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

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

SECOND ORDER ON RECONSIDERATION AND SECOND REPORT AND ORDER

Adopted: September 26, 2006

Released: September 29, 2006

By the Commission: Chairman Martin, Commissioners Copps, Adelstein, Tate and McDowell issuing separate statements.

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I. INTRODUCTION

1. In this *Second Order on Reconsideration and Second Report and Order* (“*Second Order*”)¹ we resolve issues regarding the obligation of television broadcasters to protect and serve children in their

¹ In the first *Order on Reconsideration* in this proceeding, the Commission deferred the effective date of some of the rules initially adopted in the proceeding. See *Order on Reconsideration*, 20 FCC Rcd 2055 (2005). See also footnote 21, *infra*.

audience. We address matters related to two areas: the obligation of television broadcast licensees to provide educational and informational programming for children and the requirement that television broadcast licensees and cable operators protect children from excessive and inappropriate commercial messages. Some of the rules and policies adopted herein apply only to digital broadcasters, while others apply to both analog and digital broadcasters as well as cable operators.² Our goals in resolving these issues are to provide television broadcasters with guidance regarding their obligation to serve children as we transition from an analog to a digital television environment, update our rules protecting children from overcommercialization in children's programming, and improve our children's programming rules and policies.

2. Specifically, this *Second Order* makes certain modifications to the rules and policies adopted in our September 9, 2004 *Report and Order and Further Notice of Proposed Rule Making* ("2004 Order") in this proceeding.³ The modifications we make today respond to petitions for reconsideration filed in response to the rules as well as a Joint Proposal of Industry and Advocates on Reconsideration of Children's Television Rules ("Joint Proposal") filed by a group of cable and broadcast industry representatives and children's television advocates, among others.⁴

3. Our decision today does not alter the new children's core programming "multicasting" rule adopted in the *Order*,⁵ but does clarify the way in which repeats of core programs will be counted under the new rule. We do not make substantial changes to the four-prong website rule adopted in the *Order*, but do amend the host selling restrictions adopted in the *Order* to apply those restrictions less broadly and to exempt certain third party websites from the host selling restriction. We also revise the definition of "commercial time" adopted in the *Order* to limit the kinds of promotions of children's programs that must be counted under the advertising rules adopted in the *Order*. In addition, with regard to scheduling of core children's programming, we vacate the percentage cap on the number of permissible core program preemptions adopted in the *Order* and return to our prior practice of addressing the number of preemptions and rescheduling of core programming on a case-by-case basis. These modifications will serve the public interest by ensuring an adequate supply of children's educational and informational programming as we transition to digital television technology, and protecting children from excessive and inappropriate commercial messages in broadcast and cable programming, without unduly impairing the scheduling flexibility of broadcasters and cable operators.

² For instance, for purposes of the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, 394, which provides the basis for these limits on children's television commercial content, "the term 'commercial television broadcast licensee' includes a cable operator, as defined in section 602 of the Communications Act of 1934 (47 U.S.C. § 522)."

³ 19 FCC Rcd 22943 (2004).

⁴ Joint Proposal of Industry and Advocates on Reconsideration of Children's Television Rules, MM Docket 00-167, filed Feb. 9, 2006. In this *Second Order*, we dismiss the petitions for reconsideration filed in response to the 2004 Order. We believe that the adoption of this *Second Order* renders the petitions moot, to the extent that the petitions are neither granted nor denied herein. Any remaining concerns can be raised on reconsideration of the new rules adopted in this *Second Order*.

⁵ For those broadcasters that choose to "multicast" on their digital channel – i.e., provide multiple programming streams rather than the one stream possible in an analog world – the new rule generally provides that a broadcaster's core programming obligation increases in proportion to the amount of free programming being offered.

II. BACKGROUND

4. Television plays a major role in the lives of American children. On average, children watch almost three hours of television every day, and more than half of all children (53%) have a television in their bedrooms.⁶ Moreover, many children watch television before they are exposed to formal education. Children two to four years old watch on average two hours of television daily and a quarter of two to four year-olds have television sets in their bedrooms.⁷ By the time most American children begin the first grade, they will have spent the equivalent of at least three school years in front of the television set.⁸

5. Congress has recognized that television can benefit society by helping to educate and inform our children. As Congress has stated, “[i]t is difficult to think of an interest more substantial than the promotion of the welfare of children who watch so much television and rely upon it for so much of the information they receive.”⁹

6. In 1990, Congress enacted the Children’s Television Act of 1990 (“CTA”).¹⁰ The CTA imposes two requirements relating to children’s television programming. First, commercial television broadcast licensees and cable operators must limit the amount of commercial matter during children’s programs to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays.¹¹ Second, through its review of television broadcast license renewal applications, the Commission must consider whether commercial television licensees have served “the educational and informational needs of children through the licensee’s overall programming, including programming specifically designed to serve such needs.”¹²

7. In 1996, the Commission adopted a *Report and Order* strengthening its children’s educational and informational television programming requirements enforcing the CTA.¹³ Among other things, the Commission adopted a processing guideline pursuant to which broadcasters that aired at least three hours per week of programming “specifically designed” to serve the educational and informational needs of children ages 16 and under (otherwise known as “core” programming) could receive staff-level approval

⁶ Donald F. Roberts *et al.*, Kaiser Family Foundation, *Kids & Media @ The New Millennium* (1999) at 20, available at <http://www.kff.org>.

⁷ *Id.* at 2, 12.

⁸ Newton C. Minow and Craig L. LaMay, *Abandoned in the Wasteland: Children, Television, and the First Amendment*, Hill & Wang (1995) at 18; Daniel Anderson, *The Impact on Children’s Education: Television’s Influence on Cognitive Development*, U.S. Department of Education, Working Paper No. 2 (1988) at 12-13.

⁹ S. Rep. No. 227, 101st Cong., 1st Sess. 17 (1989) (“Senate Report”); H. Rep. 385, 101st Cong., 1st Sess. 11 (1989) (“House Report”).

¹⁰ Children’s Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b, 394.

¹¹ *Id.* at 303a.

¹² *Id.* at 303b.

¹³ *Policies and Rules Concerning Children’s Television Programming, Revision of Programming Policies*, 11 FCC Rcd 10660 (1996) (“1996 Order”).

of the CTA portion of their license renewal application.¹⁴ Licensees were required to identify core programming at the time it was aired (in a manner left to the discretion of the licensee) and in information provided to publishers of television program guides. Licensees were also required to prepare and place in their public inspection files a quarterly Children's Television Programming Report (FCC Form 398) identifying their core programming and other efforts to comply with their educational programming obligations.

8. In the *2004 Order*, the Commission updated the children's television rules and policies to ensure that they continue to serve the interests of children and parents as the country transitions from analog to digital television. Among other things, the Commission revised the three-hour core programming processing guideline as it applies to DTV broadcasters that choose to multicast.¹⁵ Specifically, the *2004 Order* increased the core programming benchmark for digital broadcasters in a manner roughly proportional to the increase in free video programming offered by the broadcaster on multicast channels.¹⁶ The *2004 Order* also permitted the display of Internet website addresses during children's programming only if the website meets a four-prong test limiting commercial matter on the site, and prohibited broadcasters from displaying website addresses during both children's programs and commercials appearing in those programs if the website uses host selling.¹⁷ The *2004 Order* also imposed a percentage cap on the number of preemptions of core children's programs and revised the definition of "commercial matter" for purposes of the commercial limits to include promotions of other television programs unless they are children's educational or informational programs.¹⁸

9. Several petitions for reconsideration of the *2004 Order* were filed.¹⁹ In addition, petitions for judicial review of the *2004 Order* and other requests for relief are pending before the U.S. Court of Appeals for the Sixth Circuit.²⁰

¹⁴ Alternatively, a broadcaster can receive staff-level renewal by showing 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. 47 C.F.R. § 73.671, Note 2. (Note 2 was redesignated 47 C.F.R. § 73.671(d) in the *2004 Order*, see 70 FR 25-01 (Jan. 3, 2005).) In this regard, specials, public service announcements (PSAs), short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children can count toward the three hour processing guideline. Licensees not meeting these criteria will have their license renewal applications referred to the Commission. At a Commission-level review, licensees can demonstrate compliance with the CTA by relying, in part, for example, on sponsorship of core programs on other stations in the market that increases the amount of core educational and informational programming on the station airing the sponsored program or on special nonbroadcast efforts which enhance the value of children's educational and informational programming. *Id.*

¹⁵ *2004 Order* at 22950.

¹⁶ *Id.*

¹⁷ *Id.* at 22961-62

¹⁸ *Id.* at 22958, 22963

¹⁹ A list of petitioners is attached hereto at Appendix A.

²⁰ In late September and early October 2005, the Office of Communication of the United Church of Christ ("UCC") and Viacom withdrew their participation in reconsideration petitions and filed separate petitions for judicial review of the *2004 Order*. UCC filed a petition for review of the *Order* in the U.S. Court of Appeals for the Sixth Circuit (continued....)

10. On December 16, 2005, the Commission adopted an order extending the effective date of most of the rules adopted in the 2004 Order until sixty days after publication in the Federal Register of an order on reconsideration in this proceeding.²¹ The Commission noted that representatives of the broadcast and cable industries and public interest groups involved in children's television issues had been meeting in an attempt to resolve their differences regarding the new rules that are the subject of the litigation.²² The Commission further noted that those parties had informed the Commission that they had reached an agreement on a recommendation that, if adopted, would resolve their concerns with the Commission's rules. In light of that agreement and the issues raised in the pending petitions for reconsideration, the Commission found that the public interest would be served by delaying the effective date of the new rules. The Commission noted that it would seek comment on the parties' joint recommendation separately.²³

11. On February 9, 2006, the parties involved in negotiations regarding the 2004 Order filed with the Commission the Joint Proposal, which contains the parties' recommended modifications to the rules adopted in the 2004 Order. The parties to the Joint Proposal include the four major broadcast networks, major children's programming networks, cable operators, advertisers, and a coalition of children's advocacy groups.²⁴ The Commission issued a *Second Further Notice of Proposed Rule* (Continued from previous page)

on September 26, 2005. *Office of Communication of the United Church of Christ, Inc. v. FCC*, No. 05-4189 (6th Cir., filed Sept. 26, 2005). Viacom filed a petition for review of the Order in the U.S. Court of Appeals for the D.C. Circuit on October 3, 2005. *Viacom, Inc. v. FCC*, No. 05-1387 (D.C. Cir., filed Oct. 3, 2005). Disney subsequently filed a petition for writ of mandamus with the D.C. Circuit requesting that the Commission be directed to act on the petitions for reconsideration or that the Court stay the rules until the Commission decides the reconsideration petitions. Viacom then also asked the D.C. Circuit to stay the rules until it resolved Viacom's petition for review. On November 16, 2005, the D.C. Circuit transferred both Viacom's petition and Disney's petition to the Sixth Circuit. Order, *In re Walt Disney Company*, No. 05-1393 (D.C. Cir. Nov. 16, 2005); Order, *In re Viacom, Inc.*, No. 05-1387 (D.C. Cir. Nov. 16, 2005).

²¹ *Order Extending Effective Date*, 20 FCC Rcd 20611 (2005). Originally, the rules relating to the display of Internet website addresses in children's programming were scheduled to become effective on February 1, 2005. After a number of broadcasters and cable operators expressed concern that they would have difficulty complying with the new website rules by this date, however, the Commission deferred the effective date of those rules until January 1, 2006, consistent with the effective date of many of the other requirements in the 2004 Order. See *Order on Reconsideration*, 20 FCC Rcd 2055 (2005). The decision to apply the commercial limits and policies to all digital video programming directed to children ages 12 and under, whether that programming is aired on a free or pay digital stream, went into effect February 3, 2005. See *Order on Reconsideration*, 20 FCC Rcd 2055, 2056 (2005). The rules regarding on-air identification of core children's programming became effective September 19, 2005, after approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995. See Public Notice, DA 05-2309 (rel. August 18, 2005). Those rules that are already in effect are not affected by this *Second Order*.

²² In light of the Commission's December 16, 2005 *Order Extending Effective Date*, all of the petitions involved in this litigation as referenced in footnote 20 are currently being held in abeyance by the Sixth Circuit.

²³ *Order Extending Effective Date* at 20612.

²⁴ The parties to the Joint Proposal are: Viacom, Inc., CBS Corporation, The Walt Disney Company, Fox Entertainment Group, Inc., NBC Universal, Inc. and NBC Telemundo License Co., Time Warner Inc., 4Kids Entertainment Inc., Discovery Communications, Inc., the Association of National Advertisers, Inc., The Office of Communication of the United Church of Christ, Inc., Children Now, the National Parent Teacher Association, the American Academy of Pediatrics, Action Coalition for Media Education, and the American Psychological Association.

Making ("Second FNPRM") on March 24, 2006, seeking comment "on the rules and policies adopted in the [2004] Order in light of the recommendations reflected in the Joint Proposal" and "asked for any alternative modifications" to the 2004 rules, in addition to the modifications proposed by the Joint Proposal.²⁵ Among the commenters supporting adoption of the Joint Proposal are two major industry trade associations, the National Association of Broadcasters and the National Cable and Telecommunications Association, as well as other children's programming networks, sports interests, and children's advocacy groups.

III. DISCUSSION

12. We commend the parties to the Joint Proposal for their hard work in negotiating a compromise among a group of entities with often widely divergent views on the appropriate rules and policies in the area of children's television. Negotiation among interested parties can often be productive in achieving a workable compromise proposal consistent with the public interest on issues before the Commission, and we encourage such efforts. This private agreement has now been subject to public scrutiny and we will, of course, consider all comments in determining what rules and policies are most consistent with the statute and best serve the public interest. Based on the full record before us, we conclude that the Joint Proposal appropriately balances the concerns and needs of children and parents with those of industry, advertisers, and others, and will result in swift implementation of the rules.

13. We note that the Joint Proposal recommends only relatively minor clarifications to two of the rules adopted in the 2004 Order – the digital broadcasting processing guideline and the website address rule. While some of the comments filed in response to the Joint Proposal indicate that some parties remain concerned about aspects of the digital broadcasting processing guideline,²⁶ by and large the comments support the Joint Proposal.²⁷ In this item, we retain both the digital programming processing guideline and the website address rule with only minor modifications. These and the other modifications we make to the 2004 rules are consistent with the recommendations of the Joint Proposal and with our overall goals of ensuring the provision of sufficient children's educational programming and protecting children from excessive advertising as we transition to the digital era.

A. Digital Core Children's Programming Processing Guideline

14. As discussed above, under the core programming processing guideline adopted in 1996, analog broadcasters that air at least three hours per week of core children's educational programming are entitled to staff-level approval of the CTA portion of their license renewal application. With the advent

²⁵ 21 FCC Rcd 3642, 3643 (2006). A list of the comments and reply comments filed in response to the *Second FNPRM* is attached hereto at Appendix A.

²⁶ See Local Broadcasters Alliance Comments at 3; Belo Corp. Reply Comments at 1; Catamount Television Holdings Reply Comments at 1-2; Named State Broadcasters Associations Reply Comments at 4-7; Pappas Telecasting Companies Reply Comments at 2-3; Piedmont Television Holdings Reply Comments at 1-2. These commenters argue that the Commission either should not impose additional core programming requirements on digital multicast channels or, at least, should exempt multicast channels that offer educational, informational, and/or public interest programming. For the reasons discussed in the 2004 Order and herein, we will retain the digital core children's programming processing guideline. See 2004 Order at 22950-51.

²⁷ See, e.g., Comments of CBS Corporation, Fox Entertainment Group, Inc., NBC Universal, Inc. and NBC Telemundo License Co. ("CBS *et al.*") at 2; NAB Comments at 2; Time Warner Inc. Comments at 3; Walt Disney Company Comments at 3.

of digital broadcasting and the multicasting ability that technology offers, the Commission determined in the *2004 Order* that it would adopt a new method of quantifying the core programming guideline for digital broadcasters that choose to multicast. The Commission made clear that all digital broadcasters continue to be subject to the existing three hours per week core programming processing guideline on their main program stream. In addition, for DTV broadcasters that choose to multicast, the guideline increases in proportion to the additional hours of free programming offered on multicast channels – up to an additional three hours per week for each 24-hour free multicast program stream.²⁸ Under the revised guideline adopted in the *2004 Order*, digital broadcasters can choose to air some or all of the additional core programming on either the main stream or a multicast stream, as long as the multicast stream receives MVPD carriage comparable to the stream that generated the additional core programming obligation.²⁹

15. In order to ensure that digital broadcasters do not simply replay the same core programming in order to meet this revised processing guideline, the Commission required in the *2004 Order* that “at least 50 percent of core programming not be repeated during the same week in order to qualify as core.”³⁰ The Commission exempted from this requirement any program stream that merely time shifts the entire programming line-up of another program stream.³¹ In addition, the Commission stated that during the digital transition we would not count as repeated programming core programs that are aired on both the analog station and a digital program stream.³²

16. A number of broadcast interests argued on reconsideration that requiring additional programming obligations for multicast streams would stifle the deployment of specialized channels.³³ Broadcasters also claimed that there is no record evidence of a failure by commercial TV stations to meet children’s educational programming needs.³⁴ To counter the disincentive to air multicast channels, some petitioners supported an exemption for digital programming streams that carry non-entertainment

²⁸ *2004 Order* at 22950-22951. The revised guideline for DTV broadcasters works as follows. Digital broadcasters continue to be subject to the existing three hours per week core programming processing guideline on their main program stream. DTV broadcasters that choose to provide additional streams of free video programming are subject to an additional ½ hour per week of core programming for every increment of 1 to 28 hours of free video programming provided in addition to the main program stream. Thus, for example, digital broadcasters providing between 1 and 28 hours per week of free video programming in addition to their main program stream will have a guideline of ½ hour per week of core programming added to the 3 hours per week on the main program stream, those providing between 29 and 56 hours per week of additional free video programming will have one hour per week added, and so on.

²⁹ *Id.* at 22952.

³⁰ *Id.*

³¹ Given that the purpose of such a stream is merely giving viewers the opportunity to watch the same programming offered on the main stream but at a different time, we considered the station’s core programming obligation for that stream to be fulfilled by also providing the same core programming as offered on the main stream.

³² *Id.*

³³ National Association of Broadcasters (“NAB”) Petition for Reconsideration at 4; Joint Petition for Reconsideration of Cox, Meredith, Media General, McGraw–Hill, Cosmos, Evening Post (Cox, *et al.* Petition for Reconsideration) at 10.

³⁴ NAB Petition for Reconsideration at 4.

programming.³⁵ Petitioners also argued that the Commission should waive the “comparable carriage” element of the guideline, at least until MVPDs are required to carry all free over-the-air channels.³⁶ In response, children’s television advocates argued that history shows that market forces do not ensure that broadcasters serve the educational needs of children and that the record in this proceeding demonstrates that the educational needs of children are not currently being met.³⁷

17. The Joint Proposal generally accepts the new multicasting rule but recommends a clarification of the restriction on the number of repeated core programs that can count toward the new programming guideline. Specifically, the Joint Proposal would clarify that at least 50 percent of the core programming counted toward meeting the additional programming guideline cannot consist of program episodes that had already aired within the previous seven days on either the station’s main program stream or on another of the station’s free digital program streams.³⁸ This is not a change in the rule, but rather a clearer statement of what the rule was intended to cover. The Joint Proposal would also amend FCC Form 398 to collect information necessary to enforce this limit.

18. We will retain the revised core programming processing guideline as adopted in the *2004 Order*. As we stated then, we believe that the revised guideline translates the existing three-hour guideline to the digital environment in a manner that is both fair to broadcasters and meets the needs of the child audience. The previous core programming guideline represented the Commission’s judgment as to what constituted a “reasonable, achievable guideline” that would not unduly burden broadcasters.³⁹ Now that digital broadcasters have the capability to significantly increase their overall hours of programming, increasing the amount of core programming will not result in an unreasonable burden. For example, if a station chooses to broadcast a second stream of free video programming twenty-four hours a day, seven days a week, it can satisfy the new guideline by providing merely three additional hours *per* week of core programming – or less than two percent of the channel’s 168 hours of additional weekly programming. In addition, we believe that a guideline that increases the amount of core programming in a manner roughly proportional to the increase in free video programming offered by broadcasters is consistent with the objective of the CTA “to increase the amount of educational and informational broadcast television available to children.”⁴⁰

19. We also conclude that the revised quantitative processing guideline we reaffirm today is consistent with the First Amendment. It is well established that the broadcast media do not enjoy the same level of First Amendment protection as do other media.⁴¹ Under this more lenient scrutiny, it is

³⁵ Cox, *et al.* Petition for Reconsideration at 9-12.

³⁶ *Id.* at 12.

³⁷ Coalition Opposition to Petitions for Reconsideration at 2.

³⁸ Joint Proposal at 7.

³⁹ *1996 Order* at 10719. Some parties suggest that the previous core programming guidelines did not produce sufficient educational and informational programming for children. See Comments of Children’s Media Policy Coalition, April 21, 2003, at 4-7.

⁴⁰ *2004 Order* at 22953 (citing Senate Report at 1).

⁴¹ See, e.g., *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 388 (1969); *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 637-41 (1994).

also well established that the government may regulate broadcast speech in order to advance its compelling interest in promoting and protecting the well-being of children.⁴² As we discussed in the *2004 Order*, our new guideline imposes reasonable parameters on a broadcaster's use of the public airwaves and is narrowly tailored to advance the government's substantial, and indeed compelling, interest in the protection and education of America's children.⁴³ In enacting the CTA, Congress explicitly found that "as part of their obligation to serve the public interest, television station operators and licensees should provide programming that serves the special needs of children."⁴⁴ As noted above, the multicasting rule substantially advances that interest by furthering "the objective of the CTA 'to increase the amount of educational and informational broadcast television available to children.'"⁴⁵ Moreover, consistent with the First Amendment, the rule is narrowly tailored to achieve its objective. It increases the guideline only for broadcasters that choose to use their digital capacity to air additional free video programming. Broadcasters continue to retain wide discretion in choosing the ways in which they will meet their CTA obligations. Under the rule, the core programming guideline increases in a manner roughly proportional to the additional amount of free video programming multicasters choose to provide. That guideline, by "giving broadcasters clear but nonmandatory guidance on how to guarantee compliance" with the CTA, provides "a constitutional means of giving effect to the CTA's programming requirement."⁴⁶ We reject the State Broadcasters Associations' argument that our revised guideline is constitutionally unacceptable because it "dictates the removal of one form of content over another."⁴⁷ The CTA itself reflects a preference for children's educational and informational programming, and no party has challenged the constitutionality of the CTA's provisions for promoting such programming.

20. A number of broadcast companies and industry associations, none of which are parties to the Joint Proposal, argue that the Commission either should not impose additional core programming requirements on digital multicast channels, or at least should exempt multicast channels that offer educational, informational, and/or public interest programming.⁴⁸ These commenters argue that many local broadcasters are planning multicast channels that focus on a single genre of programming, such as weather or news, and that the multicast guideline as adopted would discourage the provision of such specialized channels.⁴⁹ These commenters also argue that children are unlikely to watch programming aired on channels primarily devoted to news and other specialized adult programming.⁵⁰

⁴² See, e.g., *New York v. Ferber*, 458 U.S. 747 (1982); *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978); *Action for Children's Television v. FCC*, 58 F.3d 654 (D.C. Cir. 1995) (en banc), cert. denied, 516 U.S. 1043 (1996).

⁴³ *2004 Order* at 22956.

⁴⁴ 47 U.S.C. 303a note.

⁴⁵ Senate Report at 1.

⁴⁶ *2004 Order* at 22956.

⁴⁷ Named State Broadcasters Associations Reply Comments at 5-6.

⁴⁸ Local Broadcasters Alliance Comments at 3; Belo Corp. Reply Comments at 1; Catamount Television Holdings Reply Comments at 1-2; Named State Broadcasters Associations Reply Comments at 4-7; Pappas Telecasting Companies Reply Comments at 2-3; Piedmont Television Holdings Reply Comments at 1-2.

⁴⁹ Local Broadcasters Alliance Comments at 6.

⁵⁰ Named State Broadcasters Associations Reply Comments at 5-6.

21. We decline to revise our processing guideline as suggested by these commenters. As we stated in the *Order*, we do not want to discourage broadcasters from providing channels with a specialized focus.⁵¹ However, we agree with the Children's Media Policy Coalition that the guideline provides broadcasters the flexibility to move core programming to either their main programming stream or other multicast streams, so long as the stream the programming is moved to receives comparable MVPD carriage to the stream triggering the additional obligation.⁵² Thus, the guideline preserves the principle that, in order to obtain staff level approval of their CTA compliance, broadcasters must provide three hours of children's core programming for every 168 hours per week of free video programming that they air, while at the same time giving broadcasters flexibility to choose the multicast stream that will air that programming. In addition, broadcasters could meet the guideline by airing children's programming on specialized channels, such as a children's news program on a twenty-four hour news channel or a children's educational weather program on a twenty-four hour weather channel. Furthermore, we note that our rules provide flexibility for licensees that have aired somewhat less core programming than indicated by the guideline but that nonetheless demonstrate an adequate commitment to educating and informing children.⁵³

22. Some broadcast commenters also point out that there is no requirement for cable carriage of multicast channels, thereby limiting the flexibility of broadcasters to consolidate their core programming on a multicast stream under the comparable MVPD carriage requirement.⁵⁴ While we recognize that the comparable MVPD carriage requirement may limit the flexibility of some broadcasters to consolidate core programming on a single multicast channel, we believe that the comparable carriage requirement is necessary to ensure that, as additional free programming is made available to viewers in the station's service area, the level of children's programming increases as well.

23. As noted, the Joint Proposal suggests a clarification of the number of permissible core program repeats under the processing guideline. Specifically, the Joint Proposal recommends that the Commission clarify that at least 50 percent of the core programming counted toward meeting the additional programming guideline cannot consist of program episodes that had already aired within the previous seven days on either the station's main program stream or on another of the station's free digital program streams.⁵⁵ We will adopt this clarification; it makes the rule easier to understand and apply and is consistent with the intent of the *2004 Order*. All of the commenters that addressed this aspect of the Joint Proposal supported this clarification.⁵⁶ We will also adopt the Joint Proposal recommendation,

⁵¹ *2004 Order* at 22953.

⁵² Coalition Reply Comments at 6.

⁵³ *2004 Order* at 22951. See also 47 C.F.R. § 73.671(d). Specifically, licensees are eligible for staff level approval if they demonstrate that they have aired a package of different types of educational and informational programming that, while containing somewhat less core programming than indicated by the applicable guideline, demonstrates a level of commitment to educating and informing children at least equivalent to airing the amount of programming indicated by the guideline. In this regard, specials, PSAs, short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children may be counted toward the processing guideline. Licensees that do not meet these processing guidelines will be referred to the Commission, where they will have an additional opportunity to demonstrate compliance with the CTA.

⁵⁴ Marantha Comments at 2-3; Local Broadcasters Alliance Comments at 3, n. 3.

⁵⁵ Joint Proposal at 7.

⁵⁶ CBS, *et al.* Comments at 3; NAB Comments at 10.

supported by other commenters, that FCC Form 398 be amended to collect the information necessary to enforce the limit on repeats under the revised guideline.⁵⁷ As suggested by commenters, we will permit licensees to certify on Form 398 that they have complied with the repeat restriction and will not require broadcasters to identify each program episode on Form 398.⁵⁸ We will require licensees, however, to retain records sufficient to document the accuracy of their certification, including records of actual program episodes aired, and to make such documentation available to the public upon request.⁵⁹ The children's programming liaison, whose name and phone number must be included on FCC Form 398, should be able to provide documentation to substantiate the certification if requested.

B. Preemption

24. To qualify as "core programming" for purposes of the children's programming processing guideline, the Commission requires that a children's program be "regularly scheduled"; that is, a core children's program must "be scheduled to air at least once a week" and "must air on a regular basis."⁶⁰ In adopting its 1996 children's programming rules, the Commission stated that television series typically air in the same time slot for thirteen consecutive weeks, although some episodes may be preempted for programs such as breaking news or live sports events. The Commission stated in the *1996 Order* 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.⁶¹

25. In the *2004 Order*, the Commission stated that core programs moved to the same time slot on another digital program stream would not be considered preempted, as long as the alternate stream has comparable MVPD carriage and the station provides notice of the move on both the original and the alternate program stream. In addition, the *2004 Order* limited the number of core programming preemptions for analog and digital broadcasters to no more than ten percent of core programs in each calendar quarter.⁶² Any preemption beyond the ten percent limit would cause that program not to count as core under the processing guideline, even if the program were rescheduled. The *2004 Order* exempted preemptions for breaking news from the preemption limit and rescheduling requirement.⁶³

26. On reconsideration, a number of petitioners argued that the preemption cap is unworkable in light of broadcasters' commitments to air live sports programming on Saturdays, particularly on the West coast.⁶⁴ In lieu of the new rules, some petitioners urged the Commission to continue its prior practice of

⁵⁷ Joint Proposal at 7.

⁵⁸ CBS, *et al.* Comments at 3-4; NAB Comments at 10-11; Coalition Reply Comments at 9-10.

⁵⁹ *Id.*

⁶⁰ *1996 Order* at 10711; 47 C.F.R. § 73.671.

⁶¹ *1996 Order* at 10711.

⁶² *2004 Order* at 22958.

⁶³ *Id.*

⁶⁴ Disney Petition for Reconsideration at 14-15; Cox, *et al.* Petition for Reconsideration at 5-6; Joint Petition for Reconsideration of Fox Entertainment Group, NBC Universal, Inc. and Viacom ("Fox, *et al.* Petition for Reconsideration") at 5-6.

case-by-case staff approval of network preemption practices.⁶⁵ Other petitioners supported exempting from the preemption cap live sports programming or children's programs rescheduled in accordance with the Media Bureau's current preemption policies.⁶⁶ In their original opposition to these petitions, children's advocates agreed that a modest modification of the new preemption rule would be appropriate to accommodate major sporting events such as the Olympics and World Cup.⁶⁷

27. The Joint Proposal recommends that the Commission not adopt any percentage or other numerical limit on preemptions and instead return to the Commission practice of ensuring, on a case-by-case basis, that broadcasters do not engage in excessive preemptions of core programming.⁶⁸ All of the commenters that addressed the issue of preemptions supported the Joint Proposal recommendation to eliminate the cap on the number of preemptions and return to a case-by-case approach.⁶⁹

28. We are persuaded that the burden created by the ten percent cap on preemptions outweighs the benefits the Commission sought to achieve, and therefore hereby repeal the ten percent cap on preemptions adopted in the *2004 Order*. We will instead institute a procedure similar to that used by the Media Bureau and the Commission following adoption of the 1996 children's television *Order* whereby networks sought informal approval of their preemption plans each year. Under the policy formerly developed by the Commission staff, a program counted as preempted only if it was not aired in a substitute time slot (otherwise known as a "second home") with an on-air notification of the schedule change occurring at the time of preemption during the previously scheduled episode. The on-air notification must announce the alternate date and time when the preempted show will air. As part of this policy, we will require all networks requesting preemption flexibility to file a request with the Media Bureau by August 1 of each year stating the number of preemptions the network expects, when the program will be rescheduled, whether the rescheduled time is the program's second home, and the network's plan to notify viewers of the schedule change.⁷⁰ We will presume that non-network stations are complying with the three hour core programming requirement, and do not need broad preemption relief. We intend to monitor the number, rescheduling, and promotion of preemptions of all stations under this policy by our quarterly review of their Children's Programming Reports to ensure that the interests of the child audience are being served. We find this approach to be a reasonable compromise for programmers that routinely face conflicts between their children's television blocks and sports programming as the result of time differences. We note that the concept of a "second home" is familiar to viewers, and are persuaded that those core programs that must be preempted are consistently rescheduled and promoted.⁷¹ Indeed, the Media Bureau has previously found that children's educational and

⁶⁵ NAB Petition for Reconsideration at 21.

⁶⁶ NAB Petition for Reconsideration at 21-22; Cox, *et al.* Petition for Reconsideration at 8; Fox, *et al.* Petition for Reconsideration at 13-14.

⁶⁷ Coalition Opposition to Petitions for Reconsideration at 8.

⁶⁸ Joint Proposal at 5-6.

⁶⁹ NAB Comments at 4; Professional and Collegiate Sports Interests Comments at 3; Univision Comments at 2; Named State Broadcasters Associations Reply Comments at 3.

⁷⁰ Because the August 1 deadline for this coming programming year has passed, networks should file their requests for preemption flexibility no later than 30 days after approval of this information collection by OMB.

⁷¹ See, e.g., *The Effect of Preemption on Children's Educational and Informational Programming*, Mass Media Bureau, Policy and Rules Division, DA 98-2306 (November 1998) at 12.

informational programming efforts have not been “unduly affected by the limited preemption flexibility granted” under the existing standard.⁷²

C. Limit on Display of Internet Website Addresses

29. The CTA requires that commercial television broadcasters and cable operators limit the amount of commercial matter in children’s programs to no more than 10½ minutes per hour on weekends and 12 minutes per hour on weekdays.⁷³ The Commission noted in the *2004 Order* that some broadcasters are displaying Internet website addresses during children’s program material (for example, in a crawl at the bottom of the screen) and expressed concern that the display of such addresses for websites established for commercial purposes in children’s programs was inconsistent with the CTA’s mandate to protect children from excessive and inappropriate commercial messages. Accordingly, the *2004 Order* required that, with respect to programs directed to children ages 12 and under, the display of Internet website addresses during program material is permitted only if: (1) the website offers a substantial amount of *bona fide* program-related or other noncommercial content; (2) the website is not primarily intended for commercial purposes, including either e-commerce or advertising; (3) the website’s home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and (4) the page of the website to which viewers are directed by the website address is not used for e-commerce, advertising, or other commercial purposes (*e.g.*, contains no links labeled “store” and no links to another page with commercial material).⁷⁴ This restriction applies to analog and digital broadcasters as well as cable operators.⁷⁵

30. On reconsideration, a number of petitioners claimed that the rule exceeds the Commission’s authority because the CTA does not authorize regulation of website addresses, which petitioners assert are not commercials.⁷⁶ We disagree. As the children’s television advocates asserted,⁷⁷ the Commission has the authority to enact these restrictions because they do not regulate Internet content, but rather the advertising of commercial websites in children’s programming, a subject clearly within the scope of the Commission’s jurisdiction. Several petitioners also challenged the rule on notice grounds.⁷⁸ In response, child advocates argued that the Commission gave adequate notice of the potential restriction, because it sought comment on whether to prohibit all direct links to commercial websites and the term website links can refer to either passive displays or interactive links.⁷⁹ We agree that adoption of the website display

⁷² *Three Year Review of the Implementation of the Children’s Television Rules and Guidelines, 1997-1999*, Mass Media Bureau, Policy and Rules Division (January 18, 2001) at 5-6.

⁷³ 47 U.S.C. § 303a. Effective February 2005, these limits applied to all digital video programming directed to children 12 and under on broadcast or cable television, whether that programming is aired on a free or pay digital stream. *2004 Order* at 22,960. This *Second Order* does not modify this rule, which remains in effect.

⁷⁴ *2004 Order* at 22961.

⁷⁵ *Id.*

⁷⁶ NAB Petition for Reconsideration at 18-19; Turner Petition for Reconsideration at 16.

⁷⁷ Coalition Opposition to Petitions for Reconsideration at 22-23.

⁷⁸ American Advertising Federation, American Association of Advertising Agencies, and Association of National Advertisers, Inc. (“Advertisers”) Petition for Reconsideration at 16; National Cable & Telecommunications Association (“NCTA”) Petition for Reconsideration at 7; Disney Petition for Reconsideration at 17-18

⁷⁹ Coalition Opposition to Petitions for Reconsideration at 22.

rules was within the scope of the NPRM. Furthermore, the *Second FNPRM* sought comment “on the rules and policies adopted in the [2004] *Order* in light of the recommendations reflected in the Joint Proposal” and asked for “any alternative modifications” to the 2004 rules, in addition to the modifications proposed in the Joint Proposal.⁸⁰ Thus, the notice issue is moot.

31. The Joint Proposal does not propose material changes to the website rule adopted in the *2004 Order* but requests two clarifications: (1) that the rule applies only when Internet addresses are displayed during program material or during promotional material not counted as commercial time; and (2) that if an Internet address for a website that does not meet the four-prong test is displayed during a promotion, in addition to counting against the commercial time limits, the promotion will be clearly separated from programming material.⁸¹ The comments filed in response to the *Second FNPRM* generally support the Joint Proposal approach.

32. We will retain the rule on website addresses and, in addition, adopt the clarifications proposed in the Joint Proposal. As the Commission stated in the *2004 Order*, the website address rule fairly balances the interest of broadcasters in exploring the potential uses of the Internet with our mandate to protect children from over-commercialization.⁸² The display of the address of a website that sells a product is the equivalent of a commercial encouraging children to go to the store and buy the product.⁸³ Thus, including the display during program material converts that program material into commercial matter just as a host telling children to race to their local toy store would. We note that broadcasters are free to display the addresses of websites that do not comply with the test during the allowable commercial time, as long as it is adequately separated from the program material; thus, the burden is minimal and outweighed by the benefits discussed above. The minor clarifications recommended by the Joint Proposal make this point clear.

33. We also disagree with petitioners, and conclude that the website rule we modify today is consistent with the First Amendment.⁸⁴ Because this rule regulates commercial speech, it is subject to less First Amendment protection than noncommercial speech.⁸⁵ The rule is therefore permissible under the First Amendment if it “directly advances” a “substantial” governmental interest in a manner that “is not more extensive than necessary to serve that interest.”⁸⁶ The website rule satisfies these criteria. By

⁸⁰ *Second FNPRM* at 3463.

⁸¹ Joint Proposal at 2.

⁸² *2004 Order* at 22962.

⁸³ Programmers market products on websites in the same way that they market products in stores. See, e.g., www.disneyshopping.com or www.shop.nickjr.com.

⁸⁴ See, e.g., Advertisers Petition for Reconsideration at 17-19. One of the parties of the Advertisers Petition for Reconsideration, the Association of National Advertisers, subsequently withdrew from the Petition. Only the American Advertising Federation and the American Association of Advertising Agencies remain as petitioners. See Letter from Ronald G. Gordon, Counsel for the Association of National Advertisers, to Marlene H. Dortch, Secretary, FCC, dated October 4, 2005.

⁸⁵ See, e.g., *Central Hudson*, 447 U.S. at 562-63; *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976).

⁸⁶ *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm.*, 447 U.S. 557, 564-66 (1980).

limiting the display of commercial website addresses during children's programming, the website rule advances the government's substantial interest in protecting children from overcommercialization.⁸⁷ Numerous websites sell products with special appeal to children. Televised references to commercial websites are no different from other forms of advertising. A television commercial encouraging children to go to a toy store website, for example, is substantially similar to an advertisement telling children to go to their local toy store. As such, a limit on televised advertising of commercial websites during children's programming is necessary "to protect children, who are particularly vulnerable to commercial messages."⁸⁸ The rule is narrowly tailored. It only limits when certain types of website addresses may be televised; it places no limits on displays of websites that are not commercial in nature. In addition, these restrictions apply only during non-commercial portions of children's programs, which represent a tiny fraction of a broadcaster's programming. The rule does nothing to prevent broadcasters and cable programmers from publicizing their websites as often as they wish during their many hours of other programming or during properly buffered commercial portions of children's programming, regardless of whatever content those websites may contain. Further, despite petitioner's passing assertions, the website rule as modified is not constitutionally suspect on vagueness grounds.⁸⁹ We find that the four-part test is sufficiently clear to give broadcasters reasonable notice of what conduct is proscribed.⁹⁰

34. A number of commenters, including the Ad Council, request that public service announcements ("PSAs") be exempt from the four-prong website rule.⁹¹ The Ad Council states that the rule has created confusion within the broadcast industry and has had a chilling effect on broadcasters' willingness to run PSAs.⁹² We agree that further clarification of this issue could help avoid confusion. We agree with the Children's Media Policy Coalition⁹³ that we should clarify that certain PSAs, which are not commercial matter under our rules, are exempt from the website display rules. The Commission has historically encouraged licensees to air PSAs as part of their obligation to fulfill the public interest.⁹⁴ Indeed, in the children's television context, as discussed above,⁹⁵ licensees that have not aired at least three hours of core programming may count educational and informational PSAs toward the three hour processing guideline.⁹⁶ Thus, the Commission has already adopted a policy of encouraging the airing of

⁸⁷ See 2004 Order at 22962.

⁸⁸ 2004 Order at 22961.

⁸⁹ Advertisers Petition for Reconsideration at 18.

⁹⁰ See *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99 (1982).

⁹¹ Advertising Council ("Ad Council") Comments at 1; Named State Broadcasters Associations Joint Reply Comments at 7. See also NAB Comments at 7-8.

⁹² Ad Council Comments at 3.

⁹³ Coalition Reply Comments at 14.

⁹⁴ For example, the former FCC television renewal form (Form 303) required licensees to specify the number of PSAs broadcast, as well as certain details about those PSAs. When the license came up for renewal, Commission staff reviewed the station's "performance" against the "promise" with respect to PSAs, as well as a number of other categories of programming. This approach to broadcast license renewal was eliminated in 1984.

⁹⁵ See footnote 14.

⁹⁶ 47 C.F.R. § 73.671(d).

PSAs during programming directed to children. For these purposes, we will define PSAs exempt from the website display rules as suggested by the Coalition: PSAs aired on behalf of independent non-profit or government organizations, or media companies in partnership with non-profits or government entities, that display websites not under the control of the licensee or cable company.⁹⁷ We believe it is unlikely that PSAs meeting this definition will display addresses for commercially-oriented websites, and we are persuaded by commenters that if we do not carve out an exception for PSAs licensees and cable operators will be discouraged from airing them because they do not want to incur the obligation of ensuring that any website addresses displayed comply with the four prong test. Given the non-profit nature of PSAs, we do not expect abuse of this exemption. But we will revisit this issue if the need arises.

35. For similar reasons, we also clarify that station identifications and emergency announcements are not subject to the rules governing the display of website addresses as long as the display is consistent with the purpose of the announcement.⁹⁸ The four prong website address rule applies to website addresses displayed during program material and, as clarified above, to promotional material not counted as commercial time. Station identifications and emergency announcements are neither program material nor promotions for purposes of the website rule. Rather, both are announcements required under the Commission's rules and must comport with certain requirements regarding their composition and timing.⁹⁹ To the extent a licensee includes a website address to provide more information about an emergency or about how to contact the station, we find it unnecessarily restrictive to require that such a website comply with the four prong test.¹⁰⁰

36. We decline to exempt closing credits from application of the website address rules as requested by some commenters.¹⁰¹ Closing credits are part of the television program material and should, therefore, be subject to the website restrictions.

37. We decline at this point to further define terms in the website rule. NAB argues that certain terms in the rule are vague and do not provide sufficient guidance to broadcasters on whether a website would comply with the website rule.¹⁰² We believe that the rule, as clarified herein, is sufficiently clear to guide broadcasters' compliance.¹⁰³ Isolated concerns about the clarity of the website rule can be addressed by the Commission staff on a case-by-case basis.

38. We also decline to allow broadcasters to avoid liability by relying on representations from

⁹⁷ See Coalition Reply Comments at i, 14.

⁹⁸ NAB Comments at 6; Coalition Reply Comments at 15.

⁹⁹ See, e.g., 47 C.F.R. §§ 11.01 *et seq.*, 73.1201, 73.1250, 76.1711.

¹⁰⁰ We would not expect either type of announcement to be geared toward children; thus, our concern about website displays luring children to commercial websites is minimal. We note, however, that if such an announcement was designed to promote the station or its website to its child audience, it would be subject to the website display restrictions. We do not expect abuse of this exemption. But we will revisit this issue if the need arises.

¹⁰¹ NAB Comments at 8.

¹⁰² NAB Comments at 5.

¹⁰³ Coalition Reply Comments at 11-12 (arguing that the language is clear on its face).

program providers that web addresses meet the four-prong test.¹⁰⁴ We do not expect compliance to be burdensome, but we will revisit this issue if we receive evidence that this is imposing an undue burden on broadcasters.

D. Host Selling

39. The Commission's long standing host selling policy prohibits the use of program characters or show hosts to sell products in commercials during or adjacent to shows in which the character or host appears.¹⁰⁵ Because of the unique vulnerability of children to host selling, the *2004 Order* prohibits the display of website addresses in children's programs when the site uses characters from the program to sell products or services.¹⁰⁶ In the *2004 Order*, the Commission stated that the restriction on websites that use host selling applies to website addresses displayed both during program material and during commercial material.¹⁰⁷

40. Several parties argued on reconsideration that the host selling restriction is unnecessarily restrictive.¹⁰⁸ These petitioners contended that familiar television characters are often used in websites in ways that are not commercial in nature, such as to adorn a webpage or guide children from one page to the next.¹⁰⁹ Petitioners also argued that any website promotion of any product or service incorporating a program-related character appears to violate the rule even though the *2004 Order* permits the sale of program-related merchandise on appropriately cabined commercial sections of a website.¹¹⁰ In response, children's advocates argued that there are clear examples of problems with host selling on websites, and that the Commission can address any concerns about the clarity of its rules on a case-by-case basis.¹¹¹

41. The Joint Proposal proposes that the host selling rule in the *2004 Order* be vacated and replaced with the following rule:

Entities subject to commercial time limits under the Children's Television Act ("CTA") will not display a website address during or adjacent to a program if, at that time, on pages that are primarily devoted to free noncommercial content regarding that specific program or a character appearing in that program: (1) products are sold that feature a character appearing in that program; or (2) a character appearing in that program is used to actively sell products.

¹⁰⁴ See NAB Comments at 6.

¹⁰⁵ *Children's Television Report and Policy Statement*, 50 FCC 2d 1, 13-14 (1974).

¹⁰⁶ *2004 Order* at 22961.

¹⁰⁷ *Id.*

¹⁰⁸ Discovery Petition for Reconsideration at 7; NAB Petition for Reconsideration at 16-17; Nickelodeon Petition for Reconsideration at 23-24; Disney Petition for Reconsideration at 22; WB Television Network Petition for Reconsideration at 17-18.

¹⁰⁹ Discovery Petition for Reconsideration at 6.

¹¹⁰ *Id.* at 6-7.

¹¹¹ Coalition Opposition to Petitions for Reconsideration at 24.

To clarify, this rule does not apply to: (1) third-party sites linked from the companies' web pages; (2) on-air third-party advertisements with website references to third-party websites; or (3) pages that are primarily devoted to multiple characters from multiple programs.¹¹²

Commenters that addressed the host selling issue generally support the Joint Proposal recommendation.¹¹³

42. We continue to believe that it is important to restrict the practice of host selling in children's programming. As we have stated before, the trust that children place in program characters allows advertisers to take unfair advantage of the relationship between the hosts and young children.¹¹⁴ This can occur whether the host selling occurs on the air or on a website to which the television program refers children.

43. We agree, however, with those who argue that our original formulation of the host selling rule was overly restrictive, and that we should revise it as recommended by the Joint Proposal. We believe the revised rule achieves a better balance than the existing rule between the goals of protecting children and permitting broadcasters and cable operators to make appropriate use of website displays. The *2004 Order* expressly states that commercial portions of websites that comply with the website display rules may sell or advertise products associated with the related television program.¹¹⁵ As several parties noted, the host selling rule as originally written appeared to prohibit the sale of any merchandise incorporating a program-related character anywhere on a website, even if that portion of the site was clearly identified as commercial in nature and the site otherwise complied with the four-prong website rule.¹¹⁶ The revised host selling rule we adopt today permits the sale of merchandise featuring a program-related character in parts of the website that are sufficiently separated from the program itself to mitigate the impact of host selling.

44. Univision supports the Joint Proposal revision but states that the revised rule is vague with respect to the proposed exemption for certain third party sites as it fails to provide a definition of the term "third party."¹¹⁷ We decline to adopt a definition of "third party" at this time as we believe that the purpose of the third party exemption from the host selling restriction is sufficiently clear to provide guidance to broadcasters and cable operators about the kinds of ads and websites to which the exemption applies. As stated by the Coalition, the intent behind the third party exemption to the rule is to alleviate

¹¹² Joint Proposal at 3.

¹¹³ NAB Comments at 8; Coalition Reply Comments at 11-12; Univision Comments at 4.

¹¹⁴ *Children's Television Report and Policy Statement*, 50 FCC 2d 1, 13-14 (1974).

¹¹⁵ *2004 Order* at 22961.

¹¹⁶ Discovery Petition for Reconsideration at 6; Nickelodeon Petition for Reconsideration at 24; WB Television Network Petition for Reconsideration at 18-19.

¹¹⁷ Univision Comments at 4-5. Univision requests that the Commission clarify that a "third party" is "any entity other than the licensee and those entities directly under the licensee's control." *Id.* at 5.

the need for companies to police third party websites over which the company has no control.¹¹⁸ In addition, the third party website would not be included in the relevant children's programming; rather the third party website would be displayed in a commercial (subject to the commercial limits) or would merely be linked to from the company's website. Advertisements with or without website addresses must be separated from programming material by use of bumpers, as currently required under the Commission's existing commercial limits rules and policies. As such, there will be multiple layers of separation between the program and the third party website, which will sufficiently attenuate the commercial content from the relevant programming.

45. Television licensees currently certify their compliance with the children's advertising commercial limits on their license renewal forms and are required to maintain in their public inspection file records sufficient to substantiate the certification.¹¹⁹ As the Commission stated in the *2004 Order*, licensees will be required also to certify that they have complied with the requirements concerning the display of website addresses in such programming.¹²⁰ In addition, licensees will be required to maintain in their public inspection file, until final action has been taken on the station's next license renewal application, records sufficient to substantiate the station's certification of compliance with the restrictions on website addresses in programs directed to children ages 12 and under. Cable operators airing children's programming must maintain records sufficient to verify compliance with the website address and host selling rules and make such records available to the public. Such records must be maintained by cable operators for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).¹²¹

E. Definition of Commercial Matter

46. The limitation on the duration of advertising in children's programming of 10½ minutes per hour on weekends and 12 minutes per hour on weekdays applies to "commercial matter." Prior to the *2004 Order*, the term "commercial matter" was defined to exclude certain types of program interruptions, including promotions of upcoming programs that do not mention sponsors.¹²² The Commission noted in the *2004 Order* that a significant amount of time is devoted to these types of announcements in children's programming, thereby reducing the amount of actual program material far more than the commercial limits alone might suggest. To address this problem, the *2004 Order* revised the definition of "commercial matter" to include promotions of television programs or video programming services other than children's educational and informational programming. The revised definition applies to analog and digital broadcasters and to cable operators.¹²³

47. On reconsideration, petitioners generally argued that the revised definition of commercial matter would lead to lost ad sales in children's programming and reduced revenues from such

¹¹⁸ Coalition Reply Comments at 13.

¹¹⁹ See FCC Form 303-S; 47 C.F.R. § 73.3526(e)(11)(ii).

¹²⁰ *2004 Order* at 22962.

¹²¹ See 47 C.F.R. §§ 76.225, Note 3; 76.1703.

¹²² *2004 Order* at 22963; *Report and Order, Policies and Rules Concerning Children's Television Programming*, 6 FCC Rcd 2111, 2112 (1991), *recon. granted in part*, 6 FCC Rcd 5093 (1991).

¹²³ *2004 Order* at 22963.

programming as well as diminished opportunities to promote programming.¹²⁴ Petitioners claimed that reducing the number of program promotions would reduce the number of children watching the programs. Petitioners also argued that there is no evidence that counting internal promotions as commercials would increase the amount of content in children's shows or reduce program interruptions as programs are produced in a specific length.¹²⁵ Children's advocates claimed that new children's programs can be made longer and that the amount of program material in existing shows can be increased by supplementing existing programs with short-form programming, that is, programming lasting less than thirty minutes.¹²⁶

48. As noted above, the *2004 Order* included all program promotions other than children's educational and informational programming in the definition of commercial matter. The Joint Proposal would change the revised definition of "commercial matter" to exclude (1) promotions for any children's or other age-appropriate programming appearing on the same channel, and (2) promotions for children's educational and informational programming appearing on any channel.¹²⁷ Commenters express general support for the Joint Proposal recommendation.¹²⁸

49. We will revise our definition of "commercial matter" as recommended by the Joint Proposal. We believe that the revised definition of commercial matter is consistent with the public interest, provides additional flexibility for broadcasters and cable operators, and furthers our goal of making high quality children's programming available to the public. We also note that the CTA explicitly authorizes the Commission to review and evaluate the advertising duration limits;¹²⁹ the Commission is therefore authorized to change the definition of "commercial matter" consistent with the intent of the CTA and the public interest. Thus, we disagree with parties that argue the revised definition is inconsistent with the CTA.

50. While the revised rule may not limit program promotions in children's programming to the same extent as the rule adopted in the *2004 Order*, the revision will still reduce the number of interruptions that were permissible under the original rule and encourage the promotion of programming appropriate for children, including educational and informational programming. As we stated in the *2004 Order*, we believe that reducing the number of program promotions will help protect children from

¹²⁴ 4Kids Entertainment Petition for Reconsideration at 4-5; Advertisers Petition for Reconsideration at 4-5; Fox Entertainment Group Petition for Reconsideration at 9; Marantha Petition for Reconsideration at 6; NBC Telemundo Petition for Reconsideration at 2; Nickelodeon Petition for Reconsideration at 10; Turner Petition for Reconsideration at 6-7; WB Petition for Reconsideration at 10-11.

¹²⁵ NCTA Petition for Reconsideration at 5; Nickelodeon Petition for Reconsideration at 16; WB Petition for Reconsideration at 12.

¹²⁶ Coalition Opposition to Petitions for Reconsideration at 18.

¹²⁷ Joint Proposal at 4.

¹²⁸ CBS, *et al.* Comments at 2; NAB Comments at 3; NCTA Comments at 2; Nickelodeon Comments at 1.

¹²⁹ 47 U.S.C. § 303a. A program promotion fits within the meanings of the terms "commercial matter" and "advertising" as those terms are used in 47 U.S.C. 303a(a) and (b). For example, the word "commercial" means "an advertisement broadcast during a sponsored radio or television program." *See Webster's Third New International Dictionary* 456 (1993). Further, the term "advertisement" is defined as "the action of advertising" which entails "calling something (such as a commodity for sale, a service offered or desired) to the attention of the public." *Id.* at 31.

overcommercialization of programming consistent with overall intent of the CTA. In addition, exempting program promotions for programming appropriate for children may encourage broadcasters to promote children's programming with educational and informational value, thereby increasing public awareness of the availability of this programming.

IV. CONCLUSION

51. The rules and policies adopted herein will serve the public interest by both protecting children from excessive and inappropriate advertising on television and ensuring an adequate supply of children's educational programming as we transition from an analog to a digital television environment. Our actions today further the public interest and the mandate of the CTA and provide a reasonable balance between the concerns of industry and protecting the well-being of the nation's children.

V. ADMINISTRATIVE MATTERS

52. *Final Regulatory Flexibility Analysis* As required by the Regulatory Flexibility Act,¹³⁰ the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this Report and Order. The FRFA is set forth in Appendix C.

53. *Final Paperwork Reduction Act Analysis*. This *Second Order* contains new and modified information collection requirements which were proposed in the *Second FNPRM*, 21 FCC Rcd 3642 (2006), 71 FR 15145 (March 27, 2006), and are subject to the Paperwork Reduction Act of 1995 ("PRA").¹³¹ Our requirements regarding the requests that may be filed with the Media Bureau by networks seeking preemption flexibility will become effective after approval by the Office of Management and Budget ("OMB"). Upon OMB approval, we will issue a Public Notice announcing the effective date of this rule. In addition, a revised FCC Form 398 was submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA and approved by OMB on June 23, 2006, OMB Control No. 3060-0754. This *Second Order* adopts this information collection requirement as proposed. In addition, the general public and other Federal agencies were invited to comment on the information collection requirements in the *Second FNPRM*.¹³² We further note that pursuant to the Small Business Paperwork Relief Act of 2002,¹³³ the Commission previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." We received no comments concerning these information collection requirements. For additional information concerning the information collection requirements contained in this Report and Order, contact Cathy Williams at 202-418-2918, or via the Internet to Cathy.Williams@fcc.gov.

¹³⁰ See 5 U.S.C. § 604.

¹³¹ The Paperwork Reduction Act of 1995 ("PRA"), Pub. L. No. 104-13, 109 Stat 163 (1995) (*codified in* Chapter 35 of Title 44 U.S.C.). The version of the *Second FNPRM* published in the Federal Register on March 27, 2006 did not include the Initial Regulatory Flexibility Analysis that was contained as part of the *Second FNPRM* as adopted by the Commission. On August 25, 2006, the Federal Register published a correction to the March 27 Federal Register document that included the IRFA. See 71 FR 50380-01.

¹³² *Second FNPRM*, 21 FCC Rcd at 3645, ¶ 7.

¹³³ The Small Business Paperwork Relief Act of 2002 ("SBPRA"), Pub. L. No. 107-198, 116 Stat 729 (2002) (*codified in* Chapter 35 of title 44 U.S.C.); see 44 U.S.C. 3506(c)(4).

54. *Congressional Review Act.* The Commission will send a copy of this *Second Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

55. *Additional Information.* For additional information on this proceeding, please contact Kim Matthews, Policy Division, Media Bureau at (202) 418-2154, or Holly Saurer, Policy Division, Media Bureau at (202) 418-7283.

VI. ORDERING CLAUSES

56. IT IS ORDERED that, pursuant to the authority contained in Sections 1, 2, 4(i), 303, 303a, 303b, and 307 of the Communications Act of 1934, 47 U.S.C §§ 151, 152, 154(i), 303, 303a, 303b, and 307, this Second Order on Reconsideration and Second Report and Order IS ADOPTED.

57. IT IS FURTHER ORDERED that pursuant to the authority contained in Sections 1, 2, 4(i), 303, 303a, 303b, and 307 of the Communications Act of 1934, 47 U.S.C §§ 151, 152, 154(i), 303, 303a, 303b, and 307, the Commission's rules ARE HEREBY AMENDED as set forth in Appendix B. It is our intention in adopting these rule changes that, if any provision of the rules is held invalid by any court of competent jurisdiction, the remaining provisions shall remain in effect to the fullest extent permitted by law.

58. IT IS FURTHER ORDERED that the rules as revised in Appendix B SHALL BE EFFECTIVE 60 days after publication of the *Second Order* in the Federal Register.¹³⁴ With respect to renewal applications, we will evaluate compliance with these requirements in applications filed after that date. Licensee performance during any portion of the renewal term that predates the effective date of the rules in the *Second Order* will be evaluated under current rules, and licensee performance that post-dates the effective date of the revised rules will be judged under the new provisions.

59. IT IS FURTHER ORDERED that the Media Bureau make available to the public an electronic version of FCC Form 398, Children's Television Programming Report, that reflects the changes adopted in this *Second Order*. A revised version of this form has already been approved by OMB. Licensees will be required to use the revised electronic version of FCC Form 398 to report their children's core programming, including their digital core programming, for the first quarter of 2007. Thus, licensees must use the revised electronic version of FCC Form 398 for their quarterly filing due no later than April 10, 2007.

60. IT IS FURTHER ORDERED that the Petitions for Reconsideration and Oppositions to Petition for Reconsideration filed in response to the 2004 *Report and Order and Further Notice of Proposed Rule Making* in this docket are granted in part and denied in part, as discussed above, and otherwise dismissed as moot.

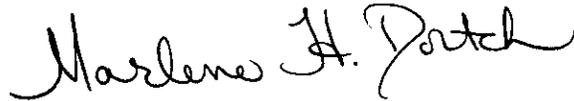
61. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Second Order on Reconsideration and Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

62. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this *Second*

¹³⁴ See *Order Extending Effective Date*, 20 FCC Rcd 20611.

Order on Reconsideration and Second Report and Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink that reads "Marlene H. Dortch". The signature is written in a cursive, flowing style.

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters, Reply Commenters and Petitioners**Parties filing Petitions for Reconsideration of the 2004 Report and Order**

4Kids Entertainment, Inc.
The American Advertising Federation, the American Association of Advertising Agencies, and
the Association of National Advertisers, Inc.
Children's Media Policy Coalition
Cox Broadcasting, Inc., Meredith Corporation; Media General, Inc.; McGraw-Hill Broadcasting
Company, Inc.; Cosmos Broadcasting Corporation; and Evening Post Publishing Company
Discovery Communications, Inc.
Fox Entertainment Group, Inc.
Fox Entertainment Group, Inc., NBC Universal, Inc. and Viacom
Maranatha Broadcasting Company, Inc
NBC Telemundo License Co.
National Association of Broadcasters
National Cable & Telecommunications Association
Nickelodeon
Turner Broadcasting System, Inc
Univision Communications Inc.
The WB Television Network
The Walt Disney Company

Parties filing Oppositions to Petitions for Reconsideration of the 2004 Report and Order

Children's Media Policy Coalition
Fox Entertainment Group, Inc., NBC Universal, Inc. and Viacom

Second Further Notice of Proposed Rulemaking Commenters

The Advertising Council
CBS Corporation; Fox Entertainment Group, Inc.; NBC Universal, Inc. & NBC Universal
License Co.
KIDSNET
Local Broadcasters Alliance
National Association of Broadcasters
National Cable & Telecommunications Association
Nickelodeon
Professional and Collegiate Sports Interests
Strategic Alliance for Healthy Food and Activity Environments
Time Warner Inc.
Univision Communications Inc.
The Walt Disney Company

Second Further Notice of Proposed Rulemaking Reply Commenters

Belo Corp.
Catamount Television Holdings, LLC
Childhood Obesity Brain Trust
Children's Media Policy Coalition

Maranatha Broadcasting Company, Inc.
Named State Broadcasters Associations
Pappas Telecasting Companies
Piedmont Television Holdings, LLC