

Federal Communications Commission.

William F. Caton,  
Acting Secretary.

#### Rule Changes

Parts 20 and 22 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

#### **PART 20—COMMERCIAL MOBILE RADIO SERVICES**

1. The authority citation for part 20 continues to read as follows:

Authority: Sec. 4, 303, and 332, 48 Stat. 1066, 1092, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 20.12 is amended by revising the section heading and adding new paragraph (c) to read as follows:

#### **§ 20.12 Resale and roaming.**

\* \* \* \* \*

(c) *Roaming.* Each licensee subject to this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this Section, including roamers, while such subscribers are located within any portion of the licensee's licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations.

#### **PART 22—PUBLIC MOBILE SERVICES**

1. The authority citation for part 22 continues to read as follows:

Authority: Sec. 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 22.901 is amended by revising the introductory paragraph to read as follows:

#### **§ 22.901 Cellular service requirements and limitations.**

Cellular system licensees must provide cellular mobile radiotelephone service upon request to subscribers in good standing, including roamers, as provided in § 20.12 of this chapter. A cellular system licensee may refuse or terminate service, however, subject to any applicable requirements for timely notification, to anyone who operates a cellular telephone in an airborne aircraft in violation of § 22.925 or otherwise fails to cooperate with the licensee in exercising operational control over mobile stations pursuant to § 22.927.

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#### **47 CFR Part 73**

[MM Docket No. 93-48; FCC 96-335]

#### **Broadcast Services; Children's Television**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This *Report and Order* amends the children's television educational and informational programming requirements to strengthen our enforcement of the Children's Television Act of 1990 ("CTA"). First, we adopt requirements designed to provide better information to the public about the shows broadcasters air to fulfill their obligation under the CTA to air educational and informational programming for children. Such information will assist parents to guide their children's television viewing, may ultimately increase the amount of educational programming available in the market, and will help parents and others to work with broadcasters in their community to improve educational programming without government intervention. Second, we adopt a definition of programming "specifically designed" to educate or inform children (or "core" programming) that provides better guidance to broadcasters concerning their specific obligation under the CTA to air such programming. Third, we adopt a processing guideline that will provide certainty for broadcasters about how to comply with the CTA, counteract market disincentives to air children's educational and informational programming, and facilitate staff processing of the children's educational programming portion of renewal applications. The purpose of these new rules is to improve public access to information about "core" programs, provide better clarity to broadcasters about their obligation to air such programs, and facilitate our application processing efforts. This proceeding was initiated by a *Notice of Inquiry* and a *Notice of Proposed Rule Making*.

**DATES:** *Effective date:* The rule changes to §§ 73.673, 73.3526(a)(8)(iii), and 73.3500, will become effective on January 2, 1997, subject to OMB approval under the Paperwork Reduction Act. Notice in the Federal Register will be given upon OMB's action to confirm this effective date. The rule changes to §§ 73.671 and 73.672, 47 CFR §§ 73.671, 73.672, will become effective on September 1, 1997. Written comments by the public on the new

and/or modified information collections are due October 28, 1996.

**ADDRESSES:** Comments on the information collections contained herein should be submitted to Secretary, Federal Communications Commission, Room 222, 1919 M Street, NW., Washington, DC 20554, and a copy submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to [dconway@fcc.gov](mailto:dconway@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Charles Logan, Kim Matthews, or Jane Gross, Mass Media Bureau, Policy and Rules Division, (202) 418-2130. For additional information concerning the information collections contained in this *Report and Order* contact Dorothy Conway at 202-418-0217, or via the Internet at [dconway@fcc.gov](mailto:dconway@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order* in MM Docket No. 93-48, adopted August 8, 1996, and released August 8, 1996. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's duplicating contractor, ITS, at (202) 857-3800, 1919 M Street, NW., Room 246, Washington, DC 20554. This *Report & Order* contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 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 collections contained in this proceeding.

Synopsis of Report and Order

#### I. Introduction

In this *Report and Order*, the Commission takes action to strengthen its enforcement of the Children's Television Act of 1990 ("CTA"). The CTA requires the Commission, in its review 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." Our initial regulations implementing the CTA have not been fully effective in prompting broadcasters to increase the amount of educational and informational broadcast television

programming available to children. Some broadcasters are carrying very little regularly scheduled standard length programming specifically designed to educate and inform children, and some broadcasters are claiming to have satisfied their statutory obligations with shows that, by any reasonable benchmark, cannot be said to be "specifically designed" to educate and inform children within the meaning of the CTA. In addition, parents and others frequently lack timely access to information about the availability of programming in their communities specifically designed to educate and inform children, exacerbating market disincentives.

2. We refine our policies and rules to remedy these problems. First, we adopt a number of proposals designed to provide better information to the public about the shows broadcasters air to fulfill their obligation to air educational and informational programming under the CTA. Second, we adopt a definition of programming "specifically designed" to educate and inform children (or "core" programming) that provides better guidance to broadcasters concerning programming that fulfills their statutory obligation to air such programming. In order to qualify as core programming, a show must have serving the educational and informational needs of children as a significant purpose, be a regularly scheduled, weekly program of at least 30 minutes, and be aired between 7:00 a.m. and 10:00 p.m. The program must also be identified as educational and informational for children when it is aired and must be listed in the children's programming report placed in the broadcaster's public inspection file. Third, we adopt a processing guideline that will provide certainty for broadcasters about how to comply with the CTA and facilitate our processing efforts.

## II. Background

3. *The Importance of Children's Educational TV.* Congress has recognized that television can benefit society by helping to educate and inform our children. In enacting the CTA, Congress cited research demonstrating that television programs designed to teach children specific skills are effective. There is substantial evidence in this proceeding that children can benefit greatly from viewing educational television. That television has the power to teach is important because nearly all American children have access to television and spend considerable time watching it. The significance of over-the-air television for children is reinforced by

the fact that fewer children have access to cable television than to over-the-air television. In the United States, 38 percent of children from ages 12 to 17 and 37 percent of children from ages 2 to 11 live in homes that are not connected to cable television. Hence, over-the-air broadcasting is an important source of video programs for children and for all members of low income families, including children.

4. *Previous Implementation of the CTA.* For over 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 special needs of children. In 1990, Congress enacted the CTA both to impose limitations on the number of commercials shown during children's programs and to make clear that the FCC could not rely solely on market forces to increase the educational and informational programming available to children on commercial television. In enacting the CTA Congress intended to increase the amount of educational and informational broadcast television available to children. Congress sought to accomplish this objective by placing on each and every licensee an obligation to provide educational and informational programming, including programming specifically designed to educate and inform children, and by requiring the FCC to enforce that obligation.

5. In 1991, the Commission adopted regulations to implement the CTA. In response to concerns expressed by a number of parties that our rules provide insufficient guidance for broadcasters seeking to comply with the CTA, we initiated this proceeding with a *Notice of Inquiry* ("NOI"), 58 FR 14367 (March 17, 1993), in 1993. Based on comments responding to our NOI, as well as comments received in connection with our 1994 *en banc* hearing on the subject of children's educational television programming, we proposed in the *Notice of Proposed Rule Making* ("NPRM"), 60 FR 20586 (April 26, 1995), to make a number of changes to our rules to achieve the goals of the CTA. In response to the NPRM, we received a substantial number of formal and informal comments from interested parties.

6. *The Economics of Children's Educational Programming.* In enacting the CTA, Congress found that market forces were not sufficient to ensure that commercial stations would provide children's educational and information programming. A number of factors explain the marketplace constraints on providing such programming. Over-the-air commercial broadcast television

stations earn their revenues from the sale of advertising time. Revenues received from the sale of advertising depend on the size and the socio-demographic characteristics of the audience reached by the broadcaster's programming. Broadcasters thus have a reduced economic incentive to promote children's programming because children's television audiences are smaller than general audiences. Broadcasters have even less economic incentive to provide educational programs for children because the market for children's educational television may be segmented by age in ways that do not characterize children's entertainment programming or adult programming. If stations are required to provide some educational programming for children, we believe that the same incentives could cause station owners to prefer to show such programming when relatively few adults would likely be in the audience. Furthermore, small audiences with little buying power, such as children's educational television audiences, are unlikely to be able to signal the intensity of their demand for such programming in the broadcasting market. Therefore, broadcasters will have little incentive to provide such programming because the small audiences and small resulting advertising revenues means that there will be a substantial cost to them (the so-called "opportunity cost") of forgoing larger revenues from other types of programs not shown. The combination of all these market forces consequently can create economic disincentives for commercial broadcasters with respect to educational programming. Broadcasters who desire to provide substantial children's educational programming may face economic pressure not to do so because airing a substantial amount of educational programming may place that broadcaster at a competitive disadvantage compared to those who do very little.

7. *The amount of educational programming on broadcast television.* A number of parties have submitted studies in this proceeding examining the amount of regularly scheduled, standard length educational programming aired on commercial television stations since passage of the CTA. These studies are inconclusive in establishing the exact amount of educational programming that currently is being provided by broadcasters. They arrive at different conclusions on this question in part because they define the programming to be measured and select their samples of broadcast stations in different ways. Despite their

deficiencies, however, the studies (particularly the study submitted by Dr. Dale Kunkel) do allow us to conclude that some broadcasters are providing a very limited amount of programming specifically designed to educate and inform children and that broadcasters vary widely in their understanding of the type of programming that the CTA requires. The conclusion that some stations are airing very little educational programming for children is also supported by our experience in implementing the CTA.

8. *Availability of educational programming on nonbroadcast media.* A number of broadcasters submitted comments arguing that the Commission should assess not just the educational programming being provided over-the-air by broadcast stations, but rather the overall availability of educational programming in the video marketplace. We believe, however, that the proper focus in this proceeding should be on the provision of children's educational programming by broadcast stations, not by cable systems and other subscription services such as direct broadcast satellite systems that, in contrast to broadcast service, require the payment of a subscription fee. The CTA itself expressly focuses on broadcast licensees. Thus, the statute focuses on the provision of children's educational programming through broadcasting, a ubiquitous service, which may be the only source of video programming for some families that cannot afford, or do not have access to, cable or other subscription services. While noting an increase in the number of nonbroadcast outlets available for children to receive video programming, the House Report at 6 states that "the new marketplace for video programming does not obviate the public interest responsibility of individual broadcast licensees to serve the child audience."

9. *Conclusion.* We conclude, on the basis of the studies before us that while some broadcasters are providing educational and informational programming as Congress intended, some are not. Congress was dissatisfied with commercial broadcasters' performance in 1990 when, according to National Association of Broadcasters ("NAB"), commercial broadcasters were devoting an average of two hours per week of airtime to educational programming, and in the CTA Congress provided that *each* broadcaster has a duty to serve the educational and informational needs of children through its overall programming, including programming specifically designed to serve children's educational and informational needs. Yet it appears that,

six years after the enactment of the CTA, at least some broadcasters are providing less than that amount. Given the Commission's duty to treat similarly situated broadcasters in a similar manner, by approving the performance under the CTA of broadcasters providing very little educational programming we would signal that all broadcasters may provide a minimal amount of such programming. The effect of that would be contrary to our effort to counter the economic disincentive to provide children's programming described above. Moreover, in light of the greater value to advertisers of entertainment programs for adults, those broadcasters providing very little educational programming for children may receive an unfair economic advantage, a result that only exacerbates the economic disincentive to provide children's programming that Congress identified in enacting the CTA. Thus unless we modify our approach to implementing the CTA, broadcasters will be able to provide extremely little educational programming for children. That would be contrary to Congress' intent in enacting the CTA.

10. The record also shows that our definition of programming fulfilling the requirements of the CTA should be modified to provide a clear definition of "specifically designed" programming, we will give better guidance and greater incentives for broadcasters' compliance with the CTA. Finally, the record in this proceeding also supports the conclusion that parents and others would profit from additional information concerning the educational programming available in their community.

### III. Public Information Initiatives

11. We conclude that the market inadequacies that led Congress to pass the Children's Television Act can be addressed, in part, by enhancing parents' knowledge of children's educational programming. One way to encourage licensees to provide such programming is to encourage and enable the public, especially parents, to interact with broadcasters. Easy public access to information permits the Commission to rely more on marketplace forces to achieve the goals of the CTA and facilitates enforcement of the statute by allowing parents, educators, and others to actively monitor a station's performance.

12. In considering the options to improve the information available regarding educational programming, we seek to maximize the access to such information by the public while minimizing the cost to the licensee. In response to the comments to the *NPRM*,

we have focused on three basic methods, described below, to improve the public's access to information. We will continue to exempt noncommercial television licensees from children's programming reporting requirements, and we will also exempt them from the other public information initiatives we adopt today. In light of Congressional intent to avoid unnecessary constraints on broadcasters, and in view of the commitment demonstrated by noncommercial stations in general to serving children, we believe it is inappropriate to impose reporting obligations on such stations. We nonetheless encourage noncommercial stations voluntarily to comport with these initiatives to the extent feasible as a means of providing parents and other members of the public with additional information about the availability of children's educational and informational programming on all broadcast stations.

13. *On-Air Identification.* We will require broadcasters to provide on-air identification of core programs, in a manner and form that is at the sole discretion of the licensee, at the beginning of the program. We believe the on-air identification of core programs will greatly assist parents in planning their children's viewing and improve the children's programming marketplace at minimal cost to stations. On-air identifiers are likely to reach a larger audience than information printed in programs guides. Moreover, we note that there is no certainty that published guides will include such information. Identifiers will improve broadcaster accountability by publicizing the programs licensees identify as contributing to their obligation to air core programming. An on-air identification requirement will make broadcasters more accountable to the public and further the goal of minimizing the possibility that the Commission would be forced to decide whether particular programs serve the educational and informational needs of children.

14. Some commenter speculated that on-air identifiers could deter children from watching educational programs. No commenter, however, presented evidence that such an effect will occur. We will revisit our decision to require on-air identification if, after some experience, parties present us with evidence that they in fact have a deterrent effect. In the meantime, broadcasters will have full discretion to design their identifiers to minimize or avoid any such effect.

15. *Program Guides.* We will require each commercial television broadcast

station licensee to provide information identifying programming specifically designed to educate and inform children, and an indication of the age group for which the program is intended, to publishers of program guides. It is industry practice for broadcasters to provide programming information to program guides, which publish such information without cost to the broadcasters. Further, it has become a well-established practice to provide specialized information about programs, such as which programs are closed captioned or the hearing impaired. As broadcasters routinely provide such information about their programming to program guides and designate core programs for their public records, we believe it would require a minimum of effort, but have a major positive effect, for broadcasters to provide publishers of program guides and listings, information identifying core programs, and the age group for which, in the opinion of the broadcaster, the program is intended.

16. We recognize broadcasters cannot require guides to print this information. The information, however, is more likely to be in the program listings if broadcasters routinely provide it. We believe program guides are an effective means of providing parents with advance notice of scheduling of educational programs. This information will assist parents in finding suitable programs for their children and be useful to parents and others who wish to monitor station performance in complying with the CTA. We note that a number of broadcasters supported this proposal, and that the major networks now employ a voluntary parental advisory plan pursuant to which they provide to program guide services information indicating whether programs contain material that may be unsuitable for children. We believe that a universal symbol for educational programming would also be useful in readily identifying such programming to the public, and encourage broadcasters to adopt such a symbol.

17. *Public File Proposals.* Our rules currently require commercial licensees to compile reports containing information about the children's programming they air, including the time, date, duration, and description of the programs. Licensees maintain these reports in the station's public inspection file. We identify several ways, discussed below, to enhance public access to and use of the information in these reports that can be made without materially increasing any burden on the licensee.

18. *Children's liaison.* We will require stations to identify the person at the

station responsible for collecting comments on the station's compliance with the CTA. We believe it is reasonable to require licensees to designate a liaison for children's programming and to include the name and method of contacting that individual in the station's children's programming reports, since someone at each station must, as a practical matter, be responsible for carrying out the broadcaster's responsibilities under the CTA. This requirement also will facilitate public access to information on stations' educational programming efforts, and assist stations in responding to comments and complaints from the public. Moreover, because licensees are currently required to maintain children's programming reports and letters received from the public in their public inspection file, this requirement should not impose a significant additional burden on licensees.

19. *Explanation of how programming meets definition of core programming.* We will require licensees to provide a brief explanation in their children's programming reports of how particular programs meet the definition of "core" programming. Such descriptions assist parents and others who wish to monitor station performance in complying with the CTA. Having a broadcaster identify those programs it relies upon to meet its CTA obligation on an ongoing basis, rather than the end of the term, will increase broadcaster accountability. With regard to a qualifying regular series, we will consider a general description to be sufficient so long as the description is adequate to provide the public with enough information about how the series is specifically designed to meet the educational and informational needs of children.

20. *Physically separate reports.* We will require licensees to separate the children's programming reports from other reports they maintain in their public inspection files. This will enable interested parties to review the information without having to search through unrelated materials. This is our current practice with a licensee's political file. Facilitating access to children's programming reports will facilitate public monitoring and increase broadcaster accountability under the CTA; requiring broadcasters to keep their children's programming reports separate from other portions of their public inspection files will ensure such ease of access.

21. *Publicizing children's programming reports.* We will require that licensees publicize the children's programming reports in an appropriate manner. We remain concerned that the

public is generally unaware of these reports and agree with commenters who contend that publicizing the children's programming reports will heighten awareness of the CTA and invite members of the public to take an active role in monitoring compliance.

22. *Quarterly reports.* We will require licensees to prepare children's programming reports on a quarterly basis. Commenters noted that a quarterly reporting requirement provides more current information about station performance and encourages more consistent focus on educational programming efforts and that, because quarterly production of children's programming reports will coincide with the quarterly issues/programs reports that broadcasters currently prepare, this requirement will not impose a significant additional burden on licensees. For an experimental period of three years, we will also require broadcasters to file such quarterly reports with the Commission on an annual basis, *i.e.*, four quarterly reports filed jointly once a year. We encourage stations to file quarterly, in electronic form, when the reports are prepared. We will evaluate whether to continue this requirement as part of our review of broadcasters' annual reports at the end of this three-year period.

23. *Standardized reporting form.* We will provide licensees with a standardized form for the quarterly children's programming reports. A standardized form should lessen the burden on broadcasters by clarifying the information to be included and providing a ready format. A standardized form will facilitate consistency of reporting among all licensees, assist in efforts by the public and the Commission to monitor station compliance with the CTA, and lessen the burden on the public and Commission staff. This form—a Children's Educational Television Report—will be designed so licensees can complete the report on a computer and file it electronically with the Commission for purposes of the experimental three-year annual filing requirement. We encourage licensees to file the form with us electronically, although we will accept filings either on computer diskette or a paper copy of the report form.

24. This form will request information to identify the individual station and the programs it airs to meet its obligation under the CTA. The form will also request information on educational programs that the station plans to air in the next quarter and ask whether the licensee has complied with other

requirements described in this *Report and Order*. We plan to issue the reporting form by Public Notice and make it available on the Internet.

#### IV. Definition of Programming "Specifically Designed" to Serve Children's Educational and Informational Needs

25. The CTA requires every television broadcaster to air programming "specifically designed" to serve the educational and informational needs of children. Our current definition of educational and informational programming—"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 very broad and does not further delineate criteria for programs that are "specifically designed" to educate and inform children. To remedy this situation, we have decided to adopt a more particularized definition of programming specifically designed to serve children's educational and informational needs, or "core" programming. We intend that this definition will identify programming that clearly meets the statutory obligation to air programming "specifically designed" to meet the educational and informational needs of children. We emphasize that licensees should not regard our definition of core programming as imposing a limit on their ability to air other programming that teaches and informs children even if that programming does not square with each element of our definition of core programming.

26. The evidence in the record supports our general proposal to adopt a definition of core educational and informational programming. Several of the studies submitted in this proceeding suggest that some licensees are uncertain about what to classify as programming specifically designed to meet children's educational and informational needs. This conclusion is supported by our experience in reviewing renewal applications and in evaluating licensees' efforts to meet their CTA obligation to air programming "specifically designed" to educate and inform children. We agree with those commenters who believe that a particularized definition will assist broadcasters and will avoid potentially misplaced reliance on general audience and entertainment programs as specifically designed to educate and inform. By more precisely defining "specifically designed" programming, we increase the likelihood that such

programs will be aired, concomitantly increasing the likelihood children will benefit as Congress intended, from such programs.

27. We will retain, with a slight modification, our existing definition of "educational and informational programming" to provide a description of the broad variety of programs that can serve to comply with a licensee's overall requirement to air programming that meets children's educational and informational needs. In order to track more closely the express language of the CTA, we will modify this definition somewhat so that the broad category of "educational and informational television programming" is defined as "any television programming that furthers the educational and informational needs of children 16 years of age and under in any respect, including children's intellectual/cognitive or social/emotional needs."

28. The definition of core programming that we adopt is designed to provide licensees with clear guidance regarding how we will evaluate renewal applications. The elements of our proposed definition are also designed to be as objective as possible so that they are more easily understood by licensees and the Commission staff and to avoid injecting the Commission unnecessarily into sensitive decisions regarding program content. As we stated in the *NPRM*, programming specifically designed to serve children's educational and informational needs is the only category of programming the CTA expressly requires each licensee to provide. We believe that the definition we adopt today will continue to provide broadcasters ample discretion in designing and producing such programming. We emphasize that the test of whether programming qualifies as core does not depend in any way on its topic or viewpoint. We now turn to the specific elements of the new definition of core programming.

#### *Significant Purpose*

29. With respect to the first element of our definition, we believe that, to qualify as core programming, a show must have served the educational and informational needs of children ages 16 and under as a significant purpose. The "significant purpose" standard appropriately acknowledges the point advanced by broadcasters and others that to be successful, and thus to serve children's needs as mandated by the CTA, educational and informational programming must also be entertaining and attractive to children. Accordingly, as proposed in the *NPRM*, we will require that core programming be

specifically designed to meet the educational and informational needs of children ages 16 and under and have educating and informing children as a significant purpose.

30. The CTA speaks of programming specifically designed to serve "the educational and informational needs of children." It does not draw a distinction between educational and informational programming that furthers children's cognitive and intellectual development and educational and informational programming that furthers children's social and emotional development. We decline to draw that distinction ourselves and accordingly conclude that both fall within the scope of our definition. The test of whether programming qualifies as core does not depend in any way on its viewpoint, but solely on whether it is "specifically designed" to serve children's educational and informational needs. In this regard, we note that entertainment programming with a minor or wrap-around educational and informational message cannot correctly be said to have serving the educational and informational needs of children as a significant purpose.<sup>1</sup> We anticipate that any attempt to incorrectly characterize programming as core will elicit significant opposition from the community, about which the FCC will be apprised.

31. In determining whether programming has a significant purpose of educating and informing children, we will ordinarily rely on the good faith judgment of broadcasters, who will be subject to increased community scrutiny as a result of the public information initiatives described above. We consequently will rely primarily on such public participation to ensure compliance with the significant purpose prong of the definition of core programming, with Commission review taking place only as a last resort.

32. One suggested rule revision discussed in the *NPRM* was to require that educational and informational programming specifically designed for children be produced with the assistance of independent educational advisors. We continue to believe that it would not be appropriate to require the use of educational experts in developing core programming. Although some broadcasters may find that experts can provide worthwhile assistance in developing educational programming, as we stated in the *NPRM* we prefer to

<sup>1</sup> The term "wrap-around" refers to messages inserted at the beginning or end of an entertainment program in an effort to make the program qualify as specifically designed to educate or inform.

minimize the burdens and potential intrusions on programming decisions of broadcasters and provide them the flexibility to select the means by which their educational programming is created.

*Educational and Informational Objective and Target Child Audience Specified in Writing*

33. With respect to the second element of our core programming definition, we are persuaded that we should adopt our proposal to require that the educational and informational objective of core programming be specified in writing. Requiring a statement of educational and informational purpose will ensure that broadcasters devote attention to the educational and informational goals of core programming and how those goals may be achieved. A written statement of educational and information purpose should also assist licensees to distinguish programs specifically designed to serve children's educational and informational needs from programs whose primary purpose is to entertain children. Moreover, this requirement can, as noted, allow parents and other interested parties to participate more actively in monitoring licensee compliance with the CTA, and thus is consistent with our public information initiatives.

34. The description of a program's educational and informational objective, which should be included in the licensee's children's programming report, does not have to be lengthy. It should state the educational and informational objective of the program and the expected educational and informational effects. To satisfy this requirement, broadcasters need not describe the viewpoint of the program or opinions expressed on it. The description must be adequate to demonstrate that a significant purpose of the program is to educate and inform children.

35. We will also require licensees to indicate a specific target age group for core programs. In enacting the CTA, Congress found that "[c]hildren's educational programming is most effective when it is designed to focus on particular age groups and address specific skills." Research has demonstrated that the ability of young children to comprehend television content varies as a function of age, and that educational programming should be targeted to an age range of no more than three to four years to ensure that its content is appropriate to the developmental level of the intended audience. Requiring licensees to specify

the age group a core program is intended to encourage them to consider whether the content of the program is suited to the interests, knowledge, vocabulary, and other abilities of that group. In addition, this requirement will provide information to parents regarding the appropriate age for core programs, thereby facilitating increased program audience and ratings. We decline, however, to identify particular age ranges of children to which core programs may be directed. We prefer to leave broadcasters the discretion to develop programs suited to children with similar educational and informational needs and to counterprogram to distinct portions of the child audience as they believe appropriate.

36. In addition, we decline to require broadcasters to serve particular segments of the child audience. We adhere to our view that we should not at this time require broadcasters to serve particular segments of the child audience, particularly in light of the significant new steps we have adopted to promote the overall availability of children's educational and informational programming.

*Times Core Programming May Be Aired*

37. As for the third element of our definition of core programming, we tentatively proposed in the *NPRM* to credit as core programming children's educational programs broadcast between the hours of 6:00 a.m. and 11:00 p.m. After considering the evidence, we will limit the hours within which programming may qualify as core to a narrower time frame than that proposed in the *NPRM*. To qualify as core, a program must air between the hours of 7:00 a.m. and 10:00 p.m. In specifying this time period, our intention is to encourage broadcasters to air educational programming at times the maximum number of child viewers will be watching. With respect to the morning time limit, recent data show that during four sample weeks in November 1995, less than 5 percent of children 2 to 17 nationwide were watching television at 6:00 a.m. Monday through Friday, and less than 10 percent of this age group was in the audience at 6:30 a.m. By 7:00 a.m., however, between 12.5 percent and 14 percent of children 2 to 11 were watching television, and by 8:00 a.m. more than 20 percent of children 2 to 5, close to 12 percent of children 6 to 8, and just under 9 percent of children 9 to 11, were in the audience. Thus, at 7:00 a.m. Monday through Friday, nearly four times as many young children are watching television than at 6:00 a.m. In

other words, at 6:00 a.m. on weekdays, 1.3 million children are watching television. By 7:00 a.m., the number of children watching television is 5.1 million. Data also show that roughly as many (i.e., very few) young children are watching television at 6:00 a.m. as are watching at midnight. With respect to weekend viewing, the same data show that less than 4 percent of children 2 to 17 were watching television from 6:00 a.m. to 6:30 a.m. on Saturday. By 7:00 a.m. on Saturday, however, the percentage of children 2 to 11 in the audience had risen to between about 5 percent and 7 percent, and continued to increase sharply to about 16 percent or more by 8:00 a.m. Figures for Sunday showed a comparable low rate of viewership for all children prior to 7:00 a.m. followed by a sharp increase between 7:00 a.m. and 8:00 a.m. for children 2 to 11.

38. Despite the relatively small percentage of children in the audience prior to 7:00 a.m. as compared to after that hour, a number of studies confirm that broadcasters air a significant percentage of their educational programming before 7:00 a.m. For example, studies indicate that approximately 20 percent of educational programs are aired before 7:00 a.m. In light of the evidence demonstrating that only 5 to 10 percent of children are watching television before 7:00 a.m., broadcasters appear to be airing a disproportionately large amount of educational programming during early morning hours in relation to the relatively few children watching television at that time. As noted in the *NPRM*, broadcasters have an incentive to air educational programming during very early morning hours as this is a less costly time for them to comply with their educational programming obligation. In view of these circumstances, we believe it is appropriate to specify that core programming air no earlier than 7:00 a.m. rather than 6:00 a.m. as proposed in the *NPRM*. An early time limit of 7:00 a.m. will ensure that core programming is shown when more children are likely to be watching television, especially young children, thus maximizing the benefit of such programming. In addition, a 7:00 a.m. cut-off will help counter the economic incentive of broadcasters to air educational and informational programming to time periods when few children are in the audience.

39. With regard to the evening limit, we believe it is appropriate to require that core programming air no later than 10:00 p.m. rather than 11:00 p.m. as proposed in the *NPRM*. Recent data

show that the number of children 2 to 17 watching television drops off considerably from 10:00 p.m. to 11:00 p.m. For all seven nights combined (Monday–Sunday), the average number of children 2 to 17 drops from 13 million at 10:00 p.m. to 8 million at 11:00 p.m. According to these figures, the number of children 2 to 8 watching television Monday through Friday peaks at approximately 30 percent at 8:00 p.m., and then declines sharply to approximately 16 percent by 10:00 p.m. and less than 10 percent by 11:00 p.m. For older children 9 to 17 Monday through Friday, viewership peaks somewhat later, between 8:30 and 9:00 p.m. at approximately 30 percent to 35 percent, and then falls off to approximately 20 percent to 25 percent at 10:00 p.m. and approximately 12 percent to 19 percent by 11:00 p.m. The data for these age groups for Saturday and Sunday also show a sharp decline in viewership from 10:00 p.m. to 11:00 p.m. We agree with those commenters who argued that core programming should be aired before 10:00 p.m. when a larger proportion of children are awake and watching television. We do not expect this evening limit to impose a burden on broadcasters, or impede their program scheduling strategies, as they typically schedule adult entertainment programming for the 10:00 p.m. to 11:00 p.m. time period. We therefore will require that, in order to qualify as core, educational and informational children's programming be aired between the hours of 7:00 a.m. and 10:00 p.m. We believe that this time period effectuates the language of the CTA that licensees air programming "specifically designed" to serve children's educational and informational needs, as children are best served by programming that airs during times more children are watching television.

40. We do not believe that the time period for core programming must be consistent with the indecency safe harbor (10:00 p.m. to 6:00 a.m.). The indecency safe harbor is intended to provide for the airing of indecent material when the risk of children in the audience is minimized, while our purpose in this context is to promote the availability of children's educational programs when substantial numbers of children are watching. Nevertheless, the data recited above indicate that because there is an appreciable drop in the number of children in the audience after 10:00 p.m. the time frame for purposes of the core programming definition should be 10:00 p.m. rather than 11:00 p.m.

#### *Regularly Scheduled*

41. Turning to the fourth element of our definition of core programming, we continue to believe that qualifying core programming should be regularly scheduled, particularly in view of our emphasis on improving the flow of information to parents through published program guides and other means to enable them to select educational and informational programs for their children. Programming that is aired on a regular basis is more easily anticipated and located by viewers, and can build loyalty that will improve its chance for commercial success. A large proportion of television programming, including children's programming, consists of shows that air on a routine basis. We agree with those commenters who argue that programs that air regularly can reinforce lessons from episode to episode. We also believe that regularly scheduled programs can develop a theme which enhances the impact of the educational and informational message. Accordingly, to be considered as core, we will require that educational and informational programs air on a regular basis. Furthermore, to count as regularly scheduled programming, such programs must be scheduled to air at least once a week. Regularly scheduled weekly programming is the dominant form of television programming. It is more likely to be anticipated by parents and children, to develop audience loyalty, and to build successfully upon and reinforce educational and informational messages, thereby better serving the educational and informational needs of children. It is also our view that programs that air at less frequent intervals are less likely to attract a regular audience and to be anticipated by parents.

42. 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. Indeed, evidence suggests that a significant number of educational and informational programs, particularly those that air on Saturday, are preempted by sports and other programming. Although a program must be regularly scheduled on a weekly basis to qualify as core, we will 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.

43. Specials, including those scheduled to appear on a regular nonweekly basis, will not be credited as

core. As stated above, we believe that programs that are aired more frequently (*i.e.*, at least once a week) are more likely to build upon and reinforce educational and informational messages, more likely to develop audience loyalty, and more likely to be anticipated by children and parents and thus attract a regular audience. Nonetheless, we recognize that educational and informational specials with a significant purpose of serving the educational and informational needs of children ages 16 and under can help accomplish the objectives of the CTA and thus can count toward the second track of our three-hour processing guideline as described below. The value of such programming is enhanced if parents are informed in advance of the program and the time it is scheduled to air. We encourage broadcasters to promote educational and informational specials and to schedule them far enough in advance to permit information about the program to be included in program guides.

#### *Substantial Length*

44. As to the fifth element of our definition of core programming, we believe that core programming should be at least 30 minutes in length. In enacting the CTA, Congress identified a number of examples of worthwhile educational and informational programs, all of which are at least one half-hour in length. Although we do not mean to suggest that these examples in the legislative history are equivalent to statutory requirements, we believe they reflect the fact that the dominant broadcast television format is 30 minutes or longer in length. We believe it reasonable that our rules, which are intended to promote the accessibility of children's educational and informational programming, reflect this current industry practice. Programs in these standard formats are more likely than shorter programming to be regularly scheduled and to be listed in program guides, and thus are easier for parents to identify for their child's viewing. In addition, programs that are 30 minutes or longer allow more time for educational and informational material to be presented, and a number of commenters stated that shows of this length can be particularly beneficial to children. There was no evidence presented in response to the *NPRM* to support claims by some parties that children have short attention spans and thus will not benefit from substantial length programming.

45. We will not credit educational and informational PSAs, interstitials, or other short segments as core

programming. The CTA does not preclude broadcasters from counting such programming as educational and informational; indeed, we recognize that some short segments have significant public interest benefits. Nevertheless, while we have previously found that short segment programming may qualify as specifically designed educational and informational programming, for the reasons stated above we believe that programs that are 30 minutes or more in length are a more appropriate focus of our definition of "core" programming. We also note that short segments and PSAs are less likely to be regularly scheduled or listed in program guides, and consequently are not easily located and anticipated by parents and children.

46. We emphasize that programming with a significant purpose of educating and informing children that is less than 30 minutes in length, although not credited as core programming, can contribute to serving children's needs pursuant to the CTA. Such programming can count toward meeting the three-hour processing guideline when broadcasters air somewhat less than 3 hours per week of core programming, as described below. We encourage all broadcasters to continue to provide a diverse mix of educational and informational programming, including short segments and PSAs, toward their overall obligation to provide programming for children.

#### *Identified as Educational and Informational*

47. With respect to the sixth element of our definition, we proposed that stations be required to identify core programs as educational and informational at the beginning of the program, and to make available the necessary information for listing these programs as educational and informational in program guides. As discussed above, we will adopt both of these proposals in order to improve the information available to parents regarding programming specifically designed for children's educational and informational needs, and to assist them in selecting these programs for their children. We also believe this measure will make broadcasters more accountable in classifying programming as specifically designed to educate and inform. Thus, as with the other aspects of our definition of core programming, we believe that the identification requirements provide an appropriate regulatory incentive for licensees to comply with their statutory obligation to air programming specifically designed

to serve children's educational and informational needs.<sup>2</sup>

#### *Assessment Guidelines*

48. In view of our adoption of a definition of core educational and informational programming that provides licensees with clearer guidance regarding the types of programming required to meet their obligation under the CTA, we believe that our permissive assessment guidelines are no longer necessary and should be eliminated.

#### *V. Processing Guideline*

49. Based on our review of the record, as well as our experience in enforcing the CTA over the past five years, we have decided to adopt a three-hour processing guideline. Under this guideline, the Mass Media Bureau will be authorized to approve the CTA portions of a broadcaster's renewal application where the broadcaster has aired three hours per week (averaged over a six month period) of educational and informational programming that has as a significant purpose serving the educational and informational needs of children ages 16 and under. A broadcaster can demonstrate that it has aired three hours per week of such programming in either of two ways: (A) By checking a box on its renewal application and providing supporting information indicating that it has aired three hours per week of regularly scheduled, weekly shows that are 30 minutes or longer and that otherwise meet the definition of "core programming" (repeats and reruns of core programming may be counted toward fulfillment of the three-hour guideline); or (B) 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. (By "package" we do not mean to imply that the programming is in any way related by topics or purchased from a single source.) A broadcaster seeking to secure staff approval under Category B must show that any reasonable observer would recognize its commitment to educating and informing children to be at least equivalent to the commitment reflected in Category A.

50. Broadcasters that do not fall within Category A or B will have their

renewal applications referred to the full Commission. Licensees referred to the Commission should be on notice by this order that they will not necessarily be found to have complied with the CTA. Given the modest nature of the guideline described in Categories A and B, we expect few broadcasters will fail to meet this benchmark. However, even if a licensee did not meet the guideline for staff approval, it will have an opportunity to make a showing before the Commission that it has satisfied its CTA obligations in other ways. Broadcasters will have a full opportunity to make this demonstration by, for example, relying in part on sponsorship of core educational and 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. It is also possible that a licensee might seek to demonstrate that it suffered such serious economic hardship—such as bankruptcy—that might excuse noncompliance with the CTA.

51. If we find that a broadcaster has not complied with the CTA, we will apply the same remedies that we use in enforcing our other rules. These remedies will vary depending on the severity of the deficiency based on objective criteria. For less serious deficiencies, we will consider letters of admonition or reporting requirements. We may also consider using a "promise versus performance" approach. This would be a prospective remedy under which a licensee would detail its plan for coming into full compliance with CTA programming obligations; if this plan meets with Commission approval, the station's license would be renewed on the condition that the licensee adheres to the plan absent special circumstances. For more serious violations, we will consider other sanctions, including forfeitures and short-term renewals. In extreme cases, we will consider designating the license for hearing to determine whether the licensee's violations of the CTA and our implementing rules warrant nonrenewal under the standards set forth in Section 309(k) of the Communications Act.

52. We believe that a three hour per week processing guideline is a reasonable benchmark for all broadcast television stations to meet six years after enactment of the CTA given long-term performance improvement Congress intended when it passed the Act. The inferences that we can draw from the

<sup>2</sup> As we noted above, we will exempt noncommercial stations from these identification requirements.



entire record in this proceeding, including the studies that were submitted, suggest that this benchmark is a reasonable, achievable guideline. In the context of the CTA, a processing guideline is clear, fair and efficient. Our experience in reviewing the children's programming portions of renewal applications teaches us that a processing guideline is desirable as a matter of administrative efficiency in enforcing the CTA and provides desirable clarity about the extent of a broadcaster's programming responsibilities under the statute. The guideline will also help ameliorate the inequities that may arise from the economic disincentives that lead some stations to air little core programming. Although some broadcasters are airing a significant amount of educational and informational programming, the evidence suggests that others are not. A processing guideline will help minimize the inequities and reduce the disincentives created by below-average performers by subjecting all broadcasters to the same scrutiny for CTA compliance by the Commission at renewal time. Moreover, the greater certainty provided by the processing guideline we adopt should create a more stable and predictable demand for such programming, and thus further the CTA's goal of increasing the availability of programs that teach and inform the nation's children.

53. The processing guideline we adopt is consistent with the CTA in that it provides a measure of flexibility for licensees in meeting the requirements of the CTA. We further believe the processing guideline we adopt is consistent with the text of the CTA, which requires us to "consider the extent" to which licensees serve the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs.

54. We thus conclude that the public interest and the interests Congress sought to promote through the CTA will be better served by this processing guideline approach. We recognize that this is contrary to our earlier interpretation of the CTA as precluding quantification of the CTA obligation. In reaching a contrary conclusion, we begin with the fact that nothing in the statutory language of the CTA forbids the use of a processing guideline. Furthermore, although there is specific language in the legislative history, cited in our 1991 *Report and Order* and by parties in this proceeding, stating the "Committee does not intend that the FCC interpret this section as requiring

or mandating a quantification standard," this language does not prohibit us from seeking to provide greater clarity and guidance through a processing guideline. Rather, this language simply makes clear that the CTA does not *require* quantitative standards or guidelines.

55. We will continue our policy of exempting noncommercial television stations from specific record- compilation, filing and submission requirements. As is our current practice, we will require noncommercial broadcast television stations to maintain documentation sufficient to show compliance at renewal time with the Act's programming obligations in response to a challenge or to specific complaints. Any such showing that a noncommercial station may need to make will be governed by the definition of core programming and the processing guideline we adopt.

56. We will monitor the broadcast industry's children's educational programming performance for three years based upon the children's programming reports that licensees will file with us annually on an experimental basis. We will conduct a review of these reports at the end of this three-year period and take appropriate action as necessary to ensure that stations are complying with the rules and guidelines we adopt. To supplement this review, Commission staff will also conduct selected individual station audits during the next three years to assess station performance under our new children's educational and informational programming rules once they go into effect.

57. We invited comment in the *NPRM* on whether we should sunset any processing guideline or program standard that we adopt on December 1, 2004, unless affirmatively extended by the Commission. Based on the record, we do not believe that an automatic expiration of the rules, absent further Commission action, is appropriate. One of our principal objectives in implementing the safe harbor processing guideline is to provide broadcasters and the public with fair notice and certainty regarding the level of performance at which a licensee can be assured it is complying with the CTA. Automatic elimination of the processing guideline is inconsistent with this important objective.

#### VI. Renewal Procedures

58. We have decided not to require members of the public to communicate with a licensee prior to filing a petition to deny, as proposed in the *NPRM*. Such a requirement could be unduly

burdensome to the public, prevent legitimate complaints from being heard, and deny the FCC an important source of information. We will nonetheless encourage parties to seek to resolve CTA programming concerns with the station before filing a complaint with the Commission, and will consider whether a petitioner has engaged in such conciliation efforts as a factor in assessing a petition to deny.

59. We sought comment in the *NPRM* on whether we should permit licensees to certify whether they have aired the prescribed amount of core programming. We decline to adopt this proposal. The parties that addressed this proposal opposed it on the ground that it would inhibit public monitoring of broadcaster compliance and was contrary to Congress' intent that the Commission review a licensee's children's programming records. Given these concerns, and our decision to require broadcasters to file children's programming reports with the Commission for an experimental three-year period, we do not believe a certification approach is workable.

#### VII. First Amendment Issues

60. The First Amendment arguments raised by opponents of our proposed CTA regulations essentially fall into two categories—arguments that attack the CTA obligation and arguments that attack the quantification of the CTA obligation. To the extent that some commenters argue that the CTA is unconstitutional, Congress itself specifically concluded that "it is well within the First Amendment strictures to require the FCC to consider, during the license renewal process, whether a television licensee has provided information specifically designed to serve the educational and informational needs of children in the context of its overall programming." Even more specifically, as the FCC, the courts, and Congress have concluded, a broadcaster's public interest obligation properly includes an obligation to serve the educational and informational needs of children. The question in this proceeding is not *whether* the Commission should give effect to the CTA, but *how* it should do so.

61. The course we adopt today—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. "It does not violate the First Amendment to treat licensees given the privilege of

using scarce radio frequencies as proxies for the entire community, obligated to give suitable time and attention to matters of great public concern." *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 394 (1969). Congress's authority to order "suitable time and attention to matters of great public concern" includes the authority to require broadcasters to air programming specifically designed to further the educational needs of children. The airwaves belong to the public, not to any individual broadcaster. As the Supreme Court observed in *CBS, Inc. v. FCC*, "a licensed broadcaster is 'granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations.'" 453 U.S. 367, 395 (1981). The fact that Congress elected to retain public ownership of the broadcast spectrum and to lease it for free to private licensees for limited periods carries significant First Amendment consequences.

62. We have chosen to adopt a processing guideline that requires broadcasters to show us how they have served the educational and informational needs of children, and which provides guidance to them about ways in which they can meet that obligation. We are not, however, telling licensees what topics to discuss. The Supreme Court has reaffirmed that "broadcast programming, unlike cable programming, is subject to certain limited content restraints imposed by statute and FCC regulation." If the equal-time and personal attack rules and the rules channeling indecent programming away from times when children are most likely to be in the viewing audience survive constitutional scrutiny, then so, *a fortiori*, would the Commission's considerably less intrusive proposal for giving meaningful effect to the CTA by defining "core" educational programming and establishing a procedure that broadcasters can use to assure routine staff processing of the CTA portion of their renewal applications.

63. Our new regulations, like the CTA itself, impose reasonable, viewpoint-neutral conditions on a broadcaster's free use of the public airwaves. The CTA and our regulations directly advance the government's substantial, and indeed compelling, interest in the education of America's children. As Congress recognized, "[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." If Congress and the Commission may ban broadcast of certain material during specified hours, even under standards of strict scrutiny, it should follow that the Commission's adoption of less restrictive measures to encourage the airing of material beneficial to children is consistent with the First Amendment. That is particularly true because the Children's Television Act is designed to promote programming that *educates and informs* children. It is entirely consistent with the First Amendment to ask trustees of the public airwaves to pursue reasonable, viewpoint-neutral measures designed to increase the likelihood that children will grow into adults capable of fully participating in our deliberative democracy.

64. The measures we adopt today to advance the Nation's interest in the intellectual development of our children are sustainable under the analysis in *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978) as they are significantly less burdensome than the measure upheld there. *Pacifica* upheld a complete ban on a particular type of programming (indecent programming) during hours when children are likely to be in the audience, a period which the Commission was later upheld in defining as 16 hours per day (6:00 a.m.–10:00 p.m.) in *Action for Children's Television v. FCC*. The measures we adopt today do not ban programming of any type, they simply notify broadcasters that compliance with the CTA can be achieved with, on average, less than half an hour a day of programming expressing any viewpoint on any topic that broadcasters desire.

65. For those reasons, our implementing rules are constitutional under the traditional First Amendment standard. But even if evaluated under a heightened standard, our rules would pass muster because the interest advanced is compelling and our regulations are narrowly tailored. As detailed above, our regulations are no more burdensome than necessary to ensure that children will be able to watch educational and informational programming. As we explain above, any programming specifically designed to meet the educational and informational needs of children can "count" for purposes of meeting the processing guideline. In addition, a broadcaster can rely on other more general programming and related non-programming efforts to satisfy its CTA obligation—albeit after full Commission review.

66. We declined to adopt quantitative processing guidelines in 1991 on the ground that they would "infringe on broadcaster discretion regarding the

appropriate manner in which to meet children's educational and informational needs." Upon further consideration, we reject that position. Processing guidelines give broadcasters an option for *guaranteeing* routine staff processing of the CTA portion of their renewal applications, but broadcasters remain free to find other ways to fulfill their obligation. In any event, our initial reluctance to adopt any form of processing guideline derived in large part from our wish to *initiate* implementation of the CTA with as little regulation as possible. As described above, our subsequent experience has persuaded us that we should alter our course in the interests of fairness and efficiency by clarifying ways in which broadcasters can ensure compliance.

67. Together, the new measures that we adopt today will help parents, children, and the general public understand the programming benefits that the CTA is intended to guarantee. That understanding is necessary to ensure that the public, in exercising informal influence over the programming choices of broadcasters, can play an important role in effectuating Congress's intent to increase the amount of educational children's programming on television. Similarly, both the clearer definition and the processing guidelines give broadcasters reasonable notice of nonmandatory ways to guarantee compliance with their statutory programming obligations. Such clarity is desirable and helps to narrowly tailor our regulations.

#### VIII. Effective Dates and Transition Period

68. Our rules regarding on-air identification, program guides, public file, and reporting requirements will become effective on January 2, 1997, subject to OMB approval under the Paperwork Reduction Act, and we will begin to evaluate compliance with these requirements in renewal applications filed after that date. With respect to our newly adopted definition of programming specifically designed to serve the educational and informational needs of children, as well as our safe harbor processing guideline relating to such programming, we believe that a longer transition period is appropriate. Accordingly, we adopt an effective date for these rules of September 1, 1997, and will begin to evaluate compliance with these provisions in renewal applications filed after that date. As with all of the provisions adopted today, these provisions will be applied on a purely prospective basis.

69. Thus, renewal applications filed earlier than September 1, 1997 will be assessed for compliance with the program-related provisions of the CTA based exclusively on the rules and criteria set forth in our 1991 CTA rulemaking proceeding. Beginning September 1, 1997, we will begin to evaluate renewal applications to determine the extent to which licensees are providing educational programming that complies with the new definition of core programming using the new processing guideline. In this renewal cycle (i.e. for applications filed through April 1999) such renewals will cover licensee performance that both pre-dates and post-dates these new rules. Licensee performance during the term that predates the relevant effective dates will be evaluated under existing standards and performance that post-dates the rules will be judged under the new provisions.

#### Administrative Matters

#### *Paperwork Reduction Act Statement*

70. This *Report and Order* contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. The Commission, as part of its continuing effort to reduce paperwork burdens, invites OMB, the general public, and other Federal agencies to comment on the information collections contained in this *Report and Order* as required by the PRA. Public and agency comments are due October 28, 1996. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) 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.

*OMB Approval Number:* 3060-0214.

*Title:* Section 73.3526 Local public inspection file of commercial stations.

*Form No.:* None.

*Type of Review:* Revision of existing collection.

*Respondents:* Businesses or other for-profit.

*Number of Respondents:* 10,250 commercial radio licensees recordkeepers ; 1,200 commercial TV licensees recordkeepers; 1,200

commercial TV stations making must-carry/retransmission consent elections; 1,200 commercial TV stations publicizing existence and location of children's public inspection file.

*Estimated time per response:* 104 hours per year for radio recordkeeping; 130 hours per year for TV recordkeeping; 1 hour per election statement to 150 cable systems per TV station; 5 minutes per TV station for revising station identification publicizing the existence and location of children's public inspection file.

*Total annual burden:* 1,282,100 hours.

*Needs and Uses:* Section 73.3526 requires that each licensee/permittee of a commercial broadcast station maintain a file for public inspection. The contents of the file vary according to type of service and status. The contents include, but are not limited to, copies of certain applications tendered for filing, a statement concerning petitions to deny filed against such applications, copies of ownership reports and annual employment reports, statements certifying compliance with filing announcements in connection with renewal applications, letters received from members of the public, etc. On August 8, 1996, the Commission adopted this *Report and Order* in MM Docket No. 93-49 which, among other things, modifies the requirements currently in Section 73.3526(a)(8)(iii) by removing the requirement to keep records of educational and informational programming specifically designed to serve children's needs. This requirement was replaced with a requirement that commercial television stations place in their public inspection file, on a quarterly basis, a Children's Television Programming Report, maintained in a physically separate file from the other material kept in the public inspection file. Licensees must also publicize the existence and location of these Reports and file the Report annually with the Commission for three years. The data are used by the public and FCC to evaluate information about broadcast licensees' performance, to ensure that broadcast stations are addressing issues concerning the community they are licensed to serve, and to ensure that radio stations entering into time brokerage agreements comply with Commission policies pertaining to licensee control and to the Communications Act and the antitrust laws. Broadcasters are required to send each cable operator in the station's market a copy of the election statement applicable to that particular cable operator. Placing these retransmission consent/must-carry elections in the

public file provides public access to documentation of station's elections which are used by cable operators in negotiations with television stations and by the public to ascertain why some stations are/are not carried by the cable systems. The information contained in the separate children's television file will be used by the general public, interested parties, and FCC staff to facilitate public monitoring of broadcasters' educational programming and to ensure compliance with the CTA. The requirement that children's television material be kept in a separate file will provide easier access to such material.

*OMB Approval Number:* None.

*Title:* Section 73.673 Public information initiatives regarding educational and informational programming for children.

*Form No.:* None.

*Type of Review:* New Collection.

*Respondents:* Businesses or other for-profit.

*Number of Respondents:* 1,200 commercial television broadcast licensees.

*Estimated Time Per Response:* 1 minute per program to ensure that on-the-air identification is provided; 5 minutes per program to convey children's television information to publishers of program guides.

*Total annual burden:* 37,440 hours.

*Needs and Uses:* This new Section 73.673 will require commercial TV broadcasters to identify programs specifically designed to educate and inform children at the beginning of those programs, in a form that is at the discretion of the licensee, and to provide information identifying such programs and the age groups for which they are intended to publishers of program guides. These requirements will provide better information to the public about the shows broadcasters air to fulfill their obligation to air educational and informational programming under the CTA. This information will assist parents who wish to guide their children's television viewing. In addition, if large numbers of parents use that information to choose educational programming for their children, it will increase the likelihood that the market will respond with more educational programming. Better information should help parents and others to have an effective dialogue with broadcasters in their community about children's programming and, where appropriate, to urge programming improvements without resorting to government intervention.

### Final Regulatory Flexibility Analysis

71. As required by the Regulatory Flexibility Act, as amended ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA"), 5 U.S.C. § 603, was incorporated in the *Notice of Proposed Rule Making* in MM Docket No. 93-48 ("NPRM"). The Commission sought written public comments on the proposals in the NPRM, including the IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA")<sup>3</sup> in this *Report and Order* is as follows:

#### A. Need for and Objectives of the Rules

72. The rulemaking proceeding was initiated to explore ways to implement the Children's Television Act of 1990 ("CTA") more effectively by facilitating broadcasters' compliance with their obligation to air educational and informational programming for children, including programming specifically designed for this purpose, and by furthering the CTA's goal of increasing the amount of educational and informational programming available to children. In ¶¶ 9-13 of the *Report and Order*, we discuss the importance of children's educational television programming, and in ¶¶ 25-46 and throughout this order, we discuss the basis of our concerns that our prior rules to implement the CTA were not producing a level of performance consistent with the long-term goals of the statute. The rules adopted herein meet these objectives by giving licensees clear, efficient, and fair guidance regarding their children's programming obligation under the CTA. They do this by increasing the flow of programming information to the public to facilitate enforcement of the CTA and improve the functioning of the children's programming marketplace; by adopting a definition of programming that is clearly "specifically designed" to educate and inform children (which we refer to as "core programming") to provide licensees guidance in fulfilling their statutory obligation to air this programming; and by adopting a three-hour processing guideline to facilitate review at renewal time by the Commission, as required by the CTA, of licensees' compliance with the Act.

<sup>3</sup>This FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996, Pub. L. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Subtitle II of the CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

### B. Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

73. There were no comments submitted specifically in response to the IRFA. We have, however, taken into account all issues raised by the public in response to the proposals raised in this proceeding. In certain instances, we have modified the rules adopted in response to those comments.

#### C. Description and Number of Small Entities to Which the Rules Will Apply

##### 1. Definition of a "Small Business"

74. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. 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"). *Id.* According to the SBA's regulations, entities engaged in television broadcasting (Standard Industrial Classification ("SIC") Code 4833—Television Broadcasting Stations) may have a maximum of \$10.5 million in annual receipts in order to qualify as a small business concern.<sup>4</sup> 13 CFR §§ 121.101 *et seq.* This standard also applies in determining whether an entity is a small business for purposes of the RFA.

75. 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." While we tentatively believe that the foregoing definition of "small business" greatly

<sup>4</sup> This revenue cap appears to apply to noncommercial educational television stations, as well as to commercial television stations. See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

overstates the number of television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small television stations, we did not propose an alternative definition in the IRFA.<sup>5</sup> Accordingly, for purposes of this *Report and Order*, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to television broadcast stations and to consider further the issue of the number of small entities that are television broadcasters in the future. Further, in this FRFA, we will identify the different classes of small television stations that may be impacted by the rules adopted in this *Report and Order*.

##### 2. Issues in Applying the Definition of a "Small Business"

76. As discussed below, we could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

77. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We were 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 following estimates of small businesses to which the new rules will apply do not exclude any television station from the

<sup>5</sup> We have pending proceedings seeking comment on the definition of and data relating to small businesses. In our *Notice of Inquiry* in GN Docket No. 96-113 (In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses), 61 FR 33066 (June 26, 1996), we requested commenters to provide profile data about small telecommunications businesses in particular services, including television, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. The comment and reply comment deadlines in that proceeding have not yet elapsed. Additionally, in our *Order and Notice of Proposed Rule Making* in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 61 FR 9964 (March 12, 1996), we invited comment as to whether relief should be afforded to stations: (1) based on small staff and what size staff would be considered sufficient for relief, *e.g.*, 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force. We have not concluded the foregoing rule making.

definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. We attempted to factor in this element by looking at revenue statistics for owners of television stations. However, as discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

78. With respect to applying the revenue cap, the SBA has defined "annual receipts" specifically in 13 CFR § 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

79. Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR § 121.104(d)(1). The SBA defines affiliation in 13 CFR § 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, 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 the power to control both. 13 CFR § 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 CFR § 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the data bases available to us to provide us with that information.

### 3. Estimates Based on Census and BIA Data

80. According to the Census Bureau, in 1992, there were 1,155 out of 1,478 operating television stations with revenues of less than ten million dollars. This represents 78 percent of all television stations, including non-commercial stations. *See 1992 Census of Transportation, Communications, and Utilities, Establishment and Firm Size*, May 1995, at 1-25. The Census Bureau does not separate the revenue data by commercial and non-commercial stations in this report. Neither does it allow us to determine the number of stations with a maximum of 10.5 million dollars in annual receipts. Census data also indicates that 81 percent of operating firms (that owned at least one television station) had revenues of less than 10 million dollars.<sup>6</sup>

81. We have also performed a separate study based on the data contained in the BIA Publications, Inc. Master Access Television Analyzer Database,<sup>7</sup> which lists a total of 1,141 full-power commercial television stations. We have excluded Low Power Television (LPTV) stations or translator stations, which will not be subject to the new requirements, from our calculations.<sup>8</sup> It should be noted that, using the SBA definition of small business concern, the percentage figures derived from the BIA data base may be underinclusive because the data base does not list revenue estimates for noncommercial educational stations, and these are therefore excluded from our calculations based on the data base.<sup>9</sup>

<sup>6</sup> Alternative data supplied by the U.S. Small Business Administration Office of Advocacy indicate that 65 percent of TV owners (627 of 967) have less than \$10 million in annual revenue and that 39 percent of TV stations (627 of 1,591) have less than \$10 million in annual revenue. These data were prepared by the U.S. Census Bureau under contract to the Small Business Administration. U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Receipts Report, Table 2D (U.S. Census Bureau data adopted by SBA). These data show a lower percentage of small businesses than the data available directly from the Census Bureau. Therefore, for purposes of our worst case analysis, we will use the data available directly from the Census Bureau.

<sup>7</sup> BIA Publications, Inc., Chantilly, VA.

<sup>8</sup> It should be noted that the Commission has attempted to minimize the burden on small entities by not applying the rules to LPTV stations and television translators. As of June 30, 1996, there were 1,903 LPTV stations and 4,910 television translators licensed in the United States. FCC News Release, *Broadcast Station Totals as of June 30, 1996*, Mimeo No. 63298, released July 10, 1996.

<sup>9</sup> In the Joint Comments of the Association of America's Public Television Stations and the Public Broadcasting Service (p. 6), it is reported that there are 38 public television stations with annual operating budgets of less than \$2 million. As of June 30, 1996, there were 364 public television stations

While noncommercial stations are not subject to the new reporting or recordkeeping requirements adopted in the *Report and Order*, the new definition (except for the reporting requirements) and the processing guideline will apply to them. The BIA data indicate that, based on 1995 revenue estimates, 440 full-power commercial television stations had an estimated revenue of 10.5 million dollars or less. That represents 54 percent of commercial television stations with revenue estimates listed in the BIA program. The data base does not list estimated revenues for 331 stations. Using a worst case scenario, if those 331 stations for which no revenue is listed are counted as small stations, there would be a total of 771 stations with an estimated revenue of 10.5 million dollars or less, representing approximately 68 percent of the 1,141 commercial television stations listed in the BIA data base.

82. Alternatively, if we look at owners of commercial television stations as listed in the BIA data base, there are a total of 488 owners. The data base lists estimated revenues for 60 percent of these owners, or 295. Of these 295 owners, 158 or 54 percent had annual revenues of 10.5 million dollars or less. Using a worst case scenario, if the 193 owners for which revenue is not listed are assumed to be small, the total of small entities would constitute 72 percent of owners.

83. In summary, based on the foregoing worst case analysis using census data, we estimate that our rules will apply to as many as 1,155 commercial and non-commercial television stations (78 percent of all stations) that could be classified as small entities. Using a worst case analysis based on the data in the BIA data base, we estimate that as many as approximately 771 commercial television stations (about 68 percent of all commercial television stations) could be classified as small entities. As we noted above, these estimates are based on a definition that we tentatively believe greatly overstates the number of television broadcasters that are small businesses. Further, it should be noted that under the SBA's definitions, revenues of affiliated businesses that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Therefore, these estimates overstate the number of small entities since the revenue figures on which they are based do not include or

licensed. FCC News Release, *Broadcast Station Totals as of June 30, 1996*, released July 10, 1996.

aggregate such revenues from non-television affiliated companies.

84. It should also be noted that the foregoing estimates do not distinguish between network-affiliated<sup>10</sup> stations and independent stations. As of April, 1996, the BIA data base indicates that about 73 percent of all commercial television stations were affiliated with the ABC, CBS, NBC, Fox, UPN, or WB networks. Moreover, seven percent of those affiliates have secondary affiliations.<sup>11</sup> We assume that compliance with the requirements adopted in the *Report and Order* will be less burdensome for network affiliates than for independent stations, as the networks may provide some core programming to network affiliates at lower costs than the network affiliates might otherwise be able to obtain. The networks might also otherwise assist with the fulfillment of additional requirements.

#### 4. Alternative Classification of Small Stations

85. An alternative way to classify small television stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity ("EEO") rule for broadcasting.<sup>12</sup> Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.<sup>13</sup> We estimate that the

<sup>10</sup> In this context, "affiliation" refers to any local broadcast television station that has a contractual arrangement with a programming network to carry the network's signal. This definition of affiliated station includes both stations owned and operated by a network and stations owned by other entities.

<sup>11</sup> Secondary affiliations are secondary to the primary affiliation of the station and generally afford the affiliate additional choice of programming.

<sup>12</sup> The Commission's definition of a small broadcast station for purposes of applying its EEO rule was adopted prior to the requirement of approval by the Small Business Administration pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. § 632(a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102-366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Pub. L. No. 103-403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and an opportunity for comment. See *Report and Order* in Docket No. 18244, 35 FR 8825 (June 6, 1970).

<sup>13</sup> See, e.g., 47 CFR § 73.3612 (Requirement to file annual employment reports on Form 395-B applies to licensees with five or more full-time employees); *First Report and Order* in Docket No. 21474 (In the Matter of Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395), 44 FR 6722 (Feb. 2, 1979). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on

total number of commercial television stations with 4 or fewer employees is 132 and that the total number of noncommercial educational television stations with 4 or fewer employees is 136.<sup>14</sup>

86. Size of the station based on the number of employees is only one factor in assessing the impact of the compliance requirements on small stations. For example, as discussed below, the resources that may often be provided from the networks to network affiliates and from program syndicators to broadcasters showing their programming should ease the compliance requirements by providing educational program descriptions which can be used in public information dissemination. Small group-owned stations may also receive similar benefits from their parent companies when programs have been produced or acquired for multiple stations in the group. However, we do not have the necessary information at this time to determine the number of small group-owned stations, either under the SBA's definition or based on those stations that have fewer than five full-time employees.

#### D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules

87. The rules adopted in the *Report and Order* require commercial television broadcasters, regardless of size, but not including LPTV or translator stations, to identify programs specifically designed to educate and inform children at the time those programs are aired (at the beginning of the program), in a form that is at the discretion of the licensee, and to provide information identifying such programs and the age groups for which, in the opinion of the broadcaster, they are intended, to publishers of program guides.

88. Our rules currently require commercial licensees to complete reports containing information about the children's programming they air,

small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making* in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 61 FR 9964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees. *Id.* at ¶ 21.

<sup>14</sup> We base this estimate on a compilation of 1995 Broadcast Station Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

including time, date, duration, and description of the programs. These reports may be produced either quarterly or annually at the licensee's discretion. Licensees maintain these reports in their public inspection file.

89. The new rules will require commercial television licensees to provide a brief explanation in their children's programming reports of how particular programs meet the definition of programming specifically designed to meet children's educational and informational needs that is adopted in the *Report and Order*. Licensees will be required to produce their children's reports quarterly. For an experimental period of three years, broadcasters will be required to file these reports with the Commission on an annual basis (*i.e.*, four quarterly reports filed jointly once a year). Broadcasters will also be required to separate their children's programming reports from other materials in their public files and to publicize in an appropriate manner the existence and location of the children's programming reports. The Commission will, at a later date, adopt a standardized form for the programming reports. We will also permit, but not require, electronic filing of children's programming reports. Finally, the Commission will, at a later date, revise its license renewal form to reflect the new three hour core programming processing guideline, discussed below.

90. While licensees remain ultimately responsible for ensuring compliance with our rules, we anticipate that they may be able to refer to information provided by the broadcast networks and program suppliers in assessing the educational and informational purpose of programming. Further, we anticipate that station programming and clerical staff will continue to be able to perform the other reporting and recordkeeping functions required under the rules.

91. Under the new rules, commercial television licensees will also be required to designate a liaison at the station for children's programming and to include the name and method of contacting that person in the children's programming reports. In order to minimize burdens, the *Report and Order* exempts noncommercial educational television stations from this requirement. With respect to the liaison, the rules do not require that a new or additional employee be hired to perform this function, and we believe that it is reasonable to require licensees to designate a liaison for children's programming since someone at each station must, as a practical matter, be responsible for carrying out the broadcaster's responsibility under the

CTA to air children's educational television programming and since licensees are currently required to maintain children's programming reports and letters received from the public in their public inspection file.

92. To minimize regulatory burdens, the new rules exempt noncommercial educational television stations from the foregoing reporting, filing, and submission requirements and public information initiatives.

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered*

93. In general, we have attempted to keep burdens on television broadcast stations to a minimum, as discussed below. The regulatory burdens we have imposed are necessary to ensure compliance with the CTA.

##### 1. Public Information Initiatives

94. We adopted the requirements that commercial television broadcasters identify children's educational and informational programs and designate a liaison for children's programming, as well as the revised public file requirements, based on the goal of affording the public sufficient information to play an active role in assuring that the goals of the CTA are met. We will also make information obtained from the children's programming reports available on our Internet World Wide Web site if it is feasible so that it will be accessible by the public. Allowing the public to play an active role will, in turn, allow the Commission to minimize its involvement in evaluating the quality of children's programming and to rely more on the marketplace to achieve the goals of the CTA, thereby minimizing regulatory burdens.

95. We determined that these information requirements should not impose significant additional burdens on licensees, and, in adopting the rules, the Commission has attempted to minimize regulatory and significant economic burdens on small businesses and facilitate compliance with reporting rules wherever possible.

##### a. Identification of Core Programming

96. The burden of the on-air identification requirement on all commercial television broadcast stations, including small stations, is minimized because the form of the identification is at their discretion. The rules adopted provide greater discretion to television stations and are thus less burdensome than if we had adopted a requirement that broadcasters use an icon for such identification, as

suggested in the *NPRM*. Further, such an identification requirement may benefit small stations by affording a potential increase in audience size. An on-air identification requirement will make broadcasters more accountable to the public and further the goal of minimizing the possibility that the Commission would be forced to decide whether particular programs serve the educational and informational needs of children. We note that it is standard practice in the broadcast industry for stations to make various on-air announcements promoting their programming. We further note that under longstanding Commission rules, stations must make station identification and sponsorship announcements. See 47 CFR §§ 73.1201, 73.1212.

##### b. Program Guides

97. Television stations currently submit programming information to programming guides, which publish such information without cost to the broadcasters. See ¶ 60 *supra*. Our current rules do not require broadcasters to provide this information to the guides. However, it has become a well-established practice to provide specialized information about programs, such as which programs are closed captioned for the hearing impaired. Our new rules will require commercial television broadcasters to provide to publishers of program guides information identifying core programs, and the age group for which, in the opinion of the broadcaster, the program is intended.<sup>15</sup> This information will assist parents in finding suitable programs for their children and be useful to parents and others who wish to monitor station performance in complying with the CTA. We recognize that broadcasters cannot require publishers to print this information. The information, however, is more likely to be in the program listings if broadcasters routinely provide it. This requirement is a minor extension of what small stations already do for their standard programming. Stations are not required to purchase advertising space in TV Guide or local TV weekly publications, only to provide information to them. As broadcasters routinely provide such information about their programming to program guides and designate core programs for their public records, we believe it would require a minimum of

<sup>15</sup> As described above in Section IV of the *Report and Order*, we will require that commercial broadcasters indicate the age of the target child audience in their program description.

effort, but have a major positive effect, for them to do so.

##### c. Public File Requirements

98–99. Our rules currently require commercial television licensees to compile reports, containing information about the children's programming they air, including the time, date, duration, and description of the programs. Licensees maintain these reports in the station's public inspection file. Our new rules will require commercial television licensees to prepare these reports using a standardized format on a quarterly basis. The reports will describe their efforts to comply with the CTA-related programming requirements outlined in this decision. Licensees will be required to provide a brief explanation of how particular programs meet the definition of "core" programming. Commercial television licensees will be required to separate the children's programming reports from the other reports they maintain in their public files.

100. The impact of this requirement will depend on the specific class into which a small station falls. Network-affiliated stations, regardless of staff size, may have network support in fulfilling aspects of the reporting requirement for the programs that are broadcast by the network. For example, we assume that, in developing the educational and informational programming they furnish to affiliates, networks will have prepared program information about the educational and informational benefits to children that can be disseminated to affiliated stations.<sup>16</sup> Assuming that the network furnishes such material, a small station may be able to rely on it in preparing its programming report, with respect to the network programs that it airs. In addition, program syndicators may also provide the information needed for a small station to complete its children's programming reports with respect to the programs furnished by the syndicator, further lessening any burden on small stations.

101. A small station that wishes to produce its own children's educational programming will not have the benefit of any such material provided by a network or syndicator in fulfilling the program report requirements. However, assuming a determination of the

<sup>16</sup> See e.g., NBC Comments at 7, 19; NBC Reply Comments at 9 (written articulation of the educational theme or goal of each educational segment furnished to affiliates for inclusion in their children's programming reports); see also ABC Comments at 12 (ABC currently provides to its affiliates a brief explanation of how particular programs meet the definition of educational and informational programming for children).

educational and informational attributes of the program has been made at the pre-production/development stage, additional analysis may not be necessary in preparing the programming report. It is not required, nor should it be necessary, for a small station to hire additional personnel or a children's educational expert to prepare such reports. The Commission considered but specifically rejected such a requirement in order to minimize regulatory burdens on licensees.

102. A number of broadcasters and other commenters requested that the Commission develop a standardized form to facilitate their assembly of children's programming reports, which they are required to do under our current rules. *See Report and Order*, ¶¶ 69 and n. 174 *supra*. So that the reporting burden will be minimized, the Commission will develop a standardized form to be used for preparing the quarterly children's programming reports. We believe that the standardized form will make compliance with the reporting requirements easier and less burdensome for all entities, including small entities. *See Report and Order*, ¶¶ 69–72.

103. With regard to licensees publicizing the availability and location of the programming reports, we believe that this requirement should not be burdensome on small entities because we do not prescribe the manner in which licensees are to publicize the availability and location of the reports, but allow the licensees flexibility to do so in an appropriate manner. Therefore, licensees may choose to fulfill the requirement in a manner that is least burdensome to them, provided they do so in an appropriate manner.

104. Our new rules also require commercial television licensees to designate a liaison for children's programming and to include the name and method of contacting that individual in the station's children's programming reports.<sup>17</sup> Licensees already employ sufficient staff in order to maintain the children's programming reports<sup>18</sup> and letters received from the public in their public inspection files, as required by our current regulations.<sup>19</sup> Thus, we do not expect that the new requirement for designation of a liaison will impose a significant additional

burden on licensees. The rules do not require that a new or additional employee be hired to perform this function, and we believe that it is reasonable to require licensees to designate a liaison for children's programming since someone at each station must, as a practical matter, be responsible for carrying out the broadcaster's responsibility under the CTA to air children's educational television programming. In addition, our rules place no limitations on the licensee's discretion in assigning the liaison function and determining how it will be carried out.

## 2. Definition of "Specifically Designed" Programming

105. The CTA requires the Commission to consider the extent to which a broadcaster has "served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." We determined that we should adopt a definition of programming specifically designed to serve children's educational and informational needs (or "core programming") because our current definition is very broad, does not distinguish between general audience/entertainment programs and programs that are specifically designed to educate and inform, and does not provide licensees with sufficient guidance regarding their obligation to air "specifically designed" programming as required by the CTA. The definition is designed to be sensitive to our concerns that the rules be explicit, clear, simple, and fair and that they afford clear guidance to licensees as to their obligations under the CTA.

106. In adopting the definition, we attempted to minimize regulatory burdens and economic impact on small entities. For example, the Commission rejected a proposal advanced by several commenters that licensees be required to consult with educational experts in order for a program to qualify as core programming. *Report and Order*, ¶ 90. The Commission rejected this proposal in order to minimize burdens on our licensees. An element of our core programming definition is the requirement that commercial television licensees specify in writing in their children's programming report the educational and informational objective of a core program as well as its target child audience. While we recognize this element of the revised definition may impose an additional paperwork burden on commercial licensees, we conclude that the burden is outweighed by the

benefits of the proposal. *See Report and Order*, ¶¶ 91–95. The description of a program's educational objective does not have to be lengthy, and we do not require that the description be prepared by an expert.

## 3. Processing Guideline

107. We adopt a three-hour per week safe harbor processing guideline. A processing guideline is consistent with the text of the CTA and with the First Amendment, and we conclude that our current *ad hoc* approach provides inadequate guidance to licensees and Commission staff. Under the new processing guideline adopted, we would permit staff approval of the children's programming portion of the renewal application where the three-hour benchmark is met. A measure of flexibility is afforded to licensees, including small businesses, since a licensee falling somewhat short of this benchmark could still receive staff approval based on a 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. In this regard, specials, PSAs, short-form programs and regularly scheduled non-weekly shows with a significant purpose of educating and informing children can count toward the three hour per week processing guideline. Renewal applications that do not meet these criteria will be referred for consideration to the Commission, where they will have a full opportunity to demonstrate compliance with the CTA. Such applicants may be able to demonstrate compliance, for example, by relying in part on sponsorship of core educational and 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 that enhance the value of children's educational and informational television programming. A processing guideline is consistent with the text of the CTA that the Commission "consider the extent" to which licensees serve the "educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." *Report and Order*, ¶¶ 120–130.

108. In adopting this guideline, the Commission seeks to minimize the

<sup>17</sup> As noted earlier, noncommercial educational television licensees are exempt from this requirement.

<sup>18</sup> *NPRM*, 60 FR 20586; 47 CFR § 73.1202.

<sup>19</sup> 47 CFR § 73.1202. Commercial stations are required to maintain a number of other reports, records, and applications in their public inspection file as well. *See id.* at § 73.3526.



regulatory burdens and economic impact on licensees, including small businesses, by delegating authority to the Mass Media Bureau to approve Category A or Category B renewal applications. *See Report and Order*, ¶¶ 120–34. Additionally, the Commission allows broadcasters scheduling flexibility by adopting a per-week rather than a per-day safe harbor and by permitting the three-hour benchmark to be averaged over a six-month period, and further attempts to minimize the economic impact by allowing repeats and reruns of core programming to be counted toward fulfillment of the three-hour guideline.

109. With respect to network affiliates, we expect that networks, as they have in the past, will provide programming and compliance information to their affiliates so that, regardless of revenues, the burden on network-affiliated stations will be minimized. Indeed, as noted in ¶ 132 of the *Report and Order*, Westinghouse Electric Corporation has announced that it will provide three hours per week of children's educational programming over the CBS network and on its owned and operated stations by the fall 1997 season. Further, we assume that the three-hour per week guideline will not be burdensome because, as the National Association of Broadcasters ("NAB") reports, broadcasters today air an average of more than four hours per week of total educational and informational programming under the CTA. *See Report and Order*, ¶ 40. Even though that figure may be inflated by the inclusion of some programming that may not qualify under the definition of core programming, it suggests that a three-hour processing guideline is a reasonable level that should not be particularly difficult for broadcasters to achieve.

110. The Commission considered but did not adopt two alternative options to the processing guideline: (1) Commission monitoring of the amount of educational and informational programming on the air during a period of time following the adoption of measures to improve the flow of programming information to the public and a definition of core programming; and (2) adoption of a programming standard that would require broadcasters to air a specified average number of hours of programming specifically designed to serve the educational and informational needs of children. The rule adopted furthers the goal of making the Commission's rules and processes as clear, efficient, and fair as possible, while affording licensees discretion to augment their core

programming responsibility with program sponsorship or other exceptional programming efforts.

111. The Commission concludes that the option chosen strikes the appropriate balance between the need for certainty and flexibility in enforcing the CTA and is thus preferable to both the monitoring and programming standard proposals set forth in the *NPRM*. It should be noted that the option chosen, a processing standard, is less burdensome and affords licensees, including small businesses, greater flexibility than if the Commission had imposed a programming standard. Based on the record, the Commission does not believe that three hours of educational programming would be difficult for most broadcasters to achieve. While mere monitoring might be less burdensome than a processing guideline, the Commission concludes in the *Report and Order* that it is inadvisable to process renewals under the CTA without some quantitative guidelines that are published in advance to provide licensees notice as to means by which they can fulfill their CTA obligations.

112. Finally, the Commission will revise its license renewal form to reflect the new three hour core programming processing guideline. To minimize the regulatory burden and economic impact on broadcasters, including small businesses, they will be able to demonstrative compliance either by checking a box and providing supporting information indicating that they have aired an average of three hours per week of core programming or by showing that they have 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 revising the renewal form, we will seek to minimize the reporting burden on licensees, including small businesses, by, for example, permitting them to rely on the children's programming reports they have previously prepared.

#### *F. Report to Congress*

113. The Secretary shall send a copy of this Final Regulatory Flexibility Analysis along with this *Report and Order* in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. Section 801(a)(1)(A). A copy of this FRFA will

also be published in the Federal Register.

#### Ordering Clauses

114. Accordingly, *it is Ordered that*, pursuant to the authority contained in Sections 4 (i) & (j), 303(r), 308, and 403 of the Communications Act of 1934, 47 U.S.C. 154 (i) & (j), 303(r), 308, 403, as amended, and the Children's Television Act of 1990, 47 U.S.C. 303b(a), 303b(b), and 394, Part 73 of the Commission's Rules, 47 CFR Part 73 IS AMENDED as set forth below. The rule changes to Sections 73.673, 73.3526(a)(8)(iii), and 73.3500, 47 CFR §§ 73.673, 73.3526(a)(8)(iii), 73.3500, shall take effect on January 2, 1997, subject to OMB approval under the Paperwork Reduction Act. Appropriate public notice will be given upon OMB's action to confirm this effective date. The rule changes to Sections 73.671 and 73.672, 47 CFR §§ 73.671, 73.672, shall take effect on September 1, 1997.

115. *It is further ordered* that the new or modified paperwork requirements contained in this Report and Order (which are subject to approval by the Office of Management and Budget) will go into effect upon OMB approval.

116. *It is further ordered* that the Secretary shall send a copy of this Report and Order, including the Final 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 No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

117. *It is further ordered* that this proceeding is terminated.

#### List of Subjects in 47 CFR Part 73

##### Television.

Federal Communications Commission  
William F. Caton,  
*Acting Secretary.*

##### Rule Changes

Part 73 of Title 47 of the 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.

2. Section 73.671 is amended by removing the Note following the section, revising paragraph (a), and by adding paragraph (c) and Notes 1 and 2 to read as follows:

**§ 73.671 Educational and informational programming for children.**

(a) Each commercial and noncommercial educational television broadcast station licensee has an obligation to serve, over the term of its license, the educational and informational needs of children through both the licensee's overall programming and programming specifically designed to serve such needs.

\* \* \* \* \*

(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:

- (1) It has serving the educational and informational needs of children ages 16 and under as a significant purpose;
- (2) It is aired between the hours of 7:00 a.m. and 10:00 p.m.;
- (3) It is a regularly scheduled weekly program;
- (4) It is at least 30 minutes in length;
- (5) 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(a)(8)(iii); and
- (6) 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 1 to § 73.671: For purposes of determining under this section whether programming has a significant purpose of serving the educational and informational needs of children, the Commission will ordinarily rely on the good faith judgments of the licensee. Commission review of compliance with that element of the definition will be done only as a last resort.

Note 2 to § 73.671: The Commission will use the following processing guideline in assessing whether a television broadcast licensee has complied with the Children's Television Act of 1990 ("CTA"). 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).

**§ 73.672 [Removed and Reserved]**

- 3. Section 73.672 is removed and reserved.
- 4. New Section 73.673 is added to read as follows:

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

(a) Each commercial television broadcast licensee shall identify programs specifically designed to educate and inform children at the beginning of the program, in a form that is in the discretion of the licensee.

(b) 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(a)(8)(iii) is revised to read as follows:

**§ 73.3526 Local public inspection file of commercial stations.**

(a) \* \* \*

(8)(i) \* \* \*

(ii) \* \* \*

(iii) For commercial TV broadcast stations, 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 filed by the tenth day of the succeeding calendar quarter. 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. Licensees shall publicize in an appropriate manner the existence and location of these Reports. For an experimental period of three years, licensees shall file these Reports with the Commission on an annual basis, i.e., four quarterly reports filed jointly each year, preferably in electronic form. These Reports shall be filed with the Commission on January 10, 1998, January 10, 1999, and January 10, 2000.

\* \* \* \* \*

6. Section 73.3500 is amended by adding entry 398 in numerical order to read as follows:

**§ 73.3500 Application and report forms.**

\* \* \* \* \*

Form number	Title
* * * * *	
398 ...	Children's Television Programming Report.

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