

ADVISORY

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2019 Third Quarter Children's Television Programming Documentation

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Quarterly documentation of stations' compliance with their obligations under the Children's Television Act of 1990 for the Third Quarter of 2019 is due to be placed in stations' Public Inspection Files by **October 10, 2019**, and in the case of educational children's television programming, to be filed electronically with the FCC on that same date.

Interim Filing Procedures Regarding Educational Children's Television Programming

The Children's Television Act of 1990 requires full power and Class A television stations to: (1) limit the amount of commercial matter aired during programs originally produced and broadcast for an audience of children 12 years of age and under, and (2) air programming responsive to the educational and informational needs of children 16 years of age and under. On July 12, 2019, the FCC adopted a number of changes to its children's television programming rules, primarily with respect to the educational television programming requirements. Substantively, the new rules provide broadcasters with additional flexibility in scheduling educational children's television programming, and modify some aspects of the definition of "core" educational children's television programming. These portions of the revisions went into effect on September 16, 2019.

Procedurally, the new rules eliminate quarterly filing of the Children's Television Programming Report in favor of an annual filing, and change other information collection and reporting provisions. Unfortunately, the rule changes that affect broadcasters' reporting requirements have not yet been approved by the Office of Management and Budget, and the report form itself has not been updated to reflect the new substantive requirements.

As a result, for purposes of the quarterly Children's Television Programming Report due on **October 10, 2019**, broadcasters should answer all questions regarding such programming that aired prior to September 16, 2019, and should not respond to the question concerning what programming will be aired in the upcoming quarter. When calculating the average number of hours per week of educational children's television programming aired, broadcasters should only consider the first 11 weeks of the quarter. Programming aired on or after September 16, 2019 is to be reported on the station's next report.

The next report will be broadcasters' first "annual" Children's Television Programming Report and will cover the period from September 16, 2019 through December 31, 2019. That report must be filed by January 30, 2020.

Summary of Changes

Prior to September 16, 2019, the FCC's educational children's television programming rules generally required that a station air an average of 3 hours of "core" educational children's television programming per week on each of its streams, averaged over a six-month period, to receive staff-level license renewal approval. To be considered a "core" program, the program had to be specifically designed to meet the educational and informational needs of children 16 years of age and under; be identified as such on-air with the "E/I" symbol displayed throughout the airing of the programming; be identified to publishers of program guides along with the target age range of the program; be "program-length," that is, at least 30

minutes in length; and be regularly scheduled to air on a weekly basis between the hours of 7:00 a.m. and 10:00 p.m. In addition, broadcasters had to identify the educational purpose of the program in their quarterly Children's Television Programming Report and advertise the availability and location of that report to the public. Further provisions applied with regard to preempting and making good educational children's television programming and the treatment of educational children's programming airing on two of a station's programming streams during a quarter.

The FCC's new rules revise both the three hour per week renewal processing guideline and the definition of core children's television programming. Specifically, as of September 16, 2019, stations can continue to meet their obligation by airing an average of 3 hours per week of regularly-scheduled, weekly, program-length educational programming on their primary stream, but are not required to air additional children's television programming on their multicast streams. As an alternative to airing 3 hours per week of regularly-scheduled educational programming, stations may now air 26 hours per quarter (2 hours per week) of regularly scheduled, weekly, program-length educational programming, and air an additional 52 hours of programming throughout the year that is not provided on a regularly-scheduled basis (such as educational specials or other non-weekly programming) which is at least 30 minutes in length. Alternatively, these 52 hours of non-regularly-scheduled programming can be educational programming that is less than 30 minutes in length, such as PSAs or interstitials.

Under any scenario, licensees may move up to 13 hours per quarter of their regularly-scheduled, program-length educational children's television programming to a multicast stream, but any station opting to air 52 hours per year of programming that it is not regularly-scheduled must air that programming on the station's primary stream. In addition, broadcasters are permitted to count as regularly-scheduled any children's educational program episode that was preempted but made good within seven days before or after the date on which it was originally scheduled to air.

For purposes of compliance with the new rules in the Fourth Quarter of 2019, stations must therefore either air 45 hours of regularly-scheduled weekly core programming on their primary stream from September 16 through December 31, 2019, or they must air at least 30 hours of such programming (at least 4 hours on or before September 30) and an additional 15 hours of core programming that is not regularly-scheduled and which may be less than 30 minutes in length. Of those 30 hours, up to 2 hours can air on the station's multicast streams on or before September 30 and up to 13 hours can air on the station's multicast streams from November 1 to December 31. All of the remaining 15 hours of non-regularly-scheduled or short form programming must air on the station's primary stream.

Third Quarter 2019 Filing Requirements

Turning back to the Third Quarter 2019 Report due on **October 10**, broadcasters must comply with two paperwork requirements. Specifically, stations must (1) place in their Public Inspection File one of four prescribed types of documentation demonstrating compliance with the commercial limits in children's television, and (2) submit the Children's Television Report (FCC Form 2100, Schedule H, which is often referred to by its former designation as Form 398), which requests information regarding the educational and informational programming the station has aired for children 16 years of age and under. The Children's Television Programming Report must be filed electronically with the FCC. The FCC automatically places the electronically filed Children's Television Programming Report filings into the respective station's Public Inspection File. However, each station should confirm that has occurred to ensure that its Public Inspection File is complete.

Broadcasters must file their Children's Television Programming Reports via the Licensing and Management System (LMS), accessible at <https://enterprise filing.fcc.gov/dataentry/login.html>.

Noncommercial Educational Television Stations

Because noncommercial educational television stations are precluded from airing commercials, the commercial limitation rules do not apply to such stations. Accordingly, noncommercial television stations have no obligation to place commercial limits documentation in their Public Inspection Files. Similarly, though noncommercial stations are required

to air programming responsive to the educational and informational needs of children 16 years of age and under, they do not need to complete Children's Television Programming Reports. They must, however, maintain records of their own in the event their performance is challenged at license renewal time. In the face of such a challenge, a noncommercial station will be required to have documentation available that demonstrates its efforts to meet the needs of children.

Commercial Television Stations

Commercial Limitations

The FCC's rules require that stations limit the amount of "commercial matter" appearing in children's programs to 12 minutes per clock hour on weekdays and 10.5 minutes per clock hour on the weekend. In addition to commercial spots, website addresses displayed during children's programming and promotional material must comply with a four-part test or they will be considered "commercial matter" and counted against the commercial time limits. In addition, the content of some websites whose addresses are displayed during programming or promotional material are subject to host-selling limitations. Program promos also qualify as "commercial matter" unless they promote (i) children's educational/informational programming, or (ii) other age-appropriate programming appearing on the same channel. Licensees must prepare supporting documents to demonstrate compliance with these limits on a quarterly basis.

For commercial stations, proof of compliance with these commercial limitations must be placed in their Public Inspection File by the tenth day of the calendar quarter following the quarter during which the commercials were aired. Consequently, this proof of compliance should be placed in your Public Inspection File by **October 10, 2019**, covering programming aired during the months of July, August and September 1-15, 2019.

Documentation to show that the station has been complying with this requirement can be maintained in several different forms:

- Stations may, but are not obligated to, keep program logs in order to comply with the commercial limits rules. If the logs are kept to satisfy the documentation requirement, they must be placed in the station's Public Inspection File. The logs should be reviewed by responsible station officials to be sure they reflect compliance with both the numerical and content requirements contained in the rules.
- Tapes of children's programs will also satisfy the rules, provided they are placed in the station's Public Inspection File and are available for viewing by those examining the Public Inspection File. The FCC has not addressed how this approach can be utilized since the advent of the online Public Inspection File.
- A station may create lists of the number of commercial minutes per hour aired during identified children's programs. The lists should be reviewed on a routine basis by responsible station personnel to be sure they reflect compliance with both the numerical and content requirements contained in the rule.
- The station and its network/syndicators may certify that as a standard practice, they format and air the identified children's programs so as to comply with the statutory limit on commercial matter, and provide a detailed listing of any instances of noncompliance. Again, the certification should be reviewed on a routine basis by responsible station officials to ensure that it is accurate and that the station did not preempt programming or take other action that might affect the accuracy of the network/syndicator certification.

Regardless of the method a station uses to show compliance with the commercial limits, it must identify the specific programs that it believes are subject to the rules, and must list any instances of noncompliance. As noted above, commercial limits apply only to programs originally produced and broadcast primarily for an audience of children ages 12 and under.

Programming Requirements

As discussed above, to assist stations in identifying which programs qualify as “educational and informational” for children 16 years of age and under, and determining how much of that programming they must air to comply with the Children's Television Act of 1990, the FCC has adopted a definition of “core” educational and informational programming, as well as license renewal processing guidelines regarding the amount of core educational programming aired.

For purposes of programming aired prior to September 16, 2019 and reported in this quarter's Children's Television Programming Report, the FCC defines “core programming” as television programming that has as a significant purpose serving the educational and informational needs of children 16 years old or under, which is at least 30 minutes in length, and which is aired weekly on a regular basis between 7:00 a.m. and 10:00 p.m. Each core program must be identified by an E/I symbol displayed throughout the program. In addition, the licensee must provide information identifying each core program that it airs, including an indication of the program's target child audience, to publishers of program guides. The licensee must also publicize the existence and location of the station's children's television reports in the Public Inspection File. The FCC has not prescribed a specific manner of publicizing this information, but enforcement actions indicate that the FCC expects the effort to include an on-air component.

Under the license renewal processing guidelines applicable to programming aired prior to September 16, 2019, stations must air at least three hours of core programming per stream each week as averaged over a six-month period in order to receive staff-level approval of the children's programming portion of the station's license renewal application.

The Children's Television Programming Report is designed to provide the public and the Commission with the information necessary to determine compliance with this license renewal processing guideline. Accordingly, the report captures information regarding the preemption of children's programming, and requires stations to create an addendum to the form called a “Preemption Report” which provides information on: (1) the date of each preemption; (2) if the program was rescheduled, the date and time the rescheduled program aired; (3) the reason for the preemption; and (4) whether promotional efforts were made to notify the public of the time and date that the rescheduled program would air.

Filing of the Children's Television Programming Report

The last Children's Television Programming Report to be filed on a quarterly basis will be the Third Quarter 2019 report. As a result, full power and Class A television stations should file their Children's Television Programming Report electronically by October 10, 2019, reflecting programming aired during the months of July and August and the 1st through 15th of September 2019.

Preparation of the Programming Documentation

In preparing the necessary documentation to demonstrate compliance with the children's television rules, a station should keep the following in mind:

- The Children's Television Programming Report and documentation concerning commercialization will be very important “evidence” of the station's compliance when the station's license renewal application is filed. Preparation of these documents should be done carefully.
- Accurate and complete records of what programs were used to meet the educational and informational needs of children and what programs aired that were specifically designed for particular age groups should be preserved so that the job of completing the Children's Television Programming Report and creating documentation concerning commercialization is made easier.
- A station should prepare all documentation in time for it to be placed in the Public Inspection File by the due date. If the deadline is not met, the station should give the true date when the information was placed in the file and explain its lateness. A station should avoid creating the appearance that it was timely filed when it was not.

These are only a few ideas as to how stations can make complying with the children's television requirements easier. Please do not hesitate to contact the attorneys in the Communications Practice for specific advice on compliance with these rules or for assistance in preparing any of this documentation.

Class A Television Stations Only

Although not directly related to the requirement that Class A television stations file children's programming reports, it is important to note that Class A television stations must certify that they continue to meet the FCC's eligibility and service requirements for Class A television status under Section 73.6001 of the FCC's Rules. While the relevant subsection of the Public Inspection File rule, Section 73.3526(e)(17), does not specifically state when this certification should be prepared and placed in the Public Inspection File, we believe that since Section 73.6001 assesses compliance on a quarterly basis, the prudent course for Class A television stations is to place the Class A certification in the Public Inspection File on a quarterly basis as well.