

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**FCC 96-335**

In the Matter of )  
 )  
Policies and Rules Concerning )  
Children's Television Programming ) MM Docket No. 93-48  
 )  
Revision of Programming Policies )  
for Television Broadcast Stations )

**REPORT AND ORDER**

Adopted: August 8, 1996

Released: August 8, 1996

By the Commission: Chairman Hundt issuing a separate statement; Commissioner Quello concurring and issuing a statement; Commissioner Ness issuing a separate statement; Commissioner Chong concurring in part and issuing a statement.

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## I. INTRODUCTION

1. In this Order, we take action to strengthen our enforcement of the Children's Television Act of 1990 ("CTA"),<sup>1</sup> which 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."<sup>2</sup> In enacting the CTA, Congress found that television has the power to teach children -- that "television can assist children to learn important information, skills, values, and behavior, while entertaining them and exciting their curiosity to learn about the world around them."<sup>3</sup> Congress also found, however, that there are significant market disincentives for commercial broadcasters to air children's educational and informational programming.<sup>4</sup> The rules we adopt today are intended to counteract these market disincentives and to ensure that broadcasters fulfill the promise of the Children's Television Act to our nation's children. We alter our regulations to provide greater clarity about broadcasters' obligation under the CTA to air programming "specifically designed" to serve the educational and informational needs of children and to improve public access to information about the availability of these programs.

2. As explained in greater detail below, we conclude that 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."<sup>5</sup> Our review of the record in this proceeding reveals several problems. First, because of their imprecision in defining the scope of a broadcaster's obligation under the Children's Television Act, our rules have led to a variation in the level and nature of broadcasters' compliance efforts that is incompatible with the intent of the CTA. In so doing, our rules fail to adequately counterbalance the marketplace disincentives as Congress intended when it enacted the CTA. Indeed, some broadcasters are carrying very little regularly scheduled standard length programming specifically designed to educate and inform children. Second, 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. Third, 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. Therefore, as proposed in the Notice of

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<sup>1</sup>Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, 394.

<sup>2</sup>47 U.S.C. § 303b.

<sup>3</sup>47 U.S.C. § 303a note. See also S. Rep. No. 227, 101st Cong., 1st Sess. 5-9 (1989) ("Senate Report").

<sup>4</sup>Senate Report at 9.

<sup>5</sup>Id. at 1.

Proposed Rule Making ("NPRM") we released in April 1995,<sup>6</sup> we refine our policies and rules implementing the CTA to remedy these problems.<sup>7</sup>

3. 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. Such information will assist parents who wish to guide their children's television viewing and, if large numbers of parents use that information to choose educational programming for their children, increase the likelihood that the market will respond with more educational programming. In addition, better information should help parents and others 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.

4. 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. The Commission will ordinarily rely on the good faith judgments of broadcasters as to whether programming satisfies this test and will evaluate compliance of individual programs with this definition only as a last resort. Our new definition of core programming includes other objective elements. A core program must be a regularly scheduled, weekly program of at least 30 minutes, and 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.

5. Third, we adopt a processing guideline that will provide certainty for broadcasters about how to comply with the CTA and facilitate our processing efforts. As described more fully below, under this guideline, broadcasters will receive staff-level approval of the CTA portion of their renewal applications if they air three hours per week of core programming or if, while providing somewhat less than three hours per week of core programming, they air a package of programming that demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming. Broadcasters that do not meet this guideline will be referred to the full

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<sup>6</sup>Notice of Proposed Rule Making, In the Matter of Policies and Rules Concerning Children's Television Programming and Revision of Programming Policies for Television Broadcast Stations, MM Docket No. 93-48, 10 FCC Rcd 6308 (1995).

<sup>7</sup>The actions we take today are consistent with a proposal submitted by President Clinton on behalf of "a group including educators, child advocates, and broadcast industry representatives" on how to revise our rules "to provide educational programming for America's children in fulfillment of the purpose of the 1990 Children's Television Act." Letter from President Clinton to Chairman Reed Hundt (July 31, 1996). The National Association of Broadcasters ("NAB") participated in this group and submitted the identical proposal in supplemental comments. See NAB Supplemental Comments (filed July 29, 1996).

Commission for consideration, where they will have a full opportunity to demonstrate compliance with the CTA, including through efforts other than "core" programming and through nonbroadcast efforts.<sup>8</sup>

6. By publishing our guideline for processing television renewal applications, and by identifying in advance those broadcasters who clearly are in compliance with the CTA and those who may not be in compliance, a processing guideline will help ensure that broadcasters who wish to provide an ample amount of children's educational programming will not find themselves at an unfair disadvantage in the market relative to competing broadcasters who do not, and will not find themselves facing competitive pressure to forgo airing educational programs. A processing guideline will also facilitate speedy and consistent application processing by Commission staff. In short, a processing guideline is a clear, fair and efficient way to implement the Children's Television Act.

7. With regard to the constitutional arguments that have been raised in this proceeding, we conclude, as Congress did when it enacted the CTA, that requiring broadcasters to serve the educational and informational needs of their child audience is clearly within the scope of the long recognized obligation of broadcasters to serve the public interest. We further conclude that the regulations we adopt today directly advance the government's substantial, and indeed compelling, interest in educating America's children. At the same time, the regulations are appropriately tailored to provide flexibility for broadcasters.

8. Congress has enlisted the creativity of broadcasters to advance the nation's powerful interest in educating its youth. As Congress stated, "[i]t is difficult to think of an interest more substantial than the promotion of the welfare of children who watch so much television and rely upon it for so much of the information they receive."<sup>9</sup> We believe that this Report and Order advances that interest.

## II. BACKGROUND

### A. The Importance of Children's Educational Television Programming

9. 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

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<sup>8</sup>See 47 U.S.C. § 303b(b) (providing that, in addition to considering educational and informational programming aired on the licensee's station, the Commission may consider "any special nonbroadcast efforts" by the licensee to enhance the value of such programming, and "any special efforts" by the licensee to sponsor programming on another station in its market).

<sup>9</sup>Senate Report at 17; see also H. Rep. 385, 101st Cong., 1st Sess. 11 (1989) ("House Report").

television programs designed to teach children specific skills are effective.<sup>10</sup> For example, children who watch "Mister Rogers' Neighborhood" and "Sesame Street" have been shown to learn task persistence, imaginative play, and letter and number skills.<sup>11</sup>

10. Studies confirm, and many commenters in this proceeding agree,<sup>12</sup> that children can benefit substantially from viewing educational television.<sup>13</sup> In one such study, children who watch "Barney" showed greater counting skills, knowledge of colors and shapes, vocabulary, and social skills, than children who did not watch the program.<sup>14</sup> Although all children can benefit from educational television, it has been found to be particularly beneficial to children from lower income families. A study conducted by Dr. Aletha Huston and Dr. John Wright, co-directors of the Center for Research on the Influences of Television on Children at the University of Kansas, demonstrated that children from low- and moderate- income families who frequently watch "Sesame Street" and other educational programs from ages 2 to 4 performed better on vocabulary, school readiness, pre-reading, and math tests than non-viewers as much as three years later.<sup>15</sup> These differences occurred even when results were controlled for initial language skill and qualities of family and home environment.<sup>16</sup> The Children's Television Workshop ("CTW") submitted another recent study performed by Westat, Inc. that showed that

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<sup>10</sup>See Senate Report at 5-9. In addition, recent study published by the Department of Education concluded that 'contrary to popular assertions, children are cognitively active during television and attempt to form a coherent connected understanding of television programs.' See Daniel Anderson, *The Impact on Children's Education: Television's Influence on Cognitive Development*, U.S. Department of Education, Working Paper No. 2, April 1988; see also S. Hrg 101-69, April 12, 1989 (testimony of Daniel Anderson).

<sup>11</sup>See Senate Report at 5; see also S. Rep. No. 797, 101st Cong., 1st Sess. 4 (1989) (Senate Report accompanying National Endowment for Children's Educational Television Act -- referred to herein as "Endowment Report").

<sup>12</sup>See, e.g., Center for Educational Priorities ("CEP") Comments at 3-6; Children's Television Workshop ("CTW") Comments at 3-6; Huston & Wright Comments at 2-3. See also Comments of Newton C. Minow and Craig L. LaMay ("Minow and LaMay") at 44. These commenters submitted a copy of their book, "Abandoned in the Wasteland: Children, Television, and the First Amendment," Hill & Wang (1995). References to the comments filed by these parties refer to page numbers in this book.

<sup>13</sup>The Commission's Television Task Force found that educational programming positively affects the development of children, particularly preschool children, whose limited reading capacity restricts the range of educational resources available to them. See Federal Communications Commission, Television Programming for Children, A Report of the Children's Task Force, Vol. I, at 20 (1979).

<sup>14</sup>Jerome Singer, Ph.D. and Dorothy Singer, Ed.D., "Barney & Friends as Education and Entertainment," Feb. 25, 1994, at 21, 31.

<sup>15</sup>See Aletha C. Huston and John C. Wright ("Houston" and "Wright") Comments at 3. A complete copy of this study was submitted as Attachment 1 to the comments filed by CTW.

<sup>16</sup>Id. This study also showed that children ages 6-7 who regularly watched children's educational programs performed better on tests of reading comprehension and in-school adjustment than other children. In addition, children who watched shows such as "Sesame Street" spent less time watching cartoons than other children, and more time reading and engaged in educational activities. See CTW Comments, Attachment 1 (Huston & Wright study) at 1-2.

preschoolers from low-income families who watch "Sesame Street" demonstrated more advanced literacy and numeracy skills than their counterparts who did not watch the program.<sup>17</sup> Thus, there is substantial information before us showing that television can educate children.

11. That television has the power to teach is important because nearly all American children have access to television and spend considerable time watching it. Recent data show that television reaches 98 percent of all American homes, including well over 90 percent of households with annual incomes below \$5,000.<sup>18</sup> Data also show that children from ages 2 to 17 watch on average more than 3 hours of television each day.<sup>19</sup> 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.<sup>20</sup> Indeed, according to the consumers expenditure survey of the Bureau of Labor Statistics, the percentage of consumer households<sup>21</sup> that subscribe to cable television or community antenna systems increases significantly with household income. Thus, while about 75 percent of consumer households with incomes of \$70,000 and over subscribe to cable television, only about 36 percent of consumer households with incomes less than \$5,000

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<sup>17</sup>See CTW Comments, Attachment 2 at 20. Other commenters stated that educational programming is especially valuable to minority and low income children because they spend more time watching television and do not have access to as many alternative sources of education. They also stated that the availability of new technologies does not eradicate the need for educational programming on commercial stations because lower income children are less likely to have access to these alternative technologies. See Comments of the Center for Media Education (filed jointly with 19 other parties including Peggy Charren, the American Psychiatric Association, the Consumer Federation of America, the National Education Association, and the National Parent Teacher Association ("CME et al.)) at 22-24; Arthur D. Sheekey ("Sheekey") Comments at 2.

We noted in the NPRM that we were aware as well that some researchers have questioned the "learning gain" of children who watch "Sesame Street." NPRM, 10 FCC Rcd at 6313 n.14 (citing Sorry, Ernie. TV Isn't Teaching, New York Times, November 12, 1994). Nonetheless, we also noted that, based on other studies and evidence, Congress has determined that children benefit in important ways from viewing educational and informational programming. Id. at 6313 n.14.

<sup>18</sup>Endowment Report at 12. According to the Department of Commerce, more homes have television than have indoor plumbing. Id.

<sup>19</sup>Television Audience 1993 at 14, Nielsen Media Research, 1993.

<sup>20</sup>Nielsen Universe Estimates for January 1, 1996, Nielsen Media Research, 1996. This compares to 34 percent of U.S. households not connected to cable. Id.

<sup>21</sup>In this survey, the Bureau of Labor Statistics uses the term "consumer units" rather than consumer households. A consumer unit is defined as members of a household related by blood, marriage, adoption, or other legal arrangement; a single person living alone or sharing a household with others but who is financially independent; or two or more persons living together who share responsibility for at least 2 out of 3 major types of expenses -- food, housing, and other expenses. Students living in university-sponsored housing are also included in the sample as separate consumer units. U.S. Department of Labor, Bureau of Labor Statistics, Consumer Expenditures in 1994, Report 902 (February, 1996), 5.

subscribe to cable.<sup>22</sup> Hence, over-the-air broadcasting is an important source of video programs for children and for all members of low income families, including children.

12. Television reaches children earlier and for more hours per day than any other educational influence except perhaps family.<sup>23</sup> Many children watch television before they are exposed to any formal education.<sup>24</sup> Nearly 70 percent of day-care facilities have a television on for several hours each day.<sup>25</sup> By the time most American children begin the first grade, they will have spent the equivalent of three school years in front of the television set.<sup>26</sup>

13. Some have argued that children will not watch educational programming. But there are studies that show that, where educational programming is available, a large percentage of children watch. The Westat study found that the majority of young children in all demographic groups watch "Sesame Street."<sup>27</sup> Another study submitted by CTW suggests that children do not distinguish between educational and non-educational programming, and that they do not find educational programming less appealing.<sup>28</sup> CTW noted that quality programming specifically designed to meet children's educational and informational needs can attract sizeable audiences, as evidenced by "Sesame Street" and "Ghostwriter."<sup>29</sup> In addition, Fox Broadcasting Company, Fox Children's Network ("FCN"), and Fox Affiliates Association (collectively referred to herein as "Fox") submitted evidence that the educational programs developed by the FCN receive high ratings.<sup>30</sup>

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<sup>22</sup>Bureau of Labor Statistics, Consumer Expenditure Surveys, Table 2, Income Before Taxes, Interview Survey, 1994, 36.

<sup>23</sup>Huston & Wright Comments at 3. One researcher's estimate of the amount of time pre-schoolers spend watching television ranged from 13.3 to 27.8 hours/week. See Anderson, supra n.10, at 12-13.

<sup>24</sup>Senate Report at 5. At peak viewing hours, more than 20 percent of children ages 2 to 5 are watching television. See Appendix D.

<sup>25</sup>Minow and LaMay Comments at 19 (citing "Television Usage in Child Care Centers," Statistical Research, Inc., May 1994).

<sup>26</sup>Minow and LaMay Comments at 18. See also Anderson, supra n.10, at 12-13.

<sup>27</sup>CTW Comments, Attachment 2 at 5. According to CTW, "Sesame Street" is watched by close to 90% of children prior to beginning school, including children from all ethnic groups and socioeconomic strata. Id.

<sup>28</sup>See Shalom M. Fisch, William Yotive, Susan K. McCann, M. Scott Garner, and Lisa Chen, "Science on Saturday Morning: Children's perceptions of science in educational and non-educational cartoons," October 1995, CTW Comments, Attachment 3 at 15.

<sup>29</sup>CTW Comments at 5.

<sup>30</sup>See Fox Reply Comments at 6-7. (Although Fox styled this document "Ex Parte Presentation," it is referred to herein as Reply Comments because it was filed prior to the deadline for reply comments and refers to comments filed by other parties.)

## B. The History of Government Efforts to Promote Children's Educational Television

14. 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. The Commission's efforts to promote programming for children began in 1960 with the statement that children were one of the several groups whose programming needs television licensees must meet to fulfill their community public interest responsibilities.<sup>31</sup> In 1974, the Commission specifically recognized that broadcasters have an obligation to provide children's educational programming:

"We believe . . . that the broadcaster's public service obligation includes a responsibility to provide diversified programming designed to meet the varied needs and interests of the child audience. . . . In this regard, educational or informational programming for children is of particular importance."<sup>32</sup>

The Commission concluded at that time, however, that it was not necessary to prescribe the number of hours of such programming that broadcasters should show per week.<sup>33</sup> Instead, the Commission stated that it expected the industry to take steps voluntarily to increase the amount of educational and informational programming for children.<sup>34</sup>

15. The Commission's 1974 Policy Statement asked broadcasters to make a meaningful effort to provide programs for children, of which a reasonable part should be educational programming, to increase the number of programs aimed at children in specific age groups, and to improve scheduling practices so that children's programming would be aired during both weekends and weekdays.<sup>35</sup> The Commission also adopted policies concerning commercialization in children's programming.<sup>36</sup> The Commission stated that it expected the industry to take self-regulatory steps to comply with these guidelines by January 1, 1976.<sup>37</sup> To

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<sup>31</sup>Report and Statement of Policy Re: Commission En Banc Programming Inquiry, 44 FCC 2303 (1960).

<sup>32</sup>Children's Television Report and Policy Statement, 50 FCC 2d 1, 5 (1974), aff'd, Action for Children's Television v. FCC, 564 F.2d 458 (D.C. Cir. 1977) ("1974 Policy Statement").

<sup>33</sup>1974 Policy Statement, 50 FCC 2d at 6.

<sup>34</sup>Id. at 6-7.

<sup>35</sup>Id. at 6-8.

<sup>36</sup>The Commission stated its expectation that the industry would eliminate "host selling" and product "tie-ins," use separation between programs and commercials during children's programming, and honor the industry's voluntary guidelines to air no more than 12 minutes per hour of advertising on weekday children's programs and 9.5 minutes per hour for weekend programming. Id. at 12-13.

<sup>37</sup>Id. at 19.

evaluate the success of this program, the Commission revised its renewal forms to obtain information on commercialization practices and programming designed to serve children and kept the docket open.<sup>38</sup> The United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") affirmed the Commission's decision as a reasonable exercise of its regulatory authority.<sup>39</sup>

16. In 1978, the Commission sought to determine what changes had taken place since 1974, and whether self-regulation had been effective.<sup>40</sup> In 1979, the Commission's Children's Television Task Force ("Task Force") concluded that, although the industry generally had complied with the commercial time limits adopted in 1974, it had not complied with the programming guidelines.<sup>41</sup> The Task Force reported that licensees aired an average of 2.6 hours of "instructional" programs in a composite week in 1977-78, as compared with 2.8 hours during a composite week in 1973-74.<sup>42</sup> The Task Force concluded, therefore, that market forces had failed to ensure that television programming was responsive to the needs and interests of children. The Task Force attributed this failure to the limited ability of the child audience to influence the advertiser-supported television market.<sup>43</sup> Responding to this finding, the Commission released a Notice of Proposed Rule Making in late 1979 that outlined a series of options ranging from relying on noncommercial television for children's programming to adopting mandatory quantitative requirements.<sup>44</sup>

17. In 1983, the Commission held an en banc hearing to update the record regarding issues raised in the 1979 Notice of Proposed Rulemaking, and, in 1984, released the Children's Television decision concluding the rulemaking.<sup>45</sup> The Commission concluded that

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<sup>38</sup>Id. at 13-14, 19.

<sup>39</sup>Action for Children's Television v. FCC, 564 F.2d 458 (D.C. Cir. 1977).

<sup>40</sup>Second Notice of Inquiry, Gen. Docket No. 19142, 68 FCC 2d 1344 (1978).

<sup>41</sup>Federal Communications Commission, Television Programming for Children, A Report of the Children's Task Force, Vol. 1, at 3 (1979).

<sup>42</sup>The Amount of Children's Instructional Programming Aired During the 1973-74 and 1977-78 Television Seasons, Dr. Brian F. Fontes, published in Television Programming for Children: A Report of the Children's Television Task Force, Federal Communications Commission, October 1979, vol 3, at 4.

<sup>43</sup>Id., Vol. 1 at 42-44.

<sup>44</sup>Notice of Proposed Rule Making, Docket No. 19142, 75 FCC 2d 138 (1979). As to the latter option, the 1979 Notice proposed to require that all commercial television stations provide five hours per week of educational programming for preschool children (ages two to five) and two and one-half hours per week of educational programming for school age children (ages six to twelve). The proposal would have required that this programming be scheduled between 8:00 a.m. and 8:00 p.m., Monday through Friday. Id. at 148.

<sup>45</sup>Children's Television Programming and Advertising Practices Report and Order, MM Docket No. 19142, 96 FCC 2d 634 (1984)(1984 Report), aff'd, Action for Children's Television v. FCC, 756 F.2d 899 (D.C. Cir. 1985)(1985 ACT

there was no basis on the record before it "to apply a national mandatory quota for children's programming."<sup>46</sup> The Commission explained that it had chosen not to rely on the findings of the 1979 Task Force because the Task Force had not considered the video distribution industry as a whole.<sup>47</sup> After considering the supply of programming available on cable and noncommercial stations, the Commission decided that "there is no national failure of access to children's programming" requiring quantitative or other specific program-related requirements for broadcasters.<sup>48</sup> Nonetheless, the Commission emphasized that broadcasters had a "continuing duty . . . to examine the program needs of the child part of the audience" and chose to rely on this broadly worded obligation and market forces to ensure a sufficient amount of educational programming for children. The D.C. Circuit again affirmed the Commission's decision on appeal as a reasonable exercise of agency discretion.<sup>49</sup>

18. The Commission has no independent information about the amount of children's programming aired following the 1984 Report decision. According to one commenter, however, the three major networks collectively aired more than 11 hours per week (individually about 3.7 hours per week) of children's educational programming in 1980.<sup>50</sup> NAB states that broadcasters averaged two hours per station in 1990, and 3.6 hours per station in 1993.<sup>51</sup>

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Decision).

<sup>46</sup>1984 Report at 656.

<sup>47</sup>Id. at 644.

<sup>48</sup>Id. at 647, 656.

<sup>49</sup>Action for Children's Television v. FCC 756 F.2d 899 (D.C. Cir. 1985).

<sup>50</sup>See "Prepared Remarks of Squire D. Rushnell," June 28, 1994, FCC En Banc Hearing on Children's Television at 2 ("Rushnell Study"). (Squire D. Rushnell is the former Vice President of Children's Television for ABC.) See also NAB En Banc Reply Comments ("The 1990 Children's Television Act: Its Impact on the Amount of Educational and Informational Programming") at 1-2. NAB pointed out several problems it believes exist with the Rushnell Study, and noted that stations affiliated with the networks today air a considerable amount of non-network educational and informational programming for children. On the other hand, the finding of our Task Force that licensees aired about 2.6 hours per week of instructional programming in 1977-78 suggests that 3.7 may be too high.

<sup>51</sup>See NAB En Banc Reply Comments at 1-2. NAB asked commercial television stations to list their children's programming that met the following definition: programming originally produced and broadcast for an audience of children 16 years of age and younger which serves their cognitive/intellectual or social/emotional needs. See NAB En Banc Reply Comments ("The 1990 Children's Television Act: Its Impact on the Amount of Educational and Informational Programming") at 1-2. The NAB study is discussed infra paragraphs 37 and 40.

19. In 1984, the Commission also repealed the commercial guidelines for children's programming.<sup>52</sup> In 1987, the D.C. Circuit ruled that there was no evidence to support the Commission's decision and remanded it to the Commission for further explanation of its decision to eliminate its "longstanding children's television commercialization guidelines."<sup>53</sup> The court found no reasoned basis for the Commission to alter its policy regarding commercialization.

20. The Commission responded to the remand by issuing a Further Notice of Proposed Rulemaking and Notice of Inquiry seeking comment on the issue of commercialization guidelines for children's television.<sup>54</sup> The Commission took no further action on children's television issues until after Congress enacted the CTA in 1990. The Senate Report on the CTA cited the Commission's 1984 decisions as precipitating factors in the enactment of the CTA.<sup>55</sup>

21. 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. While recognizing that commercial television did provide some "meritorious" programming, the Senate Report stated that "when viewed as a whole, there is disturbingly little educational or informational programming on commercial television."<sup>56</sup> The Report went on to note:

The same problems with children's programming that the FCC found in 1976 exist today. Market forces have not worked to increase the educational and informational programming available to children on commercial television.<sup>57</sup>

22. In enacting the CTA Congress clearly stated its objective. The Senate Report expressly notes that the "objective of this legislation is to increase the amount of educational and

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<sup>52</sup>See Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Logs for Commercial Television Stations, 98 FCC 2d 1076, 1105 (1984), on reconsideration, 104 FCC 2d 357, 370 (1986). In 1981, the Commission reduced its license renewal application to a postcard format and eliminated questions on children's programming. 104 FCC 2d at 370 (1986).

<sup>53</sup>See Action for Children's Television v. FCC, 821 F.2d 741, 750 (D.C. Cir. 1987).

<sup>54</sup>Further Notice of Proposed Rulemaking/Notice of Inquiry, MM Docket No. 83-670, 2 FCC Rcd 6822 (1987).

<sup>55</sup>Senate Report at 4-5.

<sup>56</sup>Senate Report at 7.

<sup>57</sup>Senate Report at 9. See also House Report at 6 (noting the Committee's belief that "the new marketplace for video programming does not obviate the public interest responsibility of individual broadcast licensees to serve the child audience.").

informational broadcast television available to children."<sup>58</sup> 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. This is evident from the plain text of the CTA, which states that the FCC "shall, in its review of any application for renewal of a commercial or noncommercial television broadcast license, 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."<sup>59</sup>

23. The Senate Report explains the statute's language by noting that the CTA explicitly requires the FCC "to consider at the time of license renewal whether the licensee has provided programming specifically designed to meet the educational and informational needs of pre-school and school-age children."<sup>60</sup> On the floor of the House of Representatives, Congressman Lent made the same point: "Of course, TV stations already are required to serve their child audiences. But now, the FCC will be directed to gauge whether TV stations are actually meeting that obligation."<sup>61</sup> The Senate Report emphasized the newly codified obligation of broadcasters to provide children's educational programming:

As part of their public interest obligation, broadcasters can and indeed must be required to render public service to children. Children are the bedrock upon which our society rests. See Prince v. Massachusetts, 321 U.S. 158, 168 (1943). As demonstrated elsewhere in this report, children watch a great deal of television, especially before they start school, and are greatly influenced by this medium. Under these circumstances, the broadcaster as a public fiduciary must provide programming specifically designed to serve the informational and educational needs of children.<sup>62</sup>

24. The Senate Report also makes clear that Congress intended "to require broadcasters to provide programming specifically designed for pre-school and school-aged children because of the overwhelming evidence that such programming has the most impact on children's development. . . . Each broadcaster must demonstrate that it has served its child audience with programming which is designed to meet the unique educational and informational needs of children, taking into account the special characteristics of various segments of the child

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<sup>58</sup>Senate Report at 1.

<sup>59</sup>47 U.S.C. § 303b(a).

<sup>60</sup>Senate Report at 1.

<sup>61</sup>136 Cong. Rec. H8536, 8541 (daily ed. Oct. 1, 1990) (remarks of Rep. Lent).

<sup>62</sup>Senate Report at 16; House Report at 10-11 (language virtually identical to Senate Report).

population in order to have their license renewed."<sup>63</sup> Although Congress required each broadcast television licensee to submit a showing to the FCC that it has reasonably met its obligation to provide such programming, the legislative history also notes that Congress intended to allow broadcasters flexibility in determining how to meet their obligation to children.<sup>64</sup> Thus, Congress indicated that the FCC could consider general audience programming in addition to programs specifically designed for children's educational and informational needs.<sup>65</sup>

### C. FCC Proceedings Implementing the CTA

25. The CTA specifies that the Commission "shall" consider, in its review of applications for television license renewal, "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."<sup>66</sup> Its purpose, as noted in the Act's title, is "to require the Federal Communications Commission . . . to enforce the obligation of broadcasters to meet the educational and informational needs of the child audience . . . ." The CTA also states that, "[i]n addition to consideration of the licensee's programming," the Commission "may" consider any "special" nonbroadcast efforts by the licensee that enhance the educational and informational value of educational programming, and any "special" efforts by the licensee to produce or support programming specifically designed to serve children's educational needs that is broadcast by another station in the licensee's market.<sup>67</sup>

26. In 1991, the Commission adopted regulations to implement the CTA.<sup>68</sup> As the NPRM recounts, these regulations "contain no requirement as to the number of hours of educational and informational programming that stations must broadcast or the time of day during which such programming may be aired."<sup>69</sup> Instead these regulations require "broadcasters to air some amount of standard-length educational and informational programming specifically designed for children 16 years of age and under."<sup>70</sup> The regulations define "educational and informational programming," including programming "specifically designed" to educate and inform children, as "any television programming which furthers the positive

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<sup>63</sup>Senate Report at 23.

<sup>64</sup>See 136 Cong. Rec. S10121 (daily ed. July 19, 1990)(remarks of Senator Inouye).

<sup>65</sup>Senate Report at 3.

<sup>66</sup>47 U.S.C. § 303 b(a).

<sup>67</sup>47 U.S.C. § 303 b(b).

<sup>68</sup>47 C.F.R. §§ 73.671(a) (commercial stations), 73.672(a) (noncommercial stations).

<sup>69</sup>NPRM, 10 FCC Rcd at 6315.

<sup>70</sup>Id.

development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs."<sup>71</sup> In adopting the 1991 regulations, the Commission imposed certain reporting requirements on broadcasters, but did not consider the need for measures to enhance the ability of parents and the public generally to obtain information on the availability of children's educational programming.

27. 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") in 1993.<sup>72</sup> 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,<sup>73</sup> we proposed in the NPRM to make a number of changes to our rules to achieve the goals of the CTA.

28. In response to the NPRM, we received a substantial number of comments from interested parties, including individual broadcasters, broadcast associations, public interest groups, producers of children's programming, educational programming researchers, and elected officials. In addition, we received approximately 20,000 letters and Internet messages from individual members of the public.<sup>74</sup> The information obtained in these comments has enhanced our understanding of the market for children's educational television programming.

#### **D. The Supply of Children's Educational Television Programming**

29. The Economics of Children's Educational Programming. As noted above, 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. Congress concluded that the same problems that the Commission found in 1976 still existed and that market forces had not worked to increase the educational and information programming available to children on commercial television.<sup>75</sup>

30. 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

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<sup>71</sup>47 C.F.R. §§ 73.671 Note (commercial stations), 73.672 Note (noncommercial stations).

<sup>72</sup>Notice of Inquiry, MM Docket No. 83-94, 8 FCC Rcd 1841, 1842 (1993).

<sup>73</sup>See En Banc Hearings on Children's Television in MM Docket No. 93-48, June 28, 1994.

<sup>74</sup>The specific NPRM proposals most frequently addressed in these letters were our proposal to define programming "specifically designed" to meet children's educational and informational needs and our proposal to adopt a quantitative processing guideline or a programming standard.

<sup>75</sup>See Senate Report at 9.

programming.<sup>76</sup> Broadcasters thus have a reduced economic incentive to promote children's programming because children's television audiences are smaller than general audiences.

31. Broadcasters have even less economic incentive to provide educational programs for children. Educational programming generally must be targeted at segments of the child audience.<sup>77</sup> An educational program for children aged 2-5, however, may well be of little interest to children aged 6-11 or children aged 12-17.<sup>78</sup> By contrast, an entertainment program for children is more likely to appeal to a broader range of children.<sup>79</sup> Thus 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. Additionally, the adult audience is much larger than the child audience. There are 59.5 million children in the television audience: 16.0 million children aged 2-5, 22.2 million aged 6-11, and 21.3 million children aged 12-17. Adults aged 18-49 number 122.2 million.<sup>80</sup> Because the adult audience is so much larger than the children's audience, the potential advertising revenues are also much larger and therefore provide broadcasters with an incentive to focus on adult programming rather than children's educational television programming. And within the category of children's programming, broadcasters have an economic incentive to select entertainment programs that appeal to a broader range of children rather than educational programs that appeal to a narrower group.

32. 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. For example, it is less costly for broadcasters to show children's educational programs very early in the morning than to show them at later hours because the number of adult viewers lost, and hence the advertising revenues lost, will be relatively low. Hence, as discussed in Section IV and as shown in the charts in Appendix D, it is not surprising that a significant portion of children's programming is currently aired before 7:00 a.m. and that few children's programs are shown in prime time, which draws the largest adult audiences.

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<sup>76</sup>B. Watkins, Improving Educational and Informational Television For Children: When the Marketplace Fails, 5 Yale Law and Policy Rev. 361 (1987).

<sup>77</sup>See CME et al. Comments at 8.

<sup>78</sup>These are the age categories for children used by Nielsen in reporting audience ratings. See Huston & Wright Comments at 4-5.

<sup>79</sup>Nielsen data indicate that children ages 6 to 11 are much more likely to watch general audience or adult-oriented entertainment programs than they are to watch children's programs. Moreover, when asked to name their favorite programs, children ages 10 to 17 were much more likely to include adult-oriented or general audience programs than child-specific shows. The State of Children's Television: An Examination of Quantity, Quality, and Industry Beliefs, conducted by Amy B. Jordan for the Annenberg Public Policy Center of the University of Pennsylvania under the Direction of Kathleen Hall Jamieson, June 17, 1996, citing Nielsen Media Research, March, 1996.

<sup>80</sup>See Nielsen Estimated Persons in TV Households, January 1995.

33. Furthermore, in the broadcasting marketplace it may be difficult for a small number of parents and others with strong demands for children's educational programming to signal the intensity of their demand for such programming. In other retail markets, consumers can demonstrate the intensity of their preferences by the amount of money they spend, *i.e.*, their dollar "votes." However, broadcasting rating services basically register only one "vote" per viewer.<sup>81</sup> But the signal that matters to the broadcaster is the dollar amount of advertising revenues. 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.<sup>82</sup>

34. 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. These and the other factors described above tend to lead to an underprovision of children's educational and informational television programming, as Congress found in the CTA.

35. 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. In the NPRM we discussed several studies described below. We concluded that they provided insufficient evidence to permit us to determine whether the CTA and our existing rules had precipitated a significant increase in the amount of children's educational programming aired on commercial television stations.<sup>83</sup> In particular, none of these studies permitted us accurately to determine what amount of programming specifically designed to educate and inform children is currently being aired. Accordingly, we asked parties to provide us with additional information and studies documenting changes in the nature and amount of children's programming. In so doing, we stated our intent to reassess the need for modification of our current children's programming rules "if data were submitted that show that the educational and informational needs of children are being met consistent with the goals of the CTA."<sup>84</sup>

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<sup>81</sup>See B. Owen and S. Wildman, Video Economics 97, 148 (1992); R. Noll, M. Peck and J. McGowan, Economic Aspects of Television Regulation 32 (1973).

<sup>82</sup>We recognize that in some instances viewers have been able effectively to communicate their displeasure with certain programs by way of boycotts. But we are unfamiliar with examples where a boycott has been equally effective in convincing broadcasters to provide more programming of a particular type.

<sup>83</sup>NPRM, 10 FCC Rcd at 6318.

<sup>84</sup>Id. at 6320.

36. Like the studies described in the NPRM, the studies submitted in response to the NPRM (described below) 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 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. This evidence, viewed together with the rest of the record, leads us to conclude that it is necessary to take the actions adopted here to achieve the goals of the CTA.

37. We discussed in the NPRM two station surveys performed by the National Association of Broadcasters ("NAB") and the Association of Local Television Stations, Inc. ("ALTV") (formerly the Association of Independent Television Stations) that asserted that the amount of educational programming aired on commercial stations increased since passage of the CTA.<sup>85</sup> According to NAB, the average commercial station aired slightly more than 2 hours per week of regularly scheduled, standard-length educational programming for children in the fall of 1990 and 3.6 hours per week of such programming in 1993. In compiling these figures, NAB asked commercial television stations to list their children's programming that met the following definition: "programming originally produced and broadcast for an audience of children 16 years of age and younger which serves their cognitive/intellectual or social/emotional needs."<sup>86</sup> The ALTV survey asserted that the average independent station aired 4.64 hours per week of regularly scheduled, standard-length educational programs in the first quarter of 1994. ALTV did not ask respondents to its survey to report programming conforming to a particular definition. Instead, it asked stations to list all programs broadcast during the first quarter of 1994 that the stations believed satisfied the FCC's requirements to provide programming serving the educational and informational needs of children.<sup>87</sup>

38. We also discussed in the NPRM a study of 48 randomly selected license renewal applications filed in 1992 by stations located in the Midwestern states, which was conducted by Dr. Dale Kunkel of the University of California, Santa Barbara.<sup>88</sup> Dr. Kunkel claimed that commercial stations reported airing on average 3.4 hours per week of regularly scheduled, standard-length programming specifically designed to educate and inform children.

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<sup>85</sup>Id. at 6316-6319.

<sup>86</sup>See NAB En Banc Reply Comments ("The 1990 Children's Television Act: Its Impact on the Amount of Educational and Informational Programming") at 1-2. This definition appears to narrow somewhat the Commission's current definition of educational and informational programming as "television programming which 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." 47 C.F.R. § 73.671 Note.

<sup>87</sup>See ALTV En Banc Reply Comments ("Status Report on Children's Television") at 5.

<sup>88</sup>NPRM, 10 FCC Rcd at 6317.

In compiling this figure, Dr. Kunkel counted programs that were identified in some fashion in the license renewal applications as "specifically designed" to educate children; he did not impose his own definition of such programming.<sup>89</sup> However, he concludes that his figure is likely to be inflated because it accepts at face value the claims made by stations as to the educational objective of these programs.<sup>90</sup>

39. Several parties also submitted studies in response to our request in the NPRM for additional data. Fox submitted a report estimating that Fox affiliated stations are airing on average four hours per week of educational programming during the 1995/1996 season.<sup>91</sup> Fox states, without elaboration, that it used an "extremely conservative" methodology in determining which programs were "bona fide" children's educational programs.<sup>92</sup> NAB and ALTV submitted new studies of the educational programming aired by commercial broadcasters. Dr. Kunkel also submitted a new study.

40. According to the updated survey of 78 stations conducted by ALTV,<sup>93</sup> the average independent television station aired 3.77 hours per week of regularly scheduled, standard length educational programming in the first quarter of 1995.<sup>94</sup> NAB sent survey questionnaires to 937 commercial stations with valid fax numbers and received 559 responses. On this basis, NAB states that in 1994 the average commercial television station aired almost four and one-third hours per week of educational and informational programming specifically designed for children.<sup>95</sup> As in its earlier study, NAB again defined educational and informational programming as "programming originally produced and broadcast for an audience of children 16 years of age and younger which serves their cognitive/intellectual or social/emotional needs."<sup>96</sup> NAB also accepted at face value stations' claims that their reported

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<sup>89</sup>See Kunkel NOI Comments ("Broadcasters' License Renewal Claims Regarding Children's Television Programming") at 4. His examination was limited to license renewal applications filed by 48 stations located in the midwestern United States.

<sup>90</sup>We also examined the Rushnell Study, which compared the amount of children's educational and informational programming presented by networks in certain years prior and subsequent to enactment of the CTA. NPRM, 10 FCC Rcd at 6317. Among other results, Rushnell's study claimed that the four major networks planned to present a combined weekly average of 9 hours of educational children's programming for the 1994/95 season. See NAB En Banc Reply Comments, Attachment 5.

<sup>91</sup>Fox Reply Comments at 4 & attachments.

<sup>92</sup>Fox Reply Comments at 3.

<sup>93</sup>ALTV reports that it sent its survey to 100 member stations and received 78 "usable responses," but does not describe how it selected the original sample. ALTV Comments, Exhibits at 9.

<sup>94</sup>See ALTV Comments at 12 & Exhibit A.

<sup>95</sup>See NAB Comments at ii.

<sup>96</sup>NAB Comments, Attachment 1 at 2-4.

programming met this definition.<sup>97</sup> NAB's study is not conclusive on the average amount of educational and informational programming broadcasters are now providing because NAB's definition of the studied programming differs from our current definition of educational and informational programming. Nor can we rely on the NAB or ALTV studies to ascertain the range of performance by different broadcasters.<sup>98</sup> At the same time, neither association argues that all of its members are providing exactly the industry average or disputes that there are "outliers" providing very little children's educational programming.

41. Dr. Kunkel's new study examined 48 randomly selected license renewal applications filed in 1994.<sup>99</sup> Dr. Kunkel asserts that commercial stations on average reported airing the same number of hours of regularly scheduled, standard length programming specifically designed for children as in his earlier study of 1992 renewal applications (3.4 hours per week). Dr. Kunkel characterized as "frivolous" some broadcasters' claims that certain programs are educational.<sup>100</sup> However, even if one accepts at face value the claims of the stations in Dr. Kunkel's study of 1994 renewal applications regarding the amount of regularly scheduled programming they aired that was specifically designed to serve children's educational needs, some stations apparently aired little or no such programming.<sup>101</sup> For example, four

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<sup>97</sup>Id.

<sup>98</sup>We cannot determine the content of NAB's definition or confirm the reliability of NAB's or ALTV's claims or data because neither identified in its survey the specific programs reported by stations as "educational," making it difficult to evaluate the reliability of the survey results.

<sup>99</sup>Dr. Kunkel's sample in his new study includes commercial broadcast television stations in the northeastern U.S. They are located in Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. While such a sample cannot be demonstrated to be representative of the entire U.S., the states in Dr. Kunkel's study include a significant percentage (20 percent) of television households in the U.S. TV & Cable Factbook at C-40, No. 63, 1995 Edition.

<sup>100</sup>As examples, Dr. Kunkel points to "America's Funniest Home Videos," "Biker Mice from Mars," "Bugs and Friends," "Mighty Morphin Power Rangers," "Woody Woodpecker," "X-Men," and "Yogi Bear." Kunkel Comments at 1-4 & attachments.

<sup>101</sup>It is possible that stations actually aired such programming but did not report that these programs were regularly scheduled and specifically designed to serve children's educational and informational needs. We cannot rule out this possibility but judge it unlikely given the countervailing incentive for stations to claim as much such programming as possible in order to demonstrate compliance with the Children's Television Act and Commission rules in their license renewal applications. In our 1991 proceeding, we specifically reminded licensees that, while general audience programming can contribute toward meeting the CTA's requirements, the CTA contains the "additional requirement that licensees air some programming 'specifically designed' to serve the educational and informational needs of children." Report and Order, 6 FCC Rcd at 2115. Our rules implementing the 1991 Report and Order require licensees to maintain in their local public inspection files "records demonstrating the extent to which the licensee has responded to the educational and informational needs of children in its overall programming, including programming specifically designed to serve such needs." 47 C.F.R. § 73.3526(a)(8)(iii) (emphasis added). Our standard license renewal form directs licensees to that precise section of our rules; it instructs licensees to provide a summary of, among other things, their "programming response" to the CTA "reflecting the most significant programming related to such needs which the licensee has aired, as described in 47 C.F.R. Section 73.3526(a)(8)(iii)."

stations (8.3 percent) in the Kunkel study did not claim to air any such programming,<sup>102</sup> In addition, eleven stations (23 percent) reported airing one hour or less of such programming per week, sixteen stations (33 percent) reported airing 1.5 hours or less of such programming per week, and twenty-five stations (52 percent) reported airing two hours or less of such programming per week.<sup>103</sup>

42. The conclusion that some stations are airing very little educational programming for children is also supported by our experience in implementing the CTA. As the regulations enacted in 1991 provided only that broadcasters were required to provide "some" educational programming,<sup>104</sup> we assessed compliance with this requirement in the renewal cycle that ran from 1991-1994, which comprised the first renewal cycle immediately following enactment of the CTA, by examining the overall children's programming efforts of each licensee to ensure that the licensee broadcast some standard-length programming specifically designed to serve the educational and informational needs of children. Licensees that aired at least one such

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<sup>102</sup>In his initial comments (attachment at page 6), Dr. Kunkel stated that five stations reported airing no "specifically designed" programming. In a February 2, 1996 letter to Mass Media Bureau Chief Roy J. Stewart, however, he corrected this number to four stations.

<sup>103</sup>Despite their limited scope, two local studies conducted by the South Florida Preschool PTA ("SFPPTA") also indicate that some stations are airing very little educational programming for children. The first study, submitted in response to our NOI, was conducted in January and February 1993, and focused on educational and informational programming aired by four commercial broadcast stations serving the Miami area. The study defined children's programming somewhat more narrowly than do our current regulations and focused on regularly scheduled shows, which were classified "as educational/informational only if their primary intent was to educate, not entertainment shows that contained a social theme." SFPPTA NOI Comments, Attachment ("A Children's Television Act of 1990 Monitoring Report of South Florida Commercial Television Stations") at 5. SFPPTA concluded that the monitored stations were providing 0.5 to 1.5 hours per week of educational and informational programming for children. SFPPTA's second monitoring study of the same stations, conducted in February 1995 in the same manner as the first study, concludes that the stations provided between 1.5 and 2.0 hours per week of children's educational and informational programming. SFPPTA Comments, Attachment ("A Report on Miami Television Stations' Compliance with the Children's Television Act of 1990") at 4 (filed June 23, 1995.) Given their limited scope and narrow definition of the programming being measured we do not rely on these studies as measures of the precise amount of programming being offered, but as additional evidence that some broadcasters are still doing very little to comply with the CTA.

We similarly evaluate the additional local monitoring effort conducted by Linda L. Schwartz, author of the first SFPPTA study. In a letter dated June 13, 1995, Ms. Schwartz reports that the four network affiliates in Mobile, Alabama aired between 1.5 and 3.0 hours of children's educational and informational programming. See Letter from Linda L. Schwartz to FCC (filed June 19, 1995). Ms. Schwartz does not specify, but presumably she conducted this study in the same fashion that she conducted the 1993 SFPPTA study.

<sup>104</sup>NPRM, 10 FCC Rcd. at 6315.

half-hour program<sup>105</sup> per week received staff-level approval of the CTA portion of their renewal applications.<sup>106</sup>

43. 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.<sup>107</sup> 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. In enacting this statute, Congress found that, as part of their public interest obligations, "television station operators and licensees should provide programming that serves the special needs of children,"<sup>108</sup> and the Act applies only to television broadcast stations.<sup>109</sup> 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.<sup>110</sup> While noting an increase in the number of nonbroadcast outlets available for children to receive video programming, the House Report states that "the new marketplace for video programming does not obviate the public interest responsibility of individual broadcast licensees to serve the child audience."<sup>111</sup>

44. 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

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<sup>105</sup>Throughout this Report and Order, when we refer to a half-hour of programming, we do so with a recognition that a half-hour program is typically less than 30 minutes long, to allow for commercials, station identification, etc. See, e.g., Shop Talk (March 22, 1996) citing New York Daily News (new survey from American Association of Advertising Agencies stated that, on average, there are 14 minutes and 43 seconds of nonprogram material in every prime-time hour).

<sup>106</sup>In some cases, it was not clear that broadcasters had provided even one half-hour program per week of programming specifically designed to educate and inform children. In instances where no programming was shown, the staff contacted the stations. If a showing was made that the station had purchased children's educational programming and therefore would be increasing the amount of children's educational programming broadcast in the future, and the licensee's operations otherwise complied with our rules, renewal was granted.

<sup>107</sup>See, e.g., ABC Comments at 50; CBS Comments at 18; NAB Comments at 14.

<sup>108</sup>47 U.S.C. §§ 303a (emphasis added).

<sup>109</sup>Id. at § 303b(a).

<sup>110</sup>See paragraph 11 supra.

<sup>111</sup>House Report at 6.

when, according to 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,<sup>112</sup> 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.

45. The record also shows that our definition of programming fulfilling the requirements of the CTA should be modified. As discussed above, all of the studies in the record define educational programming differently. NAB, for example, uses a definition somewhat broader than that we adopt today. In addition, Dr. Kunkel, who did not define it, but relied upon the varying interpretations of those broadcasters whose renewal applications he reviewed, concluded that some broadcasters were attempting to satisfy their CTA obligations with programs that should not be counted as satisfying the requirements of the CTA. By establishing a clear definition of "specifically designed" programming, we will give better guidance and greater incentives for broadcasters' compliance with the CTA.

46. 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, a matter to which we now turn.

### III. PUBLIC INFORMATION INITIATIVES

47. 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.<sup>113</sup> One way to encourage licensees to provide such

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<sup>112</sup>Melody Music, Inc. v. FCC, 345 F.2d 730 (D.C. Cir. 1965), recently reiterated in McElroy Electronics Corp. v. FCC, 990 F.2d 1351, 1365 (D.C. Cir. 1993).

<sup>113</sup>See NPRM, 10 FCC Rcd at 6309-10. We note that we use the term "parent" to include guardians, foster parents and others responsible for the care of children.

programming is to encourage and enable the public, especially parents, to interact with broadcasters.<sup>114</sup> 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. As CBS "wholeheartedly" agrees, "judgments of the quality of a licensee's programming, educational or otherwise, are best made by the audience, not the federal government."<sup>115</sup> Thus, our rules should facilitate easy access to information regarding children's educational programming in their community.

48. Commercial television is advertiser supported. As we discuss above, advertisers pay according to audience size, and broadcasters have disincentives to air programs that attract small audiences. Parents can increase the audience of an educational program by encouraging their children to watch the show, but can only do so if they know in advance when the show will air and that the show is educational. Increasing the audience size for educational programs increases the incentive of broadcasters to air, and producers to supply, more such programs. Access to information can also facilitate viewer campaigns and other community-based efforts to influence stations to air more and better educational programming. In light of the evidence that parents use programming information to select programs for their children to watch,<sup>116</sup> we concluded in the NPRM that the lack of educational programming the CTA was designed to address may be attributable in part to insufficient programming information.<sup>117</sup> In the NPRM we identified several places where information about educational programs could be provided: on-air identifications; program guides and listings; and the station's children's programming reports in its public file.<sup>118</sup>

49. 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 to improve the public's access to information: commercial broadcasters should identify core programming at the time those programs are aired in a form

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<sup>114</sup>Id. at 6315-20.

<sup>115</sup>CBS Comments at 6 (citing NPRM, 10 FCC Rcd at 6310).

<sup>116</sup>A number of commenters stated their belief that advance information about educational programs would be useful to parents in selecting programs for their children. See, e.g., ABC Comments at 14. Moreover, we noted in the NPRM that television research indicates generally that programming information could help parents influence the shows viewed by children. NPRM, 10 FCC Rcd at 6310. For example, a recent study examined the impact of viewer advisories on prime time movies and found that viewing among children from 2 to 11 was statistically significantly lower for movies carrying viewer discretion advisories. Id. (citing Hamilton, Marketing Violence: The Impact of Labeling Violent Television Content, Dewitt Wallace Center for Communications and Journalism Working Paper Series, Terry Sanford Institute of Public Policy, Duke University, December 1994).

<sup>117</sup>See NPRM, 10 FCC Rcd at 6309-10.

<sup>118</sup>Id.

that is at the sole discretion of the licensee; they should identify such programs to publishers of program guides; and, as detailed below, they should provide improved access to information to the public through standardized reporting and other means.<sup>119</sup> We note that disclosure requirements of the sort we adopt today promote First Amendment interests by increasing the flow of information to the public.<sup>120</sup>

### On-Air Identification

50. Comments. Public interest groups generally supported identifying "core" programs on the air.<sup>121</sup> For example, the Center for Media Education ("CME et al."), filing jointly with 19 other parties including the American Academy of Pediatrics ("AAP"), the American Psychological Association ("APA"), the American Psychiatric Association, the National Education Foundation, and the National Parent Teacher Association, favored the use of an icon aired at the beginning of the program.<sup>122</sup> The Children's Defense Fund and Black Community Crusade for Children ("CDF and BCCC"), filing jointly, suggested using both an on-air announcement and an icon visible throughout the program and during pre-advertisements.<sup>123</sup> Among broadcasters, ALTV and the National Association of Black Owned

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<sup>119</sup>We will continue to exempt noncommercial television licensees from children's programming reporting requirements, see Memorandum Opinion and Order, 6 FCC Rcd at 5101, 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. Id. 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.

<sup>120</sup>In Meese v. Keene, 481 U.S. 465 (1987), the Supreme Court upheld the Foreign Agents Registration Act, which required the labeling of films distributed by agents of foreign governments to indicate the agent's identity and the identity of the principal for whom the agent acts. The Court agreed with the lower court that "it could not be gainsaid that this kind of disclosure serves rather than deserves the First Amendment," added that such disclosures "better enable the public to evaluate the import of the propaganda," and added that striking down the disclosure requirement under the First Amendment "[i]ronically" would "withhold[] information from the public." Id. at 477, 480, 481.

<sup>121</sup>See, e.g., Huston & Wright Comments at 3-4; Kunkel Comments at 11-12; Minow and LaMay Comments at 156-57. Dr. Kunkel contended that on-air identification will not deter children from watching, and pointed out that Fox now voluntarily airs an on-screen announcement prior to "Fox Clubhouse" that indicates that the program is endorsed by the NEA. Kunkel Comments at 12.

<sup>122</sup>See AAP Comments at 1-2; APA Comments at 5; CME et al. Comments at 32. AAP would require broadcasters to include in an icon information about the age-appropriateness of the program. See AAP Comments at 1.

<sup>123</sup>CDF and BCCC reported that Australia has implemented an icon requirement. See CDF and BCCC Comments at 11. Australian broadcasters are required to identify preschool educational programs with a "P" and primary school (under age 14) educational programs with a "C." These classifications are aired at or immediately before the start of a program and after each break or, if the program is aired without interruption, at least once every quarter-hour (superimposed on the program if necessary). See Children's Television Standards 1 (1), Television Programming Standards 11, as in force under Broadcasting Services (Transitional Provisions and Consequential Amendments) Act

Broadcasters ("NABOB") supported requiring on-air identification of core programming.<sup>124</sup> Other broadcast commenters agreed with the goal of improving the information flow to the public, but argued the use of an on-air icon or announcement would be counterproductive by deterring rather than attracting child viewers.<sup>125</sup> This view was echoed by children's programming producer CTW, who reasoned that on-air identifiers could taint educational programs.<sup>126</sup> Warner Brothers noted that parents would often miss an announcement or icon aired only briefly at the beginning of a program.<sup>127</sup> Finally, Cosmos et al. argued that the Commission lacks jurisdiction or statutory authority over the methods that stations choose to promote programming, such as on-air identification.<sup>128</sup>

51. NAB filed initial comments opposing the use of an on-air icon or announcement and disputing the Commission's jurisdiction to impose such requirements.<sup>129</sup> In supplemental comments, however, NAB supported the adoption of rules to require broadcasters to "identify core programs at the beginning of the program, in a form that is at the sole discretion of the licensee."<sup>130</sup>

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1992, § 21(2), as varied by a determination of the Australian Broadcasting Authority (Dec. 15, 1995), under Broadcasting Services Act 1992, ¶ 122(1)(a).

<sup>124</sup>See NABOB Reply Comments at 3. ALTV initially supported on-air identification. See ALTV Comments at 26. In its reply comments, however, ALTV stated that, in light of the mixed responses from commenters to this proposal, local stations should be permitted to determine the utility and effect of on-air identifiers themselves. See ALTV Reply Comments at 20.

<sup>125</sup>See, e.g., Joint Comments of Cosmos Broadcasting Corp., Cox Broadcasting, Inc., First Media Television, L.P., Paxson Communications Corp., and River City Broadcasting, L.P. ("Cosmos et al.") at 8-9; Curators of the University of Missouri Comments at 7.

<sup>126</sup>See CTW Comments at 13-14. See also Comments of The Walt Disney Company ("Disney") at 11-12. Although CEP stated that it believes that identification of educational programs is appropriate for pre-schoolers and their parents, it argued that such identification would not be appropriate for school-aged children, for whom the educational designation is likely to have a negative connotation. In addition, CEP advocated that the information stations provide to parents should include the "results" of the educational programming to allow parents to assess the merits of a station's claims regarding the educational value of their programming. CEP Comments at 8.

<sup>127</sup>See Comments of Warner Brothers Television Network, Warner Brothers, and Time Warner, Inc. ("Warner Brothers") at 11-14.

<sup>128</sup>See Cosmos et al. Comments at 8-9.

<sup>129</sup>See NAB Comments at 24-33 & Attachment 5.

<sup>130</sup>See NAB Supplemental Comments, Attachment at 5 (filed July 29, 1996). These supplemental comments were filed to "provide the Commission with the results of recent discussions between the NAB and the Clinton administration." Id. at 1.

52. Discussion. We believe the on-air identification of core programs would greatly assist parents in planning their children's viewing and improve the children's programming marketplace at minimal cost to stations. Accordingly, 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. Just as we require stations to provide on air station identification and sponsor identification,<sup>131</sup> we believe the public would be served by requiring broadcasters to identify programs specifically designed to educate and inform children on the air. On-air identifiers are likely to reach a larger audience than information printed in programs guides.<sup>132</sup> 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.<sup>133</sup> 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.

53. Some commenters speculated that on-air identifiers could deter children from watching educational programs.<sup>134</sup> 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.

54. We disagree with the argument of Cosmos et al. that the FCC lacks the statutory authority to require broadcasters to provide on-air identification of core programs. The Commission has adequate statutory authority under the CTA and under the Communications Act to require broadcasters to provide information about their core programming to the public. The CTA seeks to increase the amount of educational and informational programming available to children. Requiring broadcasters to provide information concerning educational and informational programming will improve the children's television marketplace, thereby effectuating the goal of the CTA. In addition to our authority under the CTA, we have broad authority under the Communications Act of 1934 to regulate all communications services that

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<sup>131</sup>47 C.F.R. §§ 73.1201, 73.1212.

<sup>132</sup>This is especially true for groups that use television more extensively than newspapers or other printed materials. For example, Huston & Wright stated in their comments that on-air information is likely to reach a larger audience than printed television guides or public files maintained by stations. They expressed the view that on-air identifiers would be more effective, particularly for adults and children in low-income and minority families because surveys indicate that these groups use television extensively and are more likely to use it for information than a newspaper. Huston & Wright Comments at 4.

<sup>133</sup>See e.g., Minow and LaMay Comments at 156-157; Huston & Wright Comments at 3-4; CME et al. Comments at 31-32.

<sup>134</sup>See supra paragraph 50.

use radio waves, including the authority to establish the licensing procedures for broadcast stations. Section 303(r) of the Act provides that we have authority to "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of th[e] Act." Providing such information will aid parents and children in selecting programs and help hold broadcasters accountable for compliance with the CTA, thus aiding us in our mandatory review of such compliance during the renewal process. Indeed, our entire licensing scheme is premised on providing adequate information to the public to enable the public to exercise its statutory right to participate in our renewal proceedings. Providing on-air announcements about core programming will improve the functioning of the children's television market and make broadcasters more accountable to parents and other interested community members. Section 303(r) provides ample authority for the on-air identifier requirement because requiring on-air identifiers will help us make the Sections 309(a) and (k) determination that grant of a renewal application is in the public interest.

### Program Guides

55. Comments. Public interest groups, programmers, and other commenters generally support stations providing information about core programs to program guides on the ground that it would provide parents with advance notice of the scheduling of educational programs.<sup>135</sup> The National Telecommunications and Information Administration ("NTIA") commented that this proposal is one of the most important improvements we proposed in the NPRM, and will empower American parents by providing information to help them find programs that are good for their children.<sup>136</sup> KIDSNET, a non-profit clearinghouse for information about educational programming, contended that providing information to program guides could increase audiences and program loyalty.<sup>137</sup> Disney advocated requiring licensees to provide information to program guide publishers, local newspapers, and any other publishers of material "reasonably calculated" to provide the identifying information to parents.<sup>138</sup> NBC suggested that the Commission encourage the adoption of a universal symbol for educational children's programs and urge broadcasters to include the symbol in information furnished to program listing services.<sup>139</sup> Broadcaster parties who favored our proposal argued generally that

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<sup>135</sup>See, e.g., AAP Comments at 1-2; CME et al. Comments at 31-32; Comments of the Children's Television Resource & Education Center ("C-TREC") at 1; CDF and BCCC Comments at 11.

<sup>136</sup>See NTIA Reply Comments at 11.

<sup>137</sup>See KIDSNET Comments at 4.

<sup>138</sup>See Disney Comments at 11-12.

<sup>139</sup>NBC Comments at 12-14. NBC noted that the parental advisory plan that was voluntarily adopted by the national broadcast networks, local stations, and national program distributors provides a model for this requirement. Under that system, participants provide to program guide services information indicating whether programs contain material that may be unsuitable for children. These programs are identified with a universal symbol ("PA") indicating they contain a parental advisory. Id. (citing Advance Parental Advisory Plan, A Four-Network Proposal for a Two-Year Test (ABC, CBS, NBC and Fox) (June 30, 1994)).

printed program information is preferable to on-air announcements or icons because it permits parents to pre-plan viewing.<sup>140</sup> Opponents claimed licensees should retain discretion over the means that they select to promote their educational programming.<sup>141</sup> Cosmos et al. argued that we lack the statutory authority to require that information regarding specifically designed programming be provided to program guides.<sup>142</sup>

56. NAB filed initial comments that opposed a requirement that broadcasters provide information on core programming to the program guides, stating that specially marked program listings would be likely to discourage viewing among older children who refer to program guides.<sup>143</sup> In supplemental comments, however, NAB set forth its support for adopting rules to require broadcasters to "provide to program guide publishers information identifying core programming, including an indication of the age group for which the program is intended."<sup>144</sup>

57. Discussion. 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 for 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

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<sup>140</sup>NBC stated that it voluntarily commits to furnishing to the listing services a universal symbol and related information regarding children's programming. NBC Comments at 12-14. ALTV supported providing instructions to program guides for identifying programs as educational. ALTV Comments at 26. ABC would encourage broadcasters to supply information on programming to publications but would not make this proposal mandatory. According to ABC, stations have a variety of options for promoting programs, including the Internet, but they have no control over whether the guides publish the information provided by stations. ABC Comments at 14-15. CBS supported providing information on regularly scheduled programs to program guides, but stated that it would be burdensome to do so for special programming. CBS Comments at 6 n.5.

<sup>141</sup>See, e.g., Cosmos et al. Comments at 6-8. The Named State Broadcaster Associations agreed that there must be a flow of information to the public about quality programming, but they argued that the free market and open press will accomplish this without government mandates and additional paperwork burdens. Comments of the Named State Broadcaster Associations at 6. See also CEP Comments at 8. CEP stated that identification in program guides is appropriate for pre-school children and their parents, but not for school-aged children for whom the designation is likely to have a negative connotation. Id.

<sup>142</sup>See Cosmos et al. Comments at 4-5.

<sup>143</sup>See NAB Comments at 24-25.

<sup>144</sup>NAB Supplemental Comments, Attachment at 5 (filed July 29, 1996).

of the broadcaster, the program is intended.<sup>145</sup> 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.

58. We disagree with Cosmos et al. that we lack the statutory authority to require broadcasters to furnish this information to program guides. As noted in the discussion of our statutory authority to require on-air identifiers, supra, we have adequate statutory authority under the CTA and under the Communications Act to require broadcasters to provide information about their core programming to the public. Just as on-air identifiers are necessary to fulfill the mandate of the CTA, providing information to program guides will improve the functioning of the children's television market and make broadcasters more accountable to parents.

59. As with on-air identifiers, our broad authority under the Communications Act of 1934 to carry out the public interest requirement permits us to have broadcasters provide programming information where necessary to effectuate the public interest standard during the renewal process. Although we have not previously required broadcasters to furnish information to programming guides, we have required stations to broadcast certain on-air announcements,<sup>146</sup> to give public notice in a local newspaper for certain broadcast applications,<sup>147</sup> and to make available certain information in a public file.<sup>148</sup>

60. Section 303(r) provides ample authority for the programming information disclosure requirement because providing this information will help us make the Section 309(a) and (k) determination that grant of a renewal application is in the public interest. Therefore, we believe that we have the statutory authority to require broadcasters to provide programming information to programming guides.

### Public File Proposals

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<sup>145</sup>As described below in Section IV, we will require that broadcasters indicate the age of the target child audience in their program description.

<sup>146</sup>See 47 C.F.R. §§ 73.1201 (requiring station identification); 73.1212 (requiring sponsorship identification).

<sup>147</sup>See id. at § 73.3580.

<sup>148</sup>See id. at §§ 73.3526, 73.3527.

61. 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.<sup>149</sup> We sought comment in the NPRM on changing the existing requirements to enhance public access to and use of the information in these reports.<sup>150</sup> We identify several ways, discussed below, that such enhancements can be made without materially increasing any burden on the licensee.

i. Children's liaison

62. In the NPRM, we proposed that stations identify the person at the station responsible for collecting comments on the station's compliance with the CTA, and asked how such a requirement could be implemented without being burdensome.<sup>151</sup> Some broadcast parties disagreed with this proposal,<sup>152</sup> but the major networks, other broadcasters, and other commenters supported it.<sup>153</sup> 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. We agree with CME that there is value in identifying for the public an individual to contact with concerns or complaints about the broadcaster's children's programming.<sup>154</sup> 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

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<sup>149</sup>NPRM, 10 FCC Rcd at 6322; 47 C.F.R. § 73.1202.

<sup>150</sup>NPRM, 10 FCC Rcd at 6323.

<sup>151</sup>Id.

<sup>152</sup>See, e.g., Cosmos et al. Comments at 9; Tribune Comments at 23-24; Curators of the University of Missouri Comments at 6-7. These broadcasters argued that this proposal is unnecessary because licensees are conscientious in responding to the public. Tribune opposed all of the proposed public file requirements. Tribune Comments at 24.

<sup>153</sup>See, e.g., CBS Comments at 7; ABC Comments at 11-12; Golden Orange Comments at 8; NBC Comments at 15; CME et al. Comments at 45; CTW Comments at 12-13. ABC stated that it was not aware of any significant problems with public access to children's programming reports. ABC Comments at 11.

<sup>154</sup>See CME et al. Comments at 45. CME et al. also suggested that the Commission establish and publicize an "800" number that consumers could call for assistance in obtaining public information from licensees and in filing complaints with the station or with the Commission itself. Id. We note that consumers do not need an 800 number to call their local station, and the Commission is seeking to develop a "888" number system that the consumers in all 50 states may use to call the Commission.

reports<sup>155</sup> and letters received from the public in their public inspection file,<sup>156</sup> this requirement should not impose a significant additional burden on licensees.

ii. Explanation of how programming meets definition of core programming

63. We will adopt the proposal in the NPRM that licensees provide a brief explanation in their children's programming reports of how particular programs meet the definition of "core" programming.<sup>157</sup> A few broadcast parties were opposed,<sup>158</sup> but most, including most of the major networks, supported the proposal.<sup>159</sup> Although NAB initially opposed this proposal,<sup>160</sup> it filed supplemental comments setting forth its support for requiring broadcasters to explain how programs they identify as "core" meet that definition.<sup>161</sup> 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.

64. ABC argued that licensees should have broad discretion in the manner and detail of these descriptions. For example, ABC contended that, "for a qualifying regular series, licensees should not be required to describe each weekly or daily episode; a general description of the series format, subject matter, and other overall qualities should be sufficient...."<sup>162</sup> We agree that such a general description of a series should 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.

iii. Physically separate reports

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<sup>155</sup>47 C.F.R. § 73.3526(8)(iii).

<sup>156</sup>Id. at § 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.

<sup>157</sup>NPRM, 10 FCC Rcd at 6323.

<sup>158</sup>See Named State Broadcaster Associations Comments at 8; Cosmos et al. Comments at 10; Curators of the University of Missouri Comments at 6-7. These broadcasters argued that this requirement imposes a substantial burden on licensees. We note, however, that most broadcasters support this requirement and do not indicate that it will impose such a burden.

<sup>159</sup>See, e.g., CBS Comments at 7; ABC Comments at 12; NBC Comments at 15; CDF and BCCC Comments at 11-12; CTW Comments at 12-13; Golden Orange Comments at 8; Westinghouse Comments at 4-5.

<sup>160</sup>See NAB Comments at 18.

<sup>161</sup>See NAB Supplemental Comments, Attachment at 8 (filed July 29, 1996).

<sup>162</sup>See ABC Comments at 12.

65. In the NPRM, we proposed separating the children's programming reports from the rest of the public inspection file.<sup>163</sup> This would 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.<sup>164</sup> A few broadcasters commented that this requirement is unnecessary as the children's programming reports are easily accessible,<sup>165</sup> but most broadcasters and other commenters supported this proposal.<sup>166</sup> 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. We therefore conclude that broadcasters should separate children's programming reports from other reports they maintain in their public files.

iv. Publicizing children's programming reports

66. In the NPRM, we proposed that licensees publicize the children's programming reports by, for example, announcing their existence and location periodically over the air.<sup>167</sup> Some broadcasters opposed this proposal, arguing that members of the public rarely review information in the public files, and those interested in children's programming are likely to be aware of the stations' reports.<sup>168</sup>

67. 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.<sup>169</sup> Periodic on-air announcements further our desire to minimize the Commission's involvement in enforcing the CTA by facilitating public monitoring of broadcasters' educational programming. We consequently will require, as supported by NAB in

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<sup>163</sup>NPRM, 10 FCC Rcd at 6323.

<sup>164</sup>47 C.F.R. § 73.3526 (4).

<sup>165</sup>See Cosmos et al. Comments at 10. Cosmos stated that although it has no objection to this requirement, it is unnecessary because all files are clearly labeled. See also Tribune Comments at 24. Tribune opposed this proposal as unnecessary on the ground the children's reports are the largest part of the public inspection file and thus are easily spotted. The Curators of the University of Missouri opposed this proposed requirement. See Curators of the University of Missouri Comments at 6-7.

<sup>166</sup>See, e.g., ABC Comments at 11-13; Golden Orange Comments at 8; NAB Comments at 18; Westinghouse Comments at 3-4.

<sup>167</sup>NPRM, 10 FCC Rcd at 6322.

<sup>168</sup>See, e.g., CBS Comments at 7; ABC Comments at 13; Tribune Comments at 25; Curators of the University of Missouri Comments at 6-7.

<sup>169</sup>See, e.g., CME et al. Comments at 44; CTW Comments at 13; C-TREC Comments at 3.

its supplemental comments,<sup>170</sup> that broadcasters publicize in an appropriate manner the existence and location of their children's programming reports.

v. Quarterly reports

68. In the NPRM, we sought comment on whether the children's programming reports should be produced annually or quarterly, or whether we should, as we do now, allow stations to choose one of these two options.<sup>171</sup> All parties who addressed this issue, including a number of broadcasters, supported requiring 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. Commenters noted 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.<sup>172</sup> Therefore, we will require licensees to prepare children's programming reports on a quarterly basis. For an experimental period of three years, we will also require broadcasters to file such quarterly reports with the Commission on an annual basis,<sup>173</sup> *i.e.*, four quarterly reports filed jointly once a year. We encourage stations to file quarterly, in electronic form, when the reports are prepared.<sup>174</sup> We will evaluate whether to continue this requirement as part of our review of broadcasters' annual reports, *see infra* paragraph 140.

vi. Standardized reporting form

69. A number of broadcasters and other commenters,<sup>175</sup> suggested we provide licensees with a standardized form for these reports. A standardized form should lessen the burden on broadcasters by clarifying the information to be included and providing a ready format. 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

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<sup>170</sup>NAB Supplemental Comments, Attachment at 5 (filed July 29, 1996).

<sup>171</sup>NPRM, 10 FCC Rcd at 6323.

<sup>172</sup>*See e.g.*, ABC Comments at 12; Westinghouse Comments at 4.

<sup>173</sup>ABC and NBC supported requiring broadcasters to file children's programming reports on an annual basis for a three-year interval to monitor broadcasters' performance under the CTA. ABC Comments at 50; NBC Comments at 25.

<sup>174</sup>To encourage licensees to file quarterly, we will post on the FCC World Wide Web home page a list of broadcasters who choose to do so.

<sup>175</sup>*See e.g.*, CDF and BCCC Comments at 11; NBC Comments at 25. Both parties suggested that we should adopt a standardized form that would include all the information necessary regarding licensees' efforts to comply with the CTA, including, among other things, scheduling, lists of programs licensees claim are educational, total number of hours of programming, and other efforts to serve the educational and informational needs of children.

purposes of the experimental three-year annual filing requirement. We note that broadcasters have generally strongly supported the use of electronic filing for applications and other filings.<sup>176</sup> 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.<sup>177</sup>

70. To encourage broadcasters to file their reports electronically, we will publish on our World Wide Web home page a list of broadcasters that do so. 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.

71. 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.

72. Several commenters suggested that we post information on educational programming on our FCC home page on the World Wide Web. NTIA noted that Vice President Gore has proposed a "Family Right-to-Know" initiative under which broadcasters would provide information on educational programming in electronic form to the Commission for posting on the FCC home page on the World Wide Web.<sup>178</sup> James Hamilton, professor and Director of the

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<sup>176</sup>See, e.g., NAB Comments in PP Docket No. 96-17 (Notice of Inquiry in the Matter of Improving Commission Processes) (released Feb. 14, 1996) at 11-12 (filed March 15, 1996).

<sup>177</sup>We will issue a Public Notice explaining how to file programming reports electronically and how the public can access them. We note that electronic filing is simple and easy to do, and that the Commission has responded to a number of industry requests to simplify reporting procedures by making electronic filing available on a voluntary basis for other services, such as for Multipoint Distribution Service (MDS) license applications sent to the Mass Media Bureau, see Report and Order in MM Docket No. 94-131 (1995), and license applications sent to the Wireless Telecommunications Bureau ("WTB"), see Report and Order in WT Docket No. 94-148, FCC No. 96-51, 61 FR 26670 (May 28, 1996). To date, WTB has implemented electronic filing procedures for auction applications (FCC Form 175), 900 Mhz SMR and broadband PCS C block long-form applications for winning bidders (FCC Form 600), and applications for a variety of private wireless services. Electronic filing on diskette is required for circuit status reports sent to the International Bureau, see Report and Order in CC Docket No. 93-157, 10 FCC Rcd 8605 (1995), and for ARMIS reports required to be filed with the Common Carrier Bureau. See Report and Order in CC Docket No. 86-182, 2 FCC Rcd 5770 (1987), modified on recon., 3 FCC Rcd 6375 (1988). Having said this, we recognize that for some small broadcasters who do not have computer capabilities, paper filings may be more convenient and less burdensome.

<sup>178</sup>See NTIA Reply Comments at 10-11. Other commenters also supported improving public access to the information provided by stations regarding their educational children's programming. See, e.g., CEP Comments at 9 (encouraging the Commission to publish such information through various sources, including print, television, and the Internet); ABC Comments at 15 (supporting permitting broadcasters to develop creative means of circulating such information, such as through the Internet, recorded phone services, and teacher's guides). We also received comments in response to our Notice of Inquiry regarding the Commission's processes that strongly support the use of electronic

Duke Program on Violence and the Media, urged the Commission to establish a publicly accessible computerized database containing information on educational programming as well as other indicators of station performance. He argued that such a database would facilitate monitoring of station performance by interested parties.<sup>179</sup> We believe that ensuring the ready availability of such information will further the goals of the CTA by giving parents, researchers and other interested parties information about broadcaster efforts to educate children, and, if feasible, we will do so. Putting this information on our home page would be consistent with a number of efforts the Commission has made to make a variety of information available to broadcasters and the public. For example, we currently post on our home page detailed technical information, including radio and television station power levels and antenna heights.<sup>180</sup> The staff will explore the feasibility of applying such an approach to CTA information. We also encourage broadcasters that have established their own Web sites to post such information there.

#### **IV. DEFINITION OF PROGRAMMING "SPECIFICALLY DESIGNED" TO SERVE CHILDREN'S EDUCATIONAL AND INFORMATIONAL NEEDS**

73. The CTA requires every television broadcaster to air programming "specifically designed" to serve the educational and informational needs of children.<sup>181</sup> 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"<sup>182</sup> -- is very broad and does not further delineate criteria for programs that are "specifically designed" to educate and inform children. In the NPRM, we explained that some stations were identifying general audience and entertainment programming in their renewal applications as programming specifically designed to serve children's educational and informational needs. These circumstances led us tentatively to conclude that our current definition does not provide licensees with sufficient guidance regarding their obligation to air core programming.<sup>183</sup>

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filing for applications and other filings. See, e.g., NAB Comments in PP Docket No. 96-17 (Notice of Inquiry in the Matter of Improving Commission Processes) (released Feb. 14, 1996) at 11-12 (filed March 15, 1996).

<sup>179</sup>Hamilton noted that the Environmental Protection Agency created such a public database for information on release of toxic chemicals, and the resulting publicity increased the calls for industry to control their emissions. According to Hamilton, better data on educational programming efforts could put similar attention on the extent to which stations are improving the quantity and quality of such programming. Hamilton Comments at 2-5.

<sup>180</sup>The Mass Media Bureau also posts on the FCC World Wide Web site copies of FCC News Releases and FCC documents in relevant rulemaking proceedings. In addition, the Bureau posts daily Public Notices concerning station application acceptances and application actions.

<sup>181</sup>47 U.S.C. § 303b(a)(2).

<sup>182</sup>47 C.F.R. § 73.671 Note.

<sup>183</sup>NPRM, 10 FCC Rcd at 6327.

74. To remedy this situation, we proposed to supplement our broad definition of educational and informational programming with a more particularized definition of programming specifically designed to serve children's educational and informational needs. Indeed, we noted that programming "specifically designed" to meet the educational and informational needs of children was the "only category of programming that the CTA specifically requires every licensee to provide."<sup>184</sup> We stated that a clearer definition of "specifically designed" or "core" programming appeared to be necessary to help stimulate an adequate supply of such programming in view of the apparent confusion among some licensees regarding this aspect of their children's programming obligation.

75. Specifically, we proposed to define core educational programming as those programs that meet the following requirements: (1) the program has education as a significant purpose; (2) the educational objective of the program and the target child audience are specified in writing in the children's programming report; (3) the program is aired between the hours of 6:00 a.m. and 11:00 p.m.; (4) the program is regularly scheduled; (5) the program is of a substantial length (e.g., 15 or 30 minutes); and (6) the program is identified as educational children's programming at the time it is aired, and instructions for listing it as educational programming are provided by the licensee to program guides.<sup>185</sup>

76. Today, we adopt a definition of core educational and informational programming that is very similar to that proposed in the NPRM. 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. Our definition identifies core programming that we will look to for purposes of renewal processing to ensure that a broadcaster has met its responsibility under the CTA. Beyond this responsibility, we encourage licensees to air a wide variety of programming directed to children that meets their educational and informational needs.

77. Comments. Many commenters strongly supported providing licensees with clearer guidance regarding their obligation to air programming "specifically designed" to educate and inform children. Public interest groups, children's programming researchers, children's programming producers, as well as other commenters, generally agreed that the Commission's proposed definition would assist licensees to determine what programs comply with their obligation to air programming specifically designed to serve children's educational and informational needs, and would improve the overall quality of children's educational and

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<sup>184</sup>Id. at 6327.

<sup>185</sup>Id.

informational programming.<sup>186</sup> In contrast, broadcasters' reaction to the Commission's proposal was mixed. Although some -- including three of the four major broadcast networks -- agreed with the principle that a clearer definition would provide certainty to licensees,<sup>187</sup> others argued that the present definition of educational and informational programming is working and should be retained.<sup>188</sup> NAB filed initial comments arguing for retention of our existing definition,<sup>189</sup> but later filed supplemental comments supporting many aspects of the definition proposed in the NPRM.<sup>190</sup> In addition, a number of broadcasters voiced their concern that the concept of "core" programming contravenes Congress' intent to give broadcasters wide discretion in choosing the programs they believe are educational and informational, and that it ignores the CTA's requirement that licensees serve children's educational and informational needs through their "overall programming" in addition to programming "specifically designed" to serve those needs. These parties argue that the Commission may not ignore any programming that does in fact serve the educational and informational needs of children, and point out that programming that does not comply with our definition of programming "specifically designed" for children can nevertheless contribute to a licensee's fulfillment of its obligations under the CTA.<sup>191</sup>

78. Discussion. 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.<sup>192</sup>

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<sup>186</sup>See, e.g., NTIA Comments at 7; CME et al. Comments at 26; CTW Comments at 15; CDF and BCCC Comments at 8.

<sup>187</sup>See ABC Comments at 18; CBS Comments at 8; NBC Comments at 15.

<sup>188</sup>See, e.g., Comments of the Curators of the University of Missouri at 7-9; Joint Reply Comments of the Named State Broadcaster Associations at 6-7. See also Tribune Comments at 10-12 (arguing that the Commission should retain the current definition of "educational and informational" programming and define "core" programming to distinguish this from "overall" programming).

<sup>189</sup>See NAB Comments at 17-19.

<sup>190</sup>See NAB Supplemental Comments, Attachment at 2 (filed July 29, 1996).

<sup>191</sup>See, e.g., NBC Comments at 16-18; Cosmos et al. Comments at 11-13; Named State Broadcaster Associations Comments at 7.

<sup>192</sup>See supra paragraphs 36, 38, 41, and 45. Dr. Kunkel's studies of 48 license renewal applications in the midwest and 48 renewal applications in the northeast provide evidence that some licensees claim programs as specifically designed to serve children's educational and informational needs that would more correctly be classified as entertainment programming. In addition, we cited in the NPRM a review of commercial television license renewal applications conducted in 1992 by CME and the Institute for Public Representation of the Georgetown University Law Center. NPRM, 10 FCC Rcd at 6318. CME found that many stations were listing in their applications programs with no educational content. As we noted in the NPRM, NAB challenged CME's conclusions, arguing that the renewal applications reviewed were filed only shortly after the effective date of the Commission's children's programming rules, at a time when stations had had little opportunity to adjust to the new requirements. See id. at 6318 n.35.

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.

79. 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. Our existing definition states that "educational and informational television programming is any television programming which 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."<sup>193</sup> 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."

80. 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. Adopting a definition of such programming will promote this statutory objective by more precisely defining the programming that qualifies and, consequently, provide appropriate incentives to increase the amount of such programming. We further 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. The test is whether it is "specifically designed" to serve the educational and informational needs of children. We now turn to the specific elements of the new definition of core programming.

### Significant Purpose

81. With respect to the first element of our definition, we proposed to require that any program that is claimed to be specifically designed to meet children's needs have educating and informing children as a "significant purpose." We proposed that core programming have

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<sup>193</sup>See 47 C.F.R. §§ 73.671 Note; 73.672 Note.

-serving the educational and informational needs of children as a "significant" instead of "primary" purpose as suggested in the NOI, in response to the widely-held view that such programming must be entertaining to be successful. We indicated our desire to encourage producers to make programming that educates and informs, but that is also entertaining and attractive to children. We stated our belief that this terminology makes clear that education need not be the only purpose of programming specifically designed to meet the educational and informational needs of children, but must be more than an incidental goal.<sup>194</sup>

82. Comments. Most commenters who addressed this aspect of our proposed standard preferred the "significant purpose" test to the "primary purpose" test we suggested in the NOI.<sup>195</sup> Proponents of this element of the definition of core programming generally believe that the significant purpose standard appropriately acknowledges that educational programming must be entertaining to be successful. These commenters also expressed the view that the primary purpose standard would establish a false dichotomy between education and entertainment that could discourage the development of exciting and appealing programs that also serve to inform and enlighten children.

83. A number of broadcasters and broadcast organizations, including ALTV, CBS, and ABC, argued that the definition of core programming adopted by the Commission must be broad enough to encompass programming that furthers the social and emotional development of children, in addition to their cognitive and intellectual development.<sup>196</sup> According to these commenters, the legislative history of the CTA indicates that Congress intended that a broad range of programming qualify as "specifically designed," including programming that aids the personal and social growth of children and teenagers. In contrast, CME et al., as well as several other public interest organizations, argued that definition of core programming should not be interpreted to include any program that can be characterized in some way as pro-social.<sup>197</sup> CME et al. argued that a program can be "specifically designed" to further the educational and information needs of children only if it advances their cognitive/intellectual development. In the view of these commenters, programs purporting to advance children's social/emotional development but not their cognitive/intellectual development do not contain sufficient

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<sup>194</sup>NPRM, 10 FCC Rcd at 6328.

<sup>195</sup>See, e.g., Disney Comments at 5-6; CDF and BCCC Comments at 8; ABC Comments at 17-18; CBS Comments at 8; Warner Brothers Comments at 10-11. But see Children Now Comments at 2 (supporting a requirement that core programming have education as a "primary" purpose); NTIA Comments at 8-9 (urging the Commission to require that educational programs have education as a "principal purpose").

<sup>196</sup>See ALTV Comments at 31-32; CBS Comments at 8-9; ABC Comments at 18. NAB also took this position in its initial comments, see NAB Comments at 19, but did not address this issue directly in its supplemental comments.

<sup>197</sup>See CME et al. Comments at 27 and Reply Comments at 28. CME also argued that just because a program does not contain violence, it should not be considered an educational or informational program. CME et al. Comments at 27.

educational value to qualify as programming specifically designed for children's educational needs.<sup>198</sup>

84. Discussion. We believe that, to qualify as core programming, a show must have serving 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.

85. The NPRM proposed to define core programming as programming that "has education as a significant purpose."<sup>199</sup> Several commenters argued that core programming should have education and information as a significant purpose.<sup>200</sup> We agree. The CTA provides that licensees must serve the "educational and informational needs of children."<sup>201</sup> Thus, programming that has serving the educational and informational needs of children ages 16 and under as a significant purpose may qualify as core.

86. We believe that our significant purpose requirement is consistent with the "specifically designed" terminology of the CTA, which is the statutory test. Although core programming must be specifically designed to serve the educational and informational needs of children, the term "specifically" does not mean that the sole (or even primary) purpose of the programming must be to educate and inform. As discussed above, we acknowledge some commenters' position that programming must be entertaining in order to be effective, and we therefore believe that our significant purpose requirement, by allowing to qualify as core programming shows that do both, is consistent with the language of the CTA.

87. Several commenters asked us to clarify that our definition of core programming includes educational and informational programs that further children's social and emotional development as well as their cognitive and intellectual development. The CTA speaks of programming specifically designed to serve "the educational and informational needs of children."<sup>202</sup> 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

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<sup>198</sup>CME et al. Comments at 27 and Reply Comments at 31 n. 83.

<sup>199</sup>NPRM, 10 FCC Rcd at 6327.

<sup>200</sup>See, e.g., Tribune Comments at 13; Cosmos et al. Comments at 13-14.

<sup>201</sup>47 U.S.C. § 303b(a)(2).

<sup>202</sup>47 U.S.C. § 303b(a)(2).

that distinction ourselves and accordingly conclude that both fall within the scope of our definition. We underscore that we are not interested in influencing -- or even knowing -- the viewpoint of any core programming. 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>203</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.

88. In determining whether programming has a significant purpose of educating and informing children, we will ordinarily rely on the good faith judgment of broadcasters,<sup>204</sup> who will be subject to increased community scrutiny as a result of the public information initiatives described in Section III 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.

89. 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.<sup>205</sup> We stated that we did not propose to require the use of educational advisors, and that it should be left to broadcasters to decide whether they need or wish to hire educational advisors to assist them with the production of programming.<sup>206</sup> A number of commenters responding to the NPRM continued to express the view that experts should be used in developing core programming. CTW reiterated its opinion that the use of educational advisors would be a more objective determinant of educational purpose, and a more likely predictor of whether a program has educational content, than the

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<sup>203</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. NOI, 8 FCC Rcd at 1843 & n. 16.

<sup>204</sup>See, e.g., Tribune Comments at 3 (urging the Commission to defer to licensees' good faith determination that a program has a significant educational purpose). Tribune also argued that licensees should be permitted to rely on representations from program suppliers in determining whether a significant purpose of a program is educational and informational. Id. We disagree. Although licensees certainly may refer to information provided by program suppliers in assessing the educational and informational value of programming, they remain ultimately responsible for ensuring compliance with our rules.

<sup>205</sup>See NPRM, 10 FCC Rcd at 6326. This proposal was made by CTW in comments filed in connection with our NOI and en banc hearing on children's television programming. Specifically, CTW proposed that educational and informational programming specifically designed for children (1) be produced with the assistance of independent educational advisors; (2) be created to fulfill explicit written educational goals; and (3) be evaluated for effectiveness. See CTW NOI Comments at 8-10 and En Banc Comments at 2-3.

<sup>206</sup>NPRM, 10 FCC Rcd at 6326.

"significant purpose" test.<sup>207</sup> Other commenters concurred with the view that educational advisors should be used to develop core programming.<sup>208</sup> We continue to believe, however, 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 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

90. With respect to the second element of our core programming definition, we proposed in the NPRM to require licensees to 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.<sup>209</sup> We explained that we thought that such a requirement would help licensees to focus on children's specific educational and informational needs in compliance with the CTA. We also stated that this information would assist parents and other interested parties to understand licensees' programming efforts and afford them the means to participate with licensees in developing effective educational programming and to play a more active role in promoting and enforcing the goals of the CTA. We proposed that such information be included in the children's programming report that licensees place in their public inspection files.

91. Comments. Most broadcasters and other commenters who addressed the first aspect of this proposal -- requiring licensees to specify in writing the educational and informational objective of core programming -- supported it.<sup>210</sup> These parties generally expressed the view that this requirement would permit parents, researchers, and educators to evaluate whether a core program achieves its stated goals, and would assist broadcasters to

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<sup>207</sup>See CTW Comments at 16.

<sup>208</sup>Aletha Huston and John Wright believe that consultants and researchers from the fields of education and child development should be used to develop the educational goals of a program and to test for effectiveness in achieving those goals. See Huston and Wright Comments at 5-6. Dale Kunkel would require that specifically designed programming have a reasonable expectation of effectiveness as determined by educational experts or testing. See Kunkel Comments at 10. KIDSNET and Dorothy and Jerome Singer suggested that the Commission establish an independent non-governmental commission or board to provide guidance to industry and government regarding, among other things, the definition of educational programming and the use of educational advisors in developing such programming. See KIDSNET Comments at 1-3; Letter from Dorothy and Jerome Singer to Chairman Reed Hundt (November 13, 1995). We decline to adopt this latter proposal because there are other satisfactory and commonly accepted means available to broadcasters to obtain such guidance.

<sup>209</sup>NPRM, 10 FCC Rcd at 6328.

<sup>210</sup>See, e.g., C-TREC Comments at 3; CTW Comments at 16-17; NBC Comments at 18-19; Westinghouse Comments at 5.

comply with the CTA and the Commission to evaluate stations' performance.<sup>211</sup> Children Now also argued that specification of educational and informational purpose would reduce the incidence of mischaracterization of entertainment programming as educational.<sup>212</sup>

92. Public interest groups, researchers, and others also supported the Commission's proposal to require specification of the target child audience of core programming. A number of educational programming researchers submitted comments stating their belief that educational programming must be targeted to a relatively narrow age range in order for the program to be effective. Dale Kunkel asserts that children's ability to comprehend television content changes substantially over the years between infancy and adolescence, requiring that different types of educational programming be directed to children of different ages.<sup>213</sup> According to Aletha Huston and John Wright, the target age range specified by licensees should span no more than three to four years to ensure that programming is appropriate to the developmental level of the intended audience.<sup>214</sup> In contrast, some broadcasters opposed requiring specification of the target age group, generally arguing that the burdens involved outweigh the asserted benefits.<sup>215</sup> CBS also pointed out that the CTA does not require licensees to target their educational programming to discrete segments of the child audience, and argued that many stations do not have the resources to hire experts to determine the precise ages for which their qualifying programming is appropriate.<sup>216</sup> ABC stated that it does not oppose a requirement that licensees identify the target age group of core programming, as long as licensees retain the discretion to determine the appropriate age group.<sup>217</sup>

93. Discussion. 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

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<sup>211</sup>See, e.g., CME et al. Comments at 28; Westinghouse Comments at 5. NTIA advocated the adoption of a standard reporting form for use in specifying educational objective and target age group. NTIA Comments at 9.

<sup>212</sup>Children Now Comments at 3. In its initial comments, NAB contended that requiring specification of educational and informational objectives would impose a significant paperwork burden on licensees without any significant benefit, but in its supplemental comments it supported this aspect of our proposed definition. See NAB Comments at 22; see also NAB Supplemental Comments, Attachment at 4 (filed July 29, 1996).

<sup>213</sup>See Kunkel Comments at 9.

<sup>214</sup>Huston & Wright Comments at 4-5. Other commenters agreed that effective educational programming must be age-specific. See, e.g., Comments of the National Coalition on Television Violence at 2.

<sup>215</sup>See, e.g., NAB Comments at 22. NAB reversed its position on this issue in its Supplemental Comments. See NAB Supplemental Comments, Attachment at 4 (filed July 29, 1996).

<sup>216</sup>See CBS Comments at 10 n. 14.

<sup>217</sup>See ABC Comments at 20-21.

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.<sup>218</sup>

94. 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.

95. 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."<sup>219</sup> 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.<sup>220</sup> 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.

96. In addition, we decline to require broadcasters to serve particular segments of the child audience. We stated in the NPRM that we recognize the possibility that licensees may be induced to air programming for children over 12 because (1) this group has greater spending power than young children, (2) shows for older children may attract general audiences as well as children, and (3) programming designed for children 12 and under is subject to commercial

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<sup>218</sup>As we have noted, supra n.119, noncommercial stations will be exempt from these public information initiatives. We will similarly exempt them from the requirement that station's specify in writing the educational and informational objective and target age group of their core programs.

<sup>219</sup>Senate Report at 6.

<sup>220</sup>See supra paragraph 31 and n.75.

limits, while programming for older children is not. Nonetheless, we tentatively concluded that it would be undesirable to require broadcasters to serve particular segments of the child audience, in part because we did not have adequate data showing that in fact younger age groups are underserved relative to other children. We requested that those commenters who disagreed with this view submit data relevant to whether there was a shortage of educational programming targeted to certain age groups.<sup>221</sup> A few commenters discussed the need for broadcasters to air more programming directed to children of certain ages. For example, C-TREC argued that the preponderance of core programming should be directed to preschool and elementary aged children, who are in their early, more formative stages of cognitive, social, and emotional development.<sup>222</sup> However, none of these parties submitted data demonstrating that a particular age group was underserved relative to other groups. Accordingly, 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

97. As for the third element of our definition of core programming, we stated in the NPRM our belief that credit at license renewal time should be given only for programs shown during hours children are likely to be watching television. As a consequence, we tentatively proposed to credit as core programming children's educational programs broadcast between the hours of 6:00 a.m. and 11:00 p.m. We selected this time frame because it includes the time periods most popular for television viewing among children 2 to 17. We noted that several parties commenting in response to the NOI and in connection with our en banc hearing argued that core programming should be aired between 7:00 a.m. and 10:00 p.m. We stated that we were inclined to adopt a wider permissible time frame based on evidence that children are in the audience through the entire period of prime time (up to 11:00 p.m.) and that "not an insignificant" number of children are watching television as early as 6:00 a.m. However, we expressed our concern that educational programs not be routinely relegated to the 6:00 a.m. to 7:00 a.m. hour simply because it may be a less costly time for licensees to discharge their educational programming obligation.<sup>223</sup> Accordingly, we asked commenters to address whether core program hours should include 6:00 a.m. to 7:00 a.m.

98. Comments. While most broadcasters generally either supported or did not oppose the proposed 6:00 a.m. to 11:00 p.m. time period for core programming,<sup>224</sup> public

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<sup>221</sup>NPRM, 10 FCC Rcd at 6328-6329.

<sup>222</sup>See C-TREC Comments at 3-4.

<sup>223</sup>NPRM, 10 FCC Rcd at 6330.

<sup>224</sup>See, e.g., Westinghouse Comments at 5-6; ABC Comments at 21-22; NBC Comments at 19; CBS Comments at 10-11. In its supplemental comments, NAB stated its support for the narrower 7:00 a.m. to 10:00 p.m. time period, see NAB Supplemental Comments, Attachment at 4.

interest groups and other commenters generally preferred a 7:00 a.m. to 10:00 p.m. time frame.<sup>225</sup> With respect to the issue of whether programming aired between 6:00 a.m. and 7:00 a.m. should qualify as core, broadcasters argued that a significant number of children are in the audience between 6:00 a.m. and 7:00 a.m., and that broadcasters do not overuse this early time period for educational programming. In contrast, public interest groups, programmers, and other commenters almost unanimously preferred a time frame for core programming beginning at 7:00 a.m. on the ground that relatively few children are watching television before 7:00 a.m. These parties also argued that broadcasters have an incentive to air educational programming earlier than 7:00 a.m. because it is a less costly time for them to fulfill their obligation to air core programming. Several of these commenters also preferred that licensees not be permitted to air core programming after 10:00 p.m.<sup>226</sup>

99. Discussion. 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.<sup>227</sup> 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.<sup>228</sup> 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.<sup>229</sup> With respect to weekend viewing, the same data show

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<sup>225</sup>See, e.g., NTIA Comments at 9-10; AAP Comments at 2; CME et al. Comments at 28-29; C-TREC Comments at 4; Children Now Comments at 3.

<sup>226</sup>See, e.g., Children Now Comments at 3; CDF and BCCC Comments at 8-9.

<sup>227</sup>See Appendix D.

<sup>228</sup>Morning viewing for teens 12 to 17 peaks earlier Monday through Friday than for younger children, presumably because these children are all in school and leave for school earlier than younger school-aged children. For teens 12 to 14, morning viewing peaks at 7:00 a.m. at close to 10 percent, and then declines to 5 percent by 8:00 a.m. For older teens 15 to 17, morning viewing peaks at 6:30 a.m., and then declines gradually to approximately 3 to 4 percent by 8:00 a.m. In view of the significantly higher level of viewership among younger children between 7:00 a.m. and 8:00 a.m., and the comparatively level rate of viewership among teens over the 6:00 a.m. to 8:00 a.m. period, we believe that a morning time frame of 7:00 a.m. is appropriate. See A.C. Nielsen, National Audience Demographics, Vol. 1, 1995. See also Appendix D.

<sup>229</sup>Viewership among all age groups is higher at midnight on Saturday than on Sunday and during the week. Id.

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.<sup>230</sup> 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.<sup>231</sup>

100. 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, NAB's 1994 and 1995 surveys indicate that approximately 20 percent of programs stations claimed were educational were shown before 7:00 a.m.<sup>232</sup> A study submitted by UCC also demonstrates that 20 percent of the educational children's programs monitored during the study aired before 7:00 a.m.<sup>233</sup> In light of the evidence demonstrating that only 5 to 10 percent of children are watching television before 7:00 a.m.,<sup>234</sup> 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.<sup>235</sup> 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-

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<sup>230</sup>Appendix D shows that slightly more than 4% of children 9 to 11 are in the audience at 6:30 a.m. Id. at 54.

<sup>231</sup>For teens 12 to 17, viewership also increases from 7:00 a.m. to 8:00 a.m. on Saturday and Sunday, albeit at a less marked rate than for younger children. Id.

<sup>232</sup>NAB Comments at 23 and Attachment 1 at 11, 12. The 1995 survey shows that 18.1 percent of programs stations claimed were regularly scheduled educational and informational children's programming started before 7:00 a.m., while the 1994 survey shows that 22.4 percent of these programs were aired before 7:00 a.m. Another study conducted for CME shows that, in the top 20 television markets, 44 percent of all weekday core programs aired at 6:30 a.m. or earlier, and of those 25 percent aired at 5:00 a.m. or 5:30 a.m. See CME En Banc Comments at 15 (Patricia Aufderheide and Kathryn Montgomery, "The Impact of the Children's Television Act on the Broadcast Market," Center for Media Education, 1994). NAB and ALTV challenged CME's findings on the ground, inter alia, that its studies regarding the time educational programming aired were informal, were limited to relatively few markets and to weekday programs, and were not made available to the public. See ALTV En Banc Reply Comments at 9-10; NAB En Banc Reply Comments at 6-7.

<sup>233</sup>UCC Reply Comments at 9.

<sup>234</sup>See supra paragraph 99.

<sup>235</sup>NPRM, 10 FCC Rcd at 6330. See also supra paragraph 32.

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.

101. 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.<sup>236</sup> 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.<sup>237</sup> 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.<sup>238</sup> 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.<sup>239</sup> 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.

102. CME et al. argues that it is "questionable" for the Commission to credit as core programming aired after the 10:00 p.m. start of the safe harbor for indecent programming.<sup>240</sup> 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

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<sup>236</sup>See Appendix D.

<sup>237</sup>The decline in viewership between 10:00 p.m. and 11:00 p.m. is somewhat less marked on Saturday for the 9 to 17 age group.

<sup>238</sup>See, e.g., CDF and BCCC Comments at 8-9; Children Now Comments at 3.

<sup>239</sup>We decline to adopt NAB's suggestion, made in its initial comments, that our time frame for core programming be adjusted for the central and mountain time zones, where the morning news programs begin one hour earlier than in other time zones. See NAB Comments at 23. We are not aware of any evidence demonstrating that children's television viewing patterns in these regions differs from those of the nation as a whole. Consequently, the rationale underlying our selection of a 7:00 a.m. to 10:00 p.m. time frame applies to these regions as well.

<sup>240</sup>CME et al. Comments at 17-18 (citing Action for Children's Television v. FCC, 58 F.3d 654 (D.C. Cir. 1995)).

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

103. Turning to the fourth element of our definition of core programming, we proposed to require that such programming be regularly scheduled to permit children and their parents to be able easily to anticipate when educational programming will be aired. We also stated, however, that we did not wish to create a disincentive to air children's educational specials, which may not be regularly scheduled or which may air at relatively infrequent intervals. We sought comment on whether we should require core programs to be regularly scheduled and, if so, how often they should be scheduled in order to be considered "regularly" scheduled.<sup>241</sup> We specifically indicated "once a week, once a month, or so long as the program can appear in program guides" as possible definitions for "regularly scheduled."<sup>242</sup>

104. Comments. Comments on this issue were divided. Broadcasters generally argued that the Commission should not limit the credit available for educational specials because they present valuable educational programming, and cited examples of well-regarded programs such as the "ABC Afterschool Specials" that are not regularly scheduled.<sup>243</sup> Broadcasters also expressed the view that, because specials are usually heavily promoted in order to maximize viewership, the fact that they are not regularly scheduled does not limit their audience.<sup>244</sup> On the other hand, public interest groups argued that core programming be regularly scheduled on the ground that specials are not predictable and cannot be anticipated by viewers.<sup>245</sup> Children Now proposed that core programs be required to air at least once a week in a regular time slot so parents will know when to tune in and children can build on lessons taught on a daily or weekly

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<sup>241</sup>NPRM, 10 FCC Rcd at 6330.

<sup>242</sup>Id.

<sup>243</sup>See, e.g., ABC Comments at 22-24; Cosmos et al. Comments at 17; ALTV Comments at 29-30; NAB Comments at 24. In its Supplemental Comments, NAB supported crediting only regularly scheduled programming as core, while allowing educational and informational specials to contribute to the three-hour processing guideline as part of a package of a variety of core and non-core educational and informational programming. See NAB Supplemental Comments, Attachment at 3-4 (filed July 29, 1996).

<sup>244</sup>See ABC Comments at 23; Tribune Comments at 17.

<sup>245</sup>See, e.g., CME et al. Comments at 29-30; Children Now Comments at 2; C-TREC Comments at 4; National Coalition on Television Violence Comments at 3.

basis.<sup>246</sup> Disney and CTW, both of which produce educational programs, suggested that the Commission award credit to specials that are scheduled sufficiently far in advance to permit their inclusion in program guides.<sup>247</sup>

105. Discussion. 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.<sup>248</sup> We agree with those commenters who argue that programs that air regularly can reinforce lessons from episode to episode.<sup>249</sup> 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.<sup>250</sup> 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.

106. 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.<sup>251</sup> 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

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<sup>246</sup>Children Now Comments at 2. C-TREC also supported requiring most core programming to be aired at least on a weekly basis. C-TREC Comments at 4.

<sup>247</sup>CTW Comments at 18; Disney Comments at 9 n.14 (contending that specials should be considered as part of a broadcasters "overall" efforts to air educational programming.).

<sup>248</sup>NAB's two station surveys demonstrate that broadcasters aired on average of 13.5 minutes per week of educational specials in 1994. NAB Comments at Attachment 1, p. 5. In contrast, NAB's survey indicated that in 1994 broadcasters aired an average of 244.74 minutes per week of regulatory scheduled educational programming.

<sup>249</sup>See supra paragraph 104.

<sup>250</sup>Id.

<sup>251</sup>See Aufderheide and Montgomery, supra n.232, at 16-17.

necessary, what constitutes regularly scheduled programming and what level of preemption is allowable.

107. 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 in Section V. 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

108. As to the fifth element of our definition of core programming, we proposed in the NPRM that core programming be of substantial length (*e.g.*, 15 or 30 minutes).<sup>252</sup> We noted that standard-length programs (30 minutes or more) are typically regularly scheduled and therefore available at predictable times, and that it is possible to schedule 15-minute programs regularly and have such programming listed in program guides. We asked commenters to address what length of program should satisfy the proposed requirement that core programming be of substantial length. Specifically, we asked whether short segments that are specifically designed to serve children's educational and informational needs should be credited as core programming and, if so, how they should be credited.<sup>253</sup>

109. Comments. Some broadcasters who addressed this issue supported crediting short segment programming as core. They argued generally that short segments (including interstitials and PSAs) can effectively teach valuable lessons, are suited to the short attention span of children, and can reach large audiences if aired during popular children's shows.<sup>254</sup> ALTV and Tribune also noted that short segments are especially useful to local

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<sup>252</sup>NPRM, 10 FCC Rcd at 6330.

<sup>253</sup>Id.

<sup>254</sup>See, e.g., National Broadcast Association for Community Affairs Comments at 3-5; NBC Comments at 21-22; Warner Brothers Comments at 7-9. NAB took this position in its initial comments, see NAB Comments at 24, but in its supplemental comments supported requiring core programming to be at least 30 minutes in length, see NAB Supplemental Comments, Attachment at 4 (filed July 29, 1996).

stations because of their low production and opportunity cost.<sup>255</sup> ABC argued that many short segment programs recur each week at the same time in the same program, and thus can be anticipated.<sup>256</sup> In contrast, many public interest groups argued that core programs should be at least 30 minutes long.<sup>257</sup> Children Now claimed that long-form programs are more effective at teaching skills such as counting and reading, and that broadcasters are inclined to rely too heavily on short segments.<sup>258</sup> Researchers Aletha Huston and John Wright agreed that 15 or 30-minute programs are more effective than short segments because they provide more content, allow the development of a theme, and permit educational messages to be told in story form.<sup>259</sup>

110. Discussion. 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.<sup>260</sup> 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.<sup>261</sup> There was no evidence presented in response to the NPRM to support claims by

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<sup>255</sup>See ALTV Comments at 28; Tribune Comments at 19. NAB also made this argument in its initial comments. See NAB Comments at 24.

<sup>256</sup>See ABC Comments at 27. For example, ABC states that "ABC Schoolhouse Rock" is presented twice each Saturday morning at regular times.

<sup>257</sup>See, e.g., AAP Comments at 2; Children Now Comments at 2; C-TREC Comments at 4; CME Comments at 30; CDF and BCCC Comments at 9.

<sup>258</sup>See Children Now Comments at 1-2.

<sup>259</sup>See Huston and Wright Comments at 6-7. These commenters cited research that shows that, for children older than 5 or 6, programs that convey educational messages in story form are more effective than programs that move quickly from one idea to another. Id.

<sup>260</sup>See Senate Report at 6-8. See also Memorandum Opinion and Order, 6 FCC Rcd at 5101 ("Congress used standard-length programming to exemplify the type of programming the Act sought to encourage.").

<sup>261</sup>A number of commenters stated that longer form programming is more effective because it permits the educational message to be presented in a story format. Commenters presented evidence that, beginning at age 5 or 6, children are more interested in and learn more from programs that present information in the form of a story than from public service announcements or programs with a "magazine" format that moves quickly from one idea to the next. See supra n.256. With respect to younger children, commenters also presented evidence that young children are capable of benefiting from extended educational and informational messages, as long as the show is properly

some parties that children have short attention spans and thus will not benefit from substantial length programming.<sup>262</sup>

111. 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,<sup>263</sup> 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.<sup>264</sup>

112. 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

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tailored to the cognitive ability of the intended audience. See APA NOI Comments at 2-3. See also Petition for Reconsideration filed by APA, AAP, and the National Parent Teacher Association (May 10, 1991) in MM Docket Nos. 90-570 and 83-670, challenging the Report and Order adopting our initial rules implementing the CTA. The Petition sought reconsideration of our 1991 decision to allow public service announcements and short vignettes to qualify as programming specifically designed to serve the educational and informational needs of children, and cites evidence to refute the statement in the Report and Order that short segment programming is "well suited" to the short attention span of children.

<sup>262</sup>To the contrary, Dale Kunkel submitted comments stating that there is no scientific basis upon which to assert that children have inherently short attention spans in their processing of television content. Kunkel Comments at 10-11.

<sup>263</sup>We have stated previously that short-segment programming may qualify as specifically designed educational and informational programming, although broadcasters must air some standard-length children's programs to fulfill their programming renewal review requirement. See Report and Order, 6 FCC Rcd at 2115; Memorandum Opinion and Order, 6 FCC Rcd at 5101.

<sup>264</sup>While the NPRM, 10 FCC Rcd at 6330, raised the possibility that a core program could be 15 minutes in length, no broadcast parties addressed the issue, and the few nonbroadcast commenters who did address it stated that programs of this length rarely if ever appear on television, and would not be expected by parents and children.

113. 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.<sup>265</sup> 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.<sup>266</sup> 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>267</sup>

### Assessment Guidelines

114. 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.<sup>268</sup> The guidelines identify factors that we encouraged licensees to consider in assessing the needs of children in the community, and we intended them to assist licensees in determining what programs meet the educational and informational needs of children under our broad definition of "educational and informational programming."<sup>269</sup> The particularized definition of "specifically designed" programming that we adopt today goes beyond our existing definition of educational and informational programming and our assessment factors to further delineate the types of programming that will meet licensees' obligation to air core educational programming. In view of the additional guidance provided by our definition of core programming, we believe that the assessment guidelines are superfluous and should therefore be eliminated.

## V. PROCESSING GUIDELINE

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<sup>265</sup>See NPRM, 10 FCC Rcd at 6331.

<sup>266</sup>See supra paragraphs 52 and 57.

<sup>267</sup>As we have noted, supra n.119, we will exempt noncommercial stations from these identification requirements.

<sup>268</sup>See NPRM, 10 FCC Rcd at 6331. Comments were divided on whether these guidelines should be preserved. For example, ABC argued that the guidelines should be retained because they permit broadcasters to counter-program, see ABC Comments at 28-29, while C-TREC argued that they should be eliminated on the ground they serve to perpetuate the current "abysmal" state of children's programming, see C-TREC Comments at 5.

<sup>269</sup>See Report and Order, 6 FCC Rcd at 2115.

115. In the NPRM, we sought comment on several proposals for evaluating a licensee's compliance with the Children's Television Act at renewal. Specifically, we proposed to adopt one of three alternative options: (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 adoption of a definition of "core" programming; (2) adoption of a safe harbor processing guideline specifying an amount of programming specifically designed to serve children's educational and informational needs that would represent one means of satisfying the CTA's programming obligation; and (3) adoption of a programming standard that would require broadcasters to air a specified average number of hours per week of programming specifically designed to serve the educational and informational needs of children. We also sought comment on whether we should adopt "program sponsorship" rules or guidelines, giving licensees the option of satisfying a portion of the prescribed amount by providing financial or other "in kind" support for programming aired on other stations in their market.<sup>270</sup>

116. Comments. A number of broadcasters and broadcaster associations opposed both a programming standard and a safe harbor processing guideline, arguing generally that these options would infringe too greatly on broadcaster programming discretion. They also argued that quantification was contrary to the legislative history. In addition, they questioned the need for taking such measures in view of their claim that there already is a substantial amount of educational programming available to children. These parties prefer the Commission's proposal to monitor future licensee performance in lieu of adopting either a programming standard or a processing guideline.<sup>271</sup> For example, ALTV stated that its latest survey of independent stations demonstrates "dramatic and continuing" improvement in the amount of educational programming available on independent stations since passage of the CTA.<sup>272</sup> ALTV suggested that the Commission collect information regarding the industry's performance over the course of the next renewal cycle, commencing in October 1996, at which time all stations will have operated under the CTA's requirements for a full license term, permitting them sufficient time to become familiar with the requirements and obtain qualifying programming.<sup>273</sup>

117. Although ALTV argued that there is no need for a programming standard or a processing guideline to increase the amount of educational programming, in the event such action is taken ALTV suggested the Commission issue a policy statement delineating a safe harbor policy whereby stations could choose to air either 2 hours of core programming or 4

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<sup>270</sup>NPRM, 10 FCC Rcd at 6336-49.

<sup>271</sup>See, e.g., ABC Comments at 50; CBS Comments at 5; NBC Comments at 3; ALTV Comments at 12; Cosmos et al. Comments at 19; Golden Orange Comments at 6.

<sup>272</sup>ALTV Comments at 13.

<sup>273</sup>Id. at 24-25. NBC suggests the monitoring period should be three years or three broadcast seasons. See NBC Comments at 25.

hours of core and non-core programming per week.<sup>274</sup> The policy statement would also list other practices stations could choose to adopt at their own option, such as use of consultants and joint ventures with public TV stations. According to ALTV, a policy statement is preferable to a guideline or a rule because it permits greater licensee flexibility and can more easily be eliminated or changed.

118. NAB filed initial comments also opposing any quantitative guidelines or requirement. In supplemental comments, however, NAB set forth its support for a "processing guideline under which broadcasters could obtain staff approval of the children's television service portion of their renewal applications by showing that they either aired an average of three hours per week of newly defined 'core' educational and informational programming for children or that, while they aired somewhat less than this amount of 'core' programming, they aired a package of other programs that demonstrated the same level of commitment to the needs of children."<sup>275</sup> NAB stated that this "proposal overall is consistent with Congress' intent in the Act, addresses specific problems that the record before the Commission demonstrates, and provides useful guidance to licensees about the ways that they can fulfill their obligations under the Act while allowing them the programming flexibility that the FCC has always recognized is an essential element of the Communications Act."<sup>276</sup>

119. The vast majority of nonbroadcast commenters, including such varied groups as CME *et al.* (including the PTA, NEA, and American Psychiatric Association), CDF and BCCC, and APA, advocated the adoption of either a processing guideline or a programming standard in conjunction with a monitoring program to assess the effectiveness of these measures in improving broadcaster performance.<sup>277</sup> They contended that monitoring alone, without a quantitative programming standard or safe harbor guideline, would not ensure the provision of a sufficient amount of educational children's programming. These commenters generally argued that reliance on the voluntary efforts of broadcasters to increase the amount of educational programming has failed, and that marketplace forces alone do not generate sufficient educational

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<sup>274</sup>ALTV Comments at 37-43.

<sup>275</sup>NAB Supplemental Comments at 1 (filed July 29, 1996).

<sup>276</sup>*Id.* at Attachment, page 1.

<sup>277</sup>See AAP Comments at 2-3; CDF and BCCC Comments at 6; CME *et al.* comments at 40. See also Reply Comments of Henry Geller at 1-9 (stating that the explicit language and legislative history of the CTA make it clear that the FCC cannot rely simply upon monitoring industry compliance, but must instead review licensee performance at renewal, and that a processing guideline is the best approach in conducting this review). See also Tribune Comments at 6 (supporting adoption of a processing guideline if a monitoring study indicates further action to increase the amount of educational programming is warranted). See also Letter from Congressman Michael Castle (October 10, 1995) (urging adoption of a safe harbor processing guideline set at five hours, and stating that five hours is still too low, but is perhaps more realistic than ten or twelve). Other parties expressed the view that a processing guideline has the same practical effect as a rule, as broadcasters will air no less than the minimum to guarantee timely and uncontested license renewal. See CBS Comments at 33; Westinghouse Comments at 7; The Media Institute Comments at 15.

programming.<sup>278</sup> Although a few commenters favored a processing guideline over a programming standard,<sup>279</sup> most public interest groups and other non-broadcast commenters expressed a preference for a programming standard.<sup>280</sup> These commenters also noted that a standard applicable to all stations would ensure that no single station is put at a potential competitive disadvantage by acting against its economic self interest in providing more educational programming. In this regard, Children Now stated its belief that the lack of clear quantitative requirements creates a financial incentive for broadcasters to subvert the intent of the CTA because broadcasters believe that airing educational programming results in lower ratings and lost advertising revenues.<sup>281</sup>

120. Discussion. 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. As set forth more fully below, under this guideline, the Mass Media Bureau will be authorized to approve the Children's Television Act 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" as described in Section IV, supra; or

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<sup>278</sup>See, e.g., CME et al. Comments at 6-9; Children Now Comments at 3; CTW Comments at 20; Kunkel Comments at 7; Huston & Wright Comments at 7.

<sup>279</sup>See, e.g., AAP Comments at 2; CME et al. Comments at 1; CDF and BCCC Comments at 10; CTW Comments at 23; Geller Reply Comments at 1-9. CDF prefers a five year monitoring period. See CDF and BCCC Comments at 10. In contrast, CEP supports monitoring, as an alternative to either a processing guideline or a programming standard, on the ground that the latter options would interfere too greatly in broadcaster programming discretion. See CEP Comments at 12.

<sup>280</sup>We also received approximately 20,000 letters and Internet messages from members of the public, many of whom urged us to adopt a quantitative processing guideline or programming standard. Other commenters, although they did not address specifically the distinction between a programming standard and a safe harbor processing guideline, supported requiring broadcasters to air a minimum amount of educational programming. See, e.g., Letter from President Clinton (September 18, 1995) (advocating a requirement that broadcasters air at least three hours per week, and preferably more, of educational children's programming); Letter from Senator Joseph Lieberman and 32 other members of the U.S. Senate (June 12, 1996) (urging adoption of a minimum three-hour threshold of educational programming); Letter from Congressman Edward Markey and 219 other members of Congress (May 29, 1996) (urging adoption of a minimum three-hour threshold of educational programming).

<sup>281</sup>See Children Now Comments at 3.

(B) By showing that it has aired a package<sup>282</sup> 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.

Renewal applications that do not meet this guideline will be referred to the Commission, where the applicant will have a full opportunity to demonstrate compliance with the CTA 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 or 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.

121. Although in 1991 we concluded that we should not quantify a broadcaster's CTA obligation,<sup>283</sup> based on our experience over the past five years and the record in this proceeding, we believe a processing guideline approach is warranted at this time. We believe that three hours per week is a reasonable benchmark for all broadcast television stations to meet six years after enactment of the CTA. NAB states that commercial broadcasters were, on average, broadcasting two hours per week of regularly scheduled, standard length educational programming at the time the CTA passed in 1990.<sup>284</sup> While we do not know whether Congress was aware of this data in passing the CTA, the Act's legislative history makes clear that Congress was generally aware of the television programming being broadcast in 1990 when it found that "the marketplace had failed to provide an adequate supply of children's educational programming," and that it desired that the amount of such programming be increased.<sup>285</sup> Thus, airing two hours per week of such programming six years after passage of the CTA clearly is not compatible with the long-term performance improvement Congress intended when it passed the CTA, and a processing guideline of three hours is clearly a reasonable means of implementing the statute at this time.

122. Our decision to set the guideline at this level does not rely upon a firm conclusion as to the amount of children's educational and informational programming currently being provided in the market, but rather on the inferences that we can draw from the entire record in this proceeding. NAB states, under its definition of core programming, that commercial broadcasters air an average of approximately four hours per week of educational and informational programming in fulfillment of their obligation under the CTA. Although we

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<sup>282</sup>By "package" we do not mean to imply that the programming is in any way related by topics or purchased from a single source.

<sup>283</sup>See Report and Order, 6 FCC Rcd at 2115. See also infra paragraphs 128-129.

<sup>284</sup>NAB Comments at 7.

<sup>285</sup>Senate Report at 1, 5.

cannot verify NAB's figure,<sup>286</sup> we take the NAB conclusion as evidence that broadcasters believe that it is reasonable to devote three hours per week of their air time to educating children. Moreover, the studies of ALTV, Fox, and Kunkel suggest that this is a reasonable, achievable guideline.

123. Our conclusion that a three-hour per week programming guideline is not unreasonable is further confirmed by the commitment of the CBS network and CBS-owned stations to provide three hours per week of core educational and informational programming by the fall 1997 season (when our new rules will go into effect). On September 20, 1995, the Westinghouse Electric Corporation announced that it would increase the amount of core programming provided by its recently acquired CBS television network and aired by its owned-and-operated stations. Under this plan, Westinghouse will double network children's programming from the one hour now broadcast on the CBS network to two hours, and will add a third hour by the beginning of the fall 1997 season.<sup>287</sup> With this initiative, over 200 CBS affiliates -- over 17 percent of the total number of commercial television stations in the country -- already have in place the means of providing at least three hours per week of educational and informational programming specifically designed to educate and inform children.

124. In the context of the CTA, a processing guideline is clear, fair and efficient. First, 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. Due to the volume of broadcast television renewal applications received by the Commission -- approximately 1500 commercial and noncommercial applications during each renewal cycle -- the Commission has for many years delegated to the Mass Media Bureau the authority to act on applications that do not present difficult issues. In the absence of an articulated guideline regarding CTA compliance that the Bureau would use to distinguish applications that are properly processed at the staff level from those that must be sent to the full Commission, a de facto processing guideline likely would develop.<sup>288</sup> But this de facto guideline, if unpublished, would not provide clear and timely notice of what a licensee can do to guarantee renewal under the CTA. By adopting a safe harbor processing guideline in this order, the Commission is simply giving public notice of the procedures it will use to evaluate a broadcaster's children's educational and informational

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<sup>286</sup>As we have explained, the studies filed in this proceeding are not conclusive due to differences in their methodologies, but allow us to draw some conclusions about the average amount of children's educational and informational programming that broadcasters are airing. See generally supra paragraphs 35-42, 44.

<sup>287</sup>Westinghouse stated that these programs will be "specifically designed to serve the educational and informational needs of children," and will be broadcast after 7:00 a.m. to ensure that they "will be accessible to the greatest number of young viewers." This initiative will run for three years, through the end of the 1998-99 season, after which "its effectiveness will be thoroughly evaluated by Westinghouse." See Stockholders of CBS Inc., FCC 95-469, released Nov. 22, 1995, at ¶ 13.

<sup>288</sup>See supra paragraph 42.

programming performance.<sup>289</sup> Licensees and the public will consequently know with certainty and in advance what a licensee can do to ensure that it meets its CTA obligations.

125. 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.<sup>290</sup> Indeed, as we have discussed previously, there are economic pressures on licensees not to air children's educational and informational programming or to air it at times when relatively few children are watching.<sup>291</sup> 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. In contrast to the current situation, a broadcaster that wishes to air an ample amount of core educational programming can feel confident that, as a general matter, its competitors will be airing at least three hours of core programming or its equivalent. Thus, like our public information initiatives and definitional requirements, the processing guideline will allow the marketplace to function more effectively in providing educational and informational children's programming. Moreover, the greater certainty provided by the processing guideline we adopt today 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.

126. The processing guideline we adopt today is consistent with the CTA in that it provides a measure of flexibility for licensees in meeting the requirements of the CTA. Broadcasters that air somewhat less than three hours per week of core programming can also receive staff-level renewal. We create this option not to encourage broadcasters to air fewer than three hours per week of core programming; we encourage broadcasters to air more than three hours. Rather, we create this option to recognize, as Congress did, the need for flexibility for broadcasters.

127. We further believe the processing guideline we adopt today is consistent with the text of the Children's Television Act, which requires us to "consider the extent" to which licensees serve the "educational and informational needs of children through the licensee's

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<sup>289</sup>The Commission in the past has adopted processing guidelines to achieve similar purposes. For example, the Commission's non-entertainment programming processing guidelines provided that the applications of licensees that offered less than certain amounts of non-entertainment programming had to be acted upon by the Commission rather than by the Bureau. See Deregulation of Radio, 84 FCC 2d 968, 975, recon., 87 FCC 2d 797 (1981), aff'd in part, remanded in part, Office of Communication of United Christ v. FCC, 707 F.2d 1413, 1432 (D.C. Cir. 1983). It is universally accepted that these guidelines were "purely procedural." Id. at 1432.

<sup>290</sup>See supra paragraphs 40-42, and 44.

<sup>291</sup>See supra paragraph 29-34.

overall programming, including programming specifically designed to serve such needs."<sup>292</sup> The CTA's renewal review requirement involves, at least in part, an assessment of the amount of educational and informational programming shown by each licensee.<sup>293</sup> By establishing a processing guideline, we provide a clear benchmark for assessing broadcasters' performance.

128. In adopting a processing guideline today, we deliberately depart from the approach to implementing the CTA underlying our current rules as promulgated in 1991. As explained above, we conclude today that the public interest and the interests Congress sought to promote through the CTA will be better served by this processing guideline approach.

129. We recognize that this is contrary to our earlier interpretation of the CTA as precluding quantification of the CTA obligation. We reached this conclusion in 1991 on the grounds that the statute itself "impos[ed] no quantitative standard" and the "legislative history suggest[ed] that Congress meant that no minimum amount criterion be imposed."<sup>294</sup> In reaching a contrary conclusion today, 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,"<sup>295</sup> 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. It is not our conclusion today that we must adopt a quantitative guideline, but that the processing guideline approach we adopt will clarify the imprecision of our current rules that has led to a variation in the level and nature of broadcasters' compliance efforts that is incompatible with the intent of the CTA. Thus, because of its clarity, fairness, and ease of administration, a processing guideline will remedy the shortcomings of our initial rules and thereby provide the appropriate

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<sup>292</sup>47 U.S.C. § 303b(a)(2).

<sup>293</sup>See Geller Reply Comments at 1-9.

<sup>294</sup>Report and Order, 6 FCC Rcd at 2115.

<sup>295</sup>The House Report states: "The Committee does not intend that the FCC interpret this section as requiring or mandating a quantification standard governing the amount of children's educational and informational programming that a broadcast licensee must broadcast to pass a license renewal ...." House Report at 17. The Senate Report contains almost identical language. See Senate Report at 23. Similar statements were also made on both the House and Senate floors. See, e.g., 136 Cong. Rec. S10122 (July 19, 1990) (comments of Senator Inouye that "[t]he Committee does not intend that the FCC interpret this section as requiring or mandating quantification standards...."); 136 Cong. Rec. 148536 (Oct. 1, 1990) (comments of Speaker Foley that "[t]his legislation does not require the FCC to set quantitative guidelines for educational programming...."). Thus, we do not by our decision today suggest that we are required by the CTA to adopt a quantitative standard. As commenters have noted, such a conclusion is contradicted by the statement in the legislative history of the CTA. On the other hand, we do not read this history to preclude the administrative step we take today.

counterweight to the market forces identified by Congress that tend to discourage broadcasters from airing children's educational and informational programming.<sup>296</sup>

130. We consequently believe a safe harbor processing guideline will serve the public interest by providing a reasonable degree of certainty while also preserving a reasonable degree of flexibility for broadcasters. Renewal applications will be divided into two categories for purposes of staff-level CTA review. Applications falling into neither of these categories will be referred to the Commission for consideration. We will revise our license renewal form to reflect this processing guideline. In revising the renewal form, we will seek to minimize the reporting burden on licensees by, for example, allowing them to rely on the children's programming reports that they have prepared previously.<sup>297</sup>

#### *Category A*

131. Broadcasters that air an average of three or more hours per week of programming that satisfies our new definition of programming "specifically designed" to serve children's educational and informational needs will have their applications approved by the staff with respect to CTA compliance. A licensee seeking review under this category must simply check a box on our revised renewal form, and provide 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.

132. To provide broadcasters scheduling flexibility, we will allow the three-hour core programming benchmark to be averaged over a six-month period. We will also allow repeats and reruns of core programming to be counted toward fulfillment of the three-hour guideline. As Tribune pointed out, virtually all network and syndicated programs are repeated to increase audience exposure.<sup>298</sup>

#### *Category B*

133. Broadcasters that air somewhat less than three hours per week of core programming will also receive staff-level approval if they show that they have aired a package of different types of educational and informational programming that demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours

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<sup>296</sup>See supra paragraphs 29-34.

<sup>297</sup>As noted above, we will continue our policy of exempting noncommercial television stations from specific record-compilation, filing and submission requirements. See Memorandum Opinion and Order, 6 FCC Rcd at 5101. 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." Id. at 5102. 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 today.

<sup>298</sup>Tribune Comments at 22-23. See also CTW Comments at 24 n.22.

per week of core programming. We do this to create a measure of flexibility as to how broadcasters may qualify for routine staff processing of their applications. Although core programming is our primary focus under the Children's Television Act, we believe that specials, regularly scheduled non-weekly programs, short-form programs, and PSAs with a significant purpose of educating and informing children ages 16 and under can help accomplish the objectives of the Act and can count toward the staff-level processing guideline. Airing such programming or core programming during prime time would also be a relevant factor under this category, as would investing a substantial amount of money in developing core programming aired on the broadcaster's channel. A broadcaster seeking to secure staff approval under this category 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.

134. Review of individual Category B applications will require a degree of evaluation and judgment by the staff. We expect the staff to exercise this discretion judiciously. We expect that, as broadcasters present different fact patterns, the Bureau, with guidance from the Commission as necessary, will assess the weight to be given to particular kinds of noncore efforts and will process such fact patterns in a consistent manner over time.

#### *Commission Consideration*

135. 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 Children's Television Act. 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 Children's Television Act obligations in other ways. Broadcasters will have a full opportunity to make this demonstration by, for example, and as described more fully below, 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.

136. 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.<sup>299</sup>

137. Special Nonbroadcast Efforts. The CTA states that, "[i]n addition to consideration of the licensee's [educational] programming, the Commission may consider . . . any special nonbroadcast efforts by the licensee which enhance the educational and informational value of such programming to children." At the Commission level, a licensee may present evidence of such special nonbroadcast efforts. To receive credit under this provision for a "special" nonbroadcast effort, a broadcaster must show that it has engaged in substantial community activity. To receive credit under this provision for a special nonbroadcast effort that "enhance[s]" the educational value of a broadcaster's educational programming, a broadcaster must show a close relationship between its core programming and its nonbroadcast efforts. Finally, we note that the text of this provision plainly does not relieve a broadcaster of the obligation to air core programming. The statute permits the Commission to consider special nonbroadcast efforts only "in addition to consideration of the licensee's [educational] programming."

138. Special Sponsorship Efforts. The CTA states that, "[i]n addition to consideration of the licensee's [educational] programming, the Commission may consider . . . any special efforts by the licensee to produce or support programming broadcast by another station in the licensee's marketplace which is specifically designed to serve the educational and informational needs of children."<sup>300</sup> Some parties supported giving credit to a sponsoring station in assessing its CTA performance at renewal time,<sup>301</sup> while others opposed the idea.<sup>302</sup> We will allow a licensee to present evidence at the Commission level of such special sponsorship efforts. To receive credit under this provision for a "special" sponsorship effort, a broadcaster must demonstrate that its production or support of core programming aired on another station in its market increased the amount of core programming on the station airing the sponsored core programming. Also, we note again that the text of Section 103(b) does not relieve a broadcaster of the obligation to air programming specifically designed to serve the educational and informational needs of children. It permits the Commission to consider sponsorship

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<sup>299</sup>See 47 U.S.C. § 309(k).

<sup>300</sup>Id. at § 303b(b)(1).

<sup>301</sup>See Comments of ACTS at 9, 11; Association of America's Public Television Stations and the Public Broadcasting Service at 10-19; CPB at 3-5; C-TREC at 7; Ronald Davis at 2; Reply Comments of ALTV at 21-22.

<sup>302</sup>See AAP Comments at 3; CME *et al.* Comments at 48-50; Children Now Comments at 5; CTW Comments at 27; UCC Comments at 3-5. These parties argued that the majority of sponsored programs would appear on noncommercial stations, thus adding to the existing imbalance between the amount of educational programming appearing on such stations as opposed to commercial stations.

nonbroadcast efforts only "in addition to consideration of the licensee's [educational] programming."

139. In response to the NPRM's proposal to establish program sponsorship guidelines, commenters raised a number of issues regarding the appropriate circumstances for crediting sponsorship efforts, such as the minimum amount of core programming that a sponsoring station must air on its own station and the extent to which programs could be sponsored on noncommercial stations. We believe these matters are best addressed on a case-by-case basis considering individual showings licensees may seek to make rather than by the adoption of program sponsorship guidelines. We will be a better position to assess these matters in individual cases after having gained some experience with the operation of our new rules and programming guideline in the children's television marketplace.

#### Monitoring and Reexamination of Rules

140. 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 today. 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.

141. 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.<sup>303</sup> The few commenters who addressed this issue expressed concern that the rules not be eliminated without an evaluation of whether continued regulation was warranted.<sup>304</sup> 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**

### License renewal challenges

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<sup>303</sup>NPRM, 10 FCC Rcd at 6349.

<sup>304</sup>See AAP Comments at 3; CTW Comments at 24.

142. One of our objectives in this proceeding has been to encourage the public to participate in promoting broadcasters' compliance with the CTA, and to reduce the role of government in enforcing compliance. As one means of achieving this goal, we proposed in the NPRM to require that any challenger filing a petition to deny a renewal application show that he or she had first attempted to resolve the alleged problem with the station in question.<sup>305</sup> The commenters who addressed this issue were divided. Cosmos et al. supported the proposal as long as licensees retained discretion as to how to respond to any complaints received from members of the public.<sup>306</sup>

143. We have decided not to require members of the public to communicate with a licensee prior to filing a petition to deny. As CME et al. pointed out, 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.<sup>307</sup> 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.

### Certification

144. As another means of reducing the government's role in reviewing CTA compliance, in the event we adopted a processing guideline or programming standard, we sought comment in the NPRM on whether we should permit licensees to certify whether they have aired the prescribed amount of core programming.<sup>308</sup> If this proposal were adopted, we stated that, in the absence of a challenge to their license renewal, licensees would not be required to submit materials documenting their programming performance, but only to retain them in their public inspection files.

145. We decline to adopt this proposal. The parties that addressed this proposal, CME et al. and Children Now, 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.<sup>309</sup> Given these concerns, and our decision to require broadcasters to file children's programming reports with the Commission for an experimental three-year period,<sup>310</sup> we do not believe a certification approach is workable.

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<sup>305</sup>NPRM, 10 FCC Rcd at 6344.

<sup>306</sup>See Cosmos et al. Comments at 9.

<sup>307</sup>See CME et al. Comments at 46-47.

<sup>308</sup>NPRM, 10 FCC Rcd at 6345.

<sup>309</sup>See CME et al. Comments at 40 n.21; Children Now Comments at 5.

<sup>310</sup>See supra paragraph 68.

## VII. FIRST AMENDMENT ISSUES

146. Comments. Broadcasters, including ABC, CBS, Cosmos et al., Donrey, Great Trails, Meredith, NAB, and NAB advocate Professor Rodney Smolla (of the Marshall-Wythe School of Law), argued that quantitative processing guidelines would violate the First Amendment. Henry Geller, as well as Price and Meyerson, maintained that a processing guideline is constitutionally permissible. We address these comments in the course of our substantive discussion below.

147. Discussion. 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 addressed that issue.<sup>311</sup> It 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."<sup>312</sup> As the Senate Report noted, broadcasters, in exchange for "the free and exclusive use of a valuable part of the public domain," can be expected to serve as a public fiduciary, obliged to serve the needs and interests of their viewers.<sup>313</sup> That obligation includes the obligation to serve the needs of children.<sup>314</sup> 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.<sup>315</sup> The question in this proceeding is not whether the Commission should give effect to the CTA, but how it should do so.

148. We do not understand NAB and Professor Smolla to be arguing that the CTA is unconstitutional insofar as it provides that broadcasters must serve the educational and informational needs of children and demonstrate that they have done so at renewal.<sup>316</sup> Professor Smolla argues that, were we to adopt either a rule requiring a specified amount of particular programming or a processing guideline that effectively imposed a similar requirement, such a rule or processing guideline would unconstitutionally burden speech and, further, would rest on

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<sup>311</sup> Senate Report at 10-18; see also House Report at 8-12.

<sup>312</sup> Senate Report at 16.

<sup>313</sup> Id. (citing Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969)).

<sup>314</sup> See id. (citing Prince v. Massachusetts, 321 U.S. 158, 168 (1943)).

<sup>315</sup> Id. (citing ACT v. FCC, 564 F.2d 458 (D.C. Cir. 1977) (affirming our 1974 Policy Statement specifying that the public interest obligation included an obligation to provide educational and informational programming for children)).

<sup>316</sup> See NAB Comments, Attachment at 6; ("Smolla Comments") at 35-36.

an improper construction of the CTA.<sup>317</sup> Such rules or processing guidelines were among the options on which we sought comment in the NPRM. As we explain above, while we adopt a processing guideline, we do so in a manner that provides broadcasters with flexibility in the ways in which they can satisfy the requirements imposed by the CTA.

149. 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.<sup>318</sup> As the Supreme Court observed in CBS, Inc. v. FCC,<sup>319</sup> "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."<sup>320</sup> 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.

150. In CBS v. FCC the Supreme Court upheld a challenge to the statute (47 U.S.C. § 312(a)(7)) that requires broadcasters to provide reasonable access to individual candidates seeking federal elective office. Similarly, here, the CTA requires broadcasters to serve the educational and informational needs of children through programming specifically designed for those needs. Both provisions require broadcasters to air certain types of programming they might not otherwise choose to provide. However, the obligation imposed by Section 312(a)(7) appears to be significantly more burdensome than the obligation imposed by the CTA. Under Section 312(a)(7), broadcasters have no control over the content of the political advertising. In contrast, under the CTA broadcasters are obligated to provide children's educational programming, yet they retain wide discretion in choosing what programs to provide, a fact little changed by the clarifying measures we adopt today.

151. Because we are adopting a processing guideline that allows broadcasters more discretion in choosing the ways in which they will meet their CTA obligations than the one we proposed in the NPRM, most of the arguments raised by Professor Smolla and others

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<sup>317</sup>Smolla Comments at 14-17, 27-33.

<sup>318</sup>See 47 U.S.C. 301; FCC v. National Citizens Comm. for Broadcasting, 436 U.S. 755, 806 n.25 (1978).

<sup>319</sup>453 U.S. 367 (1981).

<sup>320</sup>Id. at 395.

commenters are not applicable.<sup>321</sup> In Turner Broadcasting v. FCC,<sup>322</sup> the Court made clear that the Commission has the authority to "inquire of licensees what they have done to determine the needs of the community they propose to serve," but not to "impose upon them its private notions of what the public ought to hear."<sup>323</sup> 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 Turner Court reaffirmed that "broadcast programming, unlike cable programming, is subject to certain limited content restraints imposed by statute and FCC regulation."<sup>324</sup> And, as examples of (presumably) permissible regulation, the Court cited the Children's Television Act, together with 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.<sup>325</sup> If these latter regulations survive constitutional scrutiny, then so, a fortiori, would the Commission's considerably less intrusive proposal for giving meaningful effect to the Act 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.

152. Our new regulations, like the CTA itself, impose reasonable, viewpoint-neutral conditions on a broadcaster's free use of the public airwaves. They do not censor or foreclose speech of any kind. They do not tell licensees what topics they must address. They provide only that broadcasters report the educational objective of the program and the expected educational effects. Moreover, they expressly provide that broadcasters need not describe the viewpoint of the program or the opinions expressed on the program.

153. 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

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<sup>321</sup>In its supplemental comments proposing a processing guideline of the sort we adopt, NAB stated that "[b]ecause this proposal retains substantial flexibility for broadcasters in meeting their obligations under the Children's Television Act, NAB believes that a constitutional rationale can be crafted in support of these regulations that rests on established First Amendment doctrines long accepted by the Commission." NAB Supplemental Comments at 2 (filed July 29, 1996).

<sup>322</sup>114 S. Ct. 2445 (1994).

<sup>323</sup>Id. at 2463.

<sup>324</sup>Id. at 2462.

<sup>325</sup>Id. at 2462-63 n.7.

receive."<sup>326</sup> In other contexts, the courts and commentators have recognized the government's "compelling" interest in "safeguarding the physical and psychological well being" of minors.<sup>327</sup>

154. A recent case, Action for Children's Television v. FCC,<sup>328</sup> affirms the vitality of the government's interest in ensuring that television programming is consistent with the needs of America's children. In Action for Children's Television, the court of appeals echoed the Supreme Court's recognition of the "well nigh universal belief that good books, plays and art . . . improve the mind, enrich the human personality, and develop character." It then concluded that a legislature may regulate the exposure of children to indecent material on the corollary assumption that indecent material may "exert a corrupting and debasing impact."<sup>329</sup> If Congress and the Commission may rely on this corollary to 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. The framers of the First Amendment understood that "the greatest menace to freedom is an inert people," as Justice Brandeis wrote.<sup>330</sup> 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.

155. Such a requirement also is supported by the Supreme Court's decision in FCC v. Pacifica Foundation.<sup>331</sup> In that case the Court recognized that "broadcasting is uniquely accessible to children" and that "the broadcast media have established a uniquely pervasive presence in the lives of all Americans."<sup>332</sup> Both of those factors support Congress' decision to require broadcasters to serve the educational needs of children. As stated previously, television has an influence on children in our society rivalled only by family and school. It would be accurate to blend the two factors noted in Pacifica and conclude that television has a pervasive presence in the lives of American children. The Court in Pacifica upheld restrictions on the broadcast of indecent material. As stated above, the government's interest in the intellectual

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<sup>326</sup>Senate Report at 17; see also House Report at 11.

<sup>327</sup>Action for Children's Television v. FCC, 852 F.2d 1332, 1343 n.18 (D.C. Cir. 1988) (citing cases); see also R. Smolla, Smolla and Nimmer on Freedom of Speech, at 14-27 to 14-28 (1994) ("the Supreme Court has applied what might be called the 'Child's First Amendment,' permitting regulation of speech implicating children in ways that would be impermissible for adults"); Minow and LaMay Comments at 121-132.

<sup>328</sup>58 F.3d 654 (D.C. Cir. 1995), cert. denied, 116 S. Ct. 701 (1996).

<sup>329</sup>58 F.3d at 662 (quoting Paris Adult Theatre I v. Slaton, 413 U.S. 49, 63 (1973)).

<sup>330</sup>Whitney v. California, 274 U.S. 357, 372 (1927) (concurring opinion).

<sup>331</sup>438 U.S. 726 (1978).

<sup>332</sup>Id. at 748, 749-750.

development of our nation's children is at least as significant as its interest in protecting them from exposure to indecent material, an interest the Supreme Court "has often found compelling."<sup>333</sup>

156. The measures we adopt today to advance the Nation's interest in the intellectual development of our children are sustainable under the Pacifica analysis 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. 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.

157. 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. Like the CTA, our regulations require broadcasters to air children's educational and informational programming, but do not "exclude any programming that does in fact serve the educational and informational needs of children; rather the broadcaster has discretion to meet its public service obligation in the way it deems best suited."<sup>334</sup> Specifically, the processing guideline that we adopt today does not limit this discretion. It provides a means by which a broadcaster can be certain that our staff will be in a position to process its renewal application without further review of the broadcaster's CTA efforts. 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.

158. As the Media Institute observes, 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."<sup>335</sup> 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

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<sup>333</sup>Denver Area Educational Telecommunications Consortium v. FCC, 116 S. Ct. 2374, 2385, 2387 (1996).

<sup>334</sup> Senate Report at 17.

<sup>335</sup>The Media Institute Comments at 16-17 (citing Memorandum Opinion and Order, 6 FCC Rcd 5093, n.105).

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.<sup>336</sup>

159. 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**

160. 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,<sup>337</sup> and we will begin to evaluate compliance with these requirements in renewal applications filed after that date. Licensees should be able to implement these rules in that time frame as they relate to internal station practices and do not require steps that would necessitate a longer period of transition.

161. 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. Some licensees may need time to develop programming that complies with our new definition or to renegotiate or allow expiration of existing program contracts as necessary. 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.<sup>338</sup> As

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<sup>336</sup>See Price and Meyerson Comments at 18-19 (discussing the Commission's "gradual tailoring" in implementing the CTA).

<sup>337</sup>Thus, the first quarterly Children's Television Programming Report under these new rules must be placed by commercial broadcasters in their public file by April 10, 1997.

<sup>338</sup>As noted above, our rules regarding on-air identification, program guides and public file requirements will be effective sooner and we will begin to assess compliance with them after their effective date. To the extent these rules require licensees to provide information or announcements regarding their core educational programming, they should use our new definition of such programming once it goes into effect on September 1, 1997. Prior to that date, licensees will need to provide such information or announcements based on their judgment as to what programs qualify under the general statutory wording as "specifically designed" to serve the educational and informational needs

with all of the provisions adopted today, these provisions will be applied on a purely prospective basis.

162. 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. In our 1991 proceeding, we stated that licensees will be expected to "air some educational and informational programming 'specifically designed' for children 16 years of age and under in order to satisfy our renewal review",<sup>339</sup> and we defined educational and informational programming as "any television programming which 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."<sup>340</sup> We will continue to follow these general standards in assessing the CTA programming performance of renewal applicants filing prior to September 1, 1997.

163. As noted above, 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.<sup>341</sup> 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. As a practical matter, the new program-related provisions will apply to a relatively small portion of the license terms for renewal applications filed in the current renewal filing cycle after September 1, 1997.

## IX. CONCLUSION

164. For the reasons discussed above, we adopt this Report and Order designed to further the mandate of the Children's Television Act that broadcast television achieve its full potential in teaching the nation's children.

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of children.

<sup>339</sup>Report and Order, 6 FCC Rcd at 2115.

<sup>340</sup>47 C.F.R. § 73.671 Note. We also stated that broadcasters must air some standard-length children's programs in order to satisfy the renewal review requirement. Memorandum Opinion and Order, 6 FCC Rcd at 5101.

<sup>341</sup>Thus, the new definition and processing guideline will be applied for the first time to television renewal applications filed on or before October 1, 1997 for stations whose renewal terms expire February 1, 1998.

## **X. ORDERING CLAUSES**

165. 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 C.F.R. Part 73 IS AMENDED as set forth in Appendix B below. The amendments set forth in paragraphs 1, 4, 5, and 6 of Appendix B shall be effective on January 2, 1997, subject to necessary OMB approvals. The amendments set forth in paragraphs 2 and 3 of Appendix B shall take effect on September 1, 1997.

166. 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.

167. 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, Publ. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601§ et seq. (1981).

168. IT IS FURTHER ORDERED that this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

## APPENDIX A

### ADMINISTRATIVE MATTERS

#### Paperwork Reduction Act Statement

This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 ("PRA"). It has been submitted to the Office of Management and Budget ("OMB") for review under 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.

#### Final Regulatory Flexibility Analysis

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>342</sup> in this Report and Order is as follows:

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

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.

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<sup>342</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.**

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"**

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>343</sup> 13 C.F.R. §§ 121.101 et seq. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

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 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>344</sup> Accordingly, for purposes of this

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<sup>343</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.

<sup>344</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), FCC 96-216, released May 21, 1996, we requested commenters to

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"

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.

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 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.

With respect to applying the revenue cap, the SBA has defined "annual receipts" specifically in 13 C.F.R § 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

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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), 11 FCC Rcd 5154 (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.

available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

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 C.F.R. § 121.104(d)(1). The SBA defines affiliation in 13 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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

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>345</sup>

We have also performed a separate study based on the data contained in the BIA Publications, Inc. Master Access Television Analyzer Database,<sup>346</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>347</sup> It should be noted that, using the SBA definition of small business concern, the

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<sup>345</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>346</sup>BIA Publications, Inc., Chantilly, VA.

<sup>347</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

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>348</sup> 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.

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.

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 televisions 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 aggregate such revenues from non-television affiliated companies.

It should also be noted that the foregoing estimates do not distinguish between network-affiliated<sup>349</sup> stations and independent stations. As of April, 1996, the BIA data base indicates

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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>348</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 televisions stations with annual operating budgets of less than \$2 million. As of June 30, 1996, there were 364 public television stations licensed. FCC News Release, Broadcast Station Totals as of June 30, 1996, released July 10, 1996.

<sup>349</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

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>350</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

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>351</sup> Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.<sup>352</sup> We estimate that the 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>353</sup>

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

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owned and operated by a network and stations owned by other entities.

<sup>350</sup>Secondary affiliations are secondary to the primary affiliation of the station and generally afford the affiliate additional choice of programming.

<sup>351</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, 23 FCC 2d 430 (1970).

<sup>352</sup>See, e.g., 47 C.F.R. § 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), 70 FCC 2d 1466 (1979). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on 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), 11 FCC Rcd 5154 (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>353</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.

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.**

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.

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

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.

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.

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.

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.**

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**

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.

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**

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 C.F.R. §§ 73.1201, 73.1212.

#### b. Program Guides

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>354</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 effort, but have a major positive effect, for them to do so.

#### c. Public File Requirements

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"

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<sup>354</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.

programming. Commercial television licensees will be required to separate the children's programming reports from the other reports they maintain in their public files.

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>355</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.

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 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.

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.

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.

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<sup>355</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).

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>356</sup> Licensees already employ sufficient staff in order to maintain the children's programming reports<sup>357</sup> and letters received from the public in their public inspection files, as required by our current regulations.<sup>358</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

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.

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

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<sup>356</sup> As noted earlier, noncommercial educational television licensees are exempt from this requirement.

<sup>357</sup> NPRM, 10 FCC Rcd at 6322; 47 C.F.R. § 73.1202.

<sup>358</sup> Id. at § 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.

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

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.

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

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 hour 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.

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.

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.

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 demonstrate 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**

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.

## APPENDIX B

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

### Part 73 RADIO BROADCAST SERVICES

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

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

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).

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.

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

§73.3500 Application and Report Forms.

\* \* \* \* \*

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## APPENDIX C

The following parties filed comments in response to the FCC's NPRM:

### **Initial Comments**

Capital Cities/ABC, Inc.

American Academy of Pediatrics

Apple Computer, Inc.

Association of America's Public TV Stations and PBS

Association of Local Television Stations, Inc.

CBS Inc.

Congressman Michael Castle

Center for Educational Priorities

Caucus for Producers, Writers & Directors

Children's Broadcasting Corp.

Copley Entertainment, Inc.

Center for Media Education

Channel 6, Inc.

Children Now

Children's Defense Fund and Black Community Crusade for Children

The Children's Television Resource and Education Center

Children's Television Workshop

Children's TV for the '90s

President Clinton

Corporation for Public Broadcasting

Cosmos Broadcasting, Cox Broadcasting, First Media TV, Paxson Communications Corp., and River City Broadcasting

Curators of the University of Missouri

Ronald E. Davis

Donrey Media Group

Fox Broadcasting Company, Fox Children's Network, and Fox Affiliates Association

Golden Orange Broadcasting Co., Inc.

August E. Grant

Great Trails Broadcasting Corp.

Prof. James T. Hamilton

Aletha C. Huston and John C. Wright

Larry Irving

KIDSNET, Inc.

Dale Kunkel

Senator Joseph Lieberman

Congresswomen Nita Lowey and Constance Morella

Maine Broadcasting Television Co.

Congressman Edward Markey

The Media Institute

Meredith Corporation

National Association of Broadcasters

National Broadcasting Company, Inc.

National Coalition on TV Violence

NATPE International

National Broadcast Association for Community Affairs

Newton N. Minow and Craig L. LaMay

Office of Communication United Church of Christ

OKTV (Our Kid's TV) Foundation

Senators Jeff Bingaman, Paul Simon, Paul Sarbanes, John Breaux, Patty Murray, Wendell Ford, Daniel Akaka, Bob Graham, Richard Bryan, Herb Kohl, Howell Heflin, Dale Bumpers, Ernest Hollings, Olympia Snowe, John Kerry, Robert Byrd, Harry Reid, Jay Rockefeller, Barbara Boxer, Tom Harkin, Daniel Inouye, John Glenn, Claiborne Pell, David Pryor, Bennett Johnston, and Paul Wellstone

Arthur D. Sheekey

Tribune Broadcasting Company

The Walt Disney Company

Warner Bros. Television Network, Warner Bros. and Time Warner, Inc.

Westinghouse Broadcasting Company

U.S. Catholic Conference

### **Reply Comments**

Capital Cities/ABC, Inc.

American Psychological Association

Association of America's Public Television Stations and PBS

Association of Local Television Stations, Inc.

Center for Educational Priorities

Center for Media Education

Children's Television for the '90s

Children's Television Workshop

Henry Geller

Dale Kunkel

Edward Markey

Monroe E. Price & Michael I. Meyerson

National Association of Broadcasters

National Broadcasting Company, Inc.

Named State Broadcaster Associations

National Association of Black Owned Broadcasters

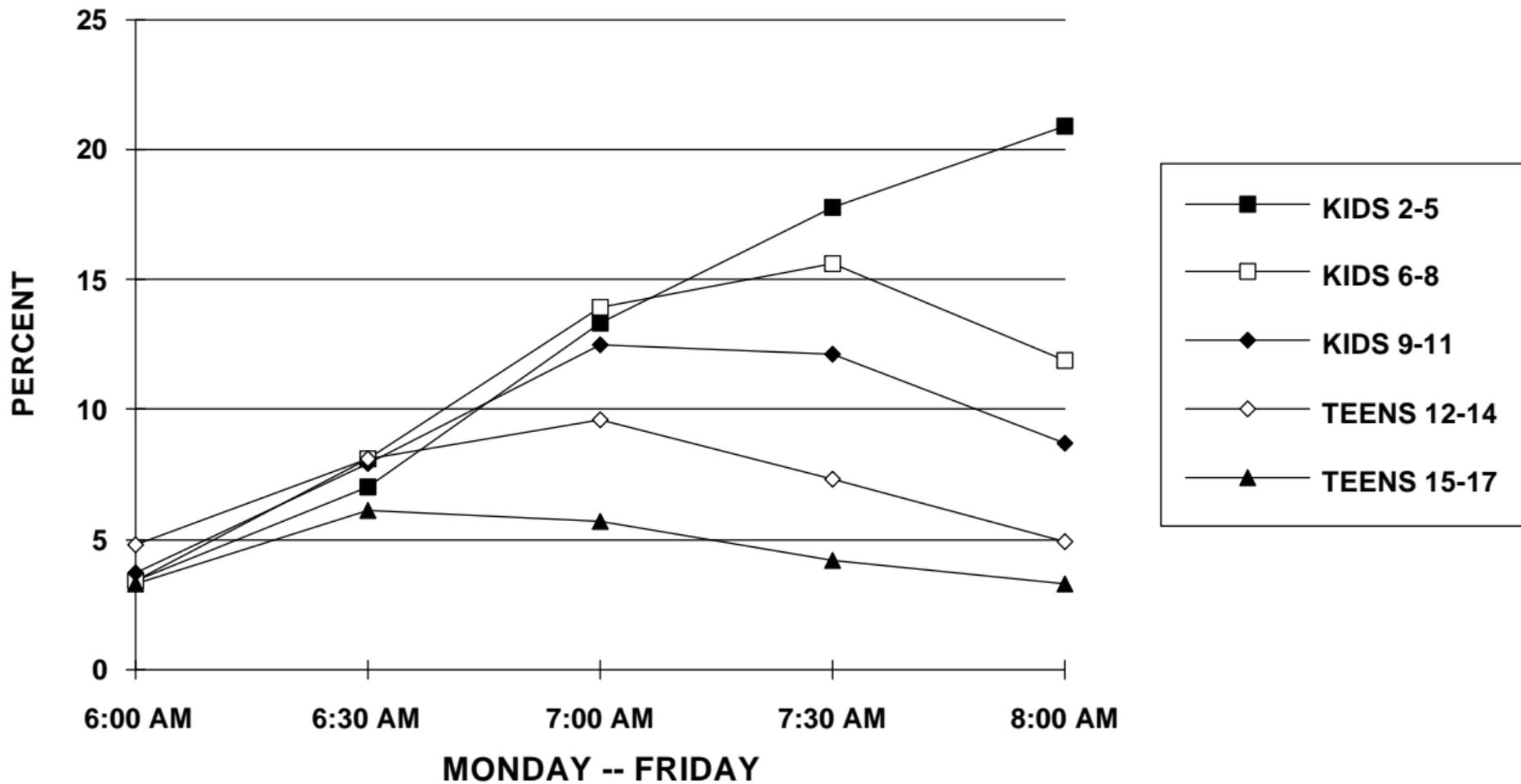
Office of Communication United Church of Christ

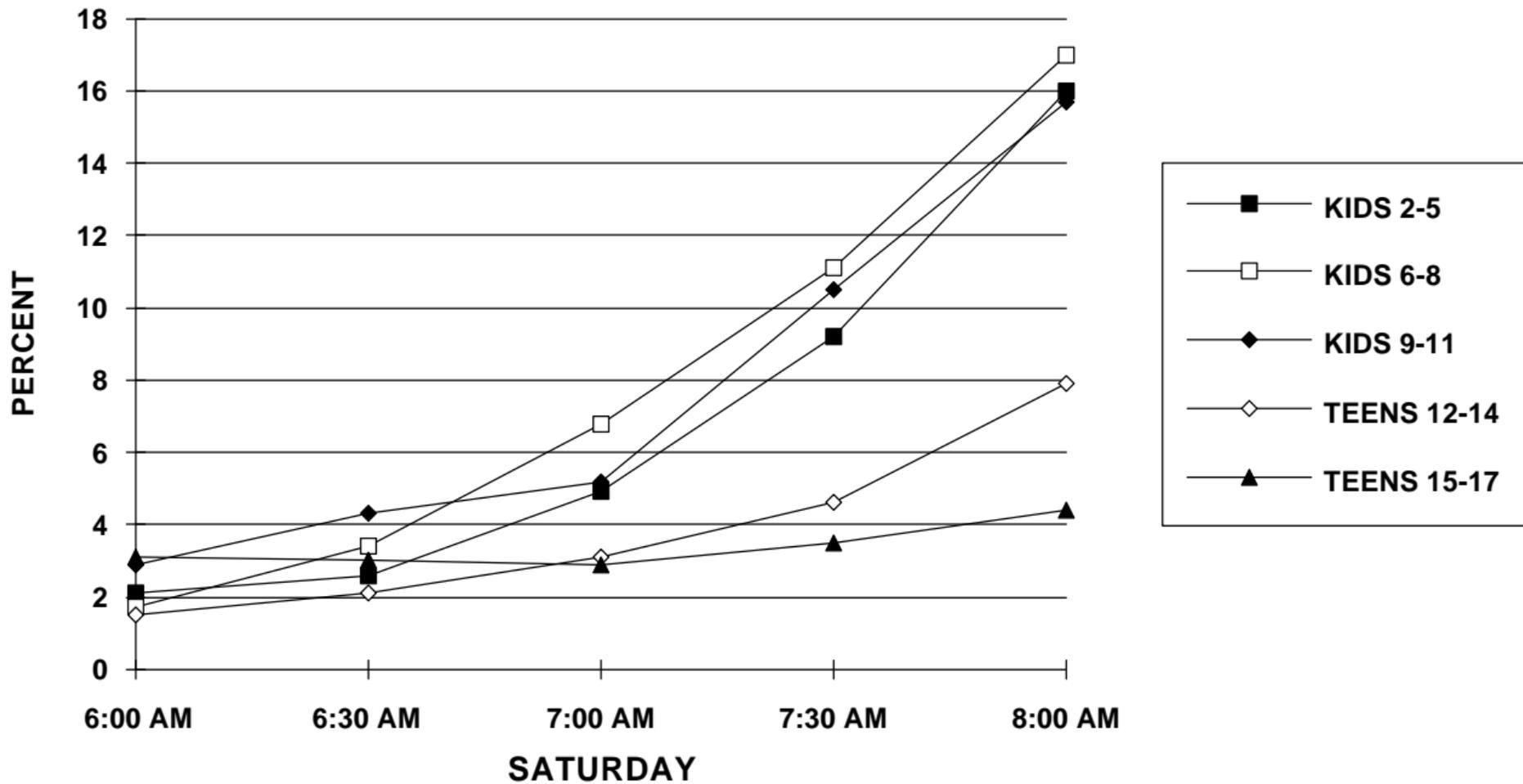
Dorothy G. and Jerome L. Singer

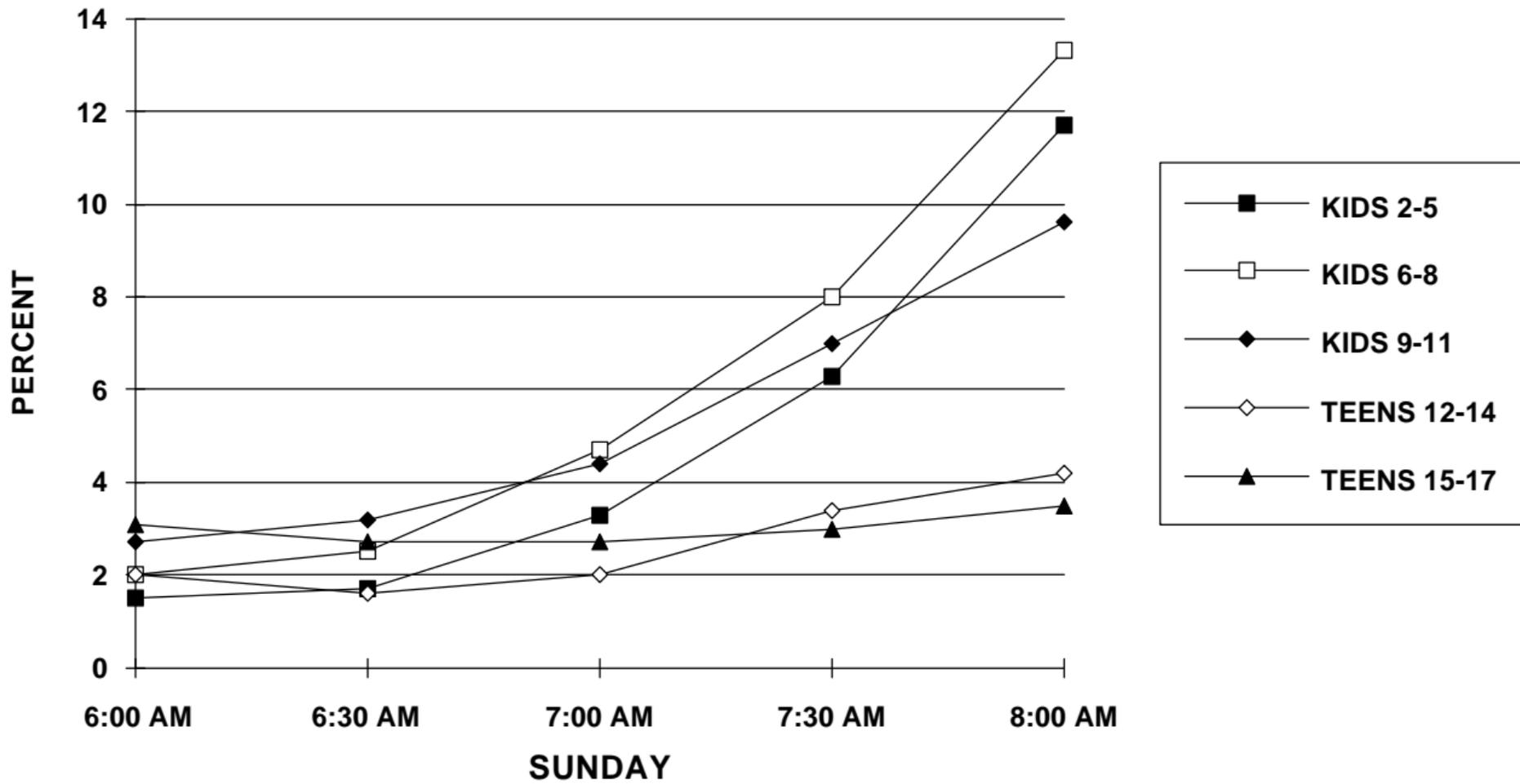
Ellen A. Wartella

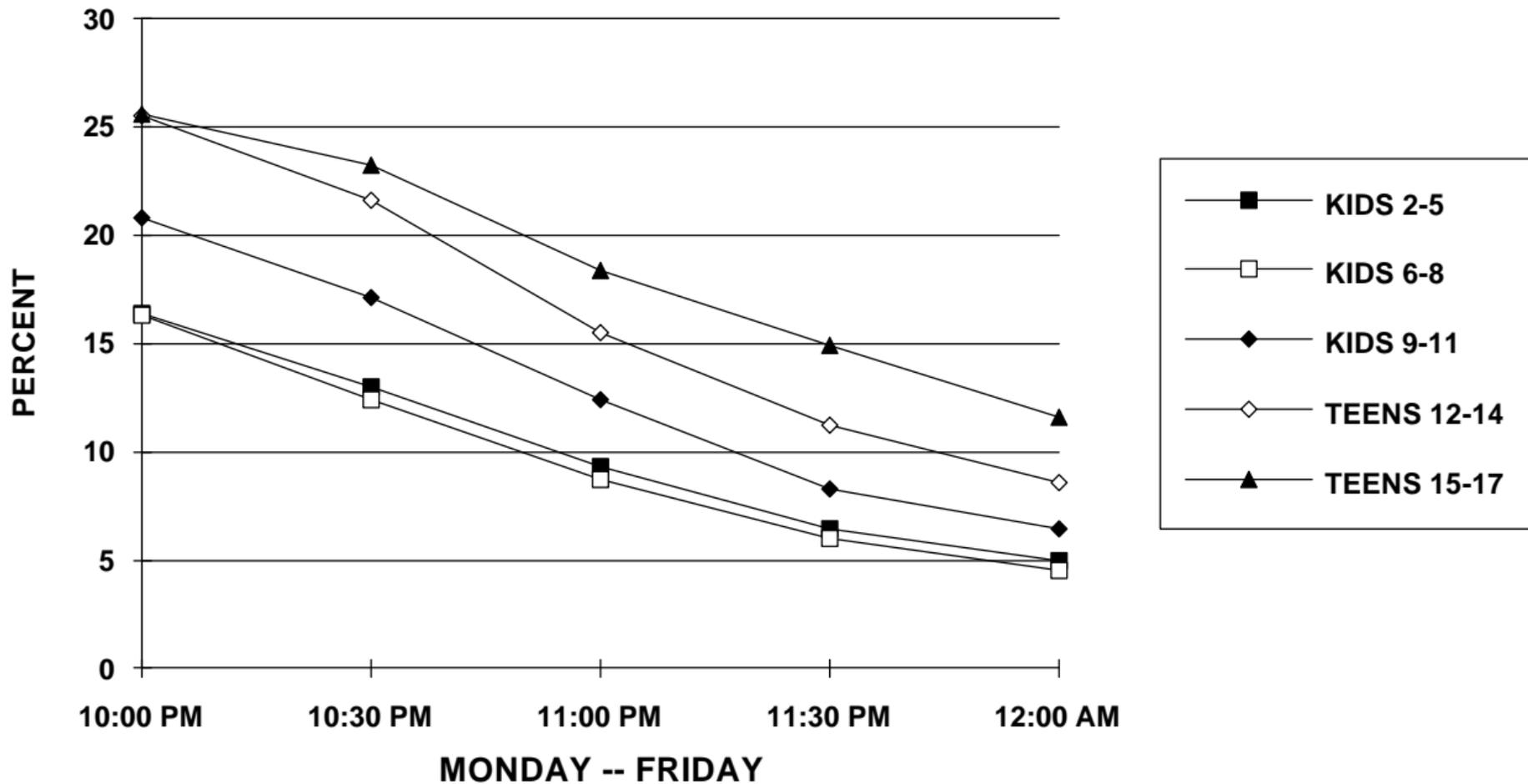
# **Appendix D**

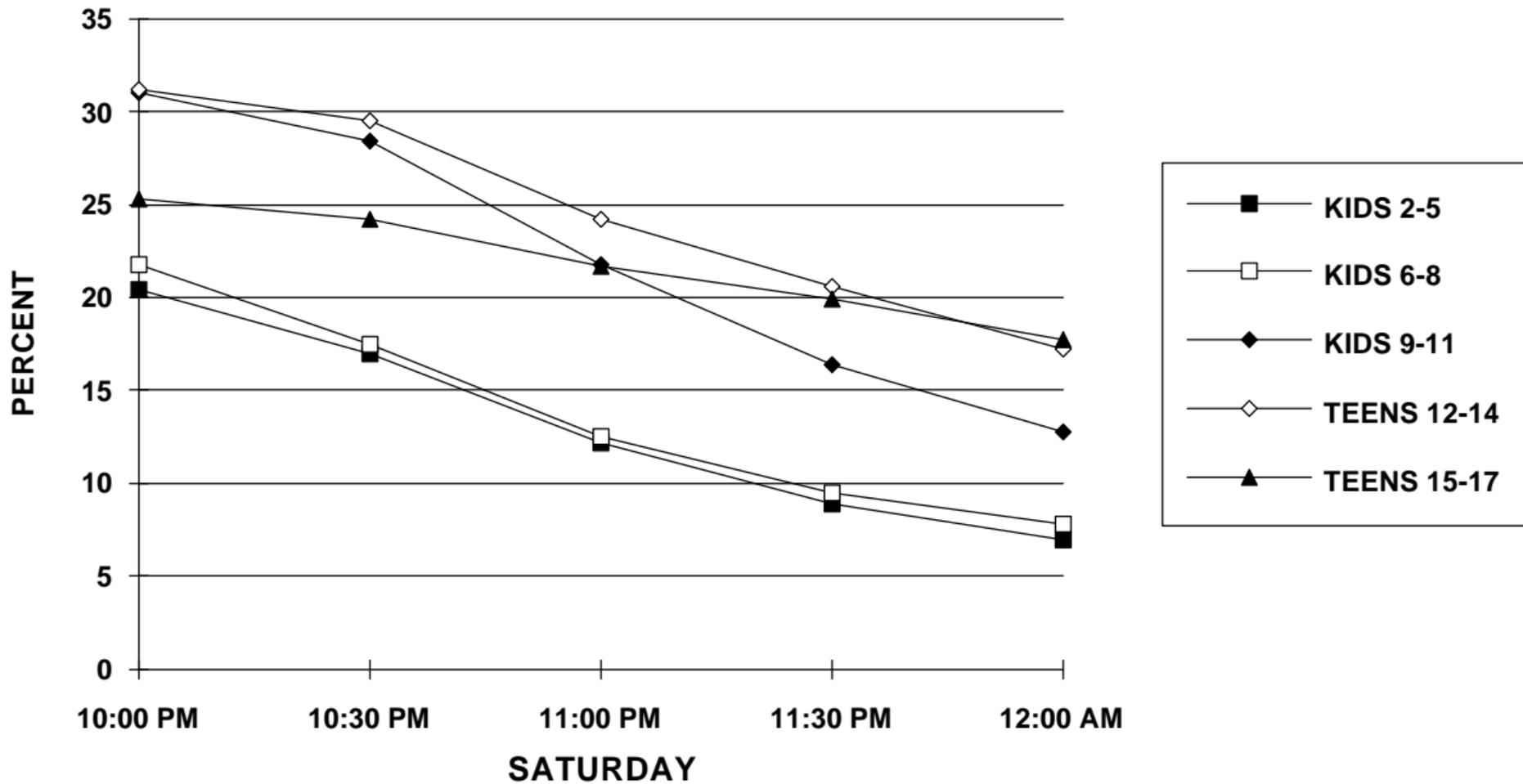
## **TV Usage By Children and Teens**

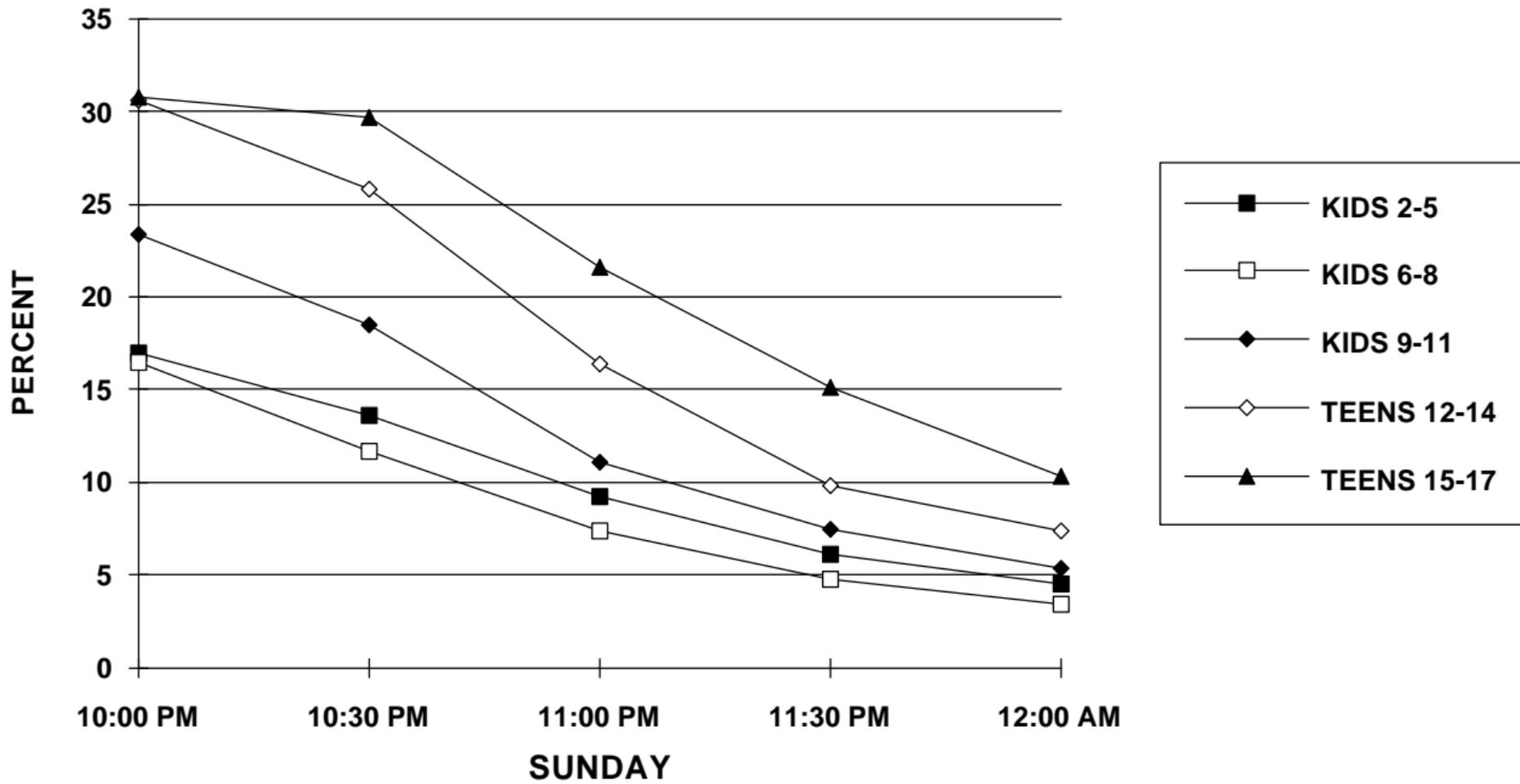




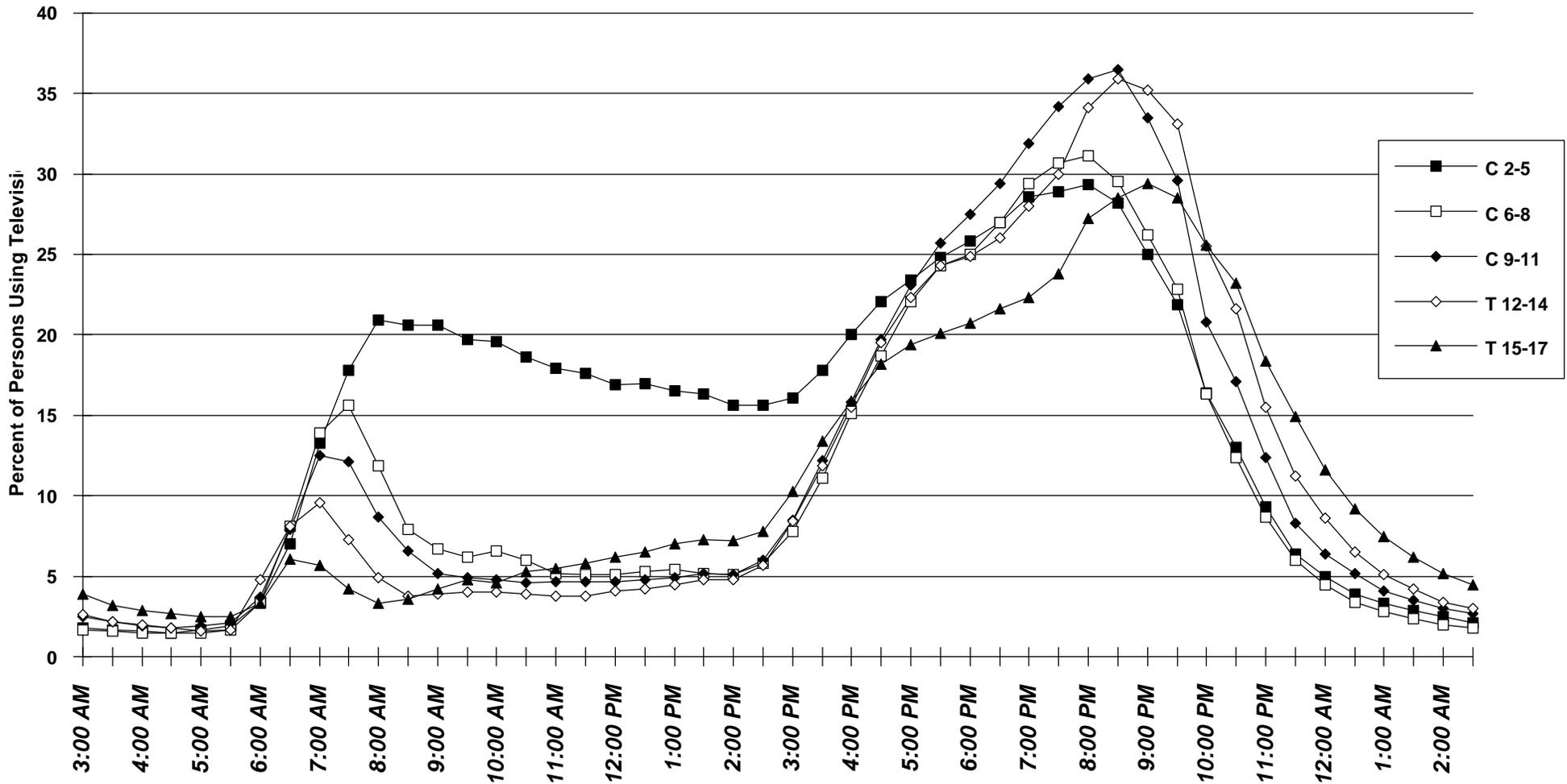




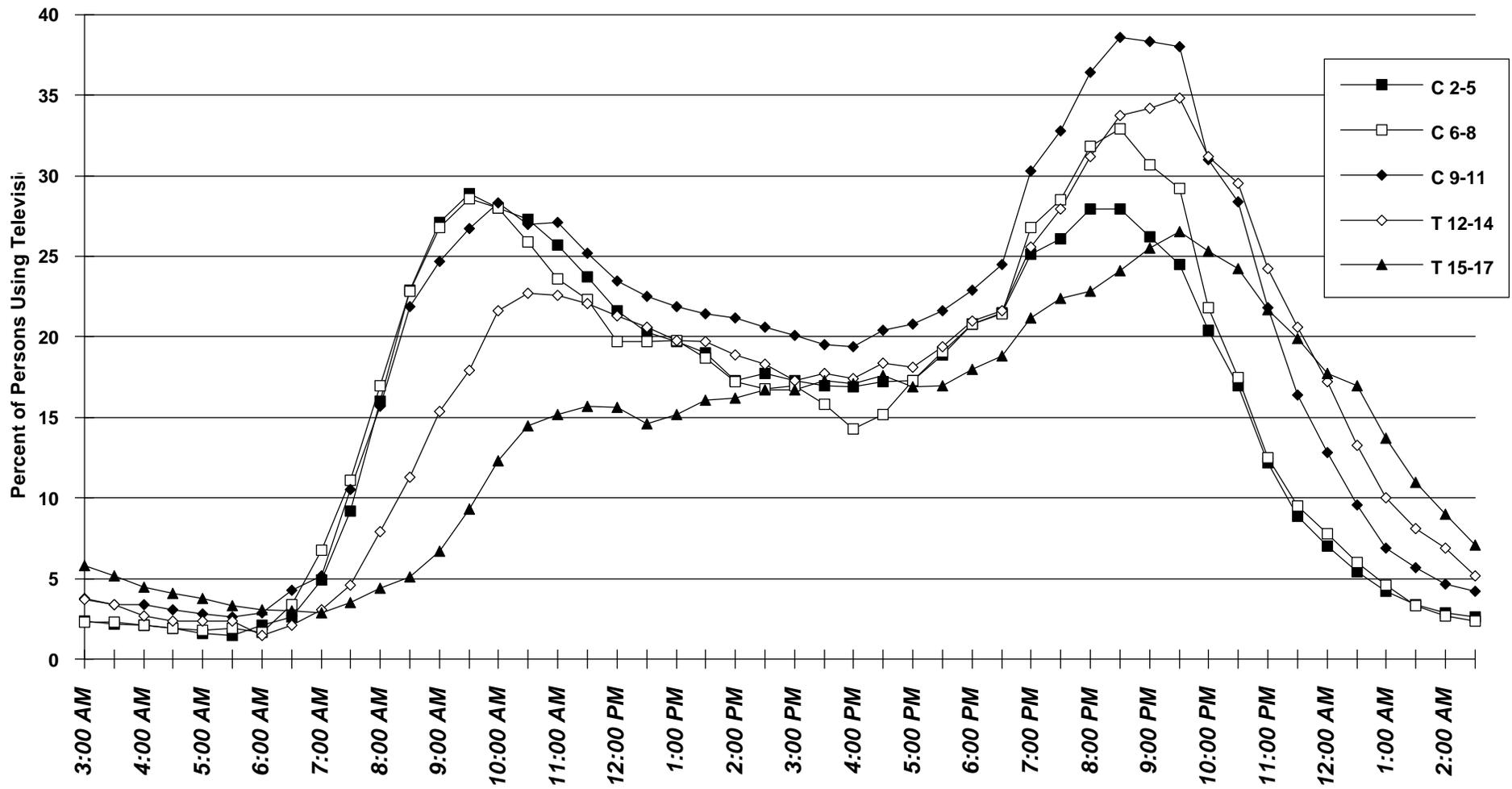




# TV Usage: Children and Teens, Monday - Friday



# TV Usage: Children and Teens, Saturday



# TV Usage: Children and Teens, Sunday

