain information in a public file.¹⁴⁸

60. Section 303(r) provides ample authority for the programming information disclosure requirement because providing this information will help us make the Section 309(a) and (k) determination that grant of a renewal application is in the public interest. Therefore, we believe that we have the statutory authority to require broadcasters to provide programming information to programming guides.

¹⁴⁵As described below in Section IV, we will require that broadcasters indicate the age of the target child audience in their program description.

¹⁴⁶See 47 C.F.R. §§ 73.1201 (requiring station identification); 73.1212 (requiring sponsorship identification).

¹⁴⁷See id. at § 73.3580.

¹⁴⁸See id. at §§ 73.3526, 73.3527.

Public File Proposals

61. Our rules currently require commercial licensees to compile reports, containing information about the children's programming they air, including the time, date, duration, and description of the programs. Licensees maintain these reports in the station's public inspection file.¹⁴⁹ We sought comment in the NPRM on changing the existing requirements to enhance public access to and use of the information in these reports.¹⁵⁰ We identify several ways, discussed below, that such enhancements can be made without materially increasing any burden on the licensee.

i. Children's liaison

62. In the NPRM, we proposed that stations identify the person at the station responsible for collecting comments on the station's compliance with the CTA, and asked how such a requirement could be implemented without being burdensome.¹⁵¹ Some broadcast parties disagreed with this proposal,¹⁵² but the major networks, other broadcasters, and other commenters supported it.¹⁵³ We believe it is reasonable to require licensees to designate a liaison for children's programming and to include the name and method of contacting that individual in the station's children's programming reports, since someone at each station must, as a practical matter, be responsible for carrying out the broadcaster's responsibilities under the CTA. We agree with CME that there is value in identifying for the public an individual to contact with concerns or complaints about the broadcaster's children's programming.¹⁵⁴ This requirement also will facilitate public access to information on stations' educational programming efforts, and assist stations in responding to comments and complaints from the public. Moreover, because licensees are currently required to maintain

¹⁴⁹NPRM, 10 FCC Rcd at 6322; 47 C.F.R. § 73.1202.

¹⁵⁰NPRM, 10 FCC Rcd at 6323.

¹⁵¹Id.

¹⁵²See, e.g., Cosmos et al. Comments at 9; Tribune Comments at 23-24; Curators of the University of Missouri Comments at 6-7. These broadcasters argued that this proposal is unnecessary because licensees are conscientious in responding to the public. Tribune opposed all of the proposed public file requirements. Tribune Comments at 24.

¹⁵³See, e.g., CBS Comments at 7; ABC Comments at 11-12; Golden Orange Comments at 8; NBC Comments at 15; CME et al. Comments at 45; CTW Comments at 12-13. ABC stated that it was not aware of any significant problems with public access to children's programming reports. ABC Comments at 11.

¹⁵⁴See CME et al. Comments at 45. CME et al. also suggested that the Commission establish and publicize an "800" number that consumers could call for assistance in obtaining public information from licensees and in filing complaints with the station or with the Commission itself. Id. We note that consumers do not need an 800 number to call their local station, and the Commission is seeking to develop a "888" number system that the consumers in all 50 states may use to call the Commission.

children's programming reports¹⁵⁵ and letters received from the public in their public inspection file,¹⁵⁶ this requirement should not impose a significant additional burden on licensees.

ii. Explanation of how programming meets definition of core programming

63. We will adopt the proposal in the NPRM that licensees provide a brief explanation in their children's programming reports of how particular programs meet the definition of "core" programming.¹⁵⁷ A few broadcast parties were opposed,¹⁵⁸ but most, including most of the major networks, supported the proposal.¹⁵⁹ Although NAB initially opposed this proposal,¹⁶⁰ it filed supplemental comments setting forth its support for requiring broadcasters to explain how programs they identify as "core" meet that definition.¹⁶¹ Such descriptions assist parents and others who wish to monitor station performance in complying with the CTA. Having a broadcaster identify those programs it relies upon to meet its CTA obligation on an ongoing basis, rather than the end of the term, will increase broadcaster accountability.

64. ABC argued that licensees should have broad discretion in the manner and detail of these descriptions. For example, ABC contended that, "for a qualifying regular series, licensees should not be required to describe each weekly or daily episode; a general description of the series format, subject matter, and other overall qualities should be sufficient..."¹⁶² We agree that such a general description of a series should be sufficient so long as the description is adequate to provide the public with enough information about how the series is specifically designed to meet the educational and informational needs of children.

¹⁵⁵47 C.F.R. § 73.3526(8)(iii).

¹⁵⁶Id. at § 73.1202. Commercial stations are required to maintain a number of other reports, records, and applications in their public inspection file as well. See id. at § 73.3526.

¹⁵⁷NPRM, 10 FCC Rcd at 6323.

¹⁵⁸See Named State Broadcaster Associations Comments at 8; Cosmos et al. Comments at 10; Curators of the University of Missouri Comments at 6-7. These broadcasters argued that this requirement imposes a substantial burden on licensees. We note, however, that most broadcasters support this requirement and do not indicate that it will impose such a burden.

¹⁵⁹See, e.g., CBS Comments at 7; ABC Comments at 12; NBC Comments at 15; CDF and BCCC Comments at 11-12; CTW Comments at 12-13; Golden Orange Comments at 8; Westinghouse Comments at 4-5.

¹⁶⁰See NAB Comments at 18.

¹⁶¹See NAB Supplemental Comments, Attachment at 8 (filed July 29, 1996).

¹⁶²See ABC Comments at 12.

iii. Physically separate reports

65. In the NPRM, we proposed separating the children's programming reports from the rest of the public inspection file.¹⁶³ This would enable interested parties to review the information without having to search through unrelated materials. This is our current practice with a licensee's political file.¹⁶⁴ A few broadcasters commented that this requirement is unnecessary as the children's programming reports are easily accessible,¹⁶⁵ but most broadcasters and other commenters supported this proposal.¹⁶⁶ Facilitating access to children's programming reports will facilitate public monitoring and increase broadcaster accountability under the CTA; requiring broadcasters to keep their children's programming reports separate from other portions of their public inspection files will ensure such ease of access. We therefore conclude that broadcasters should separate children's programming reports from other reports they maintain in their public files.

iv. Publicizing children's programming reports

66. In the NPRM, we proposed that licensees publicize the children's programming reports by, for example, announcing their existence and location periodically over the air.¹⁶⁷ Some broadcasters opposed this proposal, arguing that members of the public rarely review information in the public files, and those interested in children's programming are likely to be aware of the stations' reports.¹⁶⁸

67. We remain concerned that the public is generally unaware of these reports and agree with commenters who contend that publicizing the children's programming reports will heighten awareness of the CTA and invite members of the public to take an active role in monitoring compliance.¹⁶⁹ Periodic on-air announcements further our desire to minimize the

¹⁶³NPRM, 10 FCC Rcd at 6323.

¹⁶⁴47 C.F.R. § 73.3526 (4).

¹⁶⁵See Cosmos et al. Comments at 10. Cosmos stated that although it has no objection to this requirement, it is unnecessary because all files are clearly labeled. See also Tribune Comments at 24. Tribune opposed this proposal as unnecessary on the ground the children's reports are the largest part of the public inspection file and thus are easily spotted. The Curators of the University of Missouri opposed this proposed requirement. See Curators of the University of Missouri Comments at 6-7.

¹⁶⁶See, e.g., ABC Comments at 11-13; Golden Orange Comments at 8; NAB Comments at 18; Westinghouse Comments at 3-4.

¹⁶⁷NPRM, 10 FCC Rcd at 6322.

¹⁶⁸See, e.g., CBS Comments at 7; ABC Comments at 13; Tribune Comments at 25; Curators of the University of Missouri Comments at 6-7.

¹⁶⁹See, e.g., CME et al. Comments at 44; CTW Comments at 13; C-TREC Comments at 3.

Commission's involvement in enforcing the CTA by facilitating public monitoring of broadcasters' educational programming. We consequently will require, as supported by NAB in its supplemental comments,¹⁷⁰ that broadcasters publicize in an appropriate manner the existence and location of their children's programming reports.

v. Quarterly reports

68. In the NPRM, we sought comment on whether the children's programming reports should be produced annually or quarterly, or whether we should, as we do now, allow stations to choose one of these two options.¹⁷¹ All parties who addressed this issue, including a number of broadcasters, supported requiring reports on a quarterly basis. Commenters noted that a quarterly reporting requirement provides more current information about station performance and encourages more consistent focus on educational programming efforts. Commenters noted that because quarterly production of children's programming reports will coincide with the quarterly issues/programs reports that broadcasters currently prepare, this requirement will not impose a significant additional burden on licensees.¹⁷² Therefore, we will require licensees to prepare children's programming reports on a quarterly basis. For an experimental period of three years, we will also require broadcasters to file such quarterly reports with the Commission on an annual basis,¹⁷³ *i.e.*, four quarterly reports filed jointly once a year. We encourage stations to file quarterly, in electronic form, when the reports are prepared.¹⁷⁴ We will evaluate whether to continue this requirement as part of our review of broadcasters' annual reports, *see infra* paragraph 140.

vi. Standardized reporting form

69. A number of broadcasters and other commenters,¹⁷⁵ suggested we provide licensees with a standardized form for these reports. A standardized form should lessen the burden on broadcasters by clarifying the information to be included and providing a ready

¹⁷⁰NAB Supplemental Comments, Attachment at 5 (filed July 29, 1996).

¹⁷¹NPRM, 10 FCC Rcd at 6323.

¹⁷²See e.g., ABC Comments at 12; Westinghouse Comments at 4.

¹⁷³ABC and NBC supported requiring broadcasters to file children's programming reports on an annual basis for a three-year interval to monitor broadcasters' performance under the CTA. ABC Comments at 50; NBC Comments at 25.

¹⁷⁴To encourage licensees to file quarterly, we will post on the FCC World Wide Web home page a list of broadcasters who choose to do so.

¹⁷⁵See, e.g., CDF and BCCC Comments at 11; NBC Comments at 25. Both parties suggested that we should adopt a standardized form that would include all the information necessary regarding licensees' efforts to comply with the CTA, including, among other things, scheduling, lists of programs licensees claim are educational, total number of hours of programming, and other efforts to serve the educational and informational needs of children.

format. This form -- a Children's Educational Television Report -- will be designed so licensees can complete the report on a computer and file it electronically with the Commission for purposes of the experimental three-year annual filing requirement. We note that broadcasters have generally strongly supported the use of electronic filing for applications and other filings.¹⁷⁶ We encourage licensees to file the form with us electronically, although we will accept filings either on computer diskette or a paper copy of the report form.¹⁷⁷

70. To encourage broadcasters to file their reports electronically, we will publish on our World Wide Web home page a list of broadcasters that do so. A standardized form will facilitate consistency of reporting among all licensees, assist in efforts by the public and the Commission to monitor station compliance with the CTA, and lessen the burden on the public and Commission staff.

71. This form will request information to identify the individual station and the programs it airs to meet its obligation under the CTA. The form will also request information on educational programs that the station plans to air in the next quarter and ask whether the licensee has complied with other requirements described in this Report and Order. We plan to issue the reporting form by Public Notice and make it available on the Internet.

72. Several commenters suggested that we post information on educational programming on our FCC home page on the World Wide Web. NTIA noted that Vice President Gore has proposed a "Family Right-to-Know" initiative under which broadcasters would provide information on educational programming in electronic form to the Commission for posting on the FCC home page on the World Wide Web.¹⁷⁸ James Hamilton, professor

¹⁷⁶See, e.g., NAB Comments in PP Docket No. 96-17 (Notice of Inquiry in the Matter of Improving Commission Processes) (released Feb. 14, 1996) at 11-12 (filed March 15, 1996).

¹⁷⁷We will issue a Public Notice explaining how to file programming reports electronically and how the public can access them. We note that electronic filing is simple and easy to do, and that the Commission has responded to a number of industry requests to simplify reporting procedures by making electronic filing available on a voluntary basis for other services, such as for Multipoint Distribution Service (MDS) license applications sent to the Mass Media Bureau, see Report and Order in MM Docket No. 94-131 (1995), and license applications sent to the Wireless Telecommunications Bureau ("WTB"), see Report and Order in WT Docket No. 94-148, FCC No. 96-51, 61 FR 26670 (May 28, 1996). To date, WTB has implemented electronic filing procedures for auction applications (FCC Form 175), 900 Mhz SMR and broadband PCS C block long-form applications for winning bidders (FCC Form 600), and applications for a variety of private wireless services. Electronic filing on diskette is required for circuit status reports sent to the International Bureau, see Report and Order in CC Docket No. 93-157, 10 FCC Rcd 8605 (1995), and for ARMIS reports required to be filed with the Common Carrier Bureau. See Report and Order in CC Docket No. 86-182, 2 FCC Rcd 5770 (1987), modified on recon., 3 FCC Rcd 6375 (1988). Having said this, we recognize that for some small broadcasters who do not have computer capabilities, paper filings may be more convenient and less burdensome.

¹⁷⁸See NTIA Reply Comments at 10-11. Other commenters also supported improving public access to the information provided by stations regarding their educational children's programming. See, e.g., CEP Comments at 9 (encouraging the Commission to publish such information through various sources, including print, television, and

and Director of the Duke Program on Violence and the Media, urged the Commission to establish a publicly accessible computerized database containing information on educational programming as well as other indicators of station performance. He argued that such a database would facilitate monitoring of station performance by interested parties.¹⁷⁹ We believe that ensuring the ready availability of such information will further the goals of the CTA by giving parents, researchers and other interested parties information about broadcaster efforts to educate children, and, if feasible, we will do so. Putting this information on our home page would be consistent with a number of efforts the Commission has made to make a variety of information available to broadcasters and the public. For example, we currently post on our home page detailed technical information, including radio and television station power levels and antenna heights.¹⁸⁰ The staff will explore the feasibility of applying such an approach to CTA information. We also encourage broadcasters that have established their own Web sites to post such information there.

IV. DEFINITION OF PROGRAMMING "SPECIFICALLY DESIGNED" TO SERVE CHILDREN'S EDUCATIONAL AND INFORMATIONAL NEEDS

73. The CTA requires every television broadcaster to air programming "specifically designed" to serve the educational and informational needs of children.¹⁸¹ Our current definition of educational and informational programming -- "programming that furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs"¹⁸² -- is very broad and does not further delineate criteria for programs that are "specifically designed" to educate and inform children. In the NPRM, we explained that some stations were identifying general audience and entertainment programming in their renewal applications as programming

the Internet); ABC Comments at 15 (supporting permitting broadcasters to develop creative means of circulating such information, such as through the Internet, recorded phone services, and teacher's guides). We also received comments in response to our Notice of Inquiry regarding the Commission's processes that strongly support the use of electronic filing for applications and other filings. See, e.g., NAB Comments in PP Docket No. 96-17 (Notice of Inquiry in the Matter of Improving Commission Processes) (released Feb. 14, 1996) at 11-12 (filed March 15, 1996).

¹⁷⁹Hamilton noted that the Environmental Protection Agency created such a public database for information on release of toxic chemicals, and the resulting publicity increased the calls for industry to control their emissions. According to Hamilton, better data on educational programming efforts could put similar attention on the extent to which stations are improving the quantity and quality of such programming. Hamilton Comments at 2-5.

¹⁸⁰The Mass Media Bureau also posts on the FCC World Wide Web site copies of FCC News Releases and FCC documents in relevant rulemaking proceedings. In addition, the Bureau posts daily Public Notices concerning station application acceptances and application actions.

¹⁸¹47 U.S.C. § 303b(a)(2).

¹⁸²47 C.F.R. § 73.671 Note.

specifically designed to serve children's educational and informational needs. These circumstances led us tentatively to conclude that our current definition does not provide licensees with sufficient guidance regarding their obligation to air core programming.¹⁸³

74. To remedy this situation, we proposed to supplement our broad definition of educational and informational programming with a more particularized definition of programming specifically designed to serve children's educational and informational needs. Indeed, we noted that programming "specifically designed" to meet the educational and informational needs of children was the "only category of programming that the CTA specifically requires every licensee to provide."¹⁸⁴ We stated that a clearer definition of "specifically designed" or "core" programming appeared to be necessary to help stimulate an adequate supply of such programming in view of the apparent confusion among some licensees regarding this aspect of their children's programming obligation.

75. Specifically, we proposed to define core educational programming as those programs that meet the following requirements: (1) the program has education as a significant purpose; (2) the educational objective of the program and the target child audience are specified in writing in the children's programming report; (3) the program is aired between the hours of 6:00 a.m. and 11:00 p.m.; (4) the program is regularly scheduled; (5) the program is of a substantial length (e.g., 15 or 30 minutes); and (6) the program is identified as educational children's programming at the time it is aired, and instructions for listing it as educational programming are provided by the licensee to program guides.¹⁸⁵

76. Today, we adopt a definition of core educational and informational programming that is very similar to that proposed in the NPRM. We intend that this definition will identify programming that clearly meets the statutory obligation to air programming "specifically designed" to meet the educational and informational needs of children. We emphasize that licensees should not regard our definition of core programming as imposing a limit on their ability to air other programming that teaches and informs children even if that programming does not square with each element of our definition of core programming. Our definition identifies core programming that we will look to for purposes of renewal processing to ensure that a broadcaster has met its responsibility under the CTA. Beyond this responsibility, we encourage licensees to air a wide variety of programming directed to children that meets their educational and informational needs.

77. Comments. Many commenters strongly supported providing licensees with clearer guidance regarding their obligation to air programming "specifically designed" to educate and inform children. Public interest groups, children's programming researchers,

¹⁸³NPRM, 10 FCC Rcd at 6327.

¹⁸⁴Id. at 6327.

¹⁸⁵Id.

children's programming producers, as well as other commenters, generally agreed that the Commission's proposed definition would assist licensees to determine what programs comply with their obligation to air programming specifically designed to serve children's educational and informational needs, and would improve the overall quality of children's educational and informational programming.¹⁸⁶ In contrast, broadcasters' reaction to the Commission's proposal was mixed. Although some -- including three of the four major broadcast networks -- agreed with the principle that a clearer definition would provide certainty to licensees,¹⁸⁷ others argued that the present definition of educational and informational programming is working and should be retained.¹⁸⁸ NAB filed initial comments arguing for retention of our existing definition,¹⁸⁹ but later filed supplemental comments supporting many aspects of the definition proposed in the NPRM.¹⁹⁰ In addition, a number of broadcasters voiced their concern that the concept of "core" programming contravenes Congress' intent to give broadcasters wide discretion in choosing the programs they believe are educational and informational, and that it ignores the CTA's requirement that licensees serve children's educational and informational needs through their "overall programming" in addition to programming "specifically designed" to serve those needs. These parties argue that the Commission may not ignore any programming that does in fact serve the educational and informational needs of children, and point out that programming that does not comply with our definition of programming "specifically designed" for children can nevertheless contribute to a licensee's fulfillment of its obligations under the CTA.¹⁹¹

78. Discussion. The evidence in the record supports our general proposal to adopt a definition of core educational and informational programming. Several of the studies submitted in this proceeding suggest that some licensees are uncertain about what to classify as programming specifically designed to meet children's educational and informational

¹⁸⁶See, e.g., NTIA Comments at 7; CME et al. Comments at 26; CTW Comments at 15; CDF and BCCC Comments at 8.

¹⁸⁷See ABC Comments at 18; CBS Comments at 8; NBC Comments at 15.

¹⁸⁸See, e.g., Comments of the Curators of the University of Missouri at 7-9; Joint Reply Comments of the Named State Broadcaster Associations at 6-7. See also Tribune Comments at 10-12 (arguing that the Commission should retain the current definition of "educational and informational" programming and define "core" programming to distinguish this from "overall" programming).

¹⁸⁹See NAB Comments at 17-19.

¹⁹⁰See NAB Supplemental Comments, Attachment at 2 (filed July 29, 1996).

¹⁹¹See, e.g., NBC Comments at 16-18; Cosmos et al. Comments at 11-13; Named State Broadcaster Associations Comments at 7.

needs.¹⁹² This conclusion is supported by our experience in reviewing renewal applications and in evaluating licensees' efforts to meet their CTA obligation to air programming "specifically designed" to educate and inform children. We agree with those commenters who believe that a particularized definition will assist broadcasters and will avoid potentially misplaced reliance on general audience and entertainment programs as specifically designed to educate and inform. By more precisely defining "specifically designed" programming, we increase the likelihood that such programs will be aired, concomitantly increasing the likelihood children will benefit as Congress intended, from such programs.

79. We will retain, with a slight modification, our existing definition of "educational and informational programming" to provide a description of the broad variety of programs that can serve to comply with a licensee's overall requirement to air programming that meets children's educational and informational needs. Our existing definition states that "educational and informational television programming is any television programming which furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs."¹⁹³ In order to track more closely the express language of the CTA, we will modify this definition somewhat so that the broad category of "educational and informational television programming" is defined as "any television programming that furthers the educational and informational needs of children 16 years of age and under in any respect, including children's intellectual/cognitive or social/emotional needs."

80. The definition of core programming that we adopt is designed to provide licensees with clear guidance regarding how we will evaluate renewal applications. The elements of our proposed definition are also designed to be as objective as possible so that they are more easily understood by licensees and the Commission staff and to avoid injecting the Commission unnecessarily into sensitive decisions regarding program content. As we stated in the NPRM, programming specifically designed to serve children's educational and informational needs is the only category of programming the CTA expressly requires each licensee to provide. Adopting a definition of such programming will promote this statutory objective by more precisely defining the programming that qualifies and, consequently, provide appropriate incentives to increase the amount of such programming. We further

¹⁹²See supra paragraphs 36, 38, 41, and 45. Dr. Kunkel's studies of 48 license renewal applications in the midwest and 48 renewal applications in the northeast provide evidence that some licensees claim programs as specifically designed to serve children's educational and informational needs that would more correctly be classified as entertainment programming. In addition, we cited in the NPRM a review of commercial television license renewal applications conducted in 1992 by CME and the Institute for Public Representation of the Georgetown University Law Center. NPRM, 10 FCC Rcd at 6318. CME found that many stations were listing in their applications programs with no educational content. As we noted in the NPRM, NAB challenged CME's conclusions, arguing that the renewal applications reviewed were filed only shortly after the effective date of the Commission's children's programming rules, at a time when stations had had little opportunity to adjust to the new requirements. See id. at 6318 n.35.

¹⁹³See 47 C.F.R. §§ 73.671 Note; 73.672 Note.

believe that the definition we adopt today will continue to provide broadcasters ample discretion in designing and producing such programming. We emphasize that the test of whether programming qualifies as core does not depend in any way on its topic or viewpoint. The test is whether it is "specifically designed" to serve the educational and informational needs of children. We now turn to the specific elements of the new definition of core programming.

Significant Purpose

81. With respect to the first element of our definition, we proposed to require that any program that is claimed to be specifically designed to meet children's needs have educating and informing children as a "significant purpose." We proposed that core programming have serving the educational and informational needs of children as a "significant" instead of "primary" purpose as suggested in the NOI, in response to the widely-held view that such programming must be entertaining to be successful. We indicated our desire to encourage producers to make programming that educates and informs, but that is also entertaining and attractive to children. We stated our belief that this terminology makes clear that education need not be the only purpose of programming specifically designed to meet the educational and informational needs of children, but must be more than an incidental goal.¹⁹⁴

82. Comments. Most commenters who addressed this aspect of our proposed standard preferred the "significant purpose" test to the "primary purpose" test we suggested in the NOI.¹⁹⁵ Proponents of this element of the definition of core programming generally believe that the significant purpose standard appropriately acknowledges that educational programming must be entertaining to be successful. These commenters also expressed the view that the primary purpose standard would establish a false dichotomy between education and entertainment that could discourage the development of exciting and appealing programs that also serve to inform and enlighten children.

83. A number of broadcasters and broadcast organizations, including ALTV, CBS, and ABC, argued that the definition of core programming adopted by the Commission must be broad enough to encompass programming that furthers the social and emotional development of children, in addition to their cognitive and intellectual development.¹⁹⁶

¹⁹⁴NPRM, 10 FCC Rcd at 6328.

¹⁹⁵See, e.g., Disney Comments at 5-6; CDF and BCCC Comments at 8; ABC Comments at 17-18; CBS Comments at 8; Warner Brothers Comments at 10-11. But see Children Now Comments at 2 (supporting a requirement that core programming have education as a "primary" purpose); NTIA Comments at 8-9 (urging the Commission to require that educational programs have education as a "principal purpose").

¹⁹⁶See ALTV Comments at 31-32; CBS Comments at 8-9; ABC Comments at 18. NAB also took this position in its initial comments, see NAB Comments at 19, but did not address this issue directly in its supplemental comments.

According to these commenters, the legislative history of the CTA indicates that Congress intended that a broad range of programming qualify as "specifically designed," including programming that aids the personal and social growth of children and teenagers. In contrast, CME et al., as well as several other public interest organizations, argued that definition of core programming should not be interpreted to include any program that can be characterized in some way as pro-social.¹⁹⁷ CME et al. argued that a program can be "specifically designed" to further the educational and information needs of children only if it advances their cognitive/intellectual development. In the view of these commenters, programs purporting to advance children's social/emotional development but not their cognitive/intellectual development do not contain sufficient educational value to qualify as programming specifically designed for children's educational needs.¹⁹⁸

84. Discussion. We believe that, to qualify as core programming, a show must have serving the educational and informational needs of children ages 16 and under as a significant purpose. The "significant purpose" standard appropriately acknowledges the point advanced by broadcasters and others that to be successful, and thus to serve children's needs as mandated by the CTA, educational and informational programming must also be entertaining and attractive to children. Accordingly, as proposed in the NPRM, we will require that core programming be specifically designed to meet the educational and informational needs of children ages 16 and under and have educating and informing children as a significant purpose.

85. The NPRM proposed to define core programming as programming that "has education as a significant purpose."¹⁹⁹ Several commenters argued that core programming should have education and information as a significant purpose.²⁰⁰ We agree. The CTA provides that licensees must serve the "educational and informational needs of children."²⁰¹ Thus, programming that has serving the educational and informational needs of children ages 16 and under as a significant purpose may qualify as core.

86. We believe that our significant purpose requirement is consistent with the "specifically designed" terminology of the CTA, which is the statutory test. Although core programming must be specifically designed to serve the educational and informational needs of children, the term "specifically" does not mean that the sole (or even primary) purpose of

¹⁹⁷See CME et al. Comments at 27 and Reply Comments at 28. CME also argued that just because a program does not contain violence, it should not be considered an educational or informational program. CME et al. Comments at 27.

¹⁹⁸CME et al. Comments at 27 and Reply Comments at 31 n. 83.

¹⁹⁹NPRM, 10 FCC Rcd at 6327.

²⁰⁰See, e.g., Tribune Comments at 13; Cosmos et al. Comments at 13-14.

²⁰¹47 U.S.C. § 303b(a)(2).

the programming must be to educate and inform. As discussed above, we acknowledge some commenters' position that programming must be entertaining in order to be effective, and we therefore believe that our significant purpose requirement, by allowing to qualify as core programming shows that do both, is consistent with the language of the CTA.

87. Several commenters asked us to clarify that our definition of core programming includes educational and informational programs that further children's social and emotional development as well as their cognitive and intellectual development. The CTA speaks of programming specifically designed to serve "the educational and informational needs of children."²⁰² It does not draw a distinction between educational and informational programming that furthers children's cognitive and intellectual development and educational and informational programming that furthers children's social and emotional development. We decline to draw that distinction ourselves and accordingly conclude that both fall within the scope of our definition. We underscore that we are not interested in influencing -- or even knowing -- the viewpoint of any core programming. The test of whether programming qualifies as core does not depend in any way on its viewpoint, but solely on whether it is "specifically designed" to serve children's educational and informational needs. In this regard, we note that entertainment programming with a minor or wrap-around educational and informational message cannot correctly be said to have serving the educational and informational needs of children as a significant purpose.²⁰³ We anticipate that any attempt to incorrectly characterize programming as core will elicit significant opposition from the community, about which the FCC will be apprised.

88. In determining whether programming has a significant purpose of educating and informing children, we will ordinarily rely on the good faith judgment of broadcasters,²⁰⁴ who will be subject to increased community scrutiny as a result of the public information initiatives described in Section III above. We consequently will rely primarily on such public participation to ensure compliance with the significant purpose prong of the definition of core programming, with Commission review taking place only as a last resort.

89. One suggested rule revision discussed in the NPRM was to require that educational and informational programming specifically designed for children be produced

²⁰²47 U.S.C. § 303b(a)(2).

²⁰³The term "wrap-around" refers to messages inserted at the beginning or end of an entertainment program in an effort to make the program qualify as specifically designed to educate or inform. NOI, 8 FCC Rcd at 1843 & n. 16.

²⁰⁴See, e.g., Tribune Comments at 3 (urging the Commission to defer to licensees' good faith determination that a program has a significant educational purpose). Tribune also argued that licensees should be permitted to rely on representations from program suppliers in determining whether a significant purpose of a program is educational and informational. Id. We disagree. Although licensees certainly may refer to information provided by program suppliers in assessing the educational and informational value of programming, they remain ultimately responsible for ensuring compliance with our rules.

with the assistance of independent educational advisors.²⁰⁵ We stated that we did not propose to require the use of educational advisors, and that it should be left to broadcasters to decide whether they need or wish to hire educational advisors to assist them with the production of programming.²⁰⁶ A number of commenters responding to the NPRM continued to express the view that experts should be used in developing core programming. CTW reiterated its opinion that the use of educational advisors would be a more objective determinant of educational purpose, and a more likely predictor of whether a program has educational content, than the "significant purpose" test.²⁰⁷ Other commenters concurred with the view that educational advisors should be used to develop core programming.²⁰⁸ We continue to believe, however, that it would not be appropriate to require the use of educational experts in developing core programming. Although some broadcasters may find that experts can provide worthwhile assistance in developing educational programming, as we stated in the NPRM we prefer to minimize the burdens and potential intrusions on programming decisions of broadcasters and provide them the flexibility to select the means by which their educational programming is created.

Educational and Informational Objective and Target Child Audience Specified in Writing

90. With respect to the second element of our core programming definition, we proposed in the NPRM to require licensees to specify in writing in their children's programming report the educational and informational objective of a core program, as well as its target child audience.²⁰⁹ We explained that we thought that such a requirement would help licensees to focus on children's specific educational and informational needs in compliance

²⁰⁵See NPRM, 10 FCC Rcd at 6326. This proposal was made by CTW in comments filed in connection with our NOI and en banc hearing on children's television programming. Specifically, CTW proposed that educational and informational programming specifically designed for children (1) be produced with the assistance of independent educational advisors; (2) be created to fulfill explicit written educational goals; and (3) be evaluated for effectiveness. See CTW NOI Comments at 8-10 and En Banc Comments at 2-3.

²⁰⁶NPRM, 10 FCC Rcd at 6326.

²⁰⁷See CTW Comments at 16.

²⁰⁸Aletha Huston and John Wright believe that consultants and researchers from the fields of education and child development should be used to develop the educational goals of a program and to test for effectiveness in achieving those goals. See Huston and Wright Comments at 5-6. Dale Kunkel would require that specifically designed programming have a reasonable expectation of effectiveness as determined by educational experts or testing. See Kunkel Comments at 10. KIDSNET and Dorothy and Jerome Singer suggested that the Commission establish an independent non-governmental commission or board to provide guidance to industry and government regarding, among other things, the definition of educational programming and the use of educational advisors in developing such programming. See KIDSNET Comments at 1-3; Letter from Dorothy and Jerome Singer to Chairman Reed Hundt (November 13, 1995). We decline to adopt this latter proposal because there are other satisfactory and commonly accepted means available to broadcasters to obtain such guidance.

²⁰⁹NPRM, 10 FCC Rcd at 6328.

with the CTA. We also stated that this information would assist parents and other interested parties to understand licensees' programming efforts and afford them the means to participate with licensees in developing effective educational programming and to play a more active role in promoting and enforcing the goals of the CTA. We proposed that such information be included in the children's programming report that licensees place in their public inspection files.

91. Comments. Most broadcasters and other commenters who addressed the first aspect of this proposal -- requiring licensees to specify in writing the educational and informational objective of core programming -- supported it.²¹⁰ These parties generally expressed the view that this requirement would permit parents, researchers, and educators to evaluate whether a core program achieves its stated goals, and would assist broadcasters to comply with the CTA and the Commission to evaluate stations' performance.²¹¹ Children Now also argued that specification of educational and informational purpose would reduce the incidence of mischaracterization of entertainment programming as educational.²¹²

92. Public interest groups, researchers, and others also supported the Commission's proposal to require specification of the target child audience of core programming. A number of educational programming researchers submitted comments stating their belief that educational programming must be targeted to a relatively narrow age range in order for the program to be effective. Dale Kunkel asserts that children's ability to comprehend television content changes substantially over the years between infancy and adolescence, requiring that different types of educational programming be directed to children of different ages.²¹³ According to Aletha Huston and John Wright, the target age range specified by licensees should span no more than three to four years to ensure that programming is appropriate to the developmental level of the intended audience.²¹⁴ In contrast, some broadcasters opposed requiring specification of the target age group, generally

²¹⁰See, e.g., C-TREC Comments at 3; CTW Comments at 16-17; NBC Comments at 18-19; Westinghouse Comments at 5.

²¹¹See, e.g., CME et al. Comments at 28; Westinghouse Comments at 5. NTIA advocated the adoption of a standard reporting form for use in specifying educational objective and target age group. NTIA Comments at 9.

²¹²Children Now Comments at 3. In its initial comments, NAB contended that requiring specification of educational and informational objectives would impose a significant paperwork burden on licensees without any significant benefit, but in its supplemental comments it supported this aspect of our proposed definition. See NAB Comments at 22; see also NAB Supplemental Comments, Attachment at 4 (filed July 29, 1996).

²¹³See Kunkel Comments at 9.

²¹⁴Huston & Wright Comments at 4-5. Other commenters agreed that effective educational programming must be age-specific. See, e.g., Comments of the National Coalition on Television Violence at 2.

arguing that the burdens involved outweigh the asserted benefits.²¹⁵ CBS also pointed out that the CTA does not require licensees to target their educational programming to discrete segments of the child audience, and argued that many stations do not have the resources to hire experts to determine the precise ages for which their qualifying programming is appropriate.²¹⁶ ABC stated that it does not oppose a requirement that licensees identify the target age group of core programming, as long as licensees retain the discretion to determine the appropriate age group.²¹⁷

93. Discussion. We are persuaded that we should adopt our proposal to require that the educational and informational objective of core programming be specified in writing. Requiring a statement of educational and informational purpose will ensure that broadcasters devote attention to the educational and informational goals of core programming and how those goals may be achieved. A written statement of educational and informational purpose should also assist licensees to distinguish programs specifically designed to serve children's educational and informational needs from programs whose primary purpose is to entertain children. Moreover, this requirement can, as noted, allow parents and other interested parties to participate more actively in monitoring licensee compliance with the CTA, and thus is consistent with our public information initiatives.²¹⁸

94. The description of a program's educational and informational objective, which should be included in the licensee's children's programming report, does not have to be lengthy. It should state the educational and informational objective of the program and the expected educational and informational effects. To satisfy this requirement, broadcasters need not describe the viewpoint of the program or opinions expressed on it. The description must be adequate to demonstrate that a significant purpose of the program is to educate and inform children.

95. We will also require licensees to indicate a specific target age group for core programs. In enacting the CTA, Congress found that "[c]hildren's educational programming is most effective when it is designed to focus on particular age groups and address specific skills."²¹⁹ Research has demonstrated that the ability of young children to comprehend television content varies as a function of age, and that educational programming should be

²¹⁵See, e.g., NAB Comments at 22. NAB reversed its position on this issue in its Supplemental Comments. See NAB Supplemental Comments, Attachment at 4 (filed July 29, 1996).

²¹⁶See CBS Comments at 10 n. 14.

²¹⁷See ABC Comments at 20-21.

²¹⁸As we have noted, supra n.119, noncommercial stations will be exempt from these public information initiatives. We will similarly exempt them from the requirement that station's specify in writing the educational and informational objective and target age group of their core programs.

²¹⁹Senate Report at 6.

targeted to an age range of no more than three to four years to ensure that its content is appropriate to the developmental level of the intended audience.²²⁰ Requiring licensees to specify the age group a core program is intended to encourage them to consider whether the content of the program is suited to the interests, knowledge, vocabulary, and other abilities of that group. In addition, this requirement will provide information to parents regarding the appropriate age for core programs, thereby facilitating increased program audience and ratings. We decline, however, to identify particular age ranges of children to which core programs may be directed. We prefer to leave broadcasters the discretion to develop programs suited to children with similar educational and informational needs and to counterprogram to distinct portions of the child audience as they believe appropriate.

96. In addition, we decline to require broadcasters to serve particular segments of the child audience. We stated in the NPRM that we recognize the possibility that licensees may be induced to air programming for children over 12 because (1) this group has greater spending power than young children, (2) shows for older children may attract general audiences as well as children, and (3) programming designed for children 12 and under is subject to commercial limits, while programming for older children is not. Nonetheless, we tentatively concluded that it would be undesirable to require broadcasters to serve particular segments of the child audience, in part because we did not have adequate data showing that in fact younger age groups are underserved relative to other children. We requested that those commenters who disagreed with this view submit data relevant to whether there was a shortage of educational programming targeted to certain age groups.²²¹ A few commenters discussed the need for broadcasters to air more programming directed to children of certain ages. For example, C-TREC argued that the preponderance of core programming should be directed to preschool and elementary aged children, who are in their early, more formative stages of cognitive, social, and emotional development.²²² However, none of these parties submitted data demonstrating that a particular age group was underserved relative to other groups. Accordingly, we adhere to our view that we should not at this time require broadcasters to serve particular segments of the child audience, particularly in light of the significant new steps we have adopted to promote the overall availability of children's educational and informational programming.

Times Core Programming May Be Aired

97. As for the third element of our definition of core programming, we stated in the NPRM our belief that credit at license renewal time should be given only for programs shown during hours children are likely to be watching television. As a consequence, we tentatively proposed to credit as core programming children's educational programs broadcast

²²⁰See supra paragraph 31 and n.75.

²²¹NPRM, 10 FCC Rcd at 6328-6329.

²²²See C-TREC Comments at 3-4.

between the hours of 6:00 a.m. and 11:00 p.m. We selected this time frame because it includes the time periods most popular for television viewing among children 2 to 17. We noted that several parties commenting in response to the NOI and in connection with our en banc hearing argued that core programming should be aired between 7:00 a.m. and 10:00 p.m. We stated that we were inclined to adopt a wider permissible time frame based on evidence that children are in the audience through the entire period of prime time (up to 11:00 p.m.) and that "not an insignificant" number of children are watching television as early as 6:00 a.m. However, we expressed our concern that educational programs not be routinely relegated to the 6:00 a.m. to 7:00 a.m. hour simply because it may be a less costly time for licensees to discharge their educational programming obligation.²²³ Accordingly, we asked commenters to address whether core program hours should include 6:00 a.m. to 7:00 a.m.

98. Comments. While most broadcasters generally either supported or did not oppose the proposed 6:00 a.m. to 11:00 p.m. time period for core programming,²²⁴ public interest groups and other commenters generally preferred a 7:00 a.m. to 10:00 p.m. time frame.²²⁵ With respect to the issue of whether programming aired between 6:00 a.m. and 7:00 a.m. should qualify as core, broadcasters argued that a significant number of children are in the audience between 6:00 a.m. and 7:00 a.m., and that broadcasters do not overuse this early time period for educational programming. In contrast, public interest groups, programmers, and other commenters almost unanimously preferred a time frame for core programming beginning at 7:00 a.m. on the ground that relatively few children are watching television before 7:00 a.m. These parties also argued that broadcasters have an incentive to air educational programming earlier than 7:00 a.m. because it is a less costly time for them to fulfill their obligation to air core programming. Several of these commenters also preferred that licensees not be permitted to air core programming after 10:00 p.m.²²⁶

99. Discussion. After considering the evidence, we will limit the hours within which programming may qualify as core to a narrower time frame than that proposed in the NPRM. To qualify as core, a program must air between the hours of 7:00 a.m. and 10:00 p.m. In specifying this time period, our intention is to encourage broadcasters to air educational programming at times the maximum number of child viewers will be watching. With respect to the morning time limit, recent data show that during four sample weeks in November 1995, less than 5 percent of children 2 to 17 nationwide were watching television at 6:00 a.m. Monday through Friday, and less than 10 percent of this age group was in the

²²³NPRM, 10 FCC Red at 6330.

²²⁴See, e.g., Westinghouse Comments at 5-6; ABC Comments at 21-22; NBC Comments at 19; CBS Comments at 10-11. In its supplemental comments, NAB stated its support for the narrower 7:00 a.m. to 10:00 p.m. time period, see NAB Supplemental Comments, Attachment at 4.

²²⁵See, e.g., NTIA Comments at 9-10; AAP Comments at 2; CME et al. Comments at 28-29; C-TREC Comments at 4; Children Now Comments at 3.

²²⁶See, e.g., Children Now Comments at 3; CDF and BCCC Comments at 8-9.

audience at 6:30 a.m.²²⁷ By 7:00 a.m., however, between 12.5 percent and 14 percent of children 2 to 11 were watching television, and by 8:00 a.m. more than 20 percent of children 2 to 5, close to 12 percent of children 6 to 8, and just under 9 percent of children 9 to 11, were in the audience.²²⁸ Thus, at 7:00 a.m. Monday through Friday, nearly four times as many young children are watching television than at 6:00 a.m. In other words, at 6:00 a.m. on weekdays, 1.3 million children are watching television. By 7:00 a.m., the number of children watching television is 5.1 million. Data also show that roughly as many (i.e., very few) young children are watching television at 6:00 a.m. as are watching at midnight.²²⁹ With respect to weekend viewing, the same data show that less than 4 percent of children 2 to 17 were watching television from 6:00 a.m. to 6:30 a.m. on Saturday.²³⁰ By 7:00 a.m. on Saturday, however, the percentage of children 2 to 11 in the audience had risen to between about 5 percent and 7 percent, and continued to increase sharply to about 16 percent or more by 8:00 a.m. Figures for Sunday showed a comparable low rate of viewership for all children prior to 7:00 a.m. followed by a sharp increase between 7:00 a.m. and 8:00 a.m. for children 2 to 11.²³¹

100. Despite the relatively small percentage of children in the audience prior to 7:00 a.m. as compared to after that hour, a number of studies confirm that broadcasters air a significant percentage of their educational programming before 7:00 a.m. For example, NAB's 1994 and 1995 surveys indicate that approximately 20 percent of programs stations claimed were educational were shown before 7:00 a.m.²³² A study submitted by UCC also

²²⁷See Appendix D.

²²⁸Morning viewing for teens 12 to 17 peaks earlier Monday through Friday than for younger children, presumably because these children are all in school and leave for school earlier than younger school-aged children. For teens 12 to 14, morning viewing peaks at 7:00 a.m. at close to 10 percent, and then declines to 5 percent by 8:00 a.m. For older teens 15 to 17, morning viewing peaks at 6:30 a.m., and then declines gradually to approximately 3 to 4 percent by 8:00 a.m. In view of the significantly higher level of viewership among younger children between 7:00 a.m. and 8:00 a.m., and the comparatively level rate of viewership among teens over the 6:00 a.m. to 8:00 a.m. period, we believe that a morning time frame of 7:00 a.m. is appropriate. See A.C. Nielsen, National Audience Demographics, Vol. 1, 1995. See also Appendix D.

²²⁹Viewership among all age groups is higher at midnight on Saturday than on Sunday and during the week. Id.

²³⁰Appendix D shows that slightly more than 4% of children 9 to 11 are in the audience at 6:30 a.m. Id. at 54.

²³¹For teens 12 to 17, viewership also increases from 7:00 a.m. to 8:00 a.m. on Saturday and Sunday, albeit at a less marked rate than for younger children. Id.

²³²NAB Comments at 23 and Attachment 1 at 11, 12. The 1995 survey shows that 18.1 percent of programs stations claimed were regularly scheduled educational and informational children's programming started before 7:00 a.m., while the 1994 survey shows that 22.4 percent of these programs were aired before 7:00 a.m. Another study conducted for CME shows that, in the top 20 television markets, 44 percent of all weekday core programs aired at 6:30 a.m. or earlier, and of those 25 percent aired at 5:00 a.m. or 5:30 a.m. See CME En Banc Comments at 15 (Patricia Aufderheide and Kathryn Montgomery, "The Impact of the Children's Television Act on the Broadcast Market," Center for Media Education, 1994). NAB and ALTV challenged CME's findings on the ground, inter alia,

demonstrates that 20 percent of the educational children's programs monitored during the study aired before 7:00 a.m.²³³ In light of the evidence demonstrating that only 5 to 10 percent of children are watching television before 7:00 a.m.,²³⁴ broadcasters appear to be airing a disproportionately large amount of educational programming during early morning hours in relation to the relatively few children watching television at that time. As noted in the NPRM, broadcasters have an incentive to air educational programming during very early morning hours as this is a less costly time for them to comply with their educational programming obligation.²³⁵ In view of these circumstances, we believe it is appropriate to specify that core programming air no earlier than 7:00 a.m. rather than 6:00 a.m. as proposed in the NPRM. An early time limit of 7:00 a.m. will ensure that core programming is shown when more children are likely to be watching television, especially young children, thus maximizing the benefit of such programming. In addition, a 7:00 a.m. cut-off will help counter the economic incentive of broadcasters to air educational and informational programming to time periods when few children are in the audience.

101. With regard to the evening limit, we believe it is appropriate to require that core programming air no later than 10:00 p.m. rather than 11:00 p.m. as proposed in the NPRM. Recent data show that the number of children 2 to 17 watching television drops off considerably from 10:00 p.m. to 11:00 p.m. For all seven nights combined (Monday - Sunday), the average number of children 2 to 17 drops from 13 million at 10:00 p.m. to 8 million at 11:00 p.m. According to these figures, the number of children 2 to 8 watching television Monday through Friday peaks at approximately 30 percent at 8:00 p.m., and then declines sharply to approximately 16 percent by 10:00 p.m. and less than 10 percent by 11:00 p.m.²³⁶ For older children 9 to 17 Monday through Friday, viewership peaks somewhat later, between 8:30 and 9:00 p.m. at approximately 30 percent to 35 percent, and then falls off to approximately 20 percent to 25 percent at 10:00 p.m. and approximately 12 percent to 19 percent by 11:00 p.m. The data for these age groups for Saturday and Sunday also show a sharp decline in viewership from 10:00 p.m. to 11:00 p.m.²³⁷ We agree with those commenters who argued that core programming should be aired before 10:00 p.m. when a

that its studies regarding the time educational programming aired were informal, were limited to relatively few markets and to weekday programs, and were not made available to the public. See ALTV En Banc Reply Comments at 9-10; NAB En Banc Reply Comments at 6-7.

²³³UCC Reply Comments at 9.

²³⁴See supra paragraph 99.

²³⁵NPRM, 10 FCC Rcd at 6330. See also supra paragraph 32.

²³⁶See Appendix D.

²³⁷The decline in viewership between 10:00 p.m. and 11:00 p.m. is somewhat less marked on Saturday for the 9 to 17 age group.

larger proportion of children are awake and watching television.²³⁸ We do not expect this evening limit to impose a burden on broadcasters, or impede their program scheduling strategies, as they typically schedule adult entertainment programming for the 10:00 p.m. to 11:00 p.m. time period. We therefore will require that, in order to qualify as core, educational and informational children's programming be aired between the hours of 7:00 a.m. and 10:00 p.m.²³⁹ We believe that this time period effectuates the language of the CTA that licensees air programming "specifically designed" to serve children's educational and informational needs, as children are best served by programming that airs during times more children are watching television.

102. CME et al. argues that it is "questionable" for the Commission to credit as core programming aired after the 10:00 p.m. start of the safe harbor for indecent programming.²⁴⁰ We do not believe that the time period for core programming must be consistent with the indecency safe harbor (10:00 p.m. to 6:00 a.m.). The indecency safe harbor is intended to provide for the airing of indecent material when the risk of children in the audience is minimized, while our purpose in this context is to promote the availability of children's educational programs when substantial numbers of children are watching. Nevertheless, the data recited above indicate that because there is an appreciable drop in the number of children in the audience after 10:00 p.m. the time frame for purposes of the core programming definition should be 10:00 p.m. rather than 11:00 p.m.

Regularly Scheduled

103. Turning to the fourth element of our definition of core programming, we proposed to require that such programming be regularly scheduled to permit children and their parents to be able easily to anticipate when educational programming will be aired. We also stated, however, that we did not wish to create a disincentive to air children's educational specials, which may not be regularly scheduled or which may air at relatively infrequent intervals. We sought comment on whether we should require core programs to be regularly scheduled and, if so, how often they should be scheduled in order to be considered "regularly" scheduled.²⁴¹ We specifically indicated "once a week, once a month, or so long as

²³⁸See, e.g., CDF and BCCC Comments at 8-9; Children Now Comments at 3.

²³⁹We decline to adopt NAB's suggestion, made in its initial comments, that our time frame for core programming be adjusted for the central and mountain time zones, where the morning news programs begin one hour earlier than in other time zones. See NAB Comments at 23. We are not aware of any evidence demonstrating that children's television viewing patterns in these regions differs from those of the nation as a whole. Consequently, the rationale underlying our selection of a 7:00 a.m. to 10:00 p.m. time frame applies to these regions as well.

²⁴⁰CME et al. Comments at 17-18 (citing Action for Children's Television v. FCC, 58 F.3d 654 (D.C. Cir. 1995)).

²⁴¹NPRM, 10 FCC Rcd at 6330.