

**FEDERAL COMMUNICATIONS
COMMISSION**

47 CFR Part 73

[MM Docket No. 93-48; FCC 95-143]

**Broadcast Services; Children's
Television**

AGENCY: Federal Communications
Commission.

ACTION: Notice of proposed rule making.

SUMMARY: This Notice proposes a number of changes to the Commission's rules regarding the broadcast of television programming that serves the educational and information needs of children, in order to implement the Children's Television Act of 1990 (CTA) more effectively. First, the Commission proposes to require broadcasters to identify, on the air and in materials provided to publishers of broadcast schedules, programming "specifically designed" to educate and inform children. The Commission also seeks comment on ways to improve the quality of, and public access to, the information broadcasters make available regarding their efforts in providing children's educational and informational programming. Second, the Commission proposes to clarify its definition of "educational and informational programming" by adopting a definition of "core" programming. The Commission also seeks comment on which of three alternative options for further action should be implemented:

Commission monitoring of the amount of educational and informational programming on the air during a specified period following adoption of measures to improve the flow of programming information to the public and a clarified definition; adoption of a safe harbor processing guideline specifying an amount of core programming that would satisfy the CTA; and adoption of a programming standard requiring that every station be responsible for the airing of a minimum amount of core programming in its market. The Commission also invites comment on possible new license renewal procedures and program sponsorship rules allowing licensees the option of meeting their programming obligation under the CTA in part by sponsoring core programming on other stations in their market. This action is taken to ensure that the educational and informational needs of children are satisfied and thus that broadcasters comply with the CTA.

DATES: Comments are due by June 16, 1995, and reply comments are due by July 17, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Diane Conley, Mass Media Bureau, (202) 776-1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making (NPRM) in MM Docket No. 93-48, FCC 95-143, adopted April 5, 1995, and released April 7, 1995. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making

1. Through this NPRM, the Commission seeks comment on several proposals aimed at providing licensees with clear, simple, and fair guidance regarding their children's programming obligation, to facilitate compliance with the Children's Television Act of 1990 (CTA or Act). The CTA was enacted to "increase the amount of educational and informational broadcast television programming for children."¹ In response to this mandate, the Commission earlier adopted a Report and Order in MM Dockets 90-570 and 83-670 (56 FR 19611, April 29, 1991) and a Memorandum Opinion and Order in the same proceeding (56 FR 42707, August 29, 1991), establishing rules which implemented the CTA.

2. The CTA imposes an affirmative obligation on broadcast television stations to serve the educational and informational needs of children through not only their "overall programming," but also programming "specifically designed" to serve children's needs. The Act requires the Commission, in evaluating its licensees' license renewal applications, to determine whether stations have met this obligation. The CTA also authorizes the Commission, as part of its license renewal review process, to consider any special nonbroadcast efforts by the licensee that enhance the educational and

¹ Children's Television Act of 1989, Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 227, 101st Cong., 1st Sess., 1, 9 (1989) ("Senate Report").

The other provisions of the CTA, those intended to protect children from over commercialization of programming, are not at issue in this proceeding.

information value of programming to children, and any special efforts by the licensee to produce or support programming specifically designed to serve the educational and informational needs of children that is broadcast by another station in the licensee's market. Our current rules generally incorporate the language of the statute and also define educational and informational programming as "programming that furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs."² In addition, we require broadcasters to air some amount of standard-length educational and informational programming specifically designed for children 16 years of age and under. The Commission has adopted no other guidelines regarding the types of programming that may contribute to satisfying a station's renewal review requirement, and our rules contain no requirement as to the number of hours of educational and informational programming that stations must broadcast or the time of day during which such programming may be aired.

3. After developing some experience with the CTA, including the review of more than 320 television license renewals, the Commission issued a Notice of Inquiry (NOI) initiating this proceeding (58 FR 14367, March 17, 1993) to examine whether its children's television rules should be revised. After careful consideration of the studies, comments, and other information regarding the availability of educational broadcast programming provided in response to the NOI and in connection with the FCC's *en banc* hearing on children's television held on June 28, 1994 (59 FR 22814, May 3, 1994), the Commission finds that this evidence is insufficient to support a conclusion as to whether or not the educational and informational needs of children are being met, including whether the CTA and our existing regulations have precipitated a significant increase in the amount of children's educational and informational programming carried by commercial broadcasters. In particular, none of the studies submitted enables us to determine accurately what amount of programming specifically designed to educate and inform children is currently being aired by commercial stations.

4. Even if the Commission accepts the conclusion drawn by some parties that the amount of educational programming on the air has increased since implementation of our rules, the degree of that increase appears to be quite

² 47 C.F.R. 73.671 Note.

modest at best. Thus, the Commission is not convinced that the current rules are prompting an adequate response to the CTA. Accordingly, the Commission feels that it would be desirable to precipitate a more substantial and significant increase in the amount of children's educational and informational programming—in particular, programming specifically designed to educate and inform children—in the future.

5. In developing the rule revisions it proposes, the Commission has followed three principles. The first principle is that judgments of the quality of a licensee's programming, educational or otherwise, are best made by the audience, not by the federal government. It should not be necessary for the Commission to make such judgments if the public has sufficient programming information to play an active role in ensuring that the goals of the CTA are met. The provision of better programming information to the public should give parents and others the opportunity to influence broadcasters to air more educational programming—by, for example, encouraging children to watch educational programming and thereby increasing the ratings for such programming—and should also facilitate enforcement of the CTA.

6. To improve the flow of information to the public, the Commission proposes to require broadcasters to identify programs as educational at the time they are aired and in materials provided to publishers of television schedules. Such identifications need not take up large amounts of air time or print and could be as simple as an icon. Commenters are asked not only to discuss this specific proposal, but also to propose any additional methods for informing the public of upcoming children's programming. Comment is also sought on how to improve the quality of, and public access to, the information provided by stations regarding their efforts to provide programming specifically designed to serve the educational and informational needs of children. The Commission seeks comment on revising our existing rule requiring broadcasters to place in their public inspection files annual or quarterly reports about the children's programming they air. One suggested change is to require broadcasters to include in these reports the name of and method for contacting the person at the station responsible for collecting comments on the station's compliance with the CTA. The Commission further seeks comment on ways of rendering the required information in an easily understandable yet comprehensive

form, and whether these reports should be required annually or quarterly or whether stations should continue to be allowed to choose between the two options.

7. The second principle the Commission has followed is that our rules and processes should be as clear, simple, and fair as possible. To this end, the Commission proposes to revise our definition of "educational and informational" programming. The current definition—"programming that furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs"—is ambiguous and fails to give licensees clear guidance. Indeed, some licensees have interpreted this definition to include general audience news and game shows. Moreover, the Commission has never defined what constitutes programming "specifically designed" to serve children's educational and informational needs, even though the CTA expressly requires each licensee to provide such programming. The Commission is concerned that this lack of clarity has led to less than optimal compliance with the goals of the CTA and that, unless greater specificity is provided, noneducational programming could drive educational programming off the air. The Commission therefore proposes to adopt a definition of programming specifically designed to serve children's educational and informational needs, *i.e.*, "core" programming.

8. The Commission tentatively concludes that we should define "core" educational programming as those programs that meet the following requirements: (1) The program is specifically designed to meet the educational and informational needs of children ages 16 and under (*i.e.*, has education as a significant purpose); (2) the educational objective of the program and the target child audience are specified in writing in the children's programming report described above; (3) the program is aired between the hours of 6:00 a.m. and 11:00 p.m.; (4) the program is regularly scheduled; (5) the program is of a substantial length (*e.g.*, 15 or 30 minutes); and (6) the program is identified as educational children's programming at the time it is aired, and instructions for listing it as educational programming are provided by the licensee to program guides. The Commission seeks comment on this definition.

9. The Commission's third principle is that broadcasters should be guided by market forces, to the greatest extent

possible, in determining whether they meet their programming obligation by airing shows themselves, or by sponsoring programming aired on other stations. The program sponsorship concept, most relevant to the options discussed below of adopting processing guidelines or programming standards, would permit a broadcaster to better utilize other stations' children's programming expertise, would allow some stations to develop audience identification and programming schedules that build child audiences, and could stimulate growth in the production of educational and informational programming, all while reducing disincentives to airing such programming.

10. While the Commission believes that the proposals to ensure that the public has greater access to information and to clarify the definition of educational and informational programming are important steps toward promoting the goals of the CTA more effectively, the Commission is concerned that these efforts may not suffice to serve the educational and informational needs of children, and to bring about the kind of measurable increase in such programming contemplated by Congress. Accordingly, the Commission also proposes to take one of the following three types of action.

11. The first option available to the Commission would be to monitor the amount of broadcasted programming specifically designed to serve the educational and informational needs of children for a specified period of time (*e.g.*, three years) to determine whether the Commission's efforts to increase the flow of information to the public and clarify our rules have caused a significant increase in such programming. Stations would be required to submit annual descriptions of their educational and informational programming. At the end of the specified period, the Commission would assess the need for further regulatory action.

12. A second option would be to establish a safe harbor quantitative processing guideline. Such a guideline would specify an amount of core programming that would represent one means of satisfying the CTA's programming obligation and permit staff approval of the children's programming portion of a license renewal application. Under this option, if a licensee aired the prescribed amount of programming, its license renewal application would not be reviewed further for CTA programming compliance. The only challenges to a licensee's children's

programming performance that would be entertained would be those questioning the *bona fides* of a licensee's claim to have met the processing guideline. A licensee that did not meet the processing guideline would have its application referred to the Commission for consideration and would have the opportunity to demonstrate that it had complied with the CTA in other ways. The Commission would then evaluate such a licensee's performance based on its overall efforts and other circumstances. Failure to meet the guideline would thus result in greater review of the application, but would not constitute a *de facto* violation of the Commission's rules.

13. Given the results of the studies submitted in the record thus far, and allowing for the possibility that these studies may be somewhat flawed, the Commission is currently inclined to think that, if a processing guideline is adopted, it should be set at 3 hours per week of core programming, at least initially. The Commission seeks comment on this suggestion and on whether, if a processing guideline is adopted, it should be increased in stages over time. If the Commission adopts a phased-in processing guideline, what should the ultimate level of the guideline be, and over what period of time should it be phased in? One possibility would be to increase the guideline by increments of the half hour each year until reaching a level of 5 hours of core programming per week.

14. A third option would be to establish a standard requiring that every station be responsible for the airing of a minimum amount of core programming in its market. Stations meeting this requirement would qualify for staff approval of the children's programming portion of their license renewal application. Those not meeting the standard would have their applications referred to the Commission for determination of the appropriate remedy. Notwithstanding failure to meet the standard, the Commission could hold that the licensee had in fact complied with the CTA's requirements. However, a licensee failing to meet a standard would have a much heavier burden to show that it complied with the CTA than would be the case if it did not meet a processing guideline. Thus, a licensee failing to meet a standard would have to make a compelling showing that the qualifying programming it did air, along with any of its other programming-related activities in its market, served the educational and informational needs of children in that market as well as or better than an additional amount of

programming specifically designed to serve the educational and informational needs of children. Again, the Commission believes that, given the current level of programming documented by the data submitted, the appropriate level of a programming requirement would be 3 hours of core programming per week, at least initially. The Commission seeks comment on this suggestion and, as with the option of a processing guideline, interested parties are invited to comment on whether it would be appropriate to increase the requirement by, for example, one half hour each year until a requirement of 5 hours of core programming per week is established. A programming standard, or rule, may be easier to administer and would give the Commission a broader range of sanctions than a processing guideline. The Commission solicits comment on these and other factors differentiating a processing guideline from a standard.

15. There are a number of questions on which the Commission seeks comment that are raised by both the option of a safe harbor processing guideline and that of a programming standard. First, comment is sought on the Commission's suggestion of a weekly processing guideline or programming standard averaged over a specified period, and the Commission asks for ideas as to the period of time over which a guideline or standard should be averaged. The Commission also seeks comment on the extent to which repeats during a weekly schedule and later reruns of programs should be counted toward fulfillment of any processing guideline or programming requirement that might be adopted. Second, the Commission seeks comment as to whether a processing guideline or programming requirement should be the same for all stations regardless of station type or market size. Third, it has been publicly suggested that to give stations an incentive to air high-quality programming, a programming requirement should be based entirely on a certain amount of rating points. The Commission invites comment on this suggestion and on whether it would be appropriate for either a processing guideline or a programming standard.

16. Finally, interested parties are asked to provide the Commission with further data and related information. The Commission requests in particular detailed information regarding any potential opportunity costs (*i.e.*, the difference in profits from children's educational programming and from other programming that might be aired instead) for broadcasters that would be created by the implementation of a

processing guideline or programming requiring set at various levels. More specifically, the Commission requests that commenters provide us with one or more studies that quantify any such costs for stations in different sized markets, as well as for the broadcasting industry as a whole. The Commission urges commenters to ensure that the sample data used to develop estimates of any opportunity costs that stations might face are representative and that the methodology used to develop the estimates is clearly explained. The Commission also reiterates to all interested parties the importance of providing information and studies, in addition to those already on record, documenting changes in the nature and amount of children's educational programming on the air, especially recently. In providing such studies, commenters should bear in mind that the utility of the material already presented to us in this inquiry is limited. For example, the results of certain station surveys accept at face value station claims as to the educational consent of their programming, and our experience with such claims suggests that the figures produced by these studies may be inflated. The Commission notes that if data were submitted that show that the educational and informational needs of children are being met consistent with the goals of the CTA, we would reassess the need for further action.

17. In weighing alternatives for further Commission action, the Commission must consider any limitations imposed by the First Amendment of the Constitution. Even assuming that the Commission's proposals were found to be content-based restrictions on speech, some restrictions on content have been judged permissible when applied to broadcasting because of the scarcity of frequencies and broadcasters' concomitant duty to provide public service. To be consistent with the First Amendment, content-based restrictions on speech in the broadcasting context must be narrowly tailored to further a substantial government interest. The Commission tentatively concludes, and the case law suggests, that the government has a substantial interest in furthering the education and welfare of children through implementation of the CTA. The courts have held that there is a compelling government interest in "safeguarding the physical and psychological well being of a minor."³

³ *Action for Children's Television v. FCC*, 852 F.2d 1332, 1343 n. 18 (D.C. Cir. 1988) and Supreme Court Cases cited therein.

The legislative history of the CTA states that “[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.”⁴ The Commission seeks comment on whether each of the proposed alternatives for improving implementation of the CTA is narrowly tailored to further the CTA’s interest in furthering the education and welfare of children and on its analysis of First Amendment issues as discussed in paragraphs 66 through 73 in the full text of this NPRM.

18. The Commission also seeks comment on possible revisions to our license renewal procedures that might encourage the public to take a more active role in urging stations to comply with the CTA and reduce the government’s role in reviewing such compliance. Thus, the Commission seeks comment on whether it should require any party filing a petition to deny to show that he or she had first attempted to resolve the alleged problem with the station in question, and whether, if we implement a safe harbor processing guideline or a programming standard licensees should be permitted to certify whether they have aired the prescribed amount of core programming.

19. Finally, the Commission solicits comment on a number of general and specific issues regarding “program sponsorship” rules. If the Commission adopts either a safe harbor processing guideline or a programming standard, such rules would give licensees the option of either themselves airing the entire prescribed amount of children’s educational programming, or airing a portion of the prescribed amount themselves and taking responsibility for the remainder by providing financial or other “in-kind” support for programming aired on other stations in their market. The station sponsoring educational programs shown elsewhere would take credit for these programs at license renewal time. We conclude that the CTA precludes allowing a licensee to meet either a processing guideline or programming standard entirely by sponsoring programming on other stations in the same market. The Commission thus suggests that under either option each station be required to air at least 1 hour of core educational and informational programming itself and that each be allowed to fulfill the remaining hours by sponsoring core programming on other stations. The Commission also seeks comment on the

tentative views expressed in the full text of the NPRM regarding how a program sponsorship system should work. The CTA and the Commission’s rules already permit stations to receive credit at license renewal time for supporting educational programming on another station in their market, and the Commission has held that if one station produces or buys children’s programs broadcast on another station, so as to qualify under 47 U.S.C. 303b(b)(2), both stations may rely on such programming in their license renewal applications. The Commission now seeks comment on whether that holding was correct, or whether it undermines the CTA by permitting “double counting.” It appears that, at least for the purpose of meeting a processing guideline or programming requirement, stations that air sponsored programming (“host” stations) should not be permitted to claim credit for such programming.

20. It is also the Commission’s view that a station should be allowed to sponsor programs for the purpose of meeting a processing guideline or programming requirement only on host stations that serve largely the same potential viewers. On the other hand, the Commission does not believe that we should require sponsor and host stations to serve exactly the same area because such a requirement would unduly limit the program sponsorship options available in many markets. Taking into account these competing considerations, it would seem sensible to require that, when any portion of a station’s programming that is claimed to satisfy a processing guideline or programming requirement consists of programming shown on another station, the signal of the host station cover 80 percent of either the community of license or the area encompassed within the grade A or grade B contour of the sponsor station. The Commission seeks comment on these ideas and on other issues relevant to program sponsorship. For example, the Commission asks for comment on what types of information about sponsored programs should be provided to the public, and whether antitrust law would limit the extent to which stations in a market may cooperate through program sponsorship efforts.

21. If the Commission adopts either a processing guideline or a programming standard, we would intend that the resulting regulatory changes would be made on a provisional or experimental basis, rather than as permanent changes. It is the Commission’s hope that any such guideline or standard, together with the other changes we propose, will effectuate a significant improvement in

television broadcasters’ service to children, and also will enable parents to monitor the performance of stations in their communities and ensure through their actions that the CTA’s objectives are met. In accordance with these expectations, and to ensure periodic review of the necessity and efficacy of a guideline or standard, the Commission invites comment on whether to sunset any regulatory changes related to the possible implementation of either of these two options, absent additional Commission action, on December 31, 2004, unless affirmatively extended by the Commission. This date is one year after the close of the renewal cycle for the last group of stations to come up for renewal after rules would be adopted in this proceeding, and would allow the Commission, prior to the sunset, the opportunity to evaluate fully the effects of any rules adopted here. Thus, it would be our intention to undertake a review prior to the sunset date.

22. In conclusion, with this proceeding, the Commission intends to enhance the public’s ability to monitor station compliance with the CTA, to clarify its rules and policies governing educational programming for children to provide licensees with greater certainty as to the scope of their children’s programming obligation, and to ensure that the amount of educational and informational programming provided by television broadcasters comports with the goals of the CTA. The Commission believes that these objectives can be achieved by increasing the flow of information to the public about the children’s programming that stations are broadcasting, and by adopting a definition of programming “specifically designed” to serve children’s educational and informational needs. In addition, we intend to take further action—in the form of instituting monitoring procedures, processing guidelines or a programming standard—in order to ensure that all children have access, as Congress intended, to an adequate supply of educational and informational programming specifically designed for them. The Commission seeks comment on all aspects of our proposals, and welcomes other ideas commenters may have to achieve the objectives outlined herein.

V. Administrative Matters

23. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission’s Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 16, 1995, and reply comments on or before July 17, 1995. To file formally in this

⁴ Senate Report at 17; see also House Report at 11.

proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

24. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Initial Regulatory Flexibility Act Statement

I. Reason for the Action

This proceeding was initiated to explore ways to implement the Children's Television Act of 1990 more effectively.

II. Objective of This Action

The actions proposed in this *NPRM* are intended to give licensees clear, simple, and fair guidance regarding their children's programming obligation; to increase the flow of programming information to the public to facilitate enforcement of the Children's Television Act of 1990; and to allow the marketplace to determine to the fullest extent possible the means that licensees use to meet their programming obligation. Other objectives are to increase the amount of available television broadcast programming that meets the educational and informational

needs of children and to promote efficiency in the production and distribution of such programming.

III. Legal Basis

Authority for the actions proposed in this *NPRM* may be found in Sections 1 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 303; and Section 103 of the Children's Television Act of 1990, 47 U.S.C. 303b.

IV. Number and Type of Small Entities Affected by the Proposed Rules

Approximately 1,200 existing commercial television broadcasters of all sizes may be affected by the proposals contained in this *NPRM*.

V. Reporting, Record-keeping, and Other Compliance Requirements Inherent in the Proposed Rule

The *NPRM* seeks comment on modifying current record-keeping and reporting requirements to include a requirement that licensees demonstrate compliance with proposed rule changes in their children's programming report, and seeks comment on requiring licensees to make programming information more accessible to the public. The *NPRM* seeks comment on whether stations should be required to separate their children's programming reports from other material in the public inspection file and broadcast announcements to alert the public of the existence of such reports. It also seeks comment on a certification requirement that would replace the current requirement for submission of detailed documentation to the Commission for those stations able to certify that they have met a safe harbor processing guideline or programming standard.

VI. Federal Rules Which Overlap, Duplicate, or Conflict With the Proposed Rule

None.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent With the Stated Objectives of the Action

The proposals contained in this *NPRM* are designed to encourage television broadcast programming that satisfies the requirements of the Children's Television Act of 1990, while minimizing the impact on small entities.

25. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this *NPRM*, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq* (1981).

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95-10176 Filed 4-25-95; 8:45 am]

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