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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
 )  
Extension of the Filing Requirement ) MM Docket No. 00-44  
For Children's Television Programming )  
Reports (FCC Form 398) )

**REPLY COMMENTS OF  
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)<sup>1</sup> hereby files brief reply comments in the Commission's proceeding on extending the Form 398 filing requirement for Children's Television Programming.<sup>2</sup> While NAB agrees with Commissioners Furchtgott-Roth and Powell that at this time it is unclear that "the filing of these reports necessarily accomplishes the goals for which they are intended,"<sup>3</sup> *i.e.*, the enforcement of the 1990 Children's Television Act, NAB raises no objection to the continuation of an annual Form 398 filing requirement. We disagree, however, with Center for Media Education, *et al.*<sup>4</sup> that additional reporting requirements are necessary.

<sup>1</sup> NAB is a nonprofit incorporated association of radio and television stations and broadcasting networks. NAB serves and represents the American broadcasting industry.

<sup>2</sup> *Notice of Proposed Rulemaking*, In the Matter of Review of Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398), MM Docket No. 00-44 (released April 6, 2000) [hereinafter *Notice*].

<sup>3</sup> Public Notice, News Release FCC Proposes to Continue Annual Report from Commercial TV Broadcasters FCC's Children's Education Programming, Joint Concurring Statement of Commissioners Harold Furchtgott-Roth and Michael Powell, April 6, 2000.

<sup>4</sup> Comments of Center for Media Education, *et al.*, In the Matter of Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398), MM Docket No. 00-44, June 12, 2000 [hereinafter *CME et al.*].

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NAB believes there is insufficient cause -- or evidence in the record -- to justify imposition of more reporting requirements. The *Report and Order* adopting the children's television programming rules called for the Commission to monitor broadcaster performance of children's educational programming for three years<sup>5</sup> and then, beginning after January 10, 2000, review the reports and "take appropriate action as necessary to ensure that that stations are complying with the rules and guidelines."<sup>6</sup>

Specifically, we do not believe the Commission has shown a demonstrated need to require television licensees to file a Form 398 Report on a quarterly, rather than an annual basis. Licensees appear to be complying with the children's television programming rules -- to date, the Commission has issued no fines and the *Notice* cites to no instances of noncompliance with the three hour core programming requirement. On the other hand, in instances where licensees have exceeded the commercial limits on children's programming, the Commission has been swift to levy fines. The question posed is not whether quarterly reporting places a "significant burden on licensees,"<sup>7</sup> but rather, what demonstrated need has been shown to justify an increase in reporting requirements? Licensees are already required to place quarterly reports in their public inspection file and to publicize its location to their communities. As a practical matter, we note many licensees have filed with the Commission on a quarterly, rather than annual basis. However, we ask that the Commission's rules remain flexible for those licensees who may find it preferable to file their Form 398 Reports on an annual basis.

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<sup>5</sup> *Report and Order, Policies and Rules Concerning the Children's Television Programming*, MM Docket No. 93-48, 11 FCC Rcd. 10660, 10726 (1996) [hereinafter *Report and Order*].

<sup>6</sup> *Notice* at ¶10.

<sup>7</sup> *Id.*

**I. Requiring Broadcasters To Post Form 398 Reports On Their Website Is Duplicative, Burdensome To Some and Unnecessary.**

Since January 10, 1999, the Commission rules have mandated electronic filing of Form 398.<sup>8</sup> We agree with the Commission that “electronic filing permits the Commission to place the Reports on its website, making this information easily accessible in one central location. Members of the public can view Reports from a number of stations easily, and compare results, without having to contact each station individually.”<sup>9</sup> Contrary to the assertion of *CME et al.*,<sup>10</sup> the FCC website is not user-unfriendly. Clicking first on “major initiatives” and then on “children’s programming” allows a individual, parent or organization immediate access to all television stations’ Form 398 Reports – all one must do is enter a station’s call sign and click on the desired quarter to retrieve a Form 398. NAB agrees with *CME et al.* that a direct link on the FCC’s homepage would allow persons unfamiliar with the FCC website and search engine easier access to Form 398. However, NAB suggests *CME et al.* could also facilitate public access to information by providing a direct link to the Reports via their own organizations’ websites. *CME et al.* could also publicize the availability of such reports at the FCC website.

Because the FCC is a centralized warehouse of Form 398 Reports, a requirement that a licensee post Form 398 on its website would be entirely duplicative. Moreover, *CME et al.*’s reliance on the EEO website requirement as precedent for establishing such a requirement is misplaced for two reasons. First, unlike Form 398, licensees do not file their annual EEO report

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Comments of *CME et al.* at 9.

with the Commission. Thus, unlike Form 398, the EEO report is not accessible through the FCC's website. Second, NAB has petitioned the Commission to reconsider its website posting requirement.<sup>11</sup> As we noted in our *Petition*, the Commission's policy that the public file – and its contents – are intended to be available for the public that a licensee serves, was reiterated last year in reconsidering the main studio and public inspection file rules.<sup>12</sup> In that proceeding the Commission rejected arguments that the public file be accessible to parties outside of the service area through telephone requests. Because the public file is maintained at a reasonably accessible location to the community of license, and because the FCC posts Form 398 on its website, requiring a licensee to post Form 398 on its website is unnecessary. Further, because licensees often contract with web-site managers, and are charged based on the amount of material kept on a server, licensees could incur additional costs in posting Form 398 on their website. Some licensees' websites, particularly in small markets, are simple in format and lack the sophistication of second level linking capabilities. Thus, placing Form 398 on the website may in fact be burdensome to some licensees. There is simply no need to duplicate what is already accessible on the Internet and in the public file.

## **II. There Is No Demonstrated Need For Altering Form 398.**

Contrary to *CME et al.*'s assertions, altering question four on Form 398 is the wrong means by which to accomplish the goal of “encourag[ing] program guide publishers to print the

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<sup>11</sup> *Petition for Partial Reconsideration and Clarification of the National Association of Broadcasters, In the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, MM Docket No. 98-204, March 16, 2000 at 12 [hereinafter *Petition*].*

<sup>12</sup> *Review of the Commission's Rules regarding the main studio and local public inspection files of broadcast television and radio stations, Memorandum Opinion and Order, 14 FCC Rcd. 11113, 11116 (1999).*

programming information provided by broadcasters.”<sup>13</sup> Requiring that a licensee bear the burden of subscribing to and tracking those publications which are and are not publishing children’s educational programming and report that information to the FCC will not change publishers’ practices. The Commission has no jurisdiction to require publishers to print information on children’s educational programming. *CME et al.* have already identified that most newspapers and *TV Guide* are not publishing the information.<sup>14</sup> And *CME et al.*, as well as parents and community leaders, can readily identify those program guides which do and do not list children’s programming simply by looking at the program guides themselves. Armed with that information, parents, community leaders, and advocates can directly “encourage” these publishers to change their practices. To require a licensee to report that information to an agency without enforcement authority is a waste of every party’s (broadcaster’s, FCC’s, parents’ and advocates’) time and resources.

*CME et al.* also ask the Commission to revise questions five and eight. Again, there is no demonstrated need for a broadcaster to explain in detail each preemption of children’s educational programming (question number five) or to explain how it publicizes its children’s television public file (question number eight). While the Commission imposed on licensees the obligation to publicize the existence and location of the children’s television public file, it specifically gave licensees broad discretion as to the amount and type of public file publicizing.<sup>15</sup> *CME et al.* present no evidence that licensees’ publication of their children’s television public files is insufficient to alert the public as to the existence of these files. If indeed *CME et al.*’s

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<sup>13</sup> Comments of *CME et al.* at 6-7.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Report and Order* at 10692-93.

goal is that “parents and child advocates who are dissatisfied with a broadcaster’s performance can bring public and market pressure to bear on the licensee and persuade it to publicize its Reports in a more meaningful manner,”<sup>16</sup> NAB suggests that advocacy organizations are already well-equipped to do so.

As to preemptions, licensees who need to rely on preempted children’s programming to meet their three hour “core” programming requirement are likely providing explanations for such preemptions in either question number five (as space permits) or in question number eleven (which specifically provides space for further explanations). Of course, the Commission is free to directly inquire with a licensee for further explanation of specific preemptions. Thus, licensees who are close to the three hour line would be well advised, in their own best interests, to explain these preemptions, in the space provided in question number five or question number eleven.<sup>17</sup>

CME *et al.* is also incorrect in stating that three networks only explain their preemptions for owned and operated (O&O) stations.<sup>18</sup> Three major networks, ABC, NBC, and CBS, annually report to the Commission, on a voluntary basis, their children’s programming schedule and preemptions for network programming which is aired by both the O&Os *and* affiliates. Included in these reports are foreseeable preemptions, such as those due to time zone changes, live network sporting events, etc., as well as the network’s plan to publicize such preemptions

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<sup>16</sup> Comments of CME *et al.* at 7.

<sup>17</sup> Because there is no demonstrated need to revise Form 398, NAB recommends against a formal revision process, given that, one, the Commission did not notice a need for further information or modification of Form 398 and, two, licensees are just now familiar with Form 398 and the electronic filing process.

<sup>18</sup> Comments of CME *et al.* at 6.

and reschedulings. The Commission has stated that, so long as an affiliate follows the network's scheme on preemptions, rescheduling and notice,<sup>19</sup> an affiliate's preemptions are allowable.

For the reasons stated above, NAB requests that, should the Commission chose to extend the annual reporting requirement in the above matter, it do so without alteration of Form 398.

Respectfully submitted,

**NATIONAL ASSOCIATION OF  
BROADCASTERS**



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July 12, 2000

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<sup>19</sup> See letters dated July, 11, 1997 from Roy J. Stewart, Chief, Mass Media Bureau to: Martin D. Franks, Senior Vice President, Washington, CBS, Inc.; Alan Braverman, Senior Vice President & General Counsel, ABC, Inc.; Rick Cotton and Diane Zipursky, NBC, Inc.