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

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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)	)	

RECEIVED

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: September 14, 2000 **Released:** October 5, 2000

Comment Date: December 18, 2000
Reply Comment Date: January 17, 2001

By the Commission: Chairman Kennard issuing a statement; Commissioner Furchtgott-Roth dissenting and issuing a statement; Commissioner Powell issuing a statement; Commissioner Tristani concurring in part, dissenting in part, and issuing a statement.

I. INTRODUCTION

1. In this *Report and Order* we make a number of changes to the children's educational television reporting requirements of commercial broadcast television licensees. First, we extend indefinitely the requirement that commercial broadcast television licensees file with the Commission their quarterly Children's Television Programming Reports (FCC Form 398). The Commission's rules currently state that such reports shall be completed quarterly and filed on an annual basis for an experimental period of three years, from January 1998 through January 2000. These reports are required to be filed electronically. Second, we require broadcasters in the future to file these reports on a quarterly basis, at the time they are prepared, rather than annually. Finally, we also announce herein a number of revisions to be made to FCC Form 398 to make the information contained in the form clearer and more useful to the public and the FCC. The actions we take herein will assist the Commission in continuing to enforce the Children's Television Act of 1990 ("CTA") and our rules implementing the CTA by facilitating monitoring by the FCC and the public of the amount and quality of educational television programming for children and industry compliance with the Commission's children's educational programming requirements. We also adopt a *Further Notice of Proposed Rulemaking* to seek comment on whether broadcasters should be required to provide their completed Children's Television Programming Reports at their own websites.

II. BACKGROUND

2. Data indicate that children spend, on average, almost three hours a day watching television.[1] In view of the significant impact this medium has on children, Congress has concluded that television should be contributing to children's development. The CTA requires the Commission, in its review of each television broadcast license renewal application, to "consider the extent to which the

[1] *See, e.g.*, Henry J. Kaiser Family Foundation, *Kids and Media at the New Millenium* (Nov. 1999).

licensee ... has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs."[2] In enacting the CTA, Congress found that, while television can benefit society by helping to educate and inform children, there are significant market disincentives for commercial broadcasters to air children's educational and informational programming.[3] The objective of Congress in enacting the CTA was to increase the amount of educational and informational programming available on television.[4] The CTA places on every licensee an obligation to provide such programming, including programming specifically designed to educate and inform children, and requires the FCC to enforce that obligation.

3. In August 1996, the Commission adopted its current educational programming rules to strengthen its enforcement of the CTA.[5] The Commission's rules include several measures to increase the availability of programming "specifically designed" to serve children's educational needs (otherwise known as "core" programming) and to facilitate public access to information about such programming. These measures include a requirement the licensees identify core programming at the time it is aired and in information provided to publishers of television guides.[6] Licensees are also required to designate a children's liaison at the station responsible for collecting comments on the station's compliance with the CTA. Furthermore, the rules establish a definition of "core" programming as well as a three-hour-per-week processing guideline pursuant to which broadcasters airing at least three hours per week of programming that meets the definition of "core" will receive staff-level approval of the CTA portion of their renewal applications.[7]

4. One of the most important public information measures adopted by the Commission in 1996 was the requirement that licensees complete a Children's Television Programming Report, *FCC Form 398*, each calendar quarter and place the report in the station's public inspection file.[8] Broadcasters are required to separate the children's programming reports from other materials they maintain in their public files.[9] The Commission required that these quarterly reports be filed jointly with the Commission on an annual basis for an experimental period of three years.[10] Among other things, these reports identify

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2 47 U.S.C. § 303b.

3 47 U.S.C. § 303a &b. *See also* S. Rep. No. 227, 101st Cong., 1st Sess 5-9 (1989) (Senate Report).

4 *See* Senate Report at 1.

5 See *Report and Order, Policies and Rules Concerning Children's Television Programming*, MM Docket No. 93-48, 11 FCC Rcd 10660 (1996) ("*Children's Programming Report and Order*").

6 47 C.F.R. § 73.673

7 47 C.F.R. § 73.671

8 47 C.F.R. § 73.3526(e)(11)(iii).

9 47 C.F.R. § 73.3526(e)(11)(iii).

10 47 C.F.R. § 73.3526(e)(11)(iii) currently states:

> For an experimental period of three years, licensees shall file these Reports with the Commission on an annual basis, *i.e.* four quarterly reports filed jointly each year, in electronic

(continued....)

the educational and informational programs aired by the licensee over the previous quarter and the days and times these programs were regularly scheduled, the age of the target audience for each program, and the average number of hours per week of core programming broadcast over the past quarter. Licensees must include in the reports an explanation of how each core program meets the definition of "core" programming adopted by the Commission. Stations must also identify in their reports the core programs the station plans to air during the next calendar quarter. The Commission makes the reports available at its website.

5. The public information initiatives, including the Children's Television Programming Reports, are an integral part of the children's programming rules. These measures are designed to ensure that the public, and especially parents, has access to information regarding the educational programming being aired by broadcasters so that parents and others can help achieve the goal of the CTA to increase the amount of educational programming available on television. Facilitating public access to the information contained in the Children's Television Programming Reports helps achieve the goals of the CTA in a number of ways. Parents who have access to information about educational programming, such as the titles of programs, the times they are regularly scheduled to air, and the age for which the programs are intended, can select such programming for their children to watch, thereby increasing the audience for such programs and the incentive of broadcasters to air, and producers to supply, more such programs. The information contained in the reports can also be used by parents, educators, and others interested in educational programming to monitor a station's performance in complying with the CTA and the Commission's rules. In this way, the public can play an active role in helping to enforce children's programming requirements. Finally, requiring broadcasters to identify programming they rely upon to meet their obligation to air educational programming makes broadcasters more accountable to the public. Improving broadcaster accountability minimizes the need for government involvement to enforce the CTA and helps to ensure that broadcasters, with input from the public, rather than the Commission determine which television programs serve children's educational needs.

6. In the *Children's Programming Report and Order*, the Commission also required that a children's program be "regularly scheduled" to be counted as core programming for purposes of meeting the three-hour-per-week processing guideline, i.e., -- a core children's program must "be scheduled to air at least once a week" and "must air on a regular basis."[11] The Commission stated that television series typically air in the same time slot for 13 consecutive weeks, although some episodes may be preempted for programs such as breaking news or live sports events. The Commission noted that programming that is aired on a regular basis is more easily anticipated and located by viewers, and can build loyalty that will improve its chance for commercial success. The Commission stated that it would leave to the staff to determine, with guidance from the full Commission as necessary, what constitutes regularly scheduled programming and what level of preemption is allowable. Subsequent to the adoption of the *Children's Programming Report and Order*, and in response to requests from the ABC, CBS, and NBC networks that local stations be given flexibility to reschedule episodes of core programs that are preempted by live network sports events without adversely affecting the program's status as "regularly scheduled," the Mass Media Bureau has allowed the networks limited flexibility in preempting core children's

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form as of January 10, 1999. These Reports shall be filed with the Commission on January 10, 1998, January 10, 1999, and January 10, 2000.

[11] *Children's Television Programming Report and Order*, 11 FCC Rcd at 10711.

programming.[12] Specifically, within certain limitations, the Bureau advised that preempted core programs could count toward a station's core programming obligation if the program were rescheduled. The Bureau also indicated that it would revisit this limited flexibility regarding preempted core programming based on the level of preempted programs, the rescheduling and broadcast of the preempted programs, and the impact of promotions and other steps taken by the stations to make children's educational programming a success.

7. In April 2000, the Commission adopted a *Notice of Proposed Rule Making*[13] proposing to amend section 73.3526(e)(11)(iii) of the Commission's rules to extend indefinitely the requirement that broadcasters file their Children's Television Programming Reports with the Commission. The *Notice* also sought comment on whether reports should be filed with the Commission quarterly, at the time they are prepared, rather than annually. Finally, the *Notice* asked commenters to address whether any changes should be made to *FCC Form 398* to make the reports more informative and easier to prepare. For example, the *Notice* asked whether there were revisions to the form that would make it easier for the reader to determine the number of times core programs are preempted and to obtain information about the rescheduling of any preempted episodes.[14]

III. ISSUE ANALYSIS

A. Filing Requirement Extension.

8. *Background.* As noted above, we proposed in the *Notice* to continue indefinitely the requirement that licensees file their quarterly Children's Television Programming Reports with the Commission. No comments were filed objecting to this proposal.[15]

9. *Discussion.* We will extend indefinitely the requirement that broadcasters file *FCC Form 398* with the Commission. As we stated in the *Notice*, the requirement that reports be filed with the Commission is an important part of the emphasis placed in our children's programming rules on improving the flow of information to the public about educational programming. Filing permits the Commission to place the reports on our website, making this information easily accessible in one central location. Members of the public can view reports from a number of stations easily without having to contact each station individually. As we also stated in the *Notice*, continuation of the filing requirement is also important to ensure that the Commission itself has access to information regarding licensee compliance with the children's programming rules. Without the annual filing requirement, licensees would be required to report to the Commission on their station's children's educational programming only once every eight years, at the end of the license term. Extension of the license term to eight years necessarily places a stronger emphasis on facilitating public monitoring of licensee compliance with the

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12 *See, e.g.*, 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.

13 *Notice of Proposed Rule Making, In the Matter of The Extension of the Filing Requirement For Children's Television Programming Reports (FCC Form 398)*, MM Docket No. 00-44, 15 FCC Rcd 6326 (2000) ("*Notice*").

14 *Notice* at ¶ 11.

15 We received one comment in response to our *Notice*, and one reply comment.

rules, to assist the FCC in its enforcement role. The Center for Media Education ("CME"), Peggy Charren, the Annenberg Public Policy Center of the University of Pennsylvania, and thirteen other academics and organizations interested in children's programming issues (collectively referred to herein as "*CME et al.*") filed joint comments strongly supporting extension of the Children's Television Programming Report filing requirement.[16] These commenters agree that the requirement that broadcasters file their quarterly reports with the Commission is one of the "principal ingredients" of the children's television public information initiatives and is necessary for effective monitoring and enforcement of the CTA.[17] The National Association of Broadcasters ("NAB"), the only other commenter to file in response to the *Notice*, stated that it does not object to the continuation of an annual filing requirement.[18]

10. We agree with CME *et al.* that extending the filing requirement indefinitely is important to permit the Commission to continue to inform the public about the availability of educational programming and to ensure that broadcasters are meeting the obligations set forth in the CTA and our rules. As we stated in the *Notice*, evidence also indicates that a variety of organizations, including CME, the National Institute on Media and the Family, and the Annenberg Public Policy Center at the University of Pennsylvania, use the reports to track national trends in children's television programming and to develop tools to inform parents and others about children's programming.[19] In addition to these groups, CME *et al.* notes that other organizations use or plan to use the reports, including the American Center for Children and the Media, the Center for Research on the Effects of Television, the Center for Educational Priorities, Children Now, the Media Literacy Online Project, and Mediascope. CME *et al.* also notes that the reports are integral to the academic research undertaken at centers such as the Children and Media Project in the Department of Psychology at Georgetown University, and the Center for Communication and Social Policy at the University of California at Santa Barbara.[20]

11. The Commission has reviewed all of the reports filed since commencement of the FCC filing requirement, and has used the information in the reports to evaluate industry practices in connection with preemption of children's programming.[21] In addition, the Commission staff is currently preparing an analysis based on the data reflected in reports filed over the past three years. In adopting

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16 The individuals and organizations who filed comments together with CME, Peggy Charren, and the Annenberg Public Policy Center are: the American Academy of Child and Adolescent Psychiatry; the American Psychological Association; Sandra Calvert, Professor of Psychology at Georgetown University; the Center for Science in the Public Interest; Children Now; the Council of State School Offices; the Consumer Federation of America; Dale Kunkel, Professor of Communication at University of California at Santa Barbara; the National Association for Elementary School Principals; the National Alliance for Non-Violent Programming; the National Black Child Development Institute; the National Education Association; and the National PTA.

17 CME *et al.* Comments at 2.

18 NAB Reply Comments at 1.

19 *Notice* at ¶ 10.

20 CME *et al.* Comments at 3, note 3. The *Notice* also pointed out that the Center for Research on the Influences of Television on Children at the University of Texas reviews local broadcasters' reports as part of an annual evaluation of children's programming in the Ausin, Texas market.

21 *See, e.g.*, *The Effect of Preemption on Children's Educational and Informational Programming, 1997-1998 Television Season*, DA 98-2306 (Nov. 1998).

the children's programming rules, the Commission stated it would monitor the broadcast industry's children's educational programming performance for three years based upon the Children's Television Programming Reports filed with the Commission, and would review the reports at the end of the three-year period and take appropriate action as necessary to ensure that stations are complying with the rules and guidelines.[22]

B. Quarterly Filing

12. *Background.* We also sought comment in the *Notice* on whether our rules should be revised to require that Reports be filed quarterly, at the time they are prepared, rather than once a year. We tentatively concluded that requiring reports to be filed quarterly was unlikely to impose a significant additional burden on licensees, especially as reports are required to be filed electronically.

13. *Discussion.* In addition to extending the filing requirement, we will require broadcasters to file their Children's Television Programming Reports with the Commission on a quarterly basis, at the time the reports are prepared, rather than annually. Section 73.3526(e)(11)(iii) currently requires that the report for each calendar quarter be filed in the station's public inspection file by the tenth day of the succeeding calendar quarter.[23] Beginning January 10, 2001, we will require that reports for each quarter be filed electronically with the Commission by the same date the report is due to be placed in the station's public inspection file.

14. We agree with CME *et al.* that quarterly filing with the Commission will provide the public and the Commission with more current information on the educational and informational programming offered by broadcasters to meet their obligation under the CTA and our rules. Among other things, the reports include information on the core educational and informational programs the licensee plans to air during the next calendar quarter. The purpose of requiring licensees to report this information is to permit parents, teachers, and others to better anticipate and plan for the viewing of educational programs by children. Facilitating timely public access to the station's schedule of core educational and informational programs for the succeeding calendar quarter will permit parents and others to use this information more effectively to plan their children's television viewing. CME *et al.* suggests that quarterly filings will be more helpful to parents, and argues that they will also allow researchers to report more timely on programming trends for the annual television season, which could influence programming for the subsequent television season.[24]

15. NAB opposes a quarterly filing requirement, arguing that licensees appear to be complying with the children's television programming rules and that there is no demonstrated need for increased reporting requirements.[25] While we agree that the reports filed since our revised children's television programming rules became effective indicate that virtually all licensees claim to be airing at least 3 hours per week of programming that meets our definition of programming "specifically designed" to meet the educational and informational needs of children, we believe that improving public access to the information contained in the reports will assist parents and others interested in selecting programs for

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22 *Children's Programming Report and Order*, 11 FCC Rcd at 10726.

23 47 C.F.R.§ 73.3526(e)(11)(iii).

24 CME *et al.* Comments at 5.

25 NAB Reply Comments at 2.

children to watch. As noted above, assisting parents in choosing educational programming for their children may possibly increase the commercial success of such programming and thereby prompt broadcasters to increase the amount of educational and informational broadcast television programming available to children – one of the underlying goals of our children's programming public information initiatives. More timely information will also assist those interested in monitoring station performance under our rules, thus assisting the Commission in its enforcement role.

16. As reports must now be prepared and placed in the station's public inspection file on a quarterly basis, we continue to believe that requiring these quarterly reports to be transmitted electronically to the Commission on a quarterly basis, rather than once a year, will not impose a significant additional burden on licensees. In this regard, we note that more than seventy percent of licensees already voluntarily file their reports quarterly. Reports are currently required to be filed electronically with the Commission, and the Commission makes an electronic version of a blank FCC Form 398 available on its website to be used by licensees to prepare their quarterly submissions. As CME *et al.* suggests, transmitting the reports to the Commission quarterly rather than annually should require very little additional time and effort on the part of licensees. [26] In view of the benefits of quarterly filing with the FCC and the minimal additional burden this will impose on licensees, we believe that quarterly filing is warranted.

C. Changes to FCC Form 398

17. *Background.* Finally, we also requested comment in the *Notice* on possible changes to FCC Form 398 that would make the Children's Television Programming Reports more informative or easier to prepare. Specifically, we asked whether there are revisions to the form that would make it easier for the reader to determine the number of times core programs are preempted and to obtain information about the rescheduling of any preempted episodes.[27]

18. CME *et al.* suggested that FCC Form 398 be revised to provide more information regarding (1) why a broadcaster has preempted a children's educational program, (2) which program guide publishers are not printing the programming information provided by local broadcasters, and (3) what efforts broadcasters are making to publicize the existence and location of their Reports (question 8).[28] CME et al. also suggests that broadcasters be required to post their reports on their website, that the FCC's own children's television webpage be made more user-friendly, and that Form 398 be revised to reflect the station's license renewal date.[29]

19. *Preemption Report.* The Commission required that programming must be "regularly scheduled" to qualify under the three-hour guideline. This requirement was based on the fact that programming that is aired on a regular basis is more easily anticipated and located by viewers, and therefore more likely to be seen by its intended audience. Although acknowledging that preemption might occur, the Commission expected that preemption of core programming would be rare. The Mass

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[26] CME *et al.* Comments at 4-5.

[27] *Notice* at ¶ 11.

[28] CME *et al.* Comments at 6-7. The Commission declines to adopt CME's recommendation regarding efforts to publicize the reports.

[29] CME *et al.* Comments at 7, n. 5 and 8-9.

Media Bureau staff has recently reviewed a random sample of the Children's Television Programming Reports, and determined that the average preemption rate by stations affiliated with the largest networks during the past two years is nearly 10%, and has been as high as 25% during a quarter when a large number of sports programming commitments. Given this level of preemption, and the difficulty that some members of the public and the Commission staff have experienced in interpreting the information set forth in Form 398, we wish to gather more information about the circumstances of preemption to ensure that our preemption policy does not thwart the CTA.

20. To make the information in the Children's Television Programming Reports clearer and to improve public access to information about educational and informational programming and licensee compliance with the CTA and our rules, we will make a few revisions to FCC Form 398. Currently, question 5 of FCC Form 398 requires broadcasters to list, among other information, the title of each core educational and informational program aired by the station during the past calendar quarter, the days and times the program is regularly scheduled, the total times the program aired, the number of preemptions and, if the program was preempted and rescheduled, the date and time the program was aired. From the way this question is currently worded and formatted, it is difficult to determine from the responses to this question exactly how many times each core program was preempted during the calendar quarter, whether the preempted episode was eventually aired and, if so, when the program was aired.[30] In addition, as CME suggests, it would be useful to know the reason for each preemption. Although we encourage stations to reschedule core programming preempted for breaking news, even if programs preempted for breaking news are not rescheduled they can count toward the three-hour-per-week core programming guideline. We cannot currently determine whether a program was preempted for breaking news or another reason, and thus whether the program must have been rescheduled and aired in order to count toward the three-hour guideline. Finally, we would also like to know if licensees made efforts to notify viewers and publishers of program guides of the date and time their rescheduled programs would air.[31] To address these issues, we will revise question 5 of FCC Form 398 to gather more information about preempted core programs during the quarter and add as an addendum to the form a "Preemption Report" to be completed for each preempted core program during the quarter. The Preemption Report will request information on the date of each preemption, if the program was rescheduled the date and time the program was aired, and the reason for the preemption (*e.g.*, we will ask the licensee to pick a reason from among several options, including breaking news). We will also ask licensees to indicate whether promotional efforts were made to notify the public of the time and date the rescheduled program would air. This data will provide more complete information regarding the level of preemption of core programs and station practices in rescheduling such programs. This information will in turn allow the FCC and interested members of the public to continue to monitor the impact of preemptions generally on the availability of core programs.

21. *Program Guide Information.* We will also revise question 4 of FCC Form 398 in order to collect more extensive data about the information furnished by licensees to publishers of program guides regarding core programming aired by the station. Section 73.673(b) of our rules requires

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[30] For example, question 5 of the current form asks licensees to indicate the "total times aired" for each program. This information is not broken down into the number of time the program aired at its regularly scheduled time, and the number of times preempted episodes were aired at a rescheduled time.

[31] On behalf of their owned and affiliated stations, the ABC, CBS, and NBC networks have committed to provide publishers of program guides with the alternate date/time when the preempted show will air and/or to notify viewers of the alternate date/time. *See, e.g.*, July 11, 1997 letters, *supra* note 11.

commercial television station licensees to provide information identifying core programming, and the age group for which the program is intended, to publishers of program guides. In adopting this requirement, we noted that program guides are an effective means of providing parents with advance notice of scheduling of educational programs, and that such information can assist both parents in finding suitable programs for their children and others who wish to monitor station performance in complying with the CTA. While we noted that we cannot require guides to print this information, we stated that the information is more likely to be included in program listings if broadcasters routinely provide it.[32]

22. Question 4 as currently written asks whether licensees have provided information to publishers of program guides as required by our rules, with the licensee indicating "yes" or "no." We will revise this question to ask licensees to identify by name the program guides to which information was provided, but decline to require broadcasters to indicate in their reports whether the program guides to which the information was provided actually published this information. Our purpose in making this change is twofold. First, we agree with CME *et al.* that requiring broadcasters to list the publishers to whom information was submitted will provide parents, the public and the Commission useful data by which to judge a broadcasters good-faith efforts to comply with our goal of facilitating public access to information about educational programming. Second, and perhaps more important, requiring broadcasters to provide this information will help in identifying those publishers that decline to include information about educational programming in their program guides. Studies examining the impact of the children's programming rules have concluded that many parents still do not know which programs carry educational labels, and that the widespread failure of program guides to include information identifying core educational programming contributes to this problem.[33] It does not appear that any newspapers or program guides routinely include in their television listings the symbols identifying core programs. Requiring stations to identify publishers to which information about core programs is being provided will allow parents and others to encourage other program guide publishers to include this information in their TV listings. As broadcasters are already required by our rules to provide information to program guide publishers, it should not be difficult for broadcasters simply to identify those publishers on their quarterly programming reports. We disagree with CME *et al.*, however, that broadcasters should be required to indicate in their reports whether the program guides to which information was provided actually published this information. As NAB argues, tracking what was actually published could impose a significant burden on broadcasters.[34] Once publishers that have been provided with information are identified by licensees in their reports, interested members of the public can monitor those publications and urge them to include educational children's program identifiers.

23. *License Renewal Date.* Finally, as CME *et al.* suggests, we will also add a question to FCC Form 398 requiring the station to indicate its license renewal date. This information is readily available to broadcasters and easy to provide, and will be useful to members of the public interested in monitoring station compliance.

24. *Revised Form 398.* We will amend Section 73.3526 of the Commission's rules as set forth in Appendix A and FCC Form 398, Children's Television Programming Report, to reflect the

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32 *Children's Programming Report and Order*, 11 FCC Rcd at 10688-10689

33 *See, e.g.*, Amy B. Jordan, *Is the Three-Hour Rule Living Up to Its Potential?, An Analysis of Educational Television for Children in the 1999/2000 Broadcast Season*, The Annenberg Public Policy Center of the University of Pennsylvania, 2000.

34 NAB Reply Comments at 5.

changes discussed above. We direct the Mass Media Bureau to revise FCC Form 398 accordingly and submit it to OMB for approval.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

25. *Background.* In the *Notice*, we encouraged broadcasters to make the Children's Television Programming Reports available on their own websites.[35] CME *et al.* proposes that broadcasters be required to post their reports on their internet websites. NAB, however, argues that a requirement that licensees post FCC Form 398 on their own websites would be duplicative.[36]

26. *Discussion.* We tentatively conclude that if a broadcaster maintains a website, it must post its quarterly report on that site at the same time that it places it in the station's public file. Although the Children's Television Programming Reports are available in a central location on the FCC's website, we believe that members of the public may look first to their local broadcast station, rather than the Commission, for information about the programming of the station. Our inclination is to allow stations, at their option, either to post the quarterly reports on the station's own internet website, or to create a link on the station's website directly to either the FCC's children's television webpage or to the station's most recent quarterly report on the FCC's children's television website. We note that NAB argues that it may cost stations more to provide the required form at their websites. Allowing stations simply to create a link to the FCC's website provides a less costly alternative. This option also responds to NAB's concern about any unnecessary duplication of effort associated with making the reports available both on the FCC's and the station's websites. Broadcasters must currently retain a paper copy of the report in their station public inspection file until final action has been taken on the station's next renewal of license.[37] We seek comment on whether broadcasters that elect to maintain the reports on their own station websites should be required to maintain these reports on the website until final action has been taken on the station's next license renewal application. .

27. Because the Commission's own website provides a central location where the public can access reports from all stations in their community and across the country, we want to ensure that the information on our website is easily accessible by the public. In response to a request from CME *et al.*, the Commission staff has created a link directly from its internet homepage to its children's television webpage. We note that interested organizations can create links directly from their own websites to our children's television website if they choose.

V. CONCLUSION

28. In this *Report and Order*, we revise our rules to continue indefinitely the requirement that commercial broadcast television licensees file their quarterly Children's Television Programming Reports with the Commission, and to require that these reports be filed quarterly rather than annually. We also make a number of revisions to FCC Form 398 to make the information in the reports clearer and more useful to the Commission and the public. These measures are designed to permit us to continue to enforce the CTA and our rules implementing that statute, and to improve public access to information about licensee compliance with their obligations to provide educational and informational programming

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35 *Notice* at ¶ 6.

36 *See* NAB Reply Comments at 4.

37 47 C.F.R. § 73.3526(e)(11)(iii).

for children.

ADMINISTRATIVE MATTERS

29. *Comments and Reply Comments*. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before December 18, 2000 and reply comments on or before January 17, 2001. Comments may be filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

30. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form, <your e-mail address." A sample form and directions will be sent in reply.

31. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554.

32. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, S.W.; 2-C221, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. the diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number (MM Docket No. 00-44), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, S.W.; CY-B402, Washington, D.C. 20554.

33. *Ex Parte Rules*. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

34. *Initial Regulatory Flexibility Analysis*. With respect to the *Further Notice of Proposed Rulemaking*, an Initial Regulatory Flexibility Analysis ("IRFA") is contained in Appendix C. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the proposals contained in this *Further Notice*. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract With America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small business in the television broadcasting industry.

Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *Notice*, but they must have a distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau shall send a copy of this *Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981), as amended.

35. *Initial Paperwork Reduction Act Analysis.* This *Further Notice of Proposed Rulemaking* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this *Further Notice*, as required by the Paperwork Reduction Act of 1996. Public and agency comments are due at the same time as other comments on the *Further Notice.* Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W., Room C-1804, Washington, D.C. 20554, or via the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to edward.springer@omb.eop.gov.

36. *Paperwork Reduction Act Analysis.* This *Report and Order* has been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

37. *Final Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, as amended, *see* 5 U.S.C. § 604, the Commission's Final Regulatory Flexibility Analysis for this *Report and Order* is attached as Appendix B.

38. *Additional Information.* For additional information on this proceeding, please contact Kim Matthews, Policy and Rules Division, Mass Media Bureau, (202) 418-2130.

ORDERING CLAUSES

39. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 4(i), 303, and 308 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, and 308, and the Children's Television Act of 1990, 47 U.S.C. §§ 303a, 303b, Part 73 of the Commission's rules, 47 C.F.R. Part 73, IS AMENDED as set forth in Appendix A below.

40. IT IS FURTHER ORDERED that, pursuant to the Congressional Review Act, 5 U.S.C. § 801, *et seq.*, the amendments set forth in Appendix A SHALL BE EFFECTIVE January 1, 2001. Children's Television Programming Reports for the fourth quarter of 2000, due to be filed with the Commission by January 10, 2001, should be completed using the current FCC Form 398. The Commission will revise its electronic version of FCC Form 398 to reflect the changes adopted herein. Reports for the first quarter of 2001, due to be filed by April 10, 2001, should be completed using the

revised form.

41. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Report and Order and Further Notice of Proposed Rule Making*, including the Initial and Final Regulatory Flexibility Act Analyses, to the Chief Counsel for the Small Business Administration.

42. IT IS FURTHER ORDERED that, pursuant to 47 U.S.C. § 155(c), the Chief, Mass Media Bureau, is GRANTED DELEGATED AUTHORITY to implement the changes to Form 398 adopted in this *Report and Order*.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas

Secretary

APPENDIX A

Rules

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 73 RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.3526 is amended by revising paragraph (e)(11)(iii) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

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(e) *Contents of the file.* The material to be retained in the public inspection file is as follows:

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(11)(iii) *Children's Television Programming Reports.* For commercial TV broadcast stations, on a quarterly basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. By this date, a copy of the Report for each quarter is also to be filed electronically with the FCC. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in § 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. The Report shall also identify the program guide publishers to which information regarding the licensee's educational and informational programming was provided as required in § 73.673(b), as well as the station's license renewal date. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application. Licensees shall publicize in an appropriate manner the existence and location of these Reports.

APPENDIX B

FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA),[38] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* (*Notice*). The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. One comment was received in response to the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[39]

Need for, and Objectives of, the Adopted Rules

The *Report and Order* amends Section 73.3526(e)(11)(iii) of the Commission's rules to continue indefinitely the requirement that commercial broadcast television licensees file with the Commission, on an annual basis, their quarterly Children's Television Programming Reports (FCC Form 398). The Commission's rules currently state that such reports shall be filed on an annual basis for an experimental period of three years, from January 1998 through January 2000. Continuation of the filing requirement will permit the Commission to continue to enforce the Children's Television Act of 1990 ("CTA"), and its rules implementing the CTA, by monitoring the amount and quality of educational television programming for children and industry compliance with the Commission's children's educational programming requirements. The *Report and Order* also requires that the reports be filed with the Commission quarterly, at the time they are prepared, instead of annually, which will make available to the public more timely information about the educational and informational programming aired by the licensee during the preceding calendar quarter and planned to be aired during the succeeding quarter. Finally, the *Report and Order* also makes a number of revisions to FCC Form 398 to make the information in the reports clearer and more useful to the Commission and the public. Specifically, the *Report and Order* adds a "Preemption Report" to FCC Form 398 to be completed for each preempted core program during the quarter requesting information on the date of each preemption, if the program was rescheduled the date and time the program was aired, and the reason for the preemption. The revised form also asks whether promotional efforts were made to notify the public of the time and date the rescheduled program would air, and requires licensees to identify the program guide publishers provided information about the licensee's core educational programming. Finally, licensees must indicate on the revised form the station's next license renewal date. These measures are designed to permit us to continue to enforce the CTA and our rules implementing that statute, and to improve public access to information about licensee compliance with their obligations to provide educational and informational programming for children.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

The SBA, in an *ex parte* letter dated August 31, 2000, asked that we issue a supplemental IRFA if we choose to implement three proposals made by CME: posting the reports on the Internet, reporting on the names of the program guides that a licensee provided children programming information and whether the

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[38] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[39] See 5 U.S.C. § 604.

information was published, and an explanation of why children's programming was preempted.[40] As noted, we are issuing a *Further Notice of Proposed Rulemaking* to address the use of the Internet to post the reports, and an IRFA is included for that FNPRM. For the programming guide proposal, our existing rules already require licensees to report children's programming to publishers of program guides.[41] We did not adopt the proposal that licensees monitor whether publishers have published the programming information. Thus, the only portion of the CME proposal we adopt here is the minimal requirement that a licensee report to us the names of the publishers provided the licensee's programming information, data that the licensee already has to comply with 47 C.F.R. § 73.673(b). This is hardly a burdensome requirement. Finally, we adopt CME's proposal that Form 398 include an explanation why children's programming is preempted. As we note at paragraph 20 of the *Report and Order*, we believe this addition is necessary and in the public interest. We have devised a simple, non-burdensome checklist addition to the form. This does not, as the SBA claims, duplicate any other information on the form, including question 11, which is an optional catchall explanatory question.

These modifications to Form 398 are logical outgrowths of the NPRM. We do not think that it was Congress' intent in passing the RFA to require supplemental a IRFA every time a proposed rule is modified as a logical outgrowth of the original proposal after the issuance of the NPRM especially when the economic impact of the adopted rule on small entities is not substantial. Indeed, such an approach would render the RFA's notice requirements more onerous than the notice requirement of the Administrative Procedure Act. Here the IRFA specifically noted that the Commission was proposing to continue the existing requirement to file Children Television Programming Reports and indicated that the NPRM sought comment on this proposal as well as other issues. *See Notice of Proposed Rule Making*, 15 FCC Rcd 6326, 6331 Appendix A, ¶g. The *Notice* also sought comment on possible changes to the form. Specifically, the Notice stated, "Finally, we ask commenters to address whether any changes should be made to FCC Form 398 to make the Reports more informative or easier to prepare. For example, are there revisions to Form 398 that would make it easier for the reader to determine the number of times core programs are preempted and to obtain information about the rescheduling of any preempted episodes?"

We believe that the final rule is clearly a logical outgrowth of that proposed in the *Notice* and IRFA and that the changes to the programming reports will not have a significant economic impact on a substantial number of small licensees. As explained above, neither of the changes to Form 398 will have a significant economic impact. Reporting the names of program guides simply requires licensees to provide information they already have as a result of the requirements of a pre-existing rule. The check-box reporting of reasons for preempting children's programming is of a minimum burden on licensees. We therefore certify pursuant to 5 U.S.C. § 605(b) that these two changes to Form 398 will not have a significant economic impact on a substantial number of small entities.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of

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[40] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy and Eric E. Menge, Assistant Chief Counsel for Telecommunications, Office of Advocacy, U.S. Small Business Administration, to William E. Kennard, Chairman, Federal Communications Commission, dated August 31, 2000.

[41] 47 C.F.R. § 73.673(b).

small entities that will be affected by the rules.[42] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act.[43] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[44]

Small TV Broadcast Stations. The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts.[45] BIA Research Inc. reports that 784 out of 1221 commercial television stations (64%) have annual revenues less than $10.5 million.[46] Thus, we estimate that 784 or fewer commercial TV broadcast stations are small businesses, as defined by the SBA.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The *Report and Order* continues the requirement that commercial broadcast television stations file with the FCC a copy of their quarterly Children's Television Programming Reports on FCC Form 398. In addition, the *Report and Order* requires that these reports be filed on a quarterly basis, as they are prepared, rather than annually. Finally, the *Report and Order* makes a number of changes in FCC Form 398 to make the information in the reports clearer and more useful to the FCC and the public. Specifically, the *Report and Order* adds a "Preemption Report" to FCC Form 398 to be completed for each preempted core program during the quarter requesting information on the date of each preemption, if the program was rescheduled the date and time the program was aired, and the reason for the preemption. The revised form also asks whether promotional efforts were made to notify the public of the time and date the rescheduled program would air, and requires licensees to identify the program guide publishers provided information about the licensee's core educational programming. Finally, licensees must indicate on the revised form the station's next license renewal date

Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

The *Report and Order* requires licensees to identify in their Children's Television Programming Reports the program guide publishers to whom information regarding the licensee's educational and informational children's programming was provided. Although commenters also advocated that licensees be required to state whether this information was actually published, the *Report and Order* declines to impose this additional obligation on licensees because we believe that this might have constituted a significant economic impact without an adequate resulting benefit.[47] In addition, although commenters proposed requiring that licensees be required to identify in their reports the precise efforts

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42 5 U.S.C. § 603(b)(3).

43 5 U.S.C. § 601(3)(1980).

44 5 U.S.C. § 632.

45 13 C.F.R. § 121.201 (SIC Code 4833).

46 BIA Research Inc., MEDIA Access Pro Data Base, July 11, 2000.

47 *See* para. 22, *supra*.

made to publicize the existence and location of the reports as required by 47 C.F.R. § 73.3526(e)(11)(iii), this proposal was not adopted in the *Report and Order*.

Report to Congress

The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including the certification and FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order*, certification, and FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. §§ 604(b) and 605(b)

APPENDIX C
INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act, 5 U.S.C. § 603 ("RFA"), the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the proposals contained in the attached *Further Notice of Proposed Rule Making*. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *Further Notice*, but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Commission shall send a copy of this *Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA, 5 U.S.C. § 603(a).

a. Reasons Why Agency Action is Being Considered. Our goal in commencing this proceeding is to seek comment on the tentative conclusion to require commercial television broadcasters that maintain a website to post their quarterly Children's Television Programming Reports on that site at the same time that they place the reports in the station's public inspection file. We also seek comment on whether broadcasters should be required to maintain the reports on the website until final action has been taken on the station's next license renewal.

b. Need For and Objectives of the Proposed Rule Changes. Although the Children's Television Programming Reports are available in a central location on the FCC's website, the FCC believes that members of the public may look first to their local broadcast station, rather than the Commission, for information about the programming of the station. We invite comment on this view and ask commenters to provide detailed information on any costs or other burdens associated with requiring those stations that maintain websites to post their quarterly reports on the sites.

c. Legal Basis. Authority for the actions proposed in the *Further Notice* may be found in Sections 4(i) and 303, 307, and 336(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, 307, and 336(d), and in the Children's Television Act of 1990.

d. Recording, Recordkeeping, and Other Compliance Requirements. The *Further Notice* invites comment on the tentative conclusion to require commercial television broadcasters that maintain a website to post their quarterly Children's Television Programming Reports on that site at the same time that they place the reports in the station's public inspection file. We also seek comment on whether broadcasters should be required to maintain the reports on the website until final action has been taken on the station's next license renewal.

e. Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules. The rules under consideration in this proceeding do not overlap, duplicate, or conflict with any other rules.

f. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of

the agency and publishes such definition(s) in the Federal Register.

Small TV Broadcast Stations. The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts.[48] BIA Research Inc. reports that 784 out of 1221 commercial television stations (64%) have annual revenues of less than $10.5 million.[49]

The requirement to prepare quarterly Children's Television Programming Reports applies to commercial broadcast television stations. Thus, we estimate that 784 or fewer commercial TV broadcast stations are small businesses, as defined by the SBA.

g. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. § 603(c).

This *Further Notice* invites comment generally on the tentative conclusion to require commercial television broadcasters that maintain a website to post their quarterly Children's Television Programming Reports on that site at the same time that they place the reports in the station's public inspection file. We also seek comment on whether broadcasters should be required to maintain the reports on the website until final action has been taken on the station's next renewal license. We seek comment on whether there is a significant economic impact on any class of small licensees as a result of any of these proposals. Any significant alternatives presented in the comments will be considered.

48 13 C.F.R. § 121.201 (SIC Code 4833).

49 BIA Research Inc., MEDIA Access Pro Data Base, July 11, 2000.

STATEMENT OF CHAIRMAN WILLIAM E. KENNARD

Re: In the Matter of Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398) (MM Docket No. 00-44)

Television is among the most powerful influences in our children's lives. That influence can be overwhelmingly positive because the medium has incredible potential to educate and enlighten our children. Or, television programs may raise concerns about children's exposure to excessive advertisements or inappropriate content. Broadcasters have an obligation to serve the public interest, including the specific needs of children. Since the passage of the Children's Television Act, broadcasters, parents, child advocates, and government have worked together to provide parents with educational programming choices for their children.

The Report and Order adopted today recognizes the success of the children's educational programming guidelines and rules. By their own reports, broadcasters have been providing not only the required three hours of educational programming each week, but an average of four hours each week. We must continue to ensure that parents have access to this critical information about the educational programming.

However, we missed a unique opportunity to advance the public interest in this area by not adding a very simple and logical requirement for broadcasters to describe their efforts to increase the public's awareness of children's programming as disclosed in the Children's Television Programming Reports, Form 398. Recent studies indicate that too many parents still lack information about educational and informational programming. The current form only asks whether a broadcaster publicizes the existence and location of the station's Report. Public interest and child advocacy organizations raised significant questions in this proceeding about the extent of broadcasters' efforts to publicize these Reports. Requiring broadcasters to describe briefly their efforts would promote the goals of the Children's Television Act and would not place undue burdens on licensees. I strongly encourage broadcasters to respond to the concerns of parents and advocates and to provide this information voluntarily.

DISSENTING STATEMENT OF COMMISSIONER HAROLD W. FURCHTGOTT-ROTH

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

I dissent from this Report and Order ("R&O") on the extension of the filing requirement for children's television programming reports, and also from the Further Notice of Proposed Rulemaking ("FNPRM") on mandatory web posting of the reports by broadcasters.

As for the changes to the rule regarding Form 398, I have several areas of disagreement. First, I would not make permanent the filing requirement.[50] At the Notice stage of this proceeding, I expressed my view that the record revealed scant evidence that these reports accomplish the Commission's asserted goals, including helping parents plan their children's television viewing.[51] I see no more documentation now of the actual utility of these reports than I did then. Second, given my skepticism regarding the actual need for these reports, I would not increase the procedural burden on broadcasters by requiring them to file the reports on a quarterly, as opposed to annual, basis.[52] Third and finally, I would not increase the substantive burden on broadcasters by asking them to provide more information in the form than they do now.[53]

In sum, these forms are of little real-world utility to start with. Requiring broadcasters to fill out a still longer form and file them even more frequently accomplishes little more than imposing increased costs on broadcasters without any proof of the creation of corresponding benefits.

With respect to the question of mandatory web posting of the reports, as raised in the FNPRM,[54] such a requirement is wholly unnecessary. The FCC web site *already* provides these reports. It is an inefficient use of broadcaster resources – particularly those of small broadcasters who may not have their own web sites but will be forced to create them in order to satisfy the proposed rule – to post the reports in a duplicative format or to require them to provide a link to the FCC site.

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[50] *See supra* at paras. 9-11.

[51] See Joint Concurring Statement of Commissioners Harold Furchtgott-Roth and Michael Powell, Notice of Proposed Rulemaking, In the Matter of Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398), MM Docket No. 00-44, 15 FCC Rcd. 6326 (2000) ("We are not prepared to conclude, without the benefit of further comment, that the filing of these reports necessarily accomplishes the goals for which they were intended.").

[52] *See supra* at paras. 12-16.

[53] *See supra* at paras. 17-24.

[54] *See supra* at paras. 25-27.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL K. POWELL

Re: In the Matter of Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398), MM Docket No. 00-44, Report and Order and Further Notice of Proposed Rule Making

For the foregoing reasons, I respectfully dissent from this R&O and FNPRM.

The Children's Television Act of 1990 ("CTA") requires that in reviewing a television broadcast renewal application,[55] the Commission must consider whether the licensee has served the "educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs."[56] Under the Commission's implementing rules, a broadcaster can expect to satisfy the Commission's review, if it abides by its "processing guidelines." The guidelines are, in essence, a safe harbor—if a broadcaster offers three hours of regularly scheduled children's educational programming per week, his application will be reviewed at the staff level and will be found to satisfy the CTA. A broadcaster that does not elect to follow the guidelines can still satisfy the requirements of the CTA, if he "demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming,"[57] through a different mix of education and information programming. Commission rules also require broadcasters to complete quarterly Children's Television Programming Reports identifying core programming and to place them in their public files for inspection. The central component of today's *Order* is to expand the reporting requirement.

I support two changes made to the Children's Educational Television Reporting requirements in this Order: the continuation of the reporting obligations and the change from an annual to a quarterly filing. Neither of these are burdensome obligations and both requirements will make the information contained in the reports more readily available for purposes of enforcing the Children's Television Act of 1990. Initially, I was less enthusiastic about expanding the substance of the reports, by modifying Form 398, but ultimately became comfortable that the modifications were modest and served valid purposes. I do, however, write separately to highlight what I believe are those purposes.

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[55] In 1997, the Commission increased the license term for television stations from 5 years to 8 years. *See Implementation of Section 203 of the Telecommunications Act of 1996*, MM Docket No. 96-90, 12 FCC Rcd 1720 (1997). The 1996 Telecom Act also eliminated comparative renewals and directed the Commission to grant a broadcaster's renewal application if statutory renewal standards are met. See 47 U.S.C. § 309 (k); 47 C.F.R.

§ 73.3591.

[56] *See* In the Matter of Policies and Rules Concerning Children's Television Programming, MM Docket No. 93-48, FCC 96-335, *Report and Order*, 11 FCC Rcd 10660, ¶ 1 (1996).

[57] *Id*, ¶ 5.

The Children's Television Programming Reports serve two valid purposes: First, the reports serve as a contemporary record of a broadcaster's efforts to avail himself of the processing guidelines' safe harbor. Television licenses come up for review only every eight years. At the end of such a long period, it would be challenging for the Commission to verify a licensee's claim that it satisfied the guidelines, without a body of record evidence developed over the license period. Second, by stations making these reports available for public inspection, the members of the community to whom a broadcaster is committed to serve will have a better understanding of their local stations' efforts. Likewise, it will facilitate parents' efforts to plan, to a limited degree, what their children watch.

Throughout the *Order*, however, there is a third purpose suggested that I believe is untenable. The *Order* regularly emphasizes that the reports allow the public to play an active role in helping the Commission "enforce" the children's programming requirements. Similarly, the *Order* hails the reports as a way to facilitate "monitoring license compliance" and to assist the FCC in its "enforcement role." The processing guidelines (consisting of three hours of regularly scheduled programming) are not accurately described as requirements. Indeed, a broadcaster could air a different mix of programming, or very little children's programming during its license term and not, technically speaking, violate any rule. The only consequence is that he may not avail himself of the safe harbor at the time his application is up for renewal. Thus, he may be placing his license at risk by not complying with the processing guideline, but he is not violating any rule.[58]

I highlight the nature of the processing guidelines to make the point that expanding our reporting requirements cannot rest on any notion of ongoing enforcement, for there is none to be had. The extent of the reports must be justified, and constrained, by reference to the purposes of the CTA and our obligations in reviewing license renewal applications. On balance, I think the changes today are supportable as measured by this standard.

One final note: Given that our rules do not specifically command broadcasters to air three hours per week of children's educational programming, they should be commended for doing so. This *Order* demonstrates that a very substantial percentage of stations are offering this valuable programming. Of course, this is self-interested to a degree, for it lowers the risk that their licenses will not be renewed. But, it takes more than simple risk management to produce a quality children's educational program and many of the positive results we see today reflect the commendable joint efforts of government and the broadcasting community.

[58] It is important to also note that the Children's Television Act does not strictly speaking require any programming during the license term, but only commands the Commission to consider the broadcaster's efforts when reviewing the application for renewal.

PARTIAL DISSENT OF COMMISSIONER GLORIA TRISTANI

IN THE MATTER OF THE EXTENSION OF THE FILING REQUIREMENT FOR CHILDREN'S TELEVISION PROGRAMMING REPORTS (FCC FORM 398): *Report and Order and Further Notice of Proposed Rule Making*

I strongly support the extension of this filing requirement. I also strongly support the modifications to FCC Form 398 that are designed to improve public access to the information contained in the form. Ensuring the availability of information to consumers and parents about children's television programs is a key obligation of the Commission and one that is shared with the broadcasters of such programs.

My partial dissent is very narrow and is rooted in the shared obligation with the broadcasters. Our rules require broadcasters to publicize the "existence and location" of the information about their children's television programs. Question 8 of the form we amend today asks broadcasters if they have complied with the requirement that they publicize the availability of this information. Question 8 is a yes or no question. Studies submitted in the record of this matter demonstrate that, despite the availability of Form 398, parents are often unaware of the existence of these reports and about which children's programs are educational and informational as well as the location of more detailed information about the programs.

To remedy this problem, and to respond to comments we have received, we should have amended Question 8 to require the broadcasters to state with specificity and in detail the efforts they have undertaken to make the information in Form 398 available to viewers and parents. Increasing public awareness of children's television programs is a key component of ensuring parents have the tools they need to choose quality programs for their children. Today we declined to amend Question 8 and make Form 398 a better tool for empowering parents. On this point, I respectfully dissent.