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

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

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: September 9, 2004 **Released: November 23, 2004**

By the Commission: Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein issuing separate statements.

Comment Date: March 1, 2005
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I. INTRODUCTION

1. In this *Report and Order* we resolve a number of issues raised in the *Notice of Proposed Rulemaking* ("*Notice*") [1] regarding the obligation of television broadcasters to protect and serve children in their 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 protect children from excessive and inappropriate commercial messages.[2] While some of the rules and policies we adopt herein apply only to digital broadcasters, others apply to both analog and digital broadcasters as well as cable operators. 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, and to improve our children's programming rules and policies.[3]

2. First, we address the obligation of digital television ("DTV") broadcasters to provide children's educational and informational programming and, specifically, how that obligation applies to DTV broadcasters that use the multicast capability of their ATSC digital service to broadcast multiple program services. We adopt an approach pursuant to which digital broadcasters that choose to provide streams or hours of free video programming in addition to their required free over-the-air video program service will have an increased core programming benchmark roughly proportional to the additional amount of free video programming they choose to provide. Second, for both analog and digital broadcasters, we limit the number of preemptions allowed under our processing guideline to no more than 10 percent of core programs in each calendar quarter.[4] Third, we amend our rule regarding on-air identification of core programming to require both analog and digital broadcasters to identify such programming with the same symbol, E/I, which must be displayed throughout the program in order for the program to qualify as core educational programming. Fourth, we clarify that the children's television commercial limits and policies apply to all digital video programming directed to children ages 12 and under. Fifth, we interpret the commercial time limits to require that the display of Internet website addresses during program material is permitted as within the time limits only if the website meets certain requirements, including the requirement that it offer a substantial amount of *bona fide* program-related or other noncommercial content and is not primarily intended for commercial purposes. Sixth, we revise our definition of "commercial matter" to include promotions of television programs or video programming

[1] *Notice of Proposed Rule Making, In the Matter of Children's Television Obligations of Digital Television Broadcasters,* 15 FCC Rcd 22946 (2000) ("*Notice"*). A list of parties that filed comments in response to the *Notice* is contained in Appendix A.

[2] 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] This *Report and Order* addresses issues related only to children's television programming requirements. It does not address more general issues related to the public interest obligations of digital television broadcasters. Those more general issues, raised in the *Notice of Inquiry*, *Public Interest Obligations of TV Broadcast Licensees,* 14 FCC Rcd 21633 (1999), will be addressed in a separate proceeding.

[4] A station that fails to meet the processing guideline because of excessive preemptions may still receive staff-level approval of its renewal application if it demonstrates that it has aired a package of educational and informational programming, including specials, PSAs, short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children, that demonstrates a commitment to educating and informing children at least equivalent to airing the amount of core programming indicated by the processing guideline. Licensees that do not qualify for staff level approval will have their license renewal applications referred to the Commission where they will have an additional opportunity to demonstrate compliance with the CTA.

services other than children's educational and informational programming. Finally, we seek comment on several additional proposals concerning the children's programming commercial limits and indicate our intention to issue a Public Notice in the near future seeking comment on broadcaster compliance with the Children's Television Act of 1990 ("CTA").[5]

II. BACKGROUND

3. 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 bedroom.[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 three school years in front of the television set.[8]

4. 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]

5. For more than 30 years, the Commission has recognized that, as part of their obligation as trustees of the public's airwaves, broadcasters must provide programming that serves the particular needs of children. The Commission's efforts to promote programming for children began in 1960 with the statement that children were one of the several groups whose programming needs television licensees must meet to fulfill their community public interest responsibilities.[10] In 1974, the Commission instituted a wide ranging inquiry into children's programming and advertising practices, which led to publication of the *Children's Television Report and Policy Statement.*[11] The Commission concluded that broadcasters have "a special obligation" to serve children and stated its expectation that licensees would increase the number of programs aimed at children in specific age groups. The Commission also concluded that children are more "trusting and vulnerable to commercial 'pitches' than adults" and that children "cannot distinguish conceptually between programming and advertising."[12] The Commission stated its expectation that the industry would eliminate "host selling"[13] and product "tie-ins," use separation

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

[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] *Report and Statement of Policy Re: Commission En Banc Programming Inquiry*, 44 FCC 2303 (1960).

[11] *Children's Television Report and Policy Statement*, 50 FCC 2d 1 (1974), *affd*., *Action for Children's Television v. FCC*, 564 F.2d 458 (D.C. Cir. 1977) ("*1974 Policy Statement*").

[12] *1974 Policy Statement*, 50 FCC 2d at 11.

[13] "Host-selling" is the use of program characters or show hosts to sell products in commercials during or adjacent to the shows in which the character or host appears.

between programs and commercials during children's programming, and honor the industry's voluntary advertising guidelines for children's programs.[14]

6. Later in the 1970s, the Commission undertook further study of the availability of educational programming for children.[15] Finding that the industry had failed to respond to its earlier call for improvements, the Commission considered formal regulation.[16] In 1984, however, the Commission decided not to establish quantitative program requirements for broadcasters, relying instead on market forces to ensure a sufficient supply of educational programming for children.[17] Following this decision, the amount of children's educational programming aired by commercial television stations decreased markedly.[18] Also in 1984, the Commission repealed the commercial guidelines for children's programming,[19] leading to an increase in the amount of commercial matter broadcast during children's programming.[20]

7. In 1990, Congress reacted to these decisions by enacting the Children's Television Act of 1990 ("CTA").[21] 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 that may be aired 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. Second, through its review of television broadcast 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."[22]

8. The Commission first promulgated rules implementing the CTA in 1991.[23] The Commission determined that the statutory children's programming commercial limits would apply to

[14] *1974 Policy Statement*, 50 FCC 2d at 12-13. Under the voluntary advertising guidelines, broadcasters were to air no more than 12 minutes per hour of advertising on weekday children's programs and 9.5 minutes per hour on weekend programming.

[15] FCC, *Television Programming for Children, A Report of the Children's Task Force* (1979).

[16] *Notice of Proposed Rulemaking, Children's Television Programming and Advertising Practices*, Docket No. 19142, 75 FCC 2d 138 (1979). The 1979 *Notice* proposed to require that all commercial television stations provide five hours per week of educational programming for preschool children (ages two to five) and two and one-half hours per week of educational programming for school age children (ages six to twelve). *Id*. at 148.

[17] *Report and Order*, *Children's Television Programming and Advertising Practices*, MM Docket No. 19142, 96 FCC 2d 634 (1984), *aff'd*, *Action for Children's Television v. FCC*, 756 F.2d 899 (D.C. Cir. 1985).

[18] Ellen Wartella, Katherine Heintz, Amy Aidman, and Sharon Mazzarella, *Television and Beyond: Children's Video Media in One Community*, *Communication Research* (1990); Dennis Kerkman, Dale Kunkel, Alethea Huston, John Wright, and Marites Pinon, *Children's Television Programming and the "Free Market" Solution*, *Journalism Quarterly* (1990).

[19] *Report and Order*, *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Logs for Commercial Television Stations*, 98 FCC 2d 1076 (1984).

[20] *See* Senate Report at 9.

[21] Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b, 394. The Senate Report on the CTA cited the Commission's 1984 decisions as precipitating factors in the enactment of the CTA. *See* Senate Report at 4-5.

[22] 47 U.S.C. § 303b.

[23] *Policies and Rules Concerning Children's Television Programming*, 6 FCC Rcd 2111, 2112 (1991) ("*1991 Report and Order*"), *recon. granted in part*, 6 FCC Rcd 5093 (1991).

programs originally produced and broadcast for an audience of children under 13 years old.[24] Commercial matter was defined as "air time sold for purposes of selling a product," *i.e.*, the advertiser must provide some valuable consideration either directly or indirectly to the broadcaster or cable operator as an inducement for airing the material.[25] Television licensees were required to certify their compliance with the commercial limits as part of their license renewal applications, and maintain records sufficient to permit substantiation of the certification.[26]

9. As part of the *1991 Report and Order*, the Commission also adopted rules implementing the CTA's educational programming mandate. These rules included a flexible definition of educational programming, did not establish quantitative guidelines regarding the amount of educational programming licensees were required to provide, and did not include measures designed to inform the public about educational programming.

10. In 1996, the Commission adopted new rules to further advance the goals of the CTA.[27] The rules adopted include several measures to improve public access to information about the availability of programming "specifically designed" to serve children's educational and informational needs (otherwise known as "core" programming). These measures include a requirement that licensees identify core programming at the time it is aired (in a manner left to the discretion of the licensee) and in information provided to publishers of television programming guides.[28] Licensees must also prepare and place in their public inspection files a quarterly Children's Television Programming Report identifying their core programming and other efforts to comply with their educational programming obligations.[29]

11. The rules defined "core" programming as regularly scheduled, weekly programming of at least 30 minutes duration, aired between 7:00 a.m. and 10:00 p.m., that has serving the educational and informational needs of children ages 16 and under as a significant purpose.[30] The rules also require that, to be considered core, educational and informational programming must be identified as such in the Children's Television Programming Report prepared by commercial stations and those stations must instruct program guide publishers to list the program as educational/informational.[31]

12. The Commission also adopted a processing guideline to govern action on renewal applications. Under this guideline, a broadcaster can receive staff-level approval of the CTA portion of

[24] *1991 Report and Order,* 6 FCC Rcd at 2112, ¶ 3.

[25] *Id. at* ¶¶ 4-5. The Commission also reaffirmed and clarified its long-standing policy that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a "program-length commercial"). *Id.* at 2118, ¶¶ 44-46.

[26] Licensees that cannot certify compliance must explain in their renewal applications all instances during their license terms in which they have exceeded the commercial limits. The Commission has admonished or fined licensees for commercial overages. The level of sanctions has been based on the number of overages, the length of the overages, and the period of time over which the overages have occurred.

[27] *See Policies and Rules Concerning Children's Television Programming*, 11 FCC Rcd 10660 (1996) ("*1996 Children's Programming Report and Order*").

[28] 47 C.F.R. § 73.673.

[29] 47 C.F.R. § 73.3526(a)(11)(iii). Commercial broadcast licensees must file their Reports with the Commission on a quarterly basis. *See Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398*), 15 FCC Rcd 22921 (2000). These Reports can be accessed by the public through the FCC's "Parents' Place" webpage: http://www.fcc.gov/parents/.

[30] 47 C.F.R. § 73.671(c).

[31] *Id*.

its renewal application by airing at least three hours per week of core educational programming.[32] 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.[33] Licensees not meeting these criteria will have their license renewal applications referred to the Commission.[34]

13. This proceeding was commenced by *Notice of Proposed* Rule *Making* ("*Notice*") seeking comment on a range of issues related to the obligations of DTV and analog broadcasters to serve children, focusing in particular on the changes brought about by the authorization and growth of digital television broadcasting.[35] The *Notice* sought comment on how these existing children's television obligations, developed with single channel analog technology in mind, should apply to digital television broadcasting, which permits a range of possible applications including high definition TV ("HDTV"), multicasting, and the provision of "ancillary or supplementary services" such as paid video and data services.

14. Given that the CTA is written broadly to apply to television broadcast licensees, and in light of explicit congressional intent expressed in Section 336 of the Communications Act, as amended, to continue to require digital broadcasters to serve the public interest,[36] we concluded in the *Notice* that digital broadcasters are subject to all of the CTA's commercial time limit and educational and informational programming requirements.[37] We also concluded that digital broadcasters must continue to comply with our policies regarding program-commercial separation,[38] host selling, and program-length commercials.[39] The purpose of this proceeding is to clarify how these requirements apply in light of the

[32] 47 C.F.R. § 73.671, Note 2.

[33] *Id*. 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. *Id*.

[34] *Id*. 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*.

[35] *Children's Television Obligations of Digital Television Broadcasters,* 15 FCC Rcd 22946 (2000). The *Notice* followed up on an earlier inquiry proceeding, *Public Interest Obligations of TV Broadcast Licensees,* 14 FCC Rcd 21633 (1999) ("*NOI*"). The *NOI*, in particular, sought comment on some of the views expressed in the 1998 report of the President's Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters ("Advisory Committee"). *See* Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, *Charting the Digital Broadcasting Future: Final Report of the Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters* (1998).

[36] 47 U.S.C. § 336(d). Section 336 provides that "[n]othing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity." Further: "In the Commission's review of any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, the television licensee shall establish that all of its program services on the existing or advanced television spectrum are in the public interest."

[37] *Notice*, 15 FCC Rcd at 22951, ¶ 12.

[38] Children's programs are required to contain bumpers (*e.g*., "And now it's time for a commercial break," "And now back to the [title of the program]") separating the program from adjacent commercial material. *1991 Report and Order*, 6 FCC Rcd at 2127, n. 147.

[39] *Notice*, 15 FCC Rcd at 22951, ¶ 12.

new capabilities made possible by digital technology.[40]

III. EDUCATIONAL AND INFORMATIONAL PROGRAMMING

A. Digital Core Children's Programming Processing Guideline

15. One of the questions posed in the *Notice* is how the current three-hour children's core educational programming processing guideline should apply to a DTV broadcaster that chooses to multicast.[41] We asked if the processing guideline should apply to only one digital broadcasting program stream, to more than one program stream, or to all program streams the broadcaster chooses to provide. We also noted that DTV broadcasters may choose to devote a portion of their spectrum to either non-video services, such as datacasting, or to subscription video services available only to viewers who pay a fee, consistent with the requirement that they provide at least one free, over-the-air video program service to viewers.[42] We asked whether the guideline should apply only to free broadcast services or also to services offered for a fee, and to video services only or also to non-video services. Finally, we asked how we should take into account the fact that DTV broadcasters have the flexibility to vary the amount and quality of broadcast programming they offer throughout the day. For example, a broadcaster could air 4 SDTV channels from 8 a.m. to 3 p.m., switch to two higher definition channels from 3 p.m. to 8 p.m., and finish with one HDTV channel for prime-time and late-night programming.

16. A number of commenters responding to our *NOI* made specific proposals as to how the processing guideline could be adapted to apply in a multicast environment. We invited comment on some of these proposals in the *Notice*. One proposed approach was to require each digital broadcaster to provide an amount of weekly core programming that is proportional to the three hour per week quantitative guideline. Specifically, the commenters supporting this approach proposed that DTV broadcasters devote 3% of their broadcast hours per week to core educational programming.[43] Another possible approach discussed in the *Notice* was a "pay or play" model whereby broadcasters would have the choice of meeting their core programming obligation either through their own programming or by paying other networks or channels to air children's programming for them, or a combination of both.[44] We also sought comment on a "menu" approach that would give digital broadcasters the option of satisfying their children's core programming obligation by providing, at their option, some combination of services, including additional core programming, broadband or datacasting services to local schools and libraries, or support for the production of children's educational programming by local public stations or other noncommercial program producers.[45]

17. We have three main goals in crafting children's educational and informational programming rules for digital broadcasting. First, we want to ensure that the needs of children continue to be served "through the licensee's overall programming." We agree with children's television

[40] In the *Notice of Proposed Rule Making* initiating the second periodic review of the transition to digital television, we invited additional comment on the digital children's television *Notice*. *See Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 18 FCC Rcd 1279, 1319-20, ¶ 112 (2003) ("*Second DTV Periodic NPRM"*). Comments filed in response to the *Notice* and the *Second DTV Periodic NPRM* will be identified herein both by commenter name and the month and year the comments were filed.

[41] *Notice*, 15 FCC Rcd at 22952, ¶ 14.

[42] *See* 47 C.F.R. § 73.624(b).

[43] *Id.* at 22953, ¶ 17. Commenters based the 3% figure on a 105-hour broadcasting week, counting only the hours between 7:00 a.m. and 10:00 p.m. - the window during which core educational programming must be aired.

[44] *Id.* at 22954-55, ¶ 20.

[45] *Id.* at 22955, ¶¶ 21-22.

advocates who strongly support the position that any increase in multicasting channel capacity that broadcasters choose to implement as a result of digital technology should translate to a commensurate increase in the amount of educational programming available to children.[46] Second, we want to provide broadcasters with flexibility in meeting their children's core programming obligations to permit them to explore the myriad potential uses of their broadcast spectrum made possible by digital technology. Third, we want to address what has been identified by many as a persistent problem in our rules and policies implementing the CTA: the continued lack of awareness on the part of parents and others of the availability of core programming. This concern about lack of public awareness of core programming applies to both the analog and digital broadcast environments.

18. The current 3 hours per week processing guideline was adopted with the one channel per broadcaster analog model in mind. With the advent of digital broadcasting and the multicasting ability that technology offers, a new method of quantifying the current core programming guideline for digital broadcasting is both necessary and appropriate. We also believe that whatever additional requirements we impose should be as concrete and quantifiable as possible to remove uncertainty and facilitate enforcement.[47]

19. We adopt today an approach pursuant to which digital broadcasters that choose to provide additional channels or hours of free video programming in addition to their required free over-the-air video program service will have an increased core programming benchmark roughly proportional to the additional amount of free video programming they choose to provide. This approach is similar to that proposed by a number of commenters in response to the *NOI* and the *Notice*.[48] Our revised guideline will work as follows. Digital broadcasters will 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 or channels of free video programming will, in addition, have the following guideline applied to the additional programming: ½ hour per week of additional core programming for every increment of 1 to 28 hours of free video programming provided in addition to the main program stream. Thus, 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 in addition to the 3 hours per week on the main program stream. Digital broadcasters providing between 29 and 56 hours per week of free video programming in addition to their main program stream will have a guideline of 1 hour per week of core programming in addition to the 3 hours per week on the main

[46] Children's Media Policy Coalition Comments (Apr. 2003) at 6. The Children's Media Policy Coalition is comprised of the following groups: Children Now, the Center for Media Education ("CME"), American Academy of Pediatrics, American Academy of Child and Adolescent Psychiatrists, American Psychological Association, Action Coalition for Media Education, Mediascope, The National Education Association, and The National PTA. CME and Children Now each also filed earlier separate comments in response to the *Notice*. *See also* Consumer Federation of America Comments (Apr. 2003) at 5-6.

[47] Children's Media Policy Coalition Comments (Apr. 2003) at 6.

[48] In its comments responding to the *Notice*, Children Now reiterates the proposal made in its *NOI* comments that each broadcaster be required to provide an amount of weekly core programming equivalent to at least 3% of its overall programming aired between 7:00 a.m. and 10:00 p.m. Children Now Comments (Dec. 2000) at 6-9. These comments were filed by Children Now in association with the national coalition People for Better TV. Other commenters supporting this 3% proposal include: Geoffrey Cowan, LL.B., Aimee Dorr, Ph.D., Donald F. Roberts, Ph.D., Katharine E. Heintz-Knowles, Ph.D. ("Cowan, *et al*.") and Sandra L. Calvert ("Calvert"). *See* Cowan, *et al*. Reply Comments (Jan. 2001); Calvert Reply Comments (Jan. 2001). Sesame Workshop proposes a modified version of the proportional hours approach suggested by Children Now. Sesame Workshop would apply the existing 3 hour core programming processing guideline to each digital broadcaster's main free programming stream and, in addition, would require these broadcasters to devote 3% of their additional digital transmission hours during the 7 a.m. to 10 p.m. time period to educational and informational children's programming to be broadcast on any one, or more than one, of the licensee's digital program signals. Sesame Workshop Comments (Dec. 2000) at 7, 11.

program stream. Digital broadcasters providing between 57 and 84 hours per week of free video programming in addition to their main program stream will have a guideline of 1½ hours per week of core programming in addition to the 3 hours per week on the main program stream. The guideline will continue to increase in this manner for additional hours of free video programming.[49]

20. Although we encourage stations to air more than an additional ½ hour per week of core programming for every increment of 28 hours of additional free video programming, in order to receive staff level approval of the CTA portion of their license renewal application under our revised processing guideline digital broadcasters must air at least ½ hour of core educational children's programming for every increment of 1 to 28 hours of free video programming provided in addition to the main program stream. As under our current processing guideline for the analog channel, a licensee will continue to be eligible for staff level approval if it demonstrates that it has aired a package of different types of educational and informational programming that, while containing somewhat less core programming than indicated by the revised 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 the opportunity to demonstrate compliance with the CTA in the same manner as under our current processing guideline.[50]

21. To be considered core, the programming must comply with all of the requirements for core programming specified in our rules: that is, it must have serving the educational and informational needs of children ages 16 and under as a significant purpose; it must be aired between the hours of 7:00 a.m. and 10:00 p.m.; it must be a regularly scheduled weekly program; it must be at least 30 minutes in length; the educational and informational objective and the target child audience must be specified in writing the licensee's Children's Television Programming Report; and instructions for listing the program as educational/informational, including an indication of the age group for which the program is intended, must be provided by the licensee to publishers of program guides.[51]

22. Our current 3 hours per week core programming processing benchmark is averaged over a six-month period in order to provide broadcasters with scheduling flexibility.[52] We will also average

[49] These benchmarks were derived by dividing the total number of hours in the week (168) by 6 (the number of ½ hour core programming increments required under our current guideline, as core programs must be at least 30 minutes in length), which equals 28. Thus, under the revised guideline, for every increment of 1 to 28 hours of additional free video programming offered in addition to the main digital program stream, the broadcaster must air at least an additional ½ hour of core programming. Another way to look at this is that for each full time stream of additional free video programming (24 hours day 7 days per week), the licensee must air an additional 3 hours per week of core programming.

[50] *See* 47 C.F.R. § 73.671 Note 2. Specifically, that provision states: "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 (*e.g.*, by relying in part on sponsorship of core educational/informational programs on other stations in the market that increases the amount of core educational and informational programming on the station airing the sponsored program and/or special nonbroadcast efforts which enhance the value of children's educational and informational television programming." *See also* 47 C.F.R. § 73.671(b). The Commission has discretion to determine how much weight to give to a station's sponsorship of core educational and informational programming on other stations in the market when evaluating the station's compliance with the CTA.

[51] *See* 47 C.F.R. § 73.671©. *See also 1996 Children's Programming Report and Order*, 11 FCC Rcd at 10695-10715, ¶¶ 73-114. In addition, as discussed *infra*, core programming must be identified by the symbol E/I displayed throughout the program.

[52] *See 1996 Children's Programming Report and Order,* 11 FCC Rcd at 10723, ¶ 132.

the revised core programming processing benchmark to be applied to DTV broadcasters over a six-month period, thus providing some flexibility for digital broadcasters. The revised digital core programming guideline will become effective one year after release of this *Report and Order*.[53]

23. We are concerned that digital broadcasters do not simply replay the same core programming in order to meet our revised processing guideline, particularly if broadcasters offer multiple streams of free video programming and thereby face a higher core programming guideline. We recognize, however, that to some degree children can benefit from repeated viewing of the same core program, as the educational lesson or message is reinforced.[54] Accordingly, we will not prohibit all repeats of core programming by digital broadcasters under our revised guideline, but will require that at least 50 percent of core programming not be repeated during the same week to qualify as core.[55] We will exempt from this requirement any program stream that merely time shifts the entire programming line-up of another program stream. In addition, during the digital transition, we will not count as repeated programming core programs that are aired on both the analog station and a digital program stream.

24. In order to receive staff level approval of their license renewal application under our revised core programming processing guideline, digital broadcasters will be required to air at least three hours per week of core programming on their main program stream. To provide broadcasters with flexibility in choosing how best to serve their child audience, however, we will permit digital broadcasters to air all of their additional digital core programming, beyond the 3 hour baseline on the main digital program stream, on one free digital video channel or distribute it across multiple free digital video channels, at their discretion, as long as the stream/s on which the core programming is aired has comparable carriage on multichannel video programming distributors ("MVPDs") as the stream whose programming generates the core programming obligation under the revised processing guideline. Educational and informational programming aired on subscription channels, however, will not be considered core under our processing guideline. In addition, the current three hours per week core programming processing guideline will continue to apply to analog stations until the analog channel is returned to the Commission at the end of the digital transition. Core programs aired on digital program streams will not be considered in evaluating whether a station has complied with the core programming processing guideline for its analog channel.

25. We agree with those commenters who argue that, in some cases, children and parents may be best served by having core programming available on a channel that is devoted to programming appropriate for child or family viewing during all or part of the programming day or week.[56] We also agree that requiring every programming stream to carry core programming could discourage broadcasters

[53] *See*, *infra*, Section VII.

[54] *See 1996 Children's Programming Report and Order*, 11 FCC Rcd at 10710-10711,¶ 105.

[55] Under our current 3 hours per week processing guideline that applies to the analog channel, we allow repeats and reruns of core programming to be counted toward fulfillment of the guideline. *1996 Children's Programming Report and Order,* 11 FCC Rcd at 10723, ¶ 132. There is no indication now that analog core programming is repeated excessively. We impose the limit on repeats on digital broadcasters because of our concern that higher programming benchmarks not be met by excessive repeats of core programming.

[56] *See*, *e.g.*, NAB Comments (Apr. 2003) at 4-5; Paxson Comments (Apr. 2003) at 38; Children Now Comments (Dec. 2000) at 15. Some parties have suggested that the channel on which the core programming appears should be the channel receiving cable carriage. *See*, *e.g.*, Sesame Workshop Comments (Dec. 2000) at 8-9. The basic question of the type of cable carriage DTV stations are entitled to, however, is an issue under review in a separate proceeding. *See Carriage of Digital Television Broadcast Signals*, 16 FCC Rcd 2598 (2001) (petitions for reconsideration pending). To the extent that broadcasters' digital channels receive cable carriage, we encourage broadcasters to air their core children's programming on those programming streams that are carried to maximize the access that cable subscribers have to this programming. We have no indication that this would not generally be the case.

from experimenting with innovative multicasting services.[57] If, for example, alternative content streams are used to directly expand the value of the main stream through the broadcasting of associated information or different camera angles or the alternative streams are used for low bit rate video services such as a dedicated weather channel, they may not be appropriate for the carriage of children's programming. Moreover, we do not want to discourage broadcasters from providing highly specialized channels on which content directed to children might depart from the specialized focus. It is our expectation that broadcasters will develop such programming services. In the next three years, we intend to revisit the issues addressed in this *Report and Order* in another proceeding.[58] At that time, we will consider, among other things, whether we should give broadcasters who choose to multicast more flexibility in terms of placement of core programming.

26. Our revised guideline translates our existing core programming guideline to the digital environment in a manner that is both fair to broadcasters and meets the needs of the child audience. The revised guideline sets forth clear minimum programming benchmarks that provide an administratively efficient means of enforcing the CTA and providing clarity to broadcasters about their programming obligations under the statute. 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."[59]

27. We disagree with broadcasters that contend that there is no evidence at this point that digital broadcasters will fail to meet the educational and informational needs of children, and every reason to believe that, with the advent of multicasting and other digital services, broadcasters will provide ample children's programming without imposition of new rules on digital broadcasters.[60] The history of children's television regulation shows that, in the absence of specific requirements, broadcasters have not provided sufficient programming that serves the educational and informational needs of children. Further, in enacting the CTA, Congress made clear that the FCC could not rely solely on market forces to increase the educational and informational programming available to children on commercial television.[61]

28. We also disagree with commenters who argue that imposing new and more onerous children's television obligations could interfere with the expeditious deployment of digital TV.[62] For licensees providing only a single digital video program stream, as is true of the vast majority of digital broadcasters today, our revised guideline will apply in the same manner as the current three hours per week core programming guideline. For broadcasters that choose to multicast, the revised guideline

[57] *See*, *e.g.*, NAB Comments (Apr. 2003) at 4-6; Paxson Comments (Apr. 2003) at 38; State Broadcasters Comments (Dec. 2000) at 13; Marantha Broadcasting Company, Inc. Comments (Dec. 2000) at 1-2.

[58] *See*, *infra*, Section VI.

[59] Senate Report at 1. The CTA requires the Commission, in its renewal of each television broadcast license renewal application, to "consider the extent to which the licensee … has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." 47 U.S.C. § 303b (emphasis added).

[60] ALTV Comments (Dec. 2000) at 6-8; State Broadcasters Comments (Dec. 2000) at 5 (arguing that there is no record yet that indicates that DTV broadcasters are failing to meet the needs of the nation's children).

[61] *1996 Children's Programming Report and Order*, 11 FCC Rcd at 10670, ¶ 21. The Senate Report states: "The same problems with children's programming that the FCC found in 1976 exist today. Market forces have not worked to increase the educational and informational programming available to children on commercial television." Senate Report at 9. *See also* House Report at 6 (noting the Committee's belief that "the new marketplace for video programming does not obviate the public interest responsibility of individual broadcast licensees to serve the child audience").

[62] *See*, *e.g.*, ALTV Comments (Dec. 2000) at 9.

provides flexibility by permitting them to choose, at their discretion, whether to air the additional core programming beyond the baseline three hours on the main program stream on a single or multiple channels. Thus, our revised guideline will permit broadcasters to experiment with their digital spectrum by providing channels directed, in whole or in part, to children and other discrete segments of their viewing audience.

29. Our revised guideline is similar to the 3% proportional hours proposals advanced by Sesame Workshop and Children Now. Rather than a guideline tied to a percentage of programming hours, however, we believe that the set of pre-established benchmarks for additional core programming that we adopt today will be simpler to administer for both broadcasters and the Commission. Our benchmarks are tied to ½ hour core program increments, which is consistent with the requirement that core programs be at least ½ hour long. Moreover, unlike the 3% proposal advanced by Sesame Workshop, our revised guideline ties the increase in broadcasters' educational programming obligations to an increase in video program hours aired at any time on another multicast channel, not just to additional video programming aired between 7:00 a.m. and 10:00 p.m.[63] This approach ensures that broadcasters' core programming obligation increases along with their overall programming hours regardless of when that additional programming is aired, and avoids giving broadcasters an incentive to air additional programming during hours outside the core programming window.

30. Although Children Now and Sesame Workshop propose that the 3% rule be applied to both free and pay programming,[64] we have decided, for the time being, to tie broadcasters' increased core programming obligation under our revised guideline only to the amount of additional free video programming the broadcaster offers. We take this approach because it is unclear at this time the extent to which broadcasters will choose to use their digital spectrum to offer datacasting or other non-video services or subscription video services. At present, we are aware of only a few broadcasters using their spectrum to provide ancillary and supplementary services. We believe that broadcasters should be permitted to choose to experiment with these services, at least initially, without concern regarding how they will affect the core programming obligation. We intend to monitor the evolving DTV marketplace, however, and to consider the ways in which broadcasters use their digital spectrum and the amount of digital core programming provided as compared to broadcasters' overall digital programming, and we may reevaluate this determination in the future.

31. One aspect of both the "pay or play" and "menu" models proposed by some commenters and discussed in the *Notice* is broadcast sponsorship of children's educational programming to be aired on other stations in the market.[65] Broadcasters have the option under our current rules to receive credit for

[63] *See* Sesame Workshop Comments (Dec. 2000) at 11. The hours between 7:00 a.m. and 10:00 p.m. are the time when core programming may be aired.

[64] Children Now Comments (Dec. 2000) at 6-7, n.9; Sesame Workshop Comments (Dec. 2000) at 12. In addition to the 3 hour per week guideline it would apply to the main digital program stream, Sesame Workshop would require that digital broadcasters devote 3% of their total hours transmitted between 7 a.m. and 10 p.m. over all digital program streams, including subscription and data transmissions, but excluding the main program channel, to core programming.

[65] For example, CME *et al.* proposes that the Commission maintain the 3 hour processing guideline for a broadcaster's main channel, but also require additional service to children measured according to a point system guideline. Under this proposal, the Commission would establish a point threshold for broadcasters and award broadcasters points to be applied toward the guideline for (1) airing additional core programming; (2) funding children's educational programming on a local public TV station; and/or (3) non-broadcast efforts, such as datacasting for local schools. CME *et al.* Comments (Dec. 2000) at 8. CME filed these comments in December 2000 jointly with forty other organizations and individuals.

sponsoring core programming aired on another station in their market.[66] Under the revised guideline we adopt today, we will continue to permit broadcasters to produce or support core programming aired on another station in their market in the same manner as under our current rules.[67] We decline, however, to adopt an approach requiring formal valuation of sponsorship efforts. We share the concern expressed by some commenters that the "pay or play" approach would be difficult to administer as the Commission would be required to determine how much broadcasters would have to pay other stations to air educational programming.[68]

32. We also decline to adopt an approach, such as that proposed by CME, *et al*., that would permit broadcasters to satisfy a portion of their educational programming obligation by funding broadband or datacasting services for local schools or libraries. This type of service to children is not part of the CTA mandate that broadcasters provide educational and informational programming for children. Moreover, we have no evidence in this proceeding pointing to a demand for such services that is not already being met by other providers or funding sources.[69] If evidence emerges suggesting a need for additional, new methods of funding such services, we may revisit this issue.

33. The revised guideline discussed above applies to digital broadcasters and the digital programming they provide. Up until the time that analog channels are returned to the Commission, we will continue to apply our current three hours per week core children's programming processing guideline to analog channels. Broadcasters will continue to file, on a quarterly basis, their Children's Television Programming Report, on FCC Form 398. We will revise current FCC Form 398 to permit broadcasters to report both analog and digital core programming on that form. Once the new form has been approved for use, we will issue a Public Notice informing broadcasters of the availability of the form and the date on which the revised form must begin to be used in place of the current form. On that date, reports will also be required to include information about digital core programming. As we have done in the analog context, we will continue to exempt noncommercial television licensees from children's programming reporting requirements with respect to their digital programming.[70]

34. We also decline, at this time, to require high definition, interactivity, or other features made possible by digital technology to enhance core programming. We believe it would be premature to impose any requirement for use of technological advances in children's programming until broadcasters have had more opportunity to experiment with these features in other programming. However, we

[66] The Commission has discretion to determine how much weight to give to a station's sponsorship of core educational and informational programming on other stations in the market when evaluating the station's compliance with the CTA.

[67] *Id.* Licensees are permitted to present evidence at the Commission level of special sponsorship efforts if the broadcaster can demonstrate that its production or support of core programming aired on another station in its market increased the amount of core programming on the station airing the sponsored core programming. *See* 47 C.F.R. § 73.671, Note 2; *1996 Children's Programming Report and Order*, 11 FCC Rcd at 10725-26, ¶¶ 138-39. The Commission has made clear that, under the CTA, a licensee's sponsorship of programming aired on another station in the market does not relieve the licensee of the obligation to air educational programming, and that such efforts may be considered only "in addition to" consideration of the educational programming aired by the licensee itself. *1996 Children's Programming Report and Order*, 11 FCC Rcd at 10725, ¶ 138.

[68] *See, e.g.*, State Broadcasters Comments (Dec. 2000) at 14.

[69] For example, under the E-Rate program created by Congress in the Telecommunications Act of 1996, the Commission has determined that schools and libraries may receive e-rate funds for, among other things, Internet access.

[70] *See 1996 Children's Programming Report and Order*, 11 FCC Rcd at 10684, n.119. *See also* Comments of the Association of America's Public Television Stations and the Public Broadcast Service ("AAPTS/PBS") (Dec. 2000) at 8-9.

encourage broadcasters to provide high definition educational and informational programming for children as well as educational interactive features, to ensure that children benefit from the capabilities of digital technology. We agree with those commenters who argue that use of such features could improve the educational potential of core programming.[71]

35. Finally, we disagree with those commenters that argue that the Commission lacks legal authority to impose new children's educational and informational programming requirements. As noted above, digital broadcasters are subject to the CTA's educational and informational programming requirements.[72] In the *1996 Children's Programming Report and Order*, we concluded that a safe harbor processing guideline approach to implementing the CTA is consistent with both the language and the intent of the statute.[73] The revised quantitative processing guideline we adopt today for digital broadcasters is also consistent with the CTA and the First Amendment. In adopting the three hours per week core programming processing guideline for analog broadcasters, we concluded that defining what qualifies as programming "specifically designed" to serve the educational needs of children and giving broadcasters clear but nonmandatory guidance on how to guarantee compliance is a constitutional means of giving effect to the CTA's programming requirement.[74] The actions we take today extend the current processing guideline to digital broadcasters and increase the guideline only for broadcasters who choose to use their digital capacity to air more free video programming. Broadcasters continue to retain wide discretion in choosing the ways in which they will meet their CTA obligations. 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.

B. Preemption

36. Related to the issue of digital broadcasters' educational and informational programming obligations under the CTA is the issue of how we will treat preemptions of core programs by DTV broadcasters. To qualify as "core programming" for purposes of the three-hour-per-week 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."[75] In adopting the current educational programming rules, the Commission stated that television series typically air in the same time slot for 13 consecutive weeks, although some episodes may be preempted for programs such as breaking news or live sports events. The Commission noted that programming that is aired on a regular basis is more easily anticipated and located by viewers, and can build loyalty that will

[71] *See*, *e.g.*, Coalition Comments (Apr. 2003) at 7-8; Children Now Comments (Dec. 2000) at 16-22. Children Now argues that it is important that the benefits of interactive technology reach children in an educational context. Children Now argues that, when features such as datacasting and interactivity are used in conjunction with non-core video programming, the same percentage of core programming should feature such components. In addition, when channel space is dedicated to the independent use of datacasting or other non-video features unconnected with video programming, Children Now also supports making 3% of any of such usage core. Thus, under Children Now's proposal, a 3% rule would apply to video programming, and the resulting amount of core programming would include interactive components in an amount proportional to the use of such components in non-core programming, and a separate 3% requirement would exist for any datacasting or interactive services transmitted independent of video programming. Children Now Comments (Dec. 2000) at 16-17 and n. 31. CME, *et al.* also proposes that broadcasters receive extra points under its proposed point system for core programming that includes interactive features. CME, *et al*. Comments (Dec. 2000) at 13.

[72] *See*, *supra*, ¶ 14. *See also Notice*, 15 FCC Rcd at 22951, ¶ 12.

[73] *1996 Children's Programming Report and Order*, 11 FCC Rcd at 10721-22, ¶¶ 127-29.

[74] *1996 Children's Programming Report and Order*, 11 FCC Rcd at 10729, ¶ 149.

[75] *Id.*, 11 FCC Rcd at 10711.

improve its chance for commercial success. The Commission stated that it would leave to the staff to determine, with guidance from the full Commission as necessary, what constitutes regularly scheduled programming and what level of preemption is allowable.

37. In connection with each of the 1997-98, 1998-99, and 1999-2000 television seasons, the ABC, CBS, and NBC networks made separate requests of the Mass Media Bureau for flexibility to reschedule episodes of core programs that were preempted by live network sports events without adversely affecting the program's status as "regularly scheduled." For the first two seasons, the Mass Media Bureau allowed the networks limited flexibility in preempting core children's programming.[76] Specifically, within certain limitations, the Bureau advised that preempted core programs could count toward a station's core programming obligation if the program were rescheduled, except for core programs preempted for "breaking news," which do not need to be rescheduled under this policy. The Bureau also indicated that it would revisit this limited flexibility regarding preempted core programming based on the level of preempted programs, the rescheduling and broadcast of the preempted programs, the impact of promotions and other steps taken by the stations to make children's educational programming a success.[77]

38. We requested comment in the *Notice* on whether the Commission's policies regarding preemption of core programs should be revised in view of the greater programming capacity that will be available to DTV broadcasters. We 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." Given this capability, we asked if we should fashion a rule defining clearly the requirement that a "core" program be "regularly scheduled," including the number of times a core program could be preempted and still count toward the three-hour-per-week processing guideline, and the efforts that must be made to reschedule and promote preempted programs in order for these programs to contribute toward the core programming guideline. If we were to adopt such a rule, we asked if we should continue to exempt from the requirement that core programs be rescheduled core programs preempted for breaking news. We also sought comment on the kind of rescheduling practices and promotion of rescheduled programs that we could require from digital broadcasters.

39. For both analog and digital broadcasters, to be considered core programming we will generally require that a preempted core program be rescheduled. In addition, we will consider, in determining whether the rescheduled program counts as a core educational program, the reason for the preemption, the licensee's efforts to promote the rescheduled program, the time when the rescheduled program is broadcast, and, as discussed below, the station's level of preemption of core programming. We will continue to exempt from the requirement that core programs be rescheduled core programs preempted for breaking news. Absent clear evidence that broadcasters are abusing this exemption, we intend to rely on broadcasters' journalistic judgment regarding the necessity of interrupting scheduled core programming because of a news alert.[78]

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[76] *See, e.g.*, letters dated July 11, 1997 from Roy J. Stewart, Chief, Mass Media Bureau to: Martin D. Franks, Senior Vice President, Washington, CBS, Inc.; Alan Braverman, Senior Vice President & General Counsel, ABC, Inc.; Rick Cotton and Diane Zipursky, NBC, Inc.

[77] The Commission requires licensees, in their quarterly Children's Television Programming Reports, to identify for each core program the number of times the program was preempted and rescheduled, the reason for each preemption, and the licensee's efforts to promote the rescheduled program. *See* FCC Form 398; *Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398)*, 15 FCC Rcd 22921 (2000).

[78] NAB Comments (Dec. 2000) at 28. CME, *et al*. proposes that the Commission not count toward the 3 hour processing guideline any program that is preempted by analog broadcasters more than two times in a typical 13-week quarter, and that stations be required to reschedule any preempted core programs to a "second home." CME, (continued....)

40. As a general matter, for digital broadcasters we will 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.[79] Thus, as long as viewers are adequately notified of the move and the program is moved to a program stream that is accessible to a comparable number of viewers, broadcasters may use their multicasting capability to avoid preempting core programming.

41. For both analog and digital broadcasters, we will limit the number of preemptions under our 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. We will exempt from this preemption limit preemptions for breaking news.

42. We believe that this preemption limit will help parents and children to locate core programming and to anticipate when it will be aired. We believe that most stations currently do not preempt more than 10 percent of core programs in each calendar quarter.[80] We also note that our processing guideline is averaged over a six-month period, which will provide broadcasters with some scheduling flexibility.[81] In addition, a station that fails to meet the processing guideline because of excessive preemptions may still receive staff-level approval of its renewal application if it demonstrates that it has aired a package of educational and informational programming, including specials, PSAs, short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children, that demonstrates a commitment to educating and informing children at least equivalent to airing the amount of core programming indicated by the processing guideline. Licensees that do not qualify for staff level approval will have their license renewal applications referred to the Commission where they will have an additional opportunity to demonstrate compliance with the CTA.

C. Identification of Core Programming

43. As we stated in the *Notice*, studies of the effectiveness of our educational programming requirements show a continued lack of awareness on the part of parents regarding the availability of core programming. As one study observed:

> Information about E/I programs remains hard for parents to find. Although commercial broadcasters are consistently using E/I icons, the on-air information is often brief and difficult to identify. Printed

(...continued from previous page)
et al. Comments (Dec. 2000) at 18-19. With respect to digital broadcasters, CME, *et al*. and Children Now argue that it should not be necessary in most cases to allow any preemptions of core programs because stations can air sports or breaking news on different streams than regularly scheduled core programming. CME, *et al*. Comments (Dec. 2000) at 18-19; Children Now Comments (Dec. 2000) at 33. Alternatively, Children Now proposes that digital broadcasters be required to shift the core programming to another channel of equivalent quality, airing it at the same time as it was scheduled on the original channel, and providing on-screen information throughout the preempting program informing viewers of the channel on which the preempted program is airing.

[79] This policy applies only to program moves from one digital stream to another digital stream on the same station.

[80] *See* Mass Media Bureau, *Three Year Review of the Implementation of the Children's Television Rules and Guidelines, 1997-1999* (2001).

[81] *See*, *supra*, ¶ 21.

> listing services do not carry the information.… Thus, there is a serious lack of information for parents about core educational and informational offerings, mostly because the popular press does not appear to be interested in or have the capacity to publish such information. Not surprisingly, only one in seven parents is able to correctly identify the meaning of the E/I symbol.[82]

44. Children's television advocates state that core programming is now neither well marked on screen nor consistently listed in program guides. They urge the Commission to amend its rules to require stations to use a standardized core programming icon and to prominently display the icon on screen for a specific amount of time.[83]

45. As we noted when we adopted the current children's educational programming rules in 1996, parents can increase the audience of an educational program by encouraging their children to watch the show, but can only do so if they know in advance when the show will air and that the show is educational.[84] The public information initiatives adopted by the Commission in 1996 were designed to maximize public access to information about core programming while minimizing the cost to licensees. In adopting the current on-air identification requirement, the Commission noted that on-air identifiers were likely to reach a larger audience than information published in program guides, at minimal cost to stations.[85] We continue to believe that on-air identification of core programming is a cost-effective means of ensuring that core programming reaches the child audience, but agree with those commenters that argue that the use of different identifiers by different broadcasters is confusing parents and impairing their ability to choose core programming for their children.[86]

46. Accordingly, we will amend our rules regarding on-air identification of core programming to require both analog and digital broadcasters to identify such programming with the same symbol: E/I. We will also require that this symbol be displayed throughout the program in order for the program to qualify as core. We believe this change to our on-air identification requirement will not prove onerous to broadcasters, who already use on-screen identifiers for core programs, and could greatly improve the public's ability to recognize and locate core programs. We note that broadcasters now display icons and other on-screen information with increasing frequency in many kinds of programming, and the public is increasingly used to seeing such information displayed along with program material. Broadcasters' increasing voluntary use of onscreen identifiers, such as network logos, presumably reflects their judgment as to the effectiveness of this technique in communicating information. We believe that broadcasters can display the E/I icon in an unobtrusive manner that will help parents and others identify core programs without deterring potential child viewers.[87]

47. We will apply this revised on-air identification requirement to both commercial and

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[82] Kelly L. Schmidt, The *Three-Hour Rule: Is it Living Up to Expectations?*, The Annenberg Public Policy Center of the University of Pennsylvania (1999) at 25.

[83] *See*, *e.g.*, Coalition Comments (Apr. 2003) at 5-16; CME, *et al.* Comments (Dec. 2000) at 47; CME, *et al.* Reply Comments (Jan. 2001) at 24; Cowan, *et al*. Reply Comments (Jan. 2001) at 2; Calvert Reply Comments (Jan. 2001) at 3.

[84] *1999 Children's Programming Report and Order*, 11 FCC Rcd at 10682-83, ¶ 48.

[85] *Id*. at 10683, ¶ 52.

[86] CME, *et al.* notes that broadcasters currently employ a variety of symbols for core programming, such as a light bulb (ABC), a bald head with glasses (NBC), and an E/I in a circle (CBS).

[87] Although some commenters have speculated that on-air identification of core programs could deter child viewers, we have no evidence at this time that such an effect will occur.

noncommercial broadcasters. Although we have previously exempted noncommercial licensees from the requirement that they identify core programming,[88] we believe that requiring all broadcasters to use the E/I symbol throughout the program to identify core programming will help reinforce viewer awareness of the meaning of this symbol. We will, however, continue to exempt noncommercial television licensees from the other public information initiatives adopted in the *1996 Children's Programming Report and Order*. Thus, noncommercial television stations will not be required to prepare and file quarterly Children's Television Programming Reports or to provide information identifying programming specifically designed to educate and inform children to publishers of program guides. As is our current practice, we will require noncommercial broadcast stations to maintain documentation sufficient to show compliance with the CTA's programming obligations at renewal time in response to a challenge or to specific complaints.

IV. COMMERCIAL LIMITS

A. Application of Existing Commercial Limits Rules and Policies to DTV

48. We sought comment in the *Notice* on how the limits on the amount of commercial matter in children's programming should apply in the digital environment and how we should interpret with respect to DTV broadcasters the policies set forth in the *1974 Policy Statement* on children's programming. We asked whether children's advertising limits and policies should apply only to free over-the-air channels, or to all digital channels, both fee and pay. We sought comment specifically on the proposal by CME, *et al*. that the Commission prohibit all direct links to commercial websites during children's programming.[89] If we were to permit certain kinds of commercial links during children's programs, we asked if such links should be permitted to appear during the program itself, or be limited to appearing during commercials adequately separated from program material as required by our separations policy.[90]

49. We will apply the commercial limits and policies, as clarified in today's Order, to all digital video programming directed to children ages 12 and under, whether that programming is aired on a free or pay digital stream. We note that the commercial limits and policies currently apply to cable operators and DBS providers and that cable operators are defined as "broadcast licensees" for purposes of the commercial matter limitations in the CTA.[91] Therefore, the application of such limits and policies to pay broadcast channels provides for consistent treatment of these program delivery systems for purposes of children's advertising restrictions. We agree with those commenters that argue that the same concerns that led to adoption of the advertising restrictions in the *1974 Policy Statement* and the CTA – the unique vulnerability of children as television viewers - apply regardless of the channel that a child viewer watches.[92] Thus, any advertising restrictions for children's programming should apply to all such programming, regardless of the free or pay status of the channel. This determination is both consistent with and required by Section 336 of the Communications Act, which states that the Commission "shall adopt regulations that allow the holders of [DTV] licenses to offer such ancillary and supplementary services on designated frequencies as may be consistent with the public interest, convenience and

[88] Our current rules apply the on air identification requirement for core programming only to commercial television broadcast licensees. *See* 47 C.F.R. § 73.673(a).

[89] *Notice*, 15 FCC Rcd at 22958, ¶ 32.

[90] *Notice*, 15 FCC Rcd at 22958-59, ¶ 32.

[91] 47 U.S.C. § 303a (d); *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992*, *Direct Broadcast Satellite Public Interest Obligations*, *Sua Sponte Reconsideration*, 19 FCC Rcd 5647 (2004), *appeal pending* (D.C. Cir. filed June 28, 2004).

[92] CME, *et al.* Comments (Dec. 2000) at 20-21; Children Now Comments (Dec. 2000) at 35-37.

necessity."[93] Providing programs intended for children that do not comply with the advertising limits or commercial policies is contrary to the public interest because they could expose children to excessive and abusive advertising practices.

50. We are aware that some broadcasters are currently displaying Internet website addresses that appear during children's program material (for example, in a crawl at the bottom of screen) which raises the issue of how the CTA commercial time limits should apply. We are concerned that the display of such addresses for websites established solely for commercial purposes in children's programs is inconsistent with our mandate under the CTA to protect children, who are particularly vulnerable to commercial messages and incapable of distinguishing advertising from program material.[94] This is a concern that arises with respect to all broadcasters, both analog and digital, and to cable operators. Accordingly, we adopt a proposal similar to that advanced by Sesame Workshop with respect to this display of commercial website information in children's programs. Specifically, we will interpret the CTA commercial time limits to require that, with respect to programs directed to children ages 12 and under, the display of Internet website addresses during program material is permitted as within the CTA limitations only if the website: 1) offers a substantial amount of *bona fide* program-related or other noncommercial content; 2) 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).[95]

51. For websites meeting these requirements, we will not limit the amount of time that the website address may be displayed during children's programs. In addition, we will permit the commercial portions of websites that comply with these requirements to sell or advertise products associated with the related television program. Because we require that permissible websites clearly separate the commercial portions of the site from the site's other content, we believe that children will be adequately protected from program-related merchandise sales. Because of the unique vulnerability of young children to host-selling, however, we will prohibit the display of website addresses in children's programs when the site uses characters from the program to sell products or services. This restriction on websites that use host-selling applies to website addresses displayed both during program material and during commercial material. We do not impose other restrictions at this time on the use of website

[93] 47 U.S.C. § 336(a)(2). In addition, Section 336(d) provides that that "[n]othing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity." Further: "In the Commission's review of any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, the television licensee shall establish that all of its program services on the existing or advanced television spectrum are in the public interest."

[94] *See* Senate Report at 9 (noting that young children have a difficult time distinguishing commercials from programming and that the ability to recognize persuasive intent is not developed until about the age of seven to eight years); House Report at 6 (stating that it is "well established" that children are uniquely susceptible to the persuasive messages contained in television advertising).

[95] While the CTA's limits on commercial matter in children's programming do not apply to noncommercial educational television stations, the extent to which these stations may engage in commercial activity is governed by other statutory and regulatory provisions. *See* 47 U.S.C. § 399B; 47 C.F.R. § 73.621. Section 399B permits public stations to provide facilities and services in exchange for remuneration as long as those uses do not interfere with the stations' provision of public telecommunications services. Section 399B does not permit, however, public broadcast stations to make their facilities "available to any person for the broadcasting of any advertisement." 47 U.S.C. § 399B(a)(2). In addition, under 47 C.F.R. § 73.621, public television stations are required to furnish primarily an educational as well as a nonprofit and noncommercial broadcast service. 47 C.F.R. § 73.621. *See Ancillary or Supplementary use of Digital Television Capacity by Noncommercial Licensees*, 16 FCC Rcd 19042, 19045, ¶ 7 (2001).

addresses displayed only during commercials aired in children's programs.

52. We believe that this approach to the display of website addresses in programs directed to children ages 12 and under fairly balances the interest of all broadcasters in exploring the potential uses of the Internet in connection with their children's programs with our mandate to protect children from over commercialization. We will require a broadcaster that chooses to air children's programs displaying website addresses during program material to certify, as part of its certification in its license renewal application of compliance with the commercial limits on children's programming, that it has also complied with the requirements concerning the display of website addresses in such programming. In addition, these broadcasters 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 these new 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).[96]

53. With respect to the appearance of direct, interactive, links to commercial Internet sites in children's programming, we agree with those commenters that express concern that prohibiting such links at least at this stage in the digital transition is premature and unnecessary and could hamper the ability of broadcasters to experiment with potential uses of interactive capability in children's programming.[97] There is little if any use of direct Internet connectivity today in television programming of the type that was contemplated when the *Notice* in this proceeding was issued. Accordingly, we find that it would be premature and unduly speculative to attempt to regulate such direct connectivity at this time. We agree that direct links to websites with program-related material could provide beneficial educational and informational content in children's programs and do not wish to place unnecessary barriers in the way of technical developments in this area that may take place.[98]

54. We encourage broadcasters to experiment with the capabilities digital television offers by developing interactive services that can be used to enhance the educational value of children's programming. With the benefits of interactivity, however, come potential risks that children will be exposed to additional commercial influences. We therefore seek comment in the *Further Notice of Proposed Rulemaking* that is part of this *Report and Order* about what kinds of services broadcasters and cable operators are developing and what rules would be appropriate to adopt. During the pendancy of this proceeding, however, we emphasize that broadcasters and cable operators may not circumvent our rules on commercial limits through technological developments in interactivity. We encourage broadcasters and cable operators to innovate and experiment with new uses of interactive technology that is

[96] *See* 47 C.F.R. §§ 76.225, Note 3; 76.1703.

[97] Association of National Advertisers and the American Association of Advertising Agencies ("ANA/AAAA") Comments (Dec. 2000) at 2-3; AAF Comments (Dec. 2000) at 1-4; American Advertising Federation ("AAF") Reply Comments (Jan. 2001) at 4; NAB Comments (Dec. 2000) at 23; National Cable Television Association ("NCTA") Comments (Dec. 2000) at 2; Viacom Comments (Dec. 2000) at v-vi; AOL Time Warner, Inc. ("AOL Time Warner") Reply Comments (Jan. 2001) at 1-3. ANA/AAAA also contends that the policy issues related to links between a children's TV program and a commercial website can be resolved through application of the industry's current self-regulatory program for children's marketing. Specifically, this commenter states that the Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus monitors and reviews children's advertising in all media and addresses particular concerns including host-selling and the distinction between content and advertising. ANA/AAA Comments (Dec. 2000) at 4.

[98] Sesame Workshop Comments (Dec. 2000) at 23-25 (arguing that mixed-use Internet sites can be a valuable means of enhancing the educational value of the related series and of encouraging loyalty to the series, thereby promoting the educational objectives of the CTA).

educational in nature.

B. Definition of Commercial Matter

55. The *Notice* also invited commenters to address a broader question related to our restriction on the duration of advertising during children's programming. This issue arises with respect to both analog and digital programming. We noted that, under our current policy, the limitation of 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays applies to "commercial matter." "Commercial matter" is defined to exclude certain types of program interruptions from counting toward the commercial limits, including promotions of upcoming programs that do not mention sponsors, public service messages promoting not-for-profit activities, and air-time sold for purposes of presenting educational and informational material.[99] We observed in the *Notice* that there is a significant amount of time devoted to these types of announcements in children's programming, thereby often reducing the amount of time devoted to actual program material to an amount far less than the limitation on the duration of commercial matter alone might suggest.[100]

56. Accordingly, we invited comment in the *Notice* on whether the Commission should revise its definition of "commercial matter" to include some or all of these types of program interruptions that do not currently contribute toward the commercial limits. We noted that some of the types of program interruptions currently excluded from the commercial limits may contain information valuable to children, such as promotion of upcoming educational programs or certain types of public service messages. We asked if we should nonetheless require that the time devoted to these announcements count toward the commercial limits to maximize the amount of time devoted to program material and reduce the time taken by interruptions. We also asked whether, if we were to revise our definition of "commercial matter," we should apply the new definition only to digital broadcasting or also to analog broadcasting. Finally, we asked commenters to address whether our ability to revise this definition is restricted by the CTA and its legislative history.[101]

57. We will revise our definition of "commercial matter" to include promotions of television programs or video programming services other than children's educational and informational programming.[102] This revised definition will apply to analog and digital television stations and to cable operators. In the *Further Notice of Proposed Rulemaking* that is part of this *Report and Order*, we also propose to apply this revised definition to Direct Broadcast Satellite service providers.[103] Our goals in making this revision to the definition of commercial matter are to reduce the number of commercial interruptions in children's programming and encourage the promotion of educational and informational programming for children.

58. We agree with those commenters who argue that program promotions should fall within

[99] *1991 Report and Order*, 6 FCC Rcd at 2112.

[100] *Notice*, 15 FCC Rcd at 22959, ¶ 33.

[101] The CTA itself does not define the phrases "commercial matter" or "advertising." Both the House and Senate Reports state that "[t]he Committee intends that the definition of 'commercial matter'… be consistent with the definition used by the Commission in its Former FCC Form 303." *See* House Report at 15-16; Senate Report at 21.

[102] Promotions of children's educational and informational programs are excluded from the revised definition of commercial matter regardless of whether the program being promoted meets the requirements of core programming. We note that while cable operators must comply with the limits on commercial matter in children's programming, they are not subject to the CTA's educational programming requirements, including the Commission's core programming processing guideline.

[103] *See*, *supra*, Section VIII.

the scope of commercial matter because the station broadcasting the promotion receives significant consideration for airing these advertisements: specifically, the increased audiences for the promoted program which presumably leads to increased advertising rates for the station.[104] Reducing the number of program promotions will help protect children from overcommercialization of programming consistent with the overall intent of Congress in the CTA. At the same time, exempting program promotions for children's educational and informational programming may encourage broadcasters to promote this programming, thereby increasing parents' awareness of the programming and possibly the program's audience, and thus extending the educational benefit of the programming. As noted above, there is evidence of a continued lack of awareness on the part of parents regarding the availability of core programming.[105] Our action today may lead to additional promotion of children's educational and informational programming, including core programming, thereby helping to address this problem.

59. This decision is consistent with the CTA and its legislative history. The term "commercial matter" is not defined in the CTA. The House and Senate Reports state that the definition should be "consistent" with the definition used in former Form 303-C, [106] which defined commercial matter to include, among other things, promotional announcements by commercial stations for or on behalf of another commonly owned or controlled broadcast station serving the same community. Including program promotions in the definition of commercial matter is consistent with this aspect of the definition of commercial matter on former Form 303-C, as in either case the station is receiving indirect consideration for the program promotion.

V. INAPPROPRIATE PROMOTIONS IN CHILDREN'S PROGRAMMING

60. Another issue raised both in the *Notice* and in the *NOI* relates to the airing, in programs viewed by children, of promotions for other upcoming programs that may be unsuitable for children to watch because either the promotions themselves or the programs they refer to contain sexual or violent content or inappropriate language. This issue arises with respect to both analog and digital broadcasting and applies not only to educational and informational children's programming but to any programming that is viewed by a substantial number of children. We sought comment in the *Notice* on steps the Commission could take to ensure that programs designed for children or families do not contain promotions that are unsuitable for children to watch. We noted that the broadcast, cable, and motion picture industries voluntarily rate video programming that contains sexual, violent, or other indecent material and broadcast signals containing these ratings so that these programs can be screened by "V-Chip" technology available in television sets. The ratings identify the age group for which a particular program is suitable and indicate when the program contains violence, sexual content, or suggestive or coarse language.[107] We asked in the *Notice* whether the ratings of programs promoted by broadcasters should be consistent with the ratings of the program during which the promotions run. We also asked whether we should require that promotions themselves be rated and encoded so they can be screened by V-Chip technology, or that promotions be rated and that programs with a significant child audience contain only promotions consistent with the rating of the program in which they appear.

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[104] *See* CME, *et al.* Comments (December 2000) at 42.

[105] *See* , *supra* , ¶ 41.

[106] *See* House Report at 15; Senate Report at 21.

[107] For programs designed solely for children, the ratings categories are: TV-Y (suitable for all children), TV-7 (directed to children 7 and above). For programs designed for the entire audience, the ratings categories are: TV-G (general audience), TV-PG (parental guidance suggested – program contains material parents may find unsuitable for younger children), TV-14 (parents strongly cautioned - program may contain material unsuitable for children under 14), TV-MA (mature audience only – program is designed to be viewed by adults and therefore may be unsuitable for children under 17). The TV-PG, TV-14, and TV-MA ratings may also include a V indicating violent content, S for sexual situations, L for language, or D for suggestive dialog.

61. In light of the consensus among commenters that voluntary efforts rather than Commission action are preferable to ensure that age-inappropriate promotions are not aired in children's programs, we will not take action on this issue at this time.[108] Instead, we urge broadcasters to ensure that industry mechanisms are in place and are used effectively to prevent the airing of promotions in children's programs that are inappropriate for child viewing. We also urge the public to continue to monitor promotions aired in children's programming and to notify us of instances in which broadcasters air age-inappropriate promotions. If we receive information suggesting that age-inappropriate promotions have become a systemic problem, we will revisit this issue.

62. Some commenters had general comments regarding the use of V-Chip technology in connection with core children's programming. The Henry J. Kaiser Family Foundation ("Kaiser") argues that it is important that the Commission require "open architecture" for the V-Chip to ensure that blocking technology in television sets can read and respond to the current TV parental guidelines ratings and the motion picture ratings, allow for revisions to the current ratings systems without rendering the V-Chips in existing DTV sets obsolete, and allow for the development of alternative ratings systems in the future.[109] The Children's Media Policy Coalition states that although digital television offers the potential to better serve children, it also offers the potential of providing larger quantities of programming that may not be appropriate for children. According to the Coalition, this problem is compounded by the fact that the current tools available to parents, the V-Chip and the TV ratings system, have not worked as well as anticipated. Thus, the Coalition urges the Commission to establish an advisory committee on the V-Chip to consider whether and how to: 1) implement an informational website link to provide more information about the ratings, the reasons for a program's rating, and how to use the V-Chip; 2) revise the ratings system to make it more accurate and easier to understand; and 3) devise technical standards for DTV that permit the V-Chip system to be improved and support multiple rating systems.[110] Tim Collings also argues that technical standards for DTV should permit the V-Chip system to be improved upon, and should support multiple rating systems.[111]

63. We agree with those commenters that argue that DTV technical standards should not foreclose the implementation of changes to or improvements in the V-Chip system. We also believe that DTV technical standards should not foreclose the option of using V-Chip technology to support multiple rating systems. In our *Report and Order* in the Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, we adopted rules to ensure that V-Chip functionality is available in the digital world. In that proceeding, we stated our belief that the ability to

[108] Commenters generally contend that the Commission does not have jurisdiction to adopt rules regarding promotional placement or authority to require that commercials be rated for V-Chip encoding. ANA/AAAA Comments (Dec. 2000) at 5-10; ALTV Comments (Dec. 2000) at 28; NAB Comments (Dec. 2000) at 25-26; MPAA Comments (Dec. 2000) at 2-7; NCTA Comments (Dec. 2000) at 3; AAF Reply Comments (Jan. 2001) at 7-8. ALTV notes that a report issued by the Federal Trade Commission ("FTC") in 2000 indicates that broadcasters are addressing the issue of the airing of inappropriate promotions voluntarily and that the FTC declined to adopt rules governing the placement of promotions, in part because of "significant" First Amendment issues. ALTV Comments (Dec. 2000) at 28-29 (citing *Marketing Violent Entertainment to Children: A Review of Self Regulation and Industry Practices in the Motion Picture*, *Music Recording*, *& Electronic Game Industries*, Federal Trade Commission, Sept. 2000). *See also* ANA/AAAA Comments (Dec. 2000) at 5 (arguing that proposals to rate advertisements for V-chip encoding and to limit their appearance only in programs with similar ratings raises serious First Amendment issues); State Broadcasters Comments (Dec. 2000) at 15 (arguing that age-inappropriate promotions are being dealt with voluntarily by broadcasters). According to ALTV, the FTC has a stronger jurisdictional claim over the issue of inappropriate promotions, and that agency declined to require that promotions be rated and be consistent with the program in which they appear. ALTV Comments (Dec. 2000) at 30.

[109] Kaiser Comments (Apr. 2003) at 6.

[110] Coalition Comments (Apr. 2003) at 17-23.

[111] Tim Collings Reply Comments (May 2003) at 3. Collings also supports other Coalition V-Chip proposals.

modify the content advisory rating system is beneficial and required that television receivers be able to process new ratings should they be developed.[112] We also adopted standards that do not preclude manufacturers from incorporating additional blocking standards or techniques into receivers, thereby permitting manufacturers to develop V-Chip technology that can be used in conjunction with additional ratings systems.

64. We will not at this time adopt the other V-Chip proposals advanced by commenters. Nonetheless, we encourage broadcasters to consider various ways of improving V-Chip utility, including making available in their programming a link to a website where parents and other viewers can get additional information about program ratings and the V-Chip, once such technology or functionality is available to consumers. We also encourage the broadcast, cable, and motion picture industries to consider whether any revisions to the ratings system would make it more accurate and easier to understand.

65. In our next periodic review of the status of the digital transition, we plan to address whether we should require digital broadcasters to embed E/I information in the core program stream so that this information can be sought by V-Chip or other technology. Given the lack of information in the record of this proceeding about how this information would be used and the potential benefits of this technology in helping parents locate core programming, and the potential costs such a requirement would impose, we do not address this issue today.

VI. FUTURE PROCEEDINGS

66. We intend to revisit the issues addressed in this item in the next three years and consider whether the determinations made herein should be changed in light of technological developments. In particular, we will consider whether broadcasters should be given more flexibility to determine the program stream on which core programming is placed.

67. In addition, we intend to issue a Public Notice in the near future seeking comment on whether broadcasters are complying with the letter and intent of the CTA in terms of, among other things, the amount and quality of core children's programming being provided and the extent of preemption of such programming. The Commission staff also intends to conduct a review of broadcaster compliance with the CTA and our rules and to issue a report on the results of this review and the comments filed in response to the Public Notice. The Commission last issued a report on compliance with the CTA in 2001.[113] The Commission plans to conduct similar reviews and issue similar reports on a regular basis roughly every three years.

VII. EFFECTIVE DATES AND TRANSITION PERIOD

68. Our revised policies and rules regarding application of the commercial limits and policies to digital programming as well as those regarding the display of Internet addresses in analog and digital programming and in programming aired by cable operators, will become effective February 1, 2005. We will begin to evaluate compliance with these requirements in renewal applications filed after that date. Thus, the first renewal applications to which these new requirements will be applied are those required to be filed by April 1, 2005, by television stations located in the states of Indiana, Kentucky, and Tennessee. Licensee performance during any portion of the renewal term that predates February 1, 2005, will be evaluated under the current rules and policies and performance that post-dates the rules will be judged under the new provisions.

[112] *See Report and Order*, MB Docket 03-15, FCC 04-192, released September 7, 2004, at ¶ 156.

[113] *See*, *e.g.,* Mass Media Bureau, *Three Year Review of the Implementation of the Children's Television Rules and Guidelines, 1997-1999* (2001).

69. Our rules regarding on-air identification of core programming will become effective after approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1995 ("PRA"). Upon OMB approval, we will issue a Public Notice announcing the effective date of this rule. The effective date will be no earlier than February 1, 2005. Similarly, we will issue a Public Notice announcing when the revised FCC Form 398, also subject to OMB approval under the PRA, will be available for use by licensees and when licensees must commence using the revised form to report digital core programming.

70. Our revised definition of commercial matter will become effective January 1, 2006. This transition period will give programmers time to produce sufficient children's programming and other material to include within children's programming that would not be considered commercial matter. Similarly, our revised safe harbor processing guideline for digital broadcasters will become effective January 1, 2006. The limit on the number of preemptions for digital broadcasters under our processing guideline to no more than 10 percent of core programs in each calendar quarter[114] and the limit for digital broadcasters on the number of repeats of core programming to no more than 50 percent of core programming during the same week [115] will also become effective January 1, 2006. These requirements relate to the calculation of hours of core programming under our revised guideline and therefore should become effective at the same time as the revised guideline. In addition, to give analog broadcasters time to come into compliance with our rule limiting the number of preemptions under the current analog processing guideline to no more than 10 percent of core programs in each calendar quarter,[116] we will also delay the effective date of that rule as applied to analog broadcasters until January 1, 2006. We believe that this transition period is appropriate to give licensees time to develop programming or to renegotiate or allow expiration of existing program contracts as necessary. Renewal applications filed earlier than January 1, 2006, will be evaluated for compliance with the CTA based on our current rules and the policies expressed in the *1996 Children's Programming Report and Order* and the *1991 Report and Order*, as modified upon reconsideration. License renewal applications filed after January 1, 2006, will be evaluated to determine whether broadcasters are providing core programming using the revised definition of commercial matter and processing guideline adopted herein and are complying with the revised rules concerning preemption and repeats of core programming. Thus, the first renewal applications to which these new requirements will be applied are those required to be filed by February 1, 2006, by stations located in the states of Kansas, Nebraska, and Oklahoma. Licensee performance during any portion of the renewal term that predates January 1, 2006, will be evaluated under the current rules and policies and performance that post-dates the new rules will be judged under the new provisions.

VI. FURTHER NOTICE OF PROPOSED RULE MAKING

71. As noted above, for the time being we have decided not to prohibit the appearance of direct, interactive, links to commercial Internet sites in children's programming, as this technology is currently not being used in children's programming.[117] Nonetheless, we are aware that the inclusion of interactive technology in television programming is on the horizon. We encourage broadcasters to develop interactive services that enhance the educational value of children's programming. With the benefits of interactivity, however, come potential risks that children will be exposed to additional commercial influences. Accordingly, we seek comment on how to tailor our rules to allow innovation in interactivity in children's television programming, while at the same time ensuring that parents can control what information their children can access.

[114] *See*, *supra*, ¶ 39.

[115] *See*, *supra*, ¶ 22.

[116] *See*, *supra*, ¶ 39.

[117] *See* , *supra,* ¶ 51.

72. We tentatively conclude that we should prohibit interactivity during children's programming that connects viewers to commercial matter unless parents "opt in" to such services. We seek comment on how such a rule could be implemented technologically. We also seek comment on how we would implement such a rule in terms of the statutory limits on commercial time. In particular, we note that the time spent accessing the Internet or other interactive material during a program is not limited to the time that a link is displayed on the screen. For the same reason, we seek comment as to how such a rule would apply to commercials, given that interactive elements can cause a commercial to last much longer than a 30-second or 15-second spot. Finally, we seek comment on whether to change how we define commercial matter in this context.

73. As noted above, we also concluded in this *Report and Order* that we will revise our definition of "commercial matter" to include promotions of television programs or video programming services other than children's educational and informational programming. We stated that we will apply this revised definition to television licensees and cable operators. We tentatively conclude that we should also amend Part 25 of the Commission's rules to apply this revised definition to Direct Broadcast Satellite ("DBS") service providers, and seek comment on this tentative conclusion. In addition, we propose to apply the restrictions on the displaying of commercial website information adopted in this *Report and Order* to DBS and require DBS providers to maintain records sufficient to verify compliance with the commercial limits requirements and to make such records available to the public. We believe that it is appropriate to require that children in DBS households receive the same protection from excessive commercialism on television as children in cable or over-the-air television households. We do not believe that compliance with these rules will be burdensome as many of the programming services carried by DBS providers are the same as are carried by cable systems around the country, which must comply with the revised commercial limits rules adopted in our decision today.

VII. CONCLUSION

74. We adopt this *Report and Order and Further Notice of Proposed Rule Making* to address the obligation of DTV broadcasters under the CTA to air educational programming for children and to protect children from excessive and inappropriate commercial messages. Our goals are to ensure that parents and children benefit from broadcasters' use of digital technology to provide multiple broadcast streams and to permit broadcasters flexibility to explore the potential uses of the broadcast spectrum made possible by digital technology, including the use of direct website links in children's programming, consistent with the mandate of the CTA. We believe that the rules and policies adopted herein further the mandate of the CTA that broadcast television fulfill its potential to teach the nation's children and that broadcasters protect children from over commercialization.

VII. ADMINISTRATIVE MATTERS

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

76. *Comment Information*. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before March 1, 2005, and reply comments on or before April 1, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998). Documents filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers are referenced in the caption of the comments, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen,

commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of the comment, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

77. *Initial Paperwork Reduction Act Analysis*. This *Further Notice of Proposed Rulemaking* ("Notice") may contain either proposed or modified information collections subject to the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork burdens, we invite OMB, the general public, and other Federal agencies to take this opportunity to comment on the information collections contained in this *Further Notice*, as required by the Paperwork Reduction Act of 1995. Public and agency comments are due at the same time as other comments on the *Further Notice*. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, 445 Twelfth Street, S.W., Room 1-C804, Washington, DC 20554, or via the Internet to Judith-B.Herman@fcc.gov and to Kristy L. LaLonde, OMB Desk Officer, 10234 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to Kristy L. LaLonde @omb.eop.gov, or via fax at 202-395-5167.

78. *Initial Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act,[118] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *Further Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix D. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Further Notice*, and they should have a separate and distinct heading designating them as responses to the IRFA.

79. *Accessibility Information*. To request materials in accessible formats for people with disabilities (braille, large print, electronic file, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: http://www.fcc.gov.

[118] *See* 5 U.S.C. § 603.

80. *Paperwork Reduction Act of 1995 Analysis*. This *Report and Order* contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding. Written comments by the public on the proposed new and modified information collection(s) are due 60 days from date of publication of this *Report and Order* in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to Judith-B.Herman@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW, Washington, DC 20503, or via the Internet to Kristy L. LaLonde@omb.eop.gov, or via fax at 202-395-5167.

81. *Final Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act,[119] the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this *Report and Order*. The FRFA is set forth in Appendix C.

82. *Congressional Review Act*. The Commission will send a copy of this *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).

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

VIII. ORDERING CLAUSES

84. **IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 2, 4(i), 303, 303a, 303b, 307 of the Communications Act of 1934, 47 U.S.C §§ 151, 152, 154(i), 303, 303a, 303b, and 307, this *Report and Order and Further Notice of Proposed Rule Making* **IS ADOPTED**.

85. **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.

86. **IT IS FURTHER ORDERED** that 47 C.F.R. Sections 73.670(b) and (c) and 76.225(b) and (c), as revised in Appendix B and which address the display of internet addresses in analog and digital programming and on cable systems, SHALL BE EFFECTIVE February 1, 2005. In addition, the policies announced herein regarding application of the commercial limits and policies to digital programming shall also be effective on that date. Revised rule section 47 C.F.R. Section 73.671(c)(5), which requires that a program display on the television screen throughout the program the symbol E/I in order to be considered core, contains information collection requirements under the PRA and is, therefore, not effective until approved by OMB. The FCC will issue a Public Notice announcing the effective date for this section. The FCC will also issue a Public Notice announcing when the revised FCC Form 398 will be available for use by licensees and when licensees must commence using the revised form to report digital core programming. Revised rule sections 47 C.F.R. § 73.670, Note 1 and 47 C.F.R. § 76.225, Note 1, which contain the revised definition of commercial matter, will become effective January 1, 2006. Revised rule section 47 C.F.R. § 73.671, Note 3, which contains the revised safe harbor processing

[119] *See* 5 U.S.C. § 604.

guideline for digital broadcasters as well as our rule announced herein regarding the limit on repeats of core programming by digital broadcasters, will become effective January 1, 2006. In addition, revised rule section 47 C.F.R. § 73.671 Note 4, which contains the newly adopted limit on the number of preemptions of core programming by analog and digital broadcasters under the safe harbor processing guideline to no more than 10 percent of core programs in each calendar quarter, will also become effective January 1, 2006.

87. **IT IS FURTHER ORDERED** that, pursuant to 47 U.S.C. § 155(c), the Chief, Media Bureau, is **GRANTED DELEGATED AUTHORITY** to revise FCC Form 398 as indicated in this Order.

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

89. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this *Report and Order and Further Notice of Proposed Rule Making* 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

Marlene H. Dortch
Secretary

APPENDIX A

LIST OF COMMENTS

Comments

Alaska Broadcaster's Association, et al.
Association of America's Public Television Stations and the Public Broadcasting Service Association of America's Public Television Stations
Association of Local Television Stations, Inc.
Association of National Advertisers and the American Association of Advertising Agencies
Belo Corp.
Capitol Broadcasting Co., Inc.
CBC (Gore Report)
Center for Media Education, et al.
Consumer Federation of America
Children's Media Policy Coalition
Children Now
Consumer Federation of America
John Emerson
Christopher J. Hauser
Henry J. Kaiser Family Foundation
Named State Broadcasters Association
National Association of Broadcasters
National Broadcasting Company, Inc.
National Cable Television Association
Maranatha Broadcasting Company, Inc.
Motion Picture Association of America
Paxson Communications Corporation
People for Better TV
Sesame Workshop
Sinclair Broadcast Group, Inc.
Viacom Inc.
WGBH/CPB/NCAM

Reply Comments

A&E Television Networks
Alaska Broadcasters Association, et al.
Annenberg Public Policy Center
Annenberg School for Communications USC
American Advertising Federation
AOL Time Warner Inc.
APTS/PBS
Association of America Public Television Stations
Association of Local Television Stations, Inc.
Belo Corp.
CFA
Sandra A. Calvert
Campaign Legal Center
Capitol Broadcasting Co., Inc.

Cavalier Group, LLC

Center for Media Education, et al.
Channel 3 of Corpus Christi, Inc.
Children's Media Policy Coalition
Children Now
Civil Rights Organization
Tim Collings
Comcast Corporation
Consumer Federation of America
Courtroom Television Network LLC
Geoffrey Cowan, et al.
DIRECTv, Inc.
DTV Access Project et al.
John Emerson
Georgetown University
Kankola Telephone Association, Inc., et al.
KIDSNET
Dale Kunkel
Paul J. McGeady
Media Access Project
Media General Communications, Inc.
MTC North, Inc.
Morality in Media, Inc.
Motion Picture Association of America, Inc.
National Association of Broadcasters
National Cable & Telecommunications Association
National Minority TV, Inc.
Named State Broadcasters Associations
Noncommercial Educational Television Licenses
Office of Advocacy, U.S. Small Business Administration
Paxson Communications
People for Better TV
Public Safety Wireless Network
Sharp Electronics Corporation
Siete Grande Television, Inc.
Sinclair Broadcast Group, Inc.
University of California, Los Angeles
Watch TV, Inc.
WB Television Network

APPENDIX B

RULE CHANGES

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

Part 73 RADIO BROADCAST SERVICES

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

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

2. Section 73.670 is amended to add paragraphs (b) and (c) to revise Note 1 to read as follows:

Section 73.670 Commercial limits in children's programs.

(a) No commercial television broadcast station licensee shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

(b) The display of Internet website addresses during program material is permitted only if the website: 1) offers a substantial amount of *bona fide* program-related or other noncommercial content; 2) 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).

(c) The display of website addresses in children's programs is prohibited during both program material and commercial material when the site uses characters from the program to sell products or services.

Note 1: *Commercial matter* means air time sold for purposes of selling a product or service and promotions of television programs or video programming services other than children's educational and informational programming.

* * * * *

3. Section 73.671 is amended to revise paragraphs (c) (5) and (c) (6) and add paragraph (c) (7) and to revise Note 2 and add Note 3 and Note 4 to read as follows:

§ 73.671 Educational and informational programming for children.

* * * * *

(c) For purposes of this section, educational and informational television programming is any television programming that furthers the educational and informational needs of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs. Programming specifically designed to serve the educational and informational needs of children ("Core Programming") is educational and informational programming that satisfies the following additional criteria:

* * * * *

(5) The program is identified as specifically designed to educate and inform children by the display on the television screen throughout the program of the symbol E/I;

(6) The educational and informational objective and the target child audience are specified in writing in the licensee's Children's Television Programming Report, as described in § 73.3526(e)(11)(iii); and

(7) Instructions for listing the program as educational/informational, including an indication of the age group for which the program is intended, are provided by the licensee to publishers of program guides, as described in § 73.673(b).

* * * * *

NOTE 2 to §73.671: Until analog channels are returned to the Commission, the Commission will apply the following processing guideline to analog stations in assessing whether a television broadcast licensee has complied with the Children's Television Act of 1990 ("CTA") on its analog channel. A licensee that has aired at least three hours per week of Core Programming (as defined in paragraph (c) of this section and 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. In this regard, specials, 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 per week processing guideline. 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 (*e.g.*, by relying in part on sponsorship of Core educational/informational programs on other stations in the market that increases the amount of Core educational and informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts which enhance the value of children's educational and informational television programming).

NOTE 3 to §73.671: The Commission will apply the following processing guideline to digital stations in assessing whether a television broadcast licensee has complied with the Children's Television Act of 1990 ("CTA") on its digital channel(s).

(a) A digital television licensee providing only one stream of free digital video programming will be subject to the 3 hour/week Core Programming processing guideline discussed in Note 2 on that channel; *i.e.*, a licensee that has aired at least three hours per week of Core Programming (as defined in paragraph (c) of this section and as averaged over a six month period) on its main program stream 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. In this regard, specials, 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 per week processing guideline. 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 (*e.g.*, by

relying in part on sponsorship of Core educational/informational programs on other stations in the market that increases the amount of Core educational and informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts which enhance the value of children's educational and informational television programming).

(b) (1) A digital television licensee providing streams of free digital video programming in addition to its main program stream will be subject to the processing guideline described in Note 3, paragraph a, on its main program stream and to the following guideline applied to the additional programming: ½ hour per week of additional Core Programming (as defined in paragraph (c) of this section and as averaged over a six month period) for every increment of 1 to 28 hours of free video programming provided in addition to the main program stream. Thus, 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 in addition to the 3 hours per week on the main program stream. Digital broadcasters providing between 29 and 56 hours per week of free video programming in addition to their main program stream will have a guideline of 1 hour per week of core programming in addition to the 3 hours per week on the main program stream. Digital broadcasters providing between 57 and 84 hours per week of free video programming in addition to their main program stream will have a guideline of 1½ hours per week of core programming in addition to the 3 hours per week on the main program stream. The guideline will continue to increase in this manner for additional hours of free video programming.

(2) Broadcasters providing more than one stream of free digital video programming may air all of their additional core programming, apart from the 3 hours of core programming that must be aired on the main program stream, on one free video channel, or distribute it across multiple free video channels, at their discretion, as long as the stream on which the core programming is aired has comparable MVPD carriage as the stream whose programming generates the core programming obligation under the processing guideline described in Note 3, paragraph b. 1.

(c) For purposes of the guideline described in Note 3, sections a and b, at least 50 percent of core programming cannot be repeated during the same week to qualify as core. This requirement does not apply to any program stream that merely time shifts the entire programming line-up of another program stream and, during the digital transition, to core programs aired on both the analog station and a digital program stream.

NOTE 4 to § 73.671: No more than 10 percent of Core Programs may be preempted in each calendar quarter to qualify as Core Programming.

4. Section 73.673 is amended to read as follows:

§ 73.673 Public information initiatives regarding educational and informational programming for children.

Each commercial television broadcast station licensee shall provide information identifying programming specifically designed to educate and inform children to publishers of program guides. Such information shall include an indication of the age group for which the program is intended.

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

§ 73.3526 Local public inspection file of commercial stations.

(e)(11)(i) * * *

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

* * * * *

Part 76 of Title 47 of the U.S. Code of Federal Regulations is amended as follows:

Part 76 MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

2. Section 76.225 is amended to revise paragraph b, add paragraphs c and d, and revise Note 1 to read as follows:

§ 76.225 Commercial limits in children's programs.

* * * * *

(b) The display of Internet website addresses during program material is permitted only if the website: 1) offers a substantial amount of *bona fide* program-related or other noncommercial content; 2) 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).

(c) The display of website addresses in children's programs is prohibited during both program material and commercial material when the site uses characters from the program to sell products or services.

(d) This rule shall not apply to programs aired on a broadcast television channel which the cable operator passively carries, or to access channels over which the cable operator may not exercise editorial control, pursuant to 47 U.S.C. 531(e) and 532(c)(2).

Note 1 to § 76.225: *Commercial matter* means air time sold for purposes of selling a product or service and promotions of television programs or video programming services other than children's educational and informational programming.

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APPENDIX C

FINAL REGULATORY FLEXABILITY ANALYSIS

As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),[1] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed Rule Making* ("*Notice*").[2] The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. One comment was received on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.[3]

I. Need for, and Objectives of, the Report and Order

The purpose of this proceeding is to determine how the existing children's educational television programming obligations and limitations on advertising in children's programs should be interpreted and adapted to apply to digital television broadcasting in light of the new capabilities made possible by that technology. First, we address the obligation of digital television ("DTV") broadcasters to provide children's educational and informational programming and, specifically, how that obligation applies to DTV broadcasters that use the multicast capability of their ATSC digital service to broadcast multiple program services. We adopt an approach pursuant to which digital broadcasters that choose to provide streams or hours of free video programming in addition to their required free over-the-air video program service will have an increased core programming benchmark roughly proportional to the additional amount of free video programming they choose to provide. Second, for both analog and digital broadcasters, we limit the number of preemptions allowed under our processing guideline to no more than 10 percent of core programs in each calendar quarter. Third, we amend our rule regarding on-air identification of core programming to require both analog and digital broadcasters to identify such programming with the same symbol, E/I, which must be displayed throughout the program in order for the program to qualify as core educational programming. Fourth, we clarify that the children's television commercial limits and policies apply to all digital video programming directed to children ages 12 and under. Fifth, we interpret the commercial time limits to require that the display of Internet website addresses during program material is permitted as within the time limits only if the website meets certain requirements, including the requirement that it offer a substantial amount of *bona fide* program-related or other noncommercial content and is not primarily intended for commercial purposes. Sixth, we revise our definition of "commercial matter" to include promotions of television programs or video programming services other than children's educational and informational programming. Finally, we seek comment on several additional proposals concerning the children's programming commercial limits and indicate our intention to issue a Public Notice in the near future seeking comment on broadcaster compliance with the Children's Television Act of 1990 ("CTA"). Our objectives 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 and to improve our children's programming rules and policies.

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

The U.S. Small Business Administration ("SBA") filed the only comment in this proceeding

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 100 Stat. 857 (1996).

[2] *Notice of Proposed Rule Making, In the Matter of Children's Television Obligations of Digital Television Broadcasters,* 15 FCC Rcd 22946 (2000).

[3] *See* 5 U.S.C. § 604.

responding to the IRFA.[4] According to the SBA, the IRFA does not satisfy the requirements of the RFA, as it does not describe many of the "compliance requirements" contained in the *Notice* and their impact on small firms. The SBA also argues that the IRFA does not discuss significant alternatives that would accomplish the objectives while minimizing the significant economic impact on small entities. SBA states that it does not question the Commission's goals in this proceeding, but instead asks that the Commission seek ways to minimize the burdens on small business while still accomplishing its goals.[5]

The *Notice* described a number of possible ways of applying the current core programming processing guideline to digital broadcasters. These proposals were suggested by commenters responding to the *NOI* in this docket. It was not possible for the Commission to develop detailed estimates of the cost of adopting each of these proposals because the details of how any of the proposals would be implemented were not known. The *Notice* sought comment on these various proposals in large part to determine, in the view of broadcasters and others, which would be the preferable means of adapting our current rules. Commenters responding to the *Notice* address, among other issues, the cost of the various proposals and the advantages, from cost and other perspectives, of the approach they advocate. In determining what approach to adopt, the Commission carefully considered all of the comments, particularly those offering less burdensome means of accomplishing our stated objectives. The approach adopted in the *Report and Order* attempts to balance the need to adapt our current rules to the digital environment and to improve our children's programming rules and policies with the need to minimize costs where possible and provide broadcasters with flexibility to continue to explore different ways of employing digital technology.

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" under section 3 of the Small Business Act. [7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[8] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. [9]

Television Broadcasting. The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business.[10] Business concerns

[4] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, and Eric E. Menge, Assistant Chief Counsel for Telecommunications, U.S. Small Business Administration, to William E. Kennard, Chairman, FCC, dated January 9, 2001.

[5] *Id.* at 2.

[6] 5 U.S.C § 604(a)(3).

[7] 5 U.S.C § 601(6).

[8] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[9] 5 U.S.C. § 632

[10] *See* 13 C.F.R. § 121.201, NAICS Code 515120 (adopted Oct. 2002).

included in this industry are those "primarily engaged in broadcasting images together with sound."[11] According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[12] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

There are also 380 non-commercial TV stations in the BIA database. Since these stations do not receive advertising revenue, there are no revenue estimates for these stations. We believe that virtually all of these stations would be considered "small businesses" given that they are generally owned by non-commmercial entities including local schools and governments and, for the most part, rely on public donations and funding.

Cable Operators. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually.[13] The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[14] We last estimated that there were 1,439 cable operators that qualified as small cable companies.[15] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules in this *Report and Order*.

[11] NAICS Code 515120. This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

[12] "Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

[13] 13 C.F.R. § 121.201, NAICS code 517510. This NAICS code applies to all services listed in this paragraph.

[14] 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. *Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd. 7393 (1995).

[15] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[16] The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[17] Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450.[18] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The *Order* adopts a revised core children's programming processing guideline for digital television broadcasters. Our revised guideline will work as follows. Digital broadcasters providing only one stream of free digital video programming will continue to be subject to the existing 3 hours per week core programming processing guideline. DTV broadcasters that choose to provide additional streams or channels of free video programming will, in addition, have the following guideline applied to the additional programming: ½ hour per week of additional core programming for every increment of 1 to 28 hours of free video programming provided in addition to the main program stream. Thus, 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 in addition to the 3 hours per week on the main program stream. Digital broadcasters providing between 29 and 56 hours per week of free video programming in addition to their main program stream will have a guideline of 1 hour per week of core programming in addition to the 3 hours per week on the main program stream. Digital broadcasters providing between 57 and 84 hours per week of free video programming in addition to their main program stream will have a guideline of 1½ hours per week of core programming in addition to the 3 hours per week on the main program stream. The guideline will continue to increase in this manner for additional hours of free video programming. In addition, for digital broadcasters, we will require that at least 50 percent of core programming not be repeated during the same week to qualify as core.

The revised guideline discussed above applies to digital broadcasters and the digital programming they provide. Up until the time that analog channels are returned to the Commission, we will continue to apply our current 3 hours per week core children's programming processing guideline to analog channels. Broadcasters will continue to file, on a quarterly basis, their Children's Television Programming Report, on FCC Form 398. We will revise current FCC Form 398 to permit broadcasters to report both analog and digital core programming on that form. Once the new form has been approved for use, we will issue a public notice informing broadcasters of the availability of the form and the date on which the revised form must begin to be used in place of the current form. On that date, reports will also be required to include information about digital core programming. As we have done in the analog context, we will continue to exempt noncommercial television licensees from children's programming reporting requirements with respect to their digital programming.

As a general matter, for digital broadcasters we will 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

[16] 47 U.S.C. § 543(m)(2).

[17] 47 C.F.R. § 76.1403(b).

[18] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

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. Thus, as long as viewers are adequately notified of the move and the program is moved to a program stream that is accessible to a comparable number of viewers, broadcasters may use their multicasting capability to avoid preempting core programming. For both analog and digital broadcasters, however, we will limit the number of preemptions under our 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. We will exempt from this preemption limit preemptions for breaking news.

In addition, the item amends our rules regarding on-air identification of core programming to require both analog and digital broadcasters to identify such programming with the same symbol: E/I. We will also require that this symbol be displayed throughout the program in order for the program to qualify as core. We will apply this revised on-air identification requirement to both commercial and noncommercial broadcasters.

The item applies 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. In addition, we interpret the CTA commercial time limits to require that, for both analog and digital broadcasters, with respect to programs directed to children ages 12 and under, the display of Internet website addresses during program material is permitted as within the CTA limitations only if the website: 1) offers a substantial amount of *bona fide* program-related or other noncommercial content; 2) 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). Finally, the item also revises our definition of "commercial matter" to include promotions of television programs or video programming services other than children's educational and informational programming.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

Several steps were taken to minimize significant impact on small entities. For the many broadcasters simulcasting the core programming offered on their analog channel on a single digital program stream and offering no other digital free video programming, compliance with the new processing guideline should be automatic, as the digital stream will simulcast the core programming aired on the analog stream and the current 3 hours/week guideline will apply to both streams. For broadcasters choosing to provide additional streams of digital free video programming, the revised guideline establishes a series of graduated benchmarks which increase the core programming obligation in relation to the number of hours of additional free video programming offered by the licensee. Thus, only those stations choosing to provide additional free video programming are subject to the revised processing guideline. We rejected the "pay or play" and "menu" alternatives to the revised guideline largely because these approaches were more administratively burdensome to stations. Under the current and revised guideline, stations have and will continue to have the option of sponsoring core programming on other stations in the market.

In addition, for digital broadcasters we require under the new processing guideline that at least 50 percent of core programming not be repeated during the same week to qualify as core. However, we exempt from this requirement any program stream that merely time shifts the entire programming line-up of another program stream. Also, during the transition, we will not count as repeated programming core programs that are aired on both the analog station and a digital program stream.

For both analog and digital broadcasters, however, the item limits the number of preemptions under our processing guideline to no more than 10 percent of core programs in each calendar quarter. We exempt from this preemption limit preemptions for breaking news, however. We believe that most stations currently do not preempt more than 10 percent of core programs in each calendar quarter. We also note that our processing guideline is averaged over a six-month period, which will provide broadcasters with some scheduling flexibility. In addition, a station that fails to meet the processing guideline because of excessive preemptions may still receive staff-level approval of its renewal application if it demonstrates that it has aired a package of educational and informational programming, including specials, PSAs, short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children, that demonstrates a commitment to educating and informing children at least equivalent to airing the amount of core programming indicated by the processing guideline. Licensees that do not qualify for staff level approval will have their license renewal applications referred to the Commission where they will have an additional opportunity to demonstrate compliance with the CTA.

Although we have previously exempted noncommercial licensees from the requirement that they identify core programming, we believe that requiring all broadcasters to use the E/I symbol throughout the program to identify core programming will help reinforce viewer awareness of the meaning of this symbol. We will, however, continue to exempt noncommercial television licensees from the other public information initiatives adopted in the *1996 Children's Programming Report and Order*. Thus, noncommercial television stations will not be required to prepare and file quarterly Children's Television Programming Reports or to provide information identifying programming specifically designed to educate and inform children to publishers of program guides. As is our current practice, we will require noncommercial broadcast stations to maintain documentation sufficient to show compliance with the CTA's programming obligations at renewal time in response to a challenge or to specific complaints. We also decline to require licensees to use high definition, interactivity, or other features to enhance core programming.

Although the *Order* limits the display in children's programming of Internet website addresses to sites established solely for commercial purposes, it does not prohibit the display of all website addresses. In addition, the item does not prohibit direct Internet links in children's programs as several commenters advocated. This approach was adopted in an attempt to balance the interest of digital broadcasters in exploring the potential uses of interactivity with our mandate to protect children from over commercialization. The *Order* also declines to do more than urge voluntary action on the part of broadcasters to ensure that age-inappropriate promotions are not aired in children's programs.

VI. Report to Congress

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

APPENDIX D

INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),[138] the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this *Further Notice of Proposed Rulemaking* ("Notice"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided in paragraph 76 above. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[139] In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.[140]

A. Need for and Objectives of the Proposed Rules. Our goal in commencing this proceeding is to seek comment on two issues: (1) whether and how we should limit the use of interactivity for commercial purposes in children's television programming; and (2) whether we should apply to Direct Broadcast Satellite service providers the same revised definition of "commercial matter" adopted in the *Report and Order*.

We seek comment in the Notice on the tentative conclusion that we should prohibit interactivity during children's programming that connects viewers to commercial matter unless parents "opt in" to such services. We seek comment on how such a rule could be implemented technologically. We also seek comment on how we would implement such a rule in terms of the statutory limits on commercial time.

We concluded in the *Report and Order* that we will revise our definition of "commercial matter" to include promotions of television programs or video programming services other than children's educational and informational programming. We stated that we will apply this revised definition to television licensees and cable operators. We tentatively conclude in the Notice that we should also amend Part 25 of the Commission's rules to apply this revised definition to Direct Broadcast Satellite service providers, and seek comment on this tentative conclusion.

In addition, the *Report and Order* interprets the CTA commercial time limits to require that, with respect to programs directed to children ages 12 and under, the display of Internet website addresses during program material is permitted as within the CTA limitations only if the website: 1) offers a substantial amount of *bona fide* program-related or other noncommercial content; 2) 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). The *Report and Order* applies this restriction to broadcasters and cable operators. We propose in the Notice to apply this restriction to DBS. In addition, we propose to require DBS providers to maintain records sufficient to verify compliance with the commercial limits in children's programming and to make such records available to the public.

[138] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[139] *See* 5 U.S.C. § 603(a).

[140] *See id.*

B. Legal Basis. The authority for the action proposed in this rulemaking is contained in Sections 4(i) & (j), 303, 303a, 303b, 307, 309 and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) & (j), 303, 303a, 303b, 307, 309 and 336.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.[141] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[142] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[143] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").[144]

In this context, the application of the statutory definition to television stations is of concern. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and therefore might be over-inclusive.

An additional element of the definition of "small business" is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses might therefore be over inclusive.

Television Broadcasting. The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business.[145] Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."[146] According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of $12 million or less. We note, however, that, in assessing whether a business concern

[141] 5 U.S.C. § 603(b)(3).

[142] 5 U.S.C. § 601(6).

[143] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[144] 15 U.S.C. § 632.

[145] *See* 13 C.F.R. § 121.201, NAICS Code 515120 (adopted Oct. 2002).

[146] NAICS Code 515120. This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

qualifies as small under the above definition, business (control) affiliations[147] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

There are also 380 non-commercial TV stations in the BIA database. Since these stations do not receive advertising revenue, there are no revenue estimates for these stations. We believe that virtually all of these stations would be considered "small businesses" given that they are generally owned by non-commercial entities including local schools and governments and, for the most part, rely on public donations and funding.

Cable and Other Program Distribution. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually.[148] This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, multipoint distribution services ("MDS"), multichannel multipoint distribution service ("MMDS"), Instructional Television Fixed Service ("ITFS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue.[149] We address below each service individually to provide a more precise estimate of small entities.

Cable Operators. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually.[150] The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[151] We last estimated that there were 1,439 cable operators that qualified as small cable companies.[152] Since then, some of those companies

[147] "Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

[148] 13 C.F.R. § 121.201 (NAICS Code 513220). This NAICS Code applies to all services listed in this paragraph.

[149] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series – Establishment and Firm Size, Information Sector 51, Table 4 at 50 (2000). The amount of $10 million was used to estimate the number of small business firms because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $12.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[150] 13 C.F.R. § 121.201, NAICS code 517510. This NAICS code applies to all services listed in this paragraph.

[151] 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. *Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd. 7393 (1995).

[152] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules in this *Report and Order*.

The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[153] The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[154] Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450.[155] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Direct Broadcast Satellite ("DBS") Service. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution services.[156] This definition provides that a small entity is one with $12.5 million or less in annual receipts.[157] There are four licensees of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business.[158] The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated. Therefore, we will assume all four licensees are small, for the purpose of this analysis.

Electronics Equipment Manufacturers. Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment[159] as well as radio and television broadcasting and wireless communications equipment.[160] These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes

[153] 47 U.S.C. § 543(m)(2).

[154] 47 C.F.R. § 76.1403(b).

[155] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[156] 13 C.F.R. § 121.201 (NAICS Code 513220).

[157] *Id.*

[158] *Id*.

[159] 13 CFR § 121.201 (NAICS Code 334310).

[160] 13 CFR § 121.201 (NAICS Code 334220).

applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[161] Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.[162] The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.[163] Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.[164] The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

Computer Manufacturers. The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.[165] Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities.[166] The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

D. Description of Projected Reporting, Recordkeeping and other Compliance Requirements. At this time, we do not expect that the proposed rules would impose significant additional reporting or recordkeeping requirements. While the requirements proposed in the Notice would have an impact on Direct Broadcast Satellite providers and others, we do not expect the impact to be significant in terms of time or expense to comply. At this time, we expect the requirements to be the same for large and small entities. We seek comment on whether others perceive a need for less extensive recordkeeping or compliance requirements for small entities.

[161] 13 CFR § 121.201 (NAICS Code 334310).

[162] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[163] 13 C.F.R. § 121.201 (NAICS Code 513220).

[164] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[165] 13 C.F.R. § 121.201 (NAICS Code 334111).

[166] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Electronic Computer Manufacturing, Table 4 at 9 (1999).

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[167]

The proposals in the Notice would apply equally to large and small entities. We welcome comment on modifications of the proposals if such modifications might assist small entities and especially if such are based on evidence of potential differential impact.

F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals. None.

[167] 5 U.S.C. § 603.

STATEMENT OF
CHAIRMAN MICHAEL K. POWELL

Re: Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167

This Commission is committed to serving the educational needs of our nation's youth. Not only are our children the cornerstone of our future, but they will, too, be the torch bearers that bring today's digital migration into tomorrow's digital reality.

As a parent and someone who has a passion for new technologies, I am proud that the Commission brings the benefits of the digital transition to America's children. With today's action, more children's educational and informational programming joins the growing ranks of political, sports, news and information and high-definition programming made possible by advances in digital broadcast technology. I want to give special thanks to the many children's advocates, most notably Children NOW, who have fought so hard to advance the interests of children.

In 1990, Congress passed the Children's Television Act to ensure broadcasters were serving children's educational and informational needs through their programming and to limit the amount of commercial matter that may be aired during children's programming. Today, we update Congress' requirements for the digital age. At a time where broadcasters using the public airwaves may now be able to increase their programming by as much six times the content they used to, so too should their obligations to serve our Nation's youth increase.

We substantially increase the children's educational and informational programming obligations for digital multicast broadcasters. We also put in place significant restrictions on worrisome trends of increasing commercialization of children's programming on both analog and digital broadcast and cable systems. Furthermore, our actions are designed to assist parents and children to more readily identify children's educational and informational programming by advocating uniform E/I symbol for this programming that must remain on screen throughout the program.

Parents have come to rely on children's programming as an oasis in an increasingly commercial world. Today, we ensure that parents have a clear path to this haven in the digital age.

This is just one step this Commission takes today in informing our children of the promise of their digital future. Later today, we will launch a kids-page on our website (http://www.fcc.gov/cgb/kidszone/) to provide parents with teaching tools and children with learning tools about the many facets of communications policy that touches our children's everyday lives.

STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167

As a country, we have always protected, nurtured and educated our children. We recognize they are a precious resource, and that our future as a nation is inextricably intertwined with their future. That is why today we embrace a regulatory framework that recognizes the significant role media plays in shaping and educating our children. Today we look to the future and the many benefits, as well as potential harms, that are inherent in our digital migration. Today, we ensure that children will benefit from an increase in educational and information (E/I) programming, that such programming will be easier for parents to find, and that the regulations we have in place to protect children from over-commercialization cannot be circumvented by new technologies.

Perhaps most importantly, we require that the amount of programming available for children will increase exponentially with the amount of programming a broadcaster airs. As broadcasters begin to provide additional streams of digital programming, children will receive a part of those benefits. For example, on an all-news channel, a broadcaster can provide a weekly segment that explains the top stories to children of varying ages, much like the Kids Page that is part of the Washington Post. At the same time, we are giving broadcasters the flexibility to provide this programming in a manner that responds to the needs of families. For example, we allow broadcasters to place most of their E/I programming on one channel, making it easier for parents to direct their children to appropriate content. We also allow broadcasters to use some repeat programming per week since studies show young children learn better through repetitive messages. At the same time, we are ensuring that a sufficient amount of new programming is provided on a weekly basis.

We also recognize that advances in technology bring not only benefits, but unexpected harms. As technology develops and internet access and interactivity are offered through programs directed toward children, parents must be involved. Although I recognize we need to explore this issue further, I am pleased that we tentatively concluded that interactive features that bring a child to commercial material should not be permitted absent parental approval. And, as we continue to explore these issues, we also clearly state that broadcasters and cable companies cannot circumvent our rules on commercial limits in children's programming through the use of interactivity and other technological developments.

Finally, we all need to increase our efforts to help parents make informed choices about their children's viewing. This has been one of my main goals during my tenure at the FCC, and why I worked on the development of The Parents Place web page. (www.fcc.gov/parents). While it is important to focus on what children should not be watching, it is equally important to provide parents the tools to navigate the programming options that are available to them so they can tap into the numerous, creative and educational programs currently available.

Today, we take several steps in this direction by requiring broadcasters to provide E/I information throughout the duration of the program, rather than for a few brief seconds at the beginning of the program. We also require that the symbol identifying educational programming be uniform across all platforms. I believe this will empower parents and enable broadcasters to better serve the interests of their communities. Yet, the progress we make today should not be confined to the four corners of this document. I continue to encourage broadcasters and cable programmers to build on the success of many of today's children's programs and work with us to make it easier for parents to learn more about the educational value of the programming that is offered.

We have a unique opportunity to tap into new technologies to educate and inform children and parents. We must not squander this opportunity by inactivity or lack of creativity.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167

I am truly pleased that we have before us today this item concerning the obligations of broadcasters toward children in the digital era. It is something I have wanted us to act on for a long time, and I thank the Chairman and my colleagues for their work on this, particularly over the last few days as we strove to improve the item that came to us. While none of us may call it perfect or everything we'd like to have, it is a huge step forward and something we can build on.

The Commission long ago recognized that broadcasters' public service responsibilities include providing programming that meets the needs of children. Indeed, Congress made that clear for us. In the Children's Television Act, Congress directed the Commission to protect children against excessive advertisements on television and required the Commission to consider during the license renewal process whether a station's programming has served the educational and informational needs of children. Yet, for too long, America's children have been ignored as the digital era unfolds. Today, the Commission takes important initial steps towards making sure we and our kids harvest the full benefits of digital television.

This is so important. Television plays such an enormous role in children's development. By the time the average child reaches adulthood, he or she will have watched over 10,000 hours of television and been bombarded with hundreds of thousands of commercials. Television has vast and growing powers to educate and inform — or to misinform in wrong and harmful ways.

We take several important actions in this item. First, broadcasters will need to increase the amount of children's programming commensurate with the increase in overall programming. Digital television promises high definition programming, multicasting, and datacasting that will literally transform free, over-the-air television by providing consumers new and valuable services. We provide broadcasters with the flexibility to take advantage of these new opportunities, but require that they do so in child-friendly ways. We ensure that programming for the young audience is broadcast with regularity and predictability. We provide parents with additional tools to locate and take advantage of educational and informational programming. And while we provide the needed opportunity to explore innovative new interactive technologies, we do so in a manner that protects children from excessive commercialization and we provide ample opportunity for corrective steps that may become necessary as the transition unfolds.

All of the steps we take today, however, will be meaningless unless the Commission enforces its rules. As we enter a new license renewal cycle, we must take seriously our obligation to ensure that broadcasters are meeting their responsibilities under the Children's Television Act. To this end, the Commission commits to seeking public comment and issuing a report on how well we are meeting Congress' objectives. We have further committed to a follow-up proceeding to make certain that we continue to protect children as technology advances. So an important outcome here is that we make these children's television obligations part of a living, ongoing process, regularly monitored and reported and open to new actions as the digital transition occurs.

All of these steps are important to guarantee that we do not return to a time when G.I. Joe, Mighty Morphin Power Rangers, America's Funniest Home Videos, the Jetsons, and the Flintstones were held up as examples of programs that met the educational and informational needs of children. Parents have a right to expect that a program that has reportedly been taken off the air in other countries due to excessive violence will not count as core children's programming here. Nor should parents have to worry that new technologies could be used to circumvent the advertising limits. We should all be concerned when recent

independent reports find that one-fourth of the educational and informational programming served up to our children has little educational value.

This item should advance the quantity and quality of children's programming. Yet, there is much work left to do, both as regards children's TV and the more general public interest obligations of DTV broadcasters. So I look forward to our completing, hopefully very soon, the proceeding on public disclosure of broadcaster activities. Even more importantly, I hope we will get a broad and far-reaching NPRM issued in the next few weeks so that we can address the full range of public interest issues, including, among others, how the digital transition can enhance political discourse, improve access to the media for those with disabilities, and increase localism, diversity, and competition on the people's airwaves. The vast majority of television stations are already broadcasting in digital and some 400 stations across the country are already multicasting. And yet, those broadcasters do not know what they must do to discharge their public interest obligations on their new channels. Viewers are equally in the dark. We really can't delay any longer in bringing some certainty for both broadcasters and the public. If the American people are to realize the full benefits of DTV, we have to call the public interest issues forward and accord them the high priority they deserve. My hope is that both the disclosure item and the more general NPRM will be on next month's agenda.

Again, thank you, Mr. Chairman. Thank you colleagues. Thank you Bureau. And a special thank you to our hard-working Eighth Floor staffs, some of whom were here until the wee hours this very morning improving the item.

STATEMENT OF
COMMISSIONER KEVIN J. MARTIN

Re: Children's Television Obligations of Digital Television Broadcasters, Report and Order, MM Docket No. 00-167

I'm pleased to support this Order promoting children's programming on digital television. I recognize that the action we take today will increase the obligations placed on broadcasters, but I also recognize the vital role that broadcasters play in serving the interests of children—and their parents. We therefore take steps to ensure the continuation of our children's programming guidelines as well as facilitate parents' ability actually to find the programming.

Parents often complain that there is not enough broadcast programming that is suited for family viewing. This is why I have long advocated a return of the Family Viewing Hour. While the new guidelines we adopt today may not increase the amount of programming that appeals to the whole family, it is certainly a step in the right direction for parents and their children. It is my hope that broadcasters take advantage of improvements in technology and compression to devote even more time and ingenuity to family or children's programming. For example, they might create an exclusively "family TV" or "kids TV" channel on one of their multicast streams. Such a channel could also employ exciting, educational interactive features. I therefore look forward to exploring in the Further Notice the ways in which we can encourage flexibility and interactivity without sacrificing the accessibility of children's programming or opening the door to creeping commercialization.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: Children's Television Obligations of Digital Television Broadcasters, Report and Order, MM Docket No. 00-167

Quality educational and informational television can enlighten our children, feed their curiosity, and teach fundamental skills, ethics and behaviors for our society. I thank the Chairman and my colleagues for their commitment to this exceptionally valuable proceeding.

Today we've taken serious steps to update our rules and policies to protect children. We provide certainty for broadcasters to know how their obligation to serve the child audience translates in the digital world. We offer parents more and better information to help their children make appropriate viewing choices. And we recognize that new technologies can lead to previously unimagined enriching educational experiences, while we take care to prevent potential new harms.

Congress has affirmed the need for broadcasters to protect and serve children. Broadcasters must provide programming specifically designed to serve the particular needs of children, which is examined during license renewals. Like other providers of programming aimed at young children, they also must protect children from excessive commercialization. In enacting the legislation, the House Report clearly states that the presence of cable and VCRs "does not obviate the public interest responsibility of individual broadcast licensees to serve the child audience," and that "total reliance on marketplace forces is neither sufficient nor justified to protect children from potential exploitation by advertising or commercial practices."[1]

These same principles must be reinforced not just in today's television environment but for the onset of digital television and tomorrow's launch into interactive television. In all its forms, television continues to play an influential role in a child's life. Nearly all children watch television before their first exposure to formal education. Children watch on average three hours of television per day, and more than half of all children have a television in their bedroom. Without appropriate safeguards, we run the risk that our children become captive to increasingly invasive advertising. Most broadcasters today steadfastly serve their child audience. Our policies are designed to ensure that all broadcasters will.

Digital television offers vast educational potential. It provides an opportunity for broadcasters to nurture the emotional, cognitive, behavioral and other needs of children through more and better educational and informational programming. As broadcasters choose to multicast, for example, their expanded capacity can be used proportionately to further the needs of their young viewers. Indeed, we give broadcasters the flexibility to outdo one another in how they bring this programming to children using their multiple programming streams.

There is much more work to do to provide broadcasters and the public with certainty regarding the entirety of their public interest obligations in the digital era. I welcome what I expect will be an equally constructive dialogue on resolving how the remaining public interest obligations translate to digital. The high level of cooperation in this proceeding bodes well for also achieving consensus on the broader public interest examination in the weeks to come.

While this is merely the start, our children are our future and I'm delighted we stepped up to protect them. Our children should be the ones exploiting the potential of digital television, and not the other way around.

[1] *Children's Television Act of 1990*, H.R. Rep. 101-385 at 6 (1989).