

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

In the Matter of )  
 )  
Children's Television Obligations of ) MM Docket No. 00-167  
Digital Television Broadcasters )  
 )

**PETITION FOR RECONSIDERATION  
OF FOX ENTERTAINMENT GROUP, INC.,  
NBC UNIVERSAL, INC., AND VIACOM**

Ellen S. Agress	FOX ENTERTAINMENT GROUP, INC.
Maureen A. O'Connell	
Fox Entertainment Group, Inc.	NBC UNIVERSAL, INC.
444 N. Capitol Street, N.W.	
Washington, DC 20001	VIACOM
(202) 824-6502	

F. William LeBeau  
NBC Universal, Inc.  
1299 Pennsylvania Avenue, NW  
11<sup>th</sup> Floor  
Washington, DC 20004  
(202) 637-4535

John C. Quale  
Brian D. Weimer  
Malcolm J. Tuesley  
of  
Skadden, Arps, Slate, Meagher &  
Flom LLP  
1440 New York Avenue, NW  
Washington, DC 20005  
(202) 371-7000

Anne Lucey  
Viacom  
1501 M Street, NW  
Washington, DC 20005  
(202) 785-7300

Their Attorneys

Nicholas E. Poser  
CBS Broadcasting Inc.  
1515 Broadway, 49<sup>th</sup> Floor  
New York, NY 10036  
(212) 846-3573

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## SUMMARY

Because the Children's Television Act of 1990 ("CTA") directly affects content, the Commission should implement the act in a flexible manner in view of the sensitive First Amendment values implicated by content-based regulations. A flexible approach, moreover, is consistent with congressional intent in adopting the CTA. Indeed, Congress, mindful of the important First Amendment values raised by the CTA, explicitly declined to adopt any quantitative children's programming standard and expected that the Commission would provide broadcasters with great flexibility in determining how to meet their public interest obligations.

While imposing a three-hour minimum programming requirement under its processing guidelines in 1996, the Commission wisely delegated to its staff the authority to determine what constituted regularly scheduled programming and what level of preemption was permissible. Through letter rulings to major broadcast networks in 1997 and 1998, the staff announced that it would flexibly accommodate sporting events by permitting stations to count preempted programs toward their core requirement if, among other things, they were rescheduled to a fixed second home or, in isolated circumstances, to another time slot within two weeks after the preemption. Commission staff reports in 1998 and again in 2001 also confirmed that many stations, especially those in the West, faced scheduling difficulties due to sports and required a flexible preemption policy. By rescheduling programs with notice to parents and children, the Commission staff found that the preemption practices of network stations were compatible with the goals of the CTA.

Faced with the impending transition of broadcasting from analog to digital service, the Commission initiated this proceeding with its release in 2000 of a Notice of Proposed Rulemaking ("NPRM") seeking comment on issues related to the obligation of digital television broadcasters to serve children. While certain issues raised in the NPRM implicated both digital and analog broadcasters, the Commission was quite clear that any changes it might make to its rules concerning preemptions of children's programming would apply only to digital broadcasters. Notwithstanding the Commission's historical commitment to flexible implementation of the CTA's requirements and its express pronouncement that any changes to the preemption rules would apply only to digital broadcasters, the Commission in the Report & Order in this proceeding without warning adopted a strict 10 percent limit on preemptions of core children's television programming and applied that rule to analog and digital broadcasters alike.

Fox Entertainment Group, Inc., NBC Universal, Inc., and Viacom (collectively, the "Networks") seek reconsideration of the Commission's decision in the Report & Order to withdraw from its staff the authority to determine what level of preemption (for both analog and digital broadcasters) is allowable for core educational and informational programming. The Commission's decision to impose a new 10 percent preemption rule ignored the flexibility – and constitutional sensitivity – of its staff-administered approach as well as the record evidence indicating that the new rule would necessitate extensive schedule changes. The Commission's own staff reports showed that during the years 1997 through 1999, network stations, particularly in the West, preempted at a rate substantially in excess of 10 percent, primarily to accommodate popular sports events on Saturdays.

The preemption patterns have continued and, if anything, weekend morning schedules have become even tighter as more stations present early morning local news. A study by Economists Incorporated commissioned by the Networks demonstrates that for the most recent television year (fourth quarter of 2003 through the third quarter of 2004), preemptions continue to exceed the 10 percent threshold by a considerable margin in certain quarters. For each of the Networks, 50 to as many as 100 percent of Pacific time zone affiliates exceeded the 10 percent limit in at least one quarter. Accordingly, broadcasters will be forced to move core educational and informational programming to time periods when fewer children are in the audience – a result directly contrary to the ostensible purpose for adopting the new rule in the first place.

The Commission should do all it can to promote and accommodate *both* children's programming and highly popular sports programming by allowing flexibility in its implementation of the new 10 percent preemption rule. Accordingly, on reconsideration the Commission should return to its staff the authority to determine what level of preemptions is allowable. Alternatively, the Commission should amend its newly adopted preemption rule in a manner similar to its prior flexible network letter rulings. The Networks request that the exemption from the 10 percent rule, which is now limited to breaking news, be amended to accommodate sports preemptions if: (i) the program is rescheduled within one week to a fixed "second home," or, in isolated circumstances, elsewhere in the station's schedule; and (ii) stations provide publishers of program guides with the alternate date/time in advance of any core programming preemption for sports events and notify viewers by means of a crawl or other reasonable method during the previously scheduled episode and at the time of preemption of the alternate date/time

when the preempted show will air. In addition, preemptions for major multi-day, international sporting events, such as the Olympics or Wimbledon, should be exempt from the limit.

By making these changes, the Commission will permit broadcasters to continue to promote two highly cherished American values: the education of children and sports programming.

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**EXHIBIT A**

Michael G. Baumann and Kent W Mikkelsen, *Preemption of Core Children's Programming Among CBS, FOX and NBC Affiliated Stations* (Economists Incorporated, Feb. 2, 2005).

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Fox Entertainment Group, Inc., NBC Universal, Inc., and Viacom (collectively, the "Networks"), pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, respectfully seek reconsideration of the Commission's decision in the above-captioned proceeding to withdraw from its staff the authority to determine what level of preemption is allowable for core educational and informational ("E/I") programming.<sup>1</sup> In the Report & Order, the Commission amended rule 73.671, 47 C.F.R. § 73.671, by, among things, limiting to 10 percent the number of times a children's educational and informational program may be preempted in any quarter and still qualify under the Commission's renewal application processing guidelines for children's television programming.<sup>2</sup> In adopting the new 10 percent preemption rule, the Commission ignored the results of its own staff reports which demonstrate that the Networks and other broadcasters will not be able to comply with the new limit without making major changes to their children's

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<sup>1</sup> See *In re Children's Television Obligations of Digital Television Broadcasters*, Report & Order, 19 FCC Rcd 22943 (rel. Nov. 23, 2004) ("Report & Order").

<sup>2</sup> *Id.* ¶ 41.

television programming schedules. These changes would undermine the ostensible purpose for adopting the new rule – to increase the viewership of core programming by children – since the Networks would be forced to move the programming to time slots when fewer children are in the audience. The Commission should do all it can to promote and accommodate two all-American values – the education of children and highly popular sports programming – by allowing flexibility in the implementation of its preemption rule.

**I. THE NEW 10 PERCENT PREEMPTION RULE IS INCONSISTENT WITH THE COMMISSION'S RESPONSIBILITY TO IMPLEMENT THE CHILDREN'S TELEVISION ACT WITH FLEXIBILITY AND SENSITIVITY TO THE FIRST AMENDMENT**

The Commission's rules governing the children's television obligations of broadcasters date back fifteen years to the Children's Television Act of 1990 ("CTA"), whereby Congress required that the Commission consider whether a broadcast licensee has served "the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs."<sup>3</sup> At the time of passage, Congress explicitly declined to adopt any quantitative children's programming standard and expected that the FCC would provide broadcasters with great flexibility in determining how to meet their public interest obligations:

The Committee does not intend that the FCC interpret this section as requiring a quantification standard governing the amount of children's educational and informational programming that a broadcast licensee must broadcast [for license renewal] pursuant to this section or any section of this legislation.<sup>4</sup>

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<sup>3</sup> Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, 394.

<sup>4</sup> S.R. 227, 101st Cong., 1989, at 23; H.R. 385, 101st Cong. 1989, at 17.

Senator Daniel Inouye, then Chairman of the Senate Communications Subcommittee, likewise stated that a broadcaster should be provided the "greatest possible flexibility in how it discharges its public service obligation to children" and that the "Committee expects that the Commission will continue to defer to the reasonable programming judgments of licensees."<sup>5</sup>

A flexible implementation of the CTA is necessary to accommodate the overriding First Amendment considerations relevant to content-based regulations like the children's television rules. "[T]he role of government in content regulation on any medium can and should be minimal due to important First Amendment considerations central to a democratic society."<sup>6</sup> The legislative history of the CTA reflects this essential regard for the Constitution: "The nature of the content offered is up to the discretion of the broadcaster. Leeway is granted in deference to broadcasters' first amendment rights, of course, and with the expectation of good-faith judgments."<sup>7</sup> Here, as in other areas, the Commission must serve the relevant regulatory objective with precision and due respect for the First Amendment.

*A. Sensitivity to First Amendment Concerns Requires Preemption Flexibility*

In 1991, the Commission responded to the CTA by imposing a requirement that broadcasters serve the educational and informational needs of children (with no

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<sup>5</sup> Congressional Record (July 19, 1990) 136, S10121-22.

<sup>6</sup> *Commissioner Chong Calls for "First Amendment Friendly Framework" for Regulating Media Content*, Speech, 1996 WL 543932 (F.C.C.) (Sept. 25, 1996).

<sup>7</sup> 136 Cong. Rec. S16340-02 (daily ed. Oct. 22, 1990) (statement of Sen. Wirth).

quantitative mandate).<sup>8</sup> The FCC did not adopt its more restrictive three-hour "processing guideline" until it reconsidered its children's television rules in 1996. "[U]nder this guideline, broadcasters will receive staff-level approval of the CTA portion of their renewal applications if they air three hours per week of core programming . . . ."<sup>9</sup> A core program must be a regularly scheduled, weekly program of at least 30 minutes, and aired between 7:00 a.m. and 10:00 p.m.<sup>10</sup> The program must also be identified as educational and informational for children when it is aired and must be listed in the children's programming report placed in the broadcaster's public inspection file.<sup>11</sup>

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<sup>8</sup> See *In re Policies and Rules Concerning Children's Television Programming*, Report & Order, 6 FCC Rcd 2111 (1991), *order on recon.*, 6 FCC Rcd 5093 (1991).

<sup>9</sup> *In re Policies and Rules Concerning Children's Television Programming*, Report & Order, 11 FCC Rcd 10660, ¶ 5 ("1996 Report & Order").

<sup>10</sup> *Id.* ¶ 4. The Commission noted that "[t]elevision 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." *Id.* at ¶ 106.

<sup>11</sup> *Id.* ¶ 4. "A licensee that has aired at least three hours per week of Core Programming (. . . as averaged over a six month period) will be deemed to have satisfied its obligation to air such programming and shall have the CTA portion of its license renewal application approved by the Commission staff. A licensee will also be deemed to have satisfied this obligation and be eligible for such staff approval if the licensee demonstrates that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of Core Programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of Core Programming. . . . Licensees that do not meet these processing guidelines will be referred to the Commission, where they will have full opportunity to demonstrate compliance with the CTA . . . ." 47 C.F.R. § 73.671, Note 2. Failure to satisfy the processing guideline results in considerable uncertainty, delay and expense since action by the full Commission is far more time-consuming than staff action and preparation of a special showing requires the utilization of substantial personnel and legal resources.

At the time of adoption, Commissioner Chong concurred in part to "voice serious reservations about [the] decision to establish a quantitative processing guideline."<sup>12</sup> She stated, "[m]y . . . reason for disfavoring quantification is that such a standard may set an uncomfortable precedent contrary to the principles of the First Amendment."<sup>13</sup> Similarly, Commissioner Quello's concurring statement noted his concern for "establishing a precedent for future First Amendment incursions."<sup>14</sup> The Commission's 1996 decision also delegated to its staff the authority to determine, "with guidance from the full Commission as necessary, what constitutes regularly scheduled programming and what level of preemption is allowable."<sup>15</sup>

Networks almost immediately sought staff clarification and flexibility in the application of the "regularly scheduled" requirement so as to permit the broadcast of network sports and breaking news.<sup>16</sup> In one of the first requests to the Commission, CBS noted that it planned to run its children's programming on Saturday mornings, but "live network sports events, primarily college sports, will affect the broadcast of core programming" on Saturdays and result in some preemptions of the children's programming.<sup>17</sup> "[A]lmost all of these preemptions will occur in the 'third' hour of core

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<sup>12</sup> 1996 Report & Order (Commissioner Chong, concurring).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 10765 (Commissioner Quello, concurring).

<sup>15</sup> *Id.* ¶ 106.

<sup>16</sup> See Letter to Roy J. Stewart from Martin D. Franks, Senior Vice President, Washington, CBS, Inc. (June 6, 1997).

<sup>17</sup> *Mr. Martin Franks, Senior Vice President, Washington, CBS, Inc., Letter, 12 FCC Rcd 9926 (July 11, 1997) ("1997 CBS Letter").*

programming (*i.e.*, noon to 1:00 p.m.)."<sup>18</sup> CBS then proposed a flexible alternative for the Commission to consider that would enable the network to meet its children's television obligations and broadcast popular sports events.

Agency staff responded through a series of letter rulings,<sup>19</sup> which permitted stations:

(1) to count a preempted children's core program toward a station's core programming obligation if the program is rescheduled within one week to a fixed 'second home' of the station's choice for each broadcast season, or, in isolated circumstances, at any time during core hours within two weeks before or after the preemption; and (2) to exempt from the above provisions core programming that is preempted for breaking news, though [the Commission] encourage[d] stations to reschedule programming in these circumstances.<sup>20</sup>

Such preemption flexibility was based upon a station's efforts to inform parents and children of scheduling changes, including, among other things, a commitment to provide publishers of program guides with the alternate date/time in advance of any Core Programming preemption for live network sports events and notify viewers during the previously scheduled episode and at the time of preemption with respect to the alternate date/time when the preempted show will air.<sup>21</sup> While the last letter ruling was issued in

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<sup>18</sup> *Id.*

<sup>19</sup> See Mr. Mark W. Johnson, Associate General Counsel, CBS Corp., Letter, 13 FCC Rcd 20980 (Oct. 29, 1998) ("1998 CBS Letter"); Mr. Sam Antar, Vice President, Law & Regulation, ABC, Inc., Letter, 13 FCC Rcd 20975 (Oct. 29, 1998) ("1998 ABC Letter"); 1997 CBS Letter; Mr. Rick Cotton, Ms. Diane Zipursky, National Broadcasting Company, Inc., Letter, 12 FCC Rcd 9932 (July 11, 1997) ("1997 NBC Letter") (collectively, the "Network Letters").

<sup>20</sup> 1998 CBS Letter, at \*9. See also 1998 ABC Letter, at \*8-\*9; 1997 CBS Letter, at \*8-\*10; 1997 NBC Letter, at \*6-\*9.

<sup>21</sup> 1998 CBS Letter, at \*9. See also 1998 ABC Letter, at \*8-\*9; 1997 CBS Letter, at \*5-\*9; 1997 NBC Letter, at \*9-\*11. As part of an experiment, networks also

1998, these letters remain the most instructive and authoritative guidance from the staff on how licensees should handle preemptions.

The Commission, moreover, explicitly acknowledged that the flexibility afforded by the letters was consistent with its children's television programming objectives. In its 1998 Network Letters, after reviewing 1997 performance, the FCC stated that "we continue to find such flexibility consistent with our goals of maintaining scheduling continuity and predictability for the children's audience."<sup>22</sup> This acknowledgment by the Commission that flexible preemption practices were compatible with its goals for serving the children's television audience was no doubt based upon the actual success of the approach: Data submitted to the Commission for consideration as part of the letter rulings demonstrated that stations ordinarily rescheduled preempted programs to fixed second homes.<sup>23</sup> The data also demonstrated that ratings for programs rescheduled to a second home were consistently equivalent to or better than the ratings for the original time period, underscoring the effectiveness of the more flexible guidelines.<sup>24</sup>

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agreed to promote Saturday morning children's television programming during primetime on Fridays. *See* 1998 CBS Letter, at \*9. The practice was based on then-current attempts to schedule children's programming on Friday nights. However, with subsequent changes in the Friday night schedule away from programs that appeal to children, the Networks believe that promoting children's programming in primetime is ineffective.

<sup>22</sup> 1998 CBS Letter; 1998 ABC Letter.

<sup>23</sup> *See Letter from Martin D. Franks to Roy Stewart*, July 2, 1999, at 1 (noting that CBS had rescheduled virtually all preemptions to a fixed second home).

<sup>24</sup> *Id.* at 4 (A "market by market analysis shows that in a majority of cases, the programs received higher ratings in the rescheduled time period than in the regularly scheduled time period.").

In support of the staff's flexible preemption approach, Commissioner Susan Ness, a staunch supporter of children's television regulation, formally concurred with the Mass Media Bureau's 1997 Letter Rulings. She recognized that the conflict between sports and children's programming was the result of the networks' efforts to schedule programming for children in time slots which would attract the largest child audience (*i.e.*, Saturday mornings).

I am pleased that we are able to assist ABC, CBS, and NBC in accommodating two all-American priorities: sports and kids. I commend these networks for scheduling educational programming for children in timeslots they believe will attract the largest number of young viewers. Unfortunately, these are the same times when popular sporting events are taking place. . . . The Bureau's action . . . approving these requests [for preemption flexibility] demonstrates our commitment to work with broadcasters to make the Congressional vision of children's programming a success for broadcasters, for parents, and for children.<sup>25</sup>

Subsequent staff reports also confirmed the effectiveness of a flexible preemption policy. Fulfilling a commitment made to the networks as part of the letter rulings, the Commission's staff published its first report in 1998 (analyzing data from the Fall of 1997 to the Summer of 1998).<sup>26</sup> The staff again found the networks' flexible preemption policies "to be consistent with the [its] goals . . . ."<sup>27</sup> The staff also confirmed that most core programming was not preempted and that in almost every instance, preempted shows were rescheduled to a second home.<sup>28</sup> Highlighting the scheduling realities

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<sup>25</sup> 1997 NBC Letter (Commissioner Ness, concurring).

<sup>26</sup> *See The Effect of Preemption on Children's Educational and Informational Programming, 1997-1998 Television Season*, DA 98-2306 (Mass Media Bureau, Policy and Rules Division, Nov. 1998) ("1998 Report").

<sup>27</sup> *See id.* ¶ 3.

<sup>28</sup> *See id.* ¶ 6.

created by certain sporting events, the 1998 Report also revealed that certain program series were preempted more often in particular quarters depending on sports obligations and that network owned stations in the Pacific time zone preempted core programming more often (13.4 percent versus 4.8 percent in the East).<sup>29</sup> However, based on the data before the Commission, "the ratings of network children's programs did not appear to have been adversely affected by the limited rescheduling due to live sporting events and news events."<sup>30</sup>

The Commission's staff completed a more comprehensive report in January 2001, which examined the 1997 to 1999 time period.<sup>31</sup> The report's conclusions were similar to the 1998 Report. The 2001 Report found that three of the networks had quarters where the preemption rate exceeded 10 percent and the highest quarterly preemption rate was 24.9 percent.<sup>32</sup> Network affiliates "in the Pacific Time Zone preempted core programs more frequently than affiliates in the Eastern and Central Time Zones. Across the three networks [(ABC, CBS, and NBC) and over the three-year study period,] programs were, on average, preempted more than twice as often in the West than in the East (16 percent vs. six percent)."<sup>33</sup> The 2001 Report also found that "[p]reemption rates tend to increase the later a program is scheduled on Saturday or Sunday morning. Programs scheduled to begin at 12:00 p.m. or 12:30 p.m. were preempted the most often (nearly 18 percent of

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<sup>29</sup> *See id.*

<sup>30</sup> *See id.*

<sup>31</sup> *See Three Year Review of the Implementation of the Children's Television Rules and Guidelines 1997-1999* (Jan. 2001) ("2001 Report").

<sup>32</sup> *Id.* ¶ 30.

<sup>33</sup> *Id.* ¶ 3.

the time). Programs aired between 9:00 a.m. and 11:00 a.m. were preempted approximately 10 percent of the time."<sup>34</sup>

The 2001 Report concluded, though, that "[i]n general, it appears that broadcast licensees have made many efforts to comply with the scheduling and promotional rules for children's educational and informational programming set forth in the *Children's Television Report and Order*. . . . For many stations, preemption of regularly scheduled children's programming is not a significant issue. However, the three largest network affiliates' preemption rates are notable and especially significant for stations in the West."<sup>35</sup> In sum, the report supported the commendable job that broadcasters had done in meeting their children's television obligations, while noting the difficult scheduling realities that network affiliates face in the West.

*B. The Report & Order's Strict Rule Will Compel Many Broadcasters to Move Core Children's Programming to Less Attractive Time Slots*

In light of the impending digital transition, the Commission initiated this rulemaking proceeding in September 2000 "to seek comment on a range of issues related to the obligation of digital television broadcasters to serve children."<sup>36</sup> Comments were sought "largely on challenges unique to the digital area . . . ."<sup>37</sup> The Commission only requested comment on three issues that arise in both the analog and digital broadcasting contexts: the definition of commercial matter, promotions, and viewing habits (including

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<sup>34</sup> *Id.* ¶ 33.

<sup>35</sup> *Id.* ¶ 48.

<sup>36</sup> *In re Children's Television Obligations of Digital Television Broadcasters*, Notice of Proposed Rulemaking, 15 FCC Rcd 22946, ¶ 1 (2000) ("NPRM").

<sup>37</sup> *Id.* ¶ 1.

the adequacy of promotion) – consideration of preemption was limited to the digital world.<sup>38</sup> Nonetheless, in the resulting Report & Order the Commission severely tightened its preemption policies for both digital and analog broadcasters, eliminating the previously delegated staff authority to determine what level of preemption is allowable.<sup>39</sup>

Under the new rule, "[f]or both analog and digital broadcasters, [the Commission] will limit the number of preemptions under [its] processing guideline to no more than 10 percent of core programs in each calendar quarter. Each preemption beyond the 10 percent limit will cause that program not to count as core under the processing guideline, *even if the program is rescheduled.*"<sup>40</sup> Accordingly, for weekly programs, more than one preemption in a quarter for any reason other than breaking news would cause the loss of core status.<sup>41</sup>

As justification for tightening the preemption rule, the FCC, in large measure, appears to rely on the putative availability of additional programming streams. In the NPRM, the Commission "noted that the ability of DTV broadcasters to multicast provides them with the option of airing multiple streams of programming simultaneously, thus increasing their flexibility to either avoid preempting core programs or to reschedule such programs to a regular 'second home.'"<sup>42</sup> The Commission ultimately decided that

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<sup>38</sup> *Id.*, n.1. *See also* Section III below, demonstrating that the changes to the analog preemption rule violate the Administrative Procedure Act.

<sup>39</sup> *See* Report & Order.

<sup>40</sup> *See id.* ¶ 41 (emphasis added).

<sup>41</sup> If a program airs weekly over the 13 week quarter, the rule would permit 1.3 preemptions (13 weeks times 10 percent equals 1.3). Since partial preemptions are not possible, a station is allowed only one preemption per quarter.

<sup>42</sup> *See* Report & Order, ¶ 38.

for digital broadcasters it would "not consider a core program moved to the same time slot on another of the station's digital program streams to be preempted as long as the alternate program stream receives MVPD carriage comparable to the stream from which the program is being moved and the station provides adequate on-screen information about the move, including when and where the program will air, on both the original and the alternate program stream."<sup>43</sup> The new rule assumes that "broadcasters may use their multicasting capability to avoid preempting core programming."<sup>44</sup> However, there is little multicasting currently and, therefore, no safety valve for broadcasters.<sup>45</sup> Moreover, multicasting is not – and should not be – required, and may be incompatible with the simultaneous broadcast of sports events in high definition. Finally, even if multicasting became common and multicast channels are widely available on MVPDs, the rule as adopted would force analog broadcasters in the interim to make wrenching changes to their children's programming schedules that ultimately would erode viewing of Core Programming by children.

In short, the Commission's unnecessarily restrictive new children's television rule ignores the prior record of success in balancing popular sports programming with Saturday morning children's viewing (a particularly acute problem in the West) and will

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<sup>43</sup> *Id.* ¶ 40. "This policy applies only to program moves from one digital stream to another digital stream on the same station." *Id.* at n.79.

<sup>44</sup> *Id.* ¶ 40.

<sup>45</sup> The Commission in 2001 concluded that it would not impose on cable operators must-carry obligations with respect to multicast channels. *See In re Carriage of Digital Television Broadcast Signals*, First Report & Order & Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598, ¶ 57 (2001), *petitions for recon. pending* ("DTV Must-Carry Order") (finding that for a digital TV station, the primary video that is entitled to mandatory carriage includes a single programming stream and other program-related content).

have a profoundly negative effect – broadcasters will be forced to move children's programming to less attractive time slots for the child audience or to cancel local news programs.

**II. THE COMMISSION SHOULD RETURN TO ITS STAFF THE AUTHORITY TO DETERMINE WHAT LEVEL OF PREEMPTION IS ALLOWABLE, OR, ALTERNATIVELY, AMEND ITS NEW 10 PERCENT RULE TO ACCOMMODATE SPORTS BROADCASTS**

In light of its extraordinary success, the Commission on reconsideration should reinstate the flexible staff-administered approach to preemptions. As the staff's comprehensive 2001 Report concluded, "[o]verall, stations appear to be in general compliance with the Commission's rules that seek to provide better information to the public and with the processing guideline to receive staff approval of the CTA portion of their renewal applications."<sup>46</sup> The 2001 Report also concluded that "stations have sustained a reasonably consistent schedule of core programming."<sup>47</sup> There is simply no justification for jettisoning the prior approach in favor of the 10 percent preemption rule. Therefore, the Commission should return to its staff the authority to determine what level of preemption is allowable for analog broadcasters and extend such authority to the digital world as well.

Alternatively, the Commission should amend the strict 10 percent rule to better reflect the realities broadcasters face by providing greater programming flexibility. The Commission has not articulated a need for radical change and, without modification, broadcasters will no longer be able to provide programming at the optimal time to reach children. In fact, the FCC's prior reports on preemption practices suggest the system is

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<sup>46</sup> 2001 Report, ¶ 49.

<sup>47</sup> *Id.*

working well. As we shall demonstrate below, the FCC can and should amend its rule to accommodate "two all-American priorities"<sup>48</sup> (children and sports) and permit occasional sports preemptions by codifying certain aspects of the staff's flexible administration of the preemption rule through the Network Letters. Given that many stations now offer local news on weekends, moreover, a flexible approach to preemptions will accommodate a third highly important public interest objective: serving the news and information needs of local communities.

Networks schedule most children's programming on Saturday mornings or early Saturday afternoons because they have determined that this is the best time to reach the intended audience.<sup>49</sup> Unfortunately, as noted above, this is also when many live sporting events are broadcast. Given that sports preemptions will likely continue to exceed 10 percent for numerous broadcasters at certain times throughout the year (particularly in the West), implementation of the strict preemption standard will force broadcasters to move programming from Saturday mornings to other less-desirable times.

In adopting the new rules, the Commission assumed that "most stations currently do not preempt more than 10 percent of core programs in each calendar quarter."<sup>50</sup> While the Commission cites to the 2001 Report, it is apparent that the Commission did not fully consider its findings. As noted above, the 2001 Report confirmed that three of the networks had quarters where the preemption rate exceeded 10 percent and the highest

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<sup>48</sup> 1997 NBC Letter (Commissioner Ness, concurring).

<sup>49</sup> 2001 Report, ¶ 33.

<sup>50</sup> Report & Order, ¶ 42.

quarterly preemption rate was 24.9 percent.<sup>51</sup> In particular, stations in the West were required to preempt more than 10 percent of their children's programming to accommodate the Olympics, NFL games and other sports. The new rule simply makes Saturday children's television impossible for many licensees affiliated with large networks.

Moreover, preemption patterns in recent years do not differ significantly from the earlier studies. The Networks commissioned Economists Incorporated to analyze the data for the most recent television season for stations affiliated with the Networks (as reflected in the Children's Television Reports for the fourth quarter of 2003 through the third quarter of 2004).<sup>52</sup> The EI Study found that many stations are still forced to preempt greater than 10 percent of their programs.<sup>53</sup>

As shown in Figure 1 below, NBC stations had preemption rates in excess of 20 percent in all time zones in the quarter ending September 2004 due to extensive Olympics coverage. (That the Olympics only occur for two or three weeks every two years means that this programming will continue to pose biennial issues for NBC stations.) FOX stations in the Pacific time zone were forced to preempt more than 15 percent of their children's television programming during the quarter ending June 2004 to accommodate Major League Baseball coverage, and CBS stations in the West had a preemption rate of 10.9 percent during the quarter ending December 2003 due to NFL coverage.

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<sup>51</sup> 2001 Report, ¶ 30.

<sup>52</sup> See study attached hereto as Exhibit A ("EI Study").

<sup>53</sup> *Id.* at Figure 1 (reproduced in the text).

**Figure 1**

**Percentage of Core Children's Programming Minutes Preempted**

**CBS**

<b>Time Zone</b>	<b>Quarter Ending</b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Central	5.4%	1.1%	1.0%	2.5%	2.5%
East	5.3%	4.1%	1.4%	3.4%	3.6%
Mountain	7.2%	7.4%	1.8%	6.9%	5.8%
Pacific	10.9%	10.0%	1.8%	7.3%	7.5%
Nationwide	6.3%	4.1%	1.4%	4.0%	3.9%

**FOX**

<b>Time Zone</b>	<b>Quarter Ending</b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Central	0.6%	0.4%	1.9%	1.7%	1.2%
East	0.3%	0.7%	2.0%	1.5%	1.1%
Mountain	2.0%	1.6%	6.1%	6.8%	4.3%
Pacific	4.9%	3.0%	15.0%	8.7%	7.8%
Nationwide	1.2%	1.0%	4.0%	2.9%	2.3%

**NBC**

<b>Time Zone</b>	<b>Quarter Ending</b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Central	4.5%	2.6%	9.9%	22.8%	9.9%
East	4.0%	2.4%	9.7%	22.4%	9.6%
Mountain	9.1%	5.4%	13.8%	28.6%	14.4%
Pacific	11.0%	7.4%	13.3%	20.1%	12.9%
Nationwide	5.7%	3.5%	10.8%	23.1%	10.7%

**3 Network Average**

<b>Time Zone</b>	<b>Quarter Ending</b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Nationwide	4.6%	2.9%	5.6%	10.7%	5.9%

Furthermore, for each of the Networks, 50 percent to as many as 100 percent of Pacific time zone affiliates exceeded the 10 percent limit in at least one quarter.<sup>54</sup> As Figure 2 below demonstrates, 100 percent of NBC stations nationwide in the quarter ending September 2004, for example, had preemption rates exceeding 10 percent. In the quarter ending June 2004, 50 percent of FOX stations in the Pacific time zone had preemption rates exceeding 10 percent. And in the quarter ending December 2003, 70 percent of CBS stations in the Pacific time zone had preemption rates in excess of 10 percent.

**Figure 2**

**Percentage of Stations with Preemption Rates Exceeding 10%**

**CBS**

<b>Time Zone</b>	<b><u>Quarter Ending</u></b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Central	0%	0%	0%	0%	0%
East	10%	10%	0%	10%	0%
Mountain	30%	40%	0%	20%	10%
Pacific	70%	50%	0%	10%	10%
Nationwide	16%	15%	0%	7%	2%

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<sup>54</sup> *Id.* at Figure 2 (reproduced in the text).

## FOX

Time Zone	<u>Quarter Ending</u>				Annual
	Dec-03	Mar-04	Jun-04	Sep-04	
Central	0%	0%	0%	0%	0%
East	0%	0%	0%	0%	0%
Mountain	0%	0%	20%	10%	0%
Pacific	20%	0%	50%	30%	30%
Nationwide	2%	0%	8%	5%	4%

## NBC

Time Zone	<u>Quarter Ending</u>				Annual
	Dec-03	Mar-04	Jun-04	Sep-04	
Central	10%	0%	40%	100%	40%
East	0%	0%	30%	100%	40%
Mountain	30%	20%	70%	100%	60%
Pacific	70%	10%	90%	100%	80%
Nationwide	16%	4%	46%	100%	47%

## 3 Network Average

Time Zone	<u>Quarter Ending</u>				Annual
	Dec-03	Mar-04	Jun-04	Sep-04	
Nationwide	12.0%	6.4%	19.3%	40.6%	19.3%

The findings in the EI Study confirm that if the proposed rule is not amended, many stations will have to move their children's programming to times when fewer children will be in the audience.<sup>55</sup>

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<sup>55</sup> The Commission noted that its "current 3 hours per week programming processing benchmark is averaged over a six-month period in order to provide broadcasters with scheduling flexibility." Report & Order, ¶ 22. Perhaps the Commission intends to permit averaging of the number of preemptions over 6 months, as in the case of the processing guidelines. However, even the ability to preempt 2.6 episodes (26 weeks times 10 percent equals 2.6, or 3 episodes if rounding is permitted) over two quarters would not accommodate many stations

The inflexibility of the new rule will pose particular difficulties for stations airing Core Programming later in the day on weekends. As noted above, in its 2001 Report, the Commission's staff observed the highest preemption rate (18 percent) for programs scheduled during the weekend noon hour (the tail end of the children's block for many stations). This pattern of higher preemptions later in the day no doubt holds true today (given that many sporting events still begin mid-day or earlier in the Pacific time zone) and means that overall preemption rates for an entire children's programming block do not reflect either the stations' general success in avoiding preemptions of E/I programming or, conversely, the serious problem the new rule presents for whatever E/I program(s) stations schedule mid-day. Even if a station otherwise enjoys a relatively low preemption rate on average, the latest show in the day may be preempted more than 10 percent of the time. This means that a station's generally diligent and successful efforts not to preempt children's programming will be of no avail under the new rule since it may be impossible, consistent with a network sports schedule, to bring the preemption rate under 10 percent for the later-scheduled program(s). As a consequence, that station may be unable to meet the processing guideline of three hours of "regularly scheduled" E/I programming.

Given that many stations now have expanded their weekend morning local news offerings, moreover, there are simply fewer time slots to schedule children's programming. For example, on CBS's owned and operated station in New York City, WCBS-TV, the entire program schedule on Saturdays and Sundays between 7 a.m. and

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during certain times of the year, especially with regard to special multi-day, international sporting events like the Olympics. *See* EI Study. In any event, neither the text of the revised rule nor the Report & Order indicates that averaging of preemptions and rounding up would be permissible.

noon currently consists of children's programming, local news (*CBS 2 News*), national news (*Early Show*, *CBS Sunday Morning*), local public affairs programming (*Kirtzman & Company* and *Sunday Edition*), and national public affairs programming (*Face the Nation*). The noon to 1 p.m. hour on Saturdays also contains children's programming but is the typical time period when sports require preemption. When that hour is preempted, CBS usually reschedules the children's programming to 9-10 a.m. Saturday, preempting local and national news. To schedule this children's hour earlier would mean the loss of the 9-10 a.m. hour of news on a permanent basis – or the loss of some other hour of news or public affairs programming. The Commission's flexible approach to preemptions works so well because it allows for both news and children's programming on a regular basis, with only the occasional loss of news when network sports causes a preemption of children's programming that is then rescheduled in place of local and national news. The Saturday and Sunday morning schedules overall show that WCBS-TV is providing valuable programming in the public interest throughout the weekend morning hours, and removing the station's flexibility to preempt children's programming when necessary would be damaging to the public interest.

In addition to ignoring the preemption record for sports, the FCC has apparently premised the new strict rule on a mistaken belief that digital stations will offer multicast channels and that alternative program streams will achieve MVPD carriage comparable to a station's primary stream.<sup>56</sup> In fact, very few stations are multicasting at present and there is no guarantee that additional streams will be carried on a comparable basis.<sup>57</sup>

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<sup>56</sup> Report & Order, ¶ 40.

<sup>57</sup> See DTV Must-Carry Order, ¶ 57. Moreover, multicast channels are very likely to be unprofitable in the early years of operation and unable to support even

Therefore, multicasting offers very little relief from the new rule for digital broadcasters and no relief for analog broadcasters. The FCC's reliance on the possibility of multicasting with comparable coverage is far too ephemeral a basis for imposing the new restriction.

Accordingly, the Networks request that the Commission reinstate the staff's authority to determine whether preemptions are consistent with the CTA. Alternatively, the Networks urge the Commission to amend the exemption from the 10 percent rule, which is now limited to breaking news to accommodate sports preemptions for analog and digital broadcasters if the following guidelines are met:

All stations should be permitted to count a preempted children's core program toward a station's core programming obligation if the program is rescheduled within one week to a fixed "second home," or, in isolated circumstances, at any time during core hours within two weeks before or after the preemption. In addition, preemptions for major multi-day, international sporting events, such as the Olympics or Wimbledon, should be exempt from the limit.

Stations should be required to (1) provide publishers of program guides with the alternate date/time in advance of any core programming preemption for sports events; and (2) notify viewers by means of a crawl or other reasonable method during the previously scheduled episode and at the time of preemption of the alternate date/time when the preempted show will air.

In sum, there is simply no justification for the new 10 percent preemption rule and, on reconsideration, the Commission should return to its staff the ability to determine what level of preemption is allowable for analog broadcasters and extend such staff

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minimal amounts of Core Programming. Imposition of Core Programming obligations on nascent multicast channels, therefore, could discourage broadcasters from experimenting with and developing multicast services. Accordingly, the Commission should reconsider its decision to impose Core Programming requirements on digital channels (other than the primary channel) and instead should phase-in a requirement over a several year period.

authority to digital broadcasters. Alternatively, the Commission should modify the new 10 percent rule as described above to better accommodate the difficult scheduling issues presented by sports programming.

**III. ADOPTION OF THE NEW 10 PERCENT PREEMPTION RULE VIOLATES THE ADMINISTRATIVE PROCEDURE ACT BECAUSE THE COMMISSION FAILED TO PROVIDE NOTICE THAT THE NEW RULE WOULD BE APPLIED TO ANALOG BROADCASTERS**

The Administrative Procedure Act ("APA") requires agencies to publish a notice of proposed rulemaking that contains "either the terms or substance of the proposed rule or a description of the subjects and issues involved."<sup>58</sup> Failure to provide the requisite notice is grounds for reversal by a reviewing court.<sup>59</sup>

While the NPRM did discuss the possibility that the Commission might adopt a clearer policy regarding preemptions, this discussion was expressly limited to preemptions in the *digital context*. Indeed, the Commission clarified in the introduction to the NPRM that it sought comment on issues arising in both the analog and digital context *only* in the following sections of the NPRM: Section D (regarding promotions), Section E (regarding other steps to improve educational programming) and "the section entitled 'Definition of Commercial Matter'".<sup>60</sup> Preemption is addressed in Section B of the NPRM and, therefore, does not fall within the limited set of issues arising in both the analog and digital contexts.

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<sup>58</sup> 5 U.S.C. § 553(b)(3).

<sup>59</sup> *See, e.g., Sprint Corporation v. Federal Communications Commission*, 315 F.3d 369 (2003) (reversing FCC's adoption of rules governing the means by which payphone service providers are compensated because the agency failed to provide adequate notice that the rules would be adopted).

<sup>60</sup> NPRM, ¶ 1, n.1.

The preemption discussion set forth in Section B of the NPRM, moreover, expressly states that the Commission sought comment only on "how the children's educational and informational programming obligation will apply in the *digital age* . . ." <sup>61</sup> Furthermore, when discussing possible changes to its policies concerning preemptions, the Commission wondered whether it "should adopt another approach to preemptions *in the digital context* to ensure that our preemption policy does not thwart the goals of the CTA." <sup>62</sup> And, as noted above, the apparent basis for the Commission seeking comment on the preemption rule at all in the NPRM was that "DTV broadcasters will have the option of airing multiple streams of programming simultaneously, thus increasing their flexibility to either avoid preempting core programs or to reschedule such programs to a regular 'second home.'" <sup>63</sup> In short, the Commission very clearly intended any rule it might adopt regarding preemptions to apply only to digital broadcasting.

Notwithstanding the Commission's clear intentions in the NPRM, the agency inexplicably applied the new 10 percent limit to both analog and digital broadcasters. <sup>64</sup> Given that the Commission failed to provide the requisite notice that the new rule might apply to analog broadcasters, however, application of the new 10 percent preemption rule to analog broadcasters violates the APA and the rule should be rescinded.

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<sup>61</sup> *Id.* ¶ 25.

<sup>62</sup> *Id.* ¶ 28 (emphasis added).

<sup>63</sup> *Id.*

<sup>64</sup> Report & Order, ¶ 41.

#### **IV. CONCLUSION**

The Commission's new 10 percent preemption rule ignores the successful history of flexible implementation that served its children's programming objectives well by accommodating difficult scheduling realities in a way that was sensitive to First Amendment values. The significant record compiled by the agency since the rule's implementation makes clear that licensee flexibility not only accommodates sports broadcasts, it meets the needs of the child audience. Accordingly, on reconsideration the Commission should reinstate the staff's authority to determine what level of preemptions is allowable (for all broadcasters), or, alternatively, amend its newly adopted preemption rule in a manner similar to its prior flexible network letter rulings. In any event, the

Commission should rescind the new rule as to analog broadcasters since its adoption violated the notice requirements of the APA.

Respectfully submitted,

Ellen S. Agress  
Maureen A. O'Connell  
Fox Entertainment Group, Inc.  
444 N. Capitol Street, N.W.  
Washington, DC 20001  
(202) 824-6502

FOX ENTERTAINMENT GROUP, INC.

NBC UNIVERSAL, INC.

VIACOM

F. William LeBeau  
NBC Universal, Inc.  
1299 Pennsylvania Avenue, NW  
11<sup>th</sup> Floor  
Washington, DC 20004  
(202) 637-4535

By: /s/ John C. Quale

John C. Quale  
Brian D. Weimer  
Malcolm J. Tuesley  
of

Anne Lucey  
Viacom  
1501 M Street, NW  
Washington, DC 20005  
(202) 785-7300

Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Avenue, NW  
Washington, DC 20005  
(202) 371-7000

Their Attorneys

Nicholas E. Poser  
CBS Broadcasting Inc.  
1515 Broadway, 49<sup>th</sup> Floor  
New York, NY 10036  
(212) 846-3573

February 2, 2005

**EXHIBIT A**

*Preemption of Core Children's Programming  
Among CBS, FOX and NBC Affiliated Stations*

Michael G. Baumann and Kent W Mikkelsen  
Economists Incorporated

February 2, 2005

# **Preemption of Core Children's Programming Among CBS, FOX and NBC Affiliated Stations**

Michael G. Baumann and Kent W Mikkelsen  
Economists Incorporated

February 2, 2005

## **Summary**

Counsel for Fox Entertainment Group, Inc., NBC Universal, Inc. and Viacom requested that Economists Incorporated prepare a statistically valid estimate of certain measures of preemption activity among their affiliate stations. Figure 1 presents the average percentage of core children's programming preempted. Estimates are given separately for each network, for each time zone and for each quarter of the 2003-2004 broadcast year. Figure 2 presents the average percentage of stations with preemption rates exceeding 10 percent. In each case, preemption excludes preemption for "breaking news." Figures 3 and 4 present the standard errors of the estimates in Figures 1 and 2, respectively.

## **Economists Incorporated**

Economists Incorporated is an economic research and consulting firm located in Washington DC and the San Francisco Bay area. The authors have participated in numerous studies regarding broadcast and cable television and radio presented to the FCC. Both authors hold PhD degrees in economics and are conversant with the statistical techniques used in this paper.

## **Sample**

A current list of all stations affiliated with the CBS, FOX and NBC networks was compiled from network websites. Both owned-and-operated stations and stations not owned by the networks were included in the list. The stations for each network were then

stratified according to time zone. Stations in Alaska and Hawaii were excluded. Within each time zone, ten stations were chosen at random.<sup>1</sup>

## **Data**

A copy of the FCC 398 Report, which reports preemption of core children’s programming, was retrieved for each of the stations in the sample for the quarters ending December 2003, March 2004, June 2004 and September 2004.<sup>2</sup> From these reports we captured the following data for each program listed as core children’s programming: length of program in minutes, total times aired at the regularly scheduled time, number of times preempted, and number of times preempted for “breaking news.” From these data, we calculated the total number of scheduled core children’s programming minutes, the number of minutes preempted for reasons other than “breaking news,” and the percentage of scheduled minutes that were preempted for other than “breaking news.” (Throughout the remainder of this paper, references to preemption should be understood to exclude preemptions for breaking news.) We also noted whether the preemption minutes so measured exceeded 10 percent of the scheduled core children’s programming minutes in the quarter.

## **Statistics**

A simple average of the percentage of scheduled core children’s programming minutes that were preempted was calculated across the stations in each quarter, separately for each time zone and each network. These averages are presented in Figure 1. Each average is an estimate of the percentage preemption among all stations affiliated with the corresponding network located in the corresponding time zone in that quarter. For each network and time zone, the average preemption percentage for the entire year is reported in the last column of each panel in Figure 1.

To estimate the average preemption rate among all of a network’s stations in all four time zones, it is necessary to weight the sample averages of the four time zones by

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<sup>1</sup> Stations with the designation LP (low power) or CA (Class A) were excluded from the sampled stations.

<sup>2</sup> For a few of the sampled stations, the FCC 398 Report was not available from the FCC website for one or more of the quarters studied. These stations were replaced in the sample by other stations chosen at random from the remaining stations in the time zone.

the number of stations the network has in each time zone. For example, of the 169 FOX affiliated stations, the stations located in the Eastern, Central, Mountain and Pacific time zones make up 40, 39, 9 and 12 percent, respectively. These percentages are the time zone weights for FOX. To estimate the average preemption rate for all FOX stations in a particular quarter, the time zone preemption averages for the Eastern, Central, Mountain and Pacific time zones in the quarter were multiplied by the corresponding FOX time zone weights and then summed. Such averages are reported on the last line of each panel in Figure 1.

The average preemption rate for each network, combining all four quarters and all four time zones, is obtained by multiplying the station weights by the annual average preemption rates. These are shown in the last row, last column of each panel in Figure 1. At the bottom of Figure 1, the average preemption rate across all stations in all three networks is shown for each quarter and for the entire year.

Similar methods were used in calculating Figure 2. For each network, separately for each quarter and each time zone, the estimated percentage of stations preempting more than 10 percent of the scheduled core children's programming minutes is simply the number of sample stations exceeding the 10-percent level divided by the number of stations in the sample for that network-time zone-quarter combination. Averages across quarters, across time zones, and across networks were calculated as described for Figure 1.

Figures 3 and 4 report the estimated standard errors surrounding each of the averages reported in Figures 1 and 2, respectively. These can be used to calculate confidence intervals around the averages in Figures 1 and 2. For instance, the estimated standard error around the average preemption rate of 5.9% for all three networks for the entire year is 0.2%. With a 95 percent probability, the population mean preemption rate will fall within approximately two standard errors of the sample mean. Thus, the 95-percent confidence interval for the average annual preemption rate across CBS, FOX and NBC is approximately 5.5% to 6.3%.

**Figure 1**

**Percentage of Core Children's Programming Minutes Preempted**

**CBS**

<b>Time Zone</b>	<b><u>Quarter Ending</u></b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Central	5.4%	1.1%	1.0%	2.5%	2.5%
East	5.3%	4.1%	1.4%	3.4%	3.6%
Mountain	7.2%	7.4%	1.8%	6.9%	5.8%
Pacific	10.9%	10.0%	1.8%	7.3%	7.5%
Nationwide	6.3%	4.1%	1.4%	4.0%	3.9%

**FOX**

<b>Time Zone</b>	<b><u>Quarter Ending</u></b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Central	0.6%	0.4%	1.9%	1.7%	1.2%
East	0.3%	0.7%	2.0%	1.5%	1.1%
Mountain	2.0%	1.6%	6.1%	6.8%	4.3%
Pacific	4.9%	3.0%	15.0%	8.7%	7.8%
Nationwide	1.2%	1.0%	4.0%	2.9%	2.3%

**NBC**

<b>Time Zone</b>	<b><u>Quarter Ending</u></b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Central	4.5%	2.6%	9.9%	22.8%	9.9%
East	4.0%	2.4%	9.7%	22.4%	9.6%
Mountain	9.1%	5.4%	13.8%	28.6%	14.4%
Pacific	11.0%	7.4%	13.3%	20.1%	12.9%
Nationwide	5.7%	3.5%	10.8%	23.1%	10.7%

**3 Network Average**

<b>Time Zone</b>	<b><u>Quarter Ending</u></b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Nationwide	4.6%	2.9%	5.6%	10.7%	5.9%

**Figure 2**

**Percentage of Stations with Preemption Rates Exceeding 10%**

**CBS**

<b>Time Zone</b>	<b><u>Quarter Ending</u></b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Central	0%	0%	0%	0%	0%
East	10%	10%	0%	10%	0%
Mountain	30%	40%	0%	20%	10%
Pacific	70%	50%	0%	10%	10%
Nationwide	16%	15%	0%	7%	2%

**FOX**

<b>Time Zone</b>	<b><u>Quarter Ending</u></b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Central	0%	0%	0%	0%	0%
East	0%	0%	0%	0%	0%
Mountain	0%	0%	20%	10%	0%
Pacific	20%	0%	50%	30%	30%
Nationwide	2%	0%	8%	5%	4%

**NBC**

<b>Time Zone</b>	<b><u>Quarter Ending</u></b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Central	10%	0%	40%	100%	40%
East	0%	0%	30%	100%	40%
Mountain	30%	20%	70%	100%	60%
Pacific	70%	10%	90%	100%	80%
Nationwide	16%	4%	46%	100%	47%

**3 Network Average**

<b>Time Zone</b>	<b><u>Quarter Ending</u></b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Nationwide	12.0%	6.4%	19.3%	40.6%	19.3%

**Figure 3**

**Percentage of Core Children's Programming Minutes Preempted  
Standard Error of Mean**

**CBS**

<b>Time Zone</b>	<b><u>Quarter Ending</u></b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Central	0.6%	0.2%	0.7%	0.4%	0.3%
East	1.0%	1.8%	0.6%	1.1%	0.7%
Mountain	1.0%	1.4%	0.5%	0.8%	0.8%
Pacific	1.1%	0.9%	0.6%	0.5%	0.6%
Nationwide	0.5%	0.7%	0.4%	0.4%	0.3%

**FOX**

<b>Time Zone</b>	<b><u>Quarter Ending</u></b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Central	0.5%	0.3%	0.8%	0.7%	0.5%
East	0.3%	0.4%	0.5%	0.4%	0.3%
Mountain	0.4%	0.3%	0.8%	0.5%	0.3%
Pacific	0.9%	0.6%	2.8%	1.5%	1.3%
Nationwide	0.2%	0.2%	0.5%	0.4%	0.3%

**NBC**

<b>Time Zone</b>	<b><u>Quarter Ending</u></b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Central	1.1%	0.6%	1.0%	1.8%	0.8%
East	0.8%	0.5%	0.4%	1.2%	0.5%
Mountain	2.0%	1.4%	1.4%	3.5%	1.7%
Pacific	1.1%	0.6%	1.4%	1.3%	0.7%
Nationwide	0.6%	0.4%	0.5%	0.9%	0.4%

**3 Network Average**

<b>Time Zone</b>	<b><u>Quarter Ending</u></b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Nationwide	0.3%	0.3%	0.3%	0.4%	0.2%

**Figure 4**

**Percentage of Stations with Preemption Rates Exceeding 10%  
Standard Error of Mean**

**CBS**

<b>Time Zone</b>					
Central	0.0%	0.0%	0.0%	0.0%	0.0%
East	9.3%	9.3%	0.0%	9.3%	0.0%
Mountain	11.7%	12.5%	0.0%	10.2%	7.6%
Pacific	11.5%	12.5%	0.0%	7.5%	7.5%
Nationwide	4.0%	4.1%	0.0%	3.8%	1.3%

**FOX**

<b>Time Zone</b>					
Central	0.0%	0.0%	0.0%	0.0%	0.0%
East	0.0%	0.0%	0.0%	0.0%	0.0%
Mountain	0.0%	0.0%	7.7%	5.8%	0.0%
Pacific	9.6%	0.0%	12.1%	11.1%	11.1%
Nationwide	1.2%	0.0%	1.6%	1.5%	1.4%

**NBC**

<b>Time Zone</b>	<b>Quarter Ending</b>				<b>Annual</b>
	<b>Dec-03</b>	<b>Mar-04</b>	<b>Jun-04</b>	<b>Sep-04</b>	
Central	9.4%	0.0%	15.3%	0.0%	15.3%
East	0.0%	0.0%	14.3%	0.0%	15.2%
Mountain	12.2%	10.7%	12.2%	0.0%	13.1%
Pacific	11.8%	7.7%	7.7%	0.0%	10.3%
Nationwide	4.1%	1.7%	8.1%	0.0%	8.4%

**3 Network Average**

<b>Time Zone</b>					
Nationwide	2.1%	1.5%	3.0%	1.4%	3.1%