

ALERT

FCC Adopts Modifications to Children's Programming Rules

July 30, 2019

At its July 2019 Open Meeting, the Federal Communications Commission (FCC or Commission) adopted an Order implementing a series of amendments to the FCC's children's television programming (KidVid) rules. The revised rules will become effective 30 days after publication in the Federal Register. However, those requirements involving Paperwork Reduction Act issues – specifically changes to the Children's Television Programming Report – will become effective at a later date, once they are approved by the Office of Management and Budget and published in the Federal Register. We will provide further information once the effective dates are established.

The Order amends the KidVid rules in ten key areas:

1. Core Programming Hours – Currently, television broadcasters must air Core Programming between the hours of 7:00 a.m. and 10:00 p.m. Under the new rules, stations can begin airing such programming at 6:00 a.m., a change the FCC claims "reflect[s] changing viewing habits among children and creat[es] additional flexibility for broadcasters." The end of the time frame will remain at 10:00 p.m.
2. Multicast Streams – The new rules eliminate the requirement that a station air an additional three hours of programming for each 24/7 multicast stream. Additionally, the new rules allow stations to shift a limited amount (up to 13 hours per quarter) of regularly scheduled weekly programming from their primary streams to their multicast streams. Thus, a station would be required to air at least two-thirds of its total annual Core Programming hours (i.e., 104 hours) on its

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primary stream and no more than one-third of its total Core Programming (i.e., 52 hours) on a multicast stream. All Core Programming that is not regularly scheduled weekly programming aired under Category A or B of the processing guidelines (explained below) must be aired on a station's primary stream.

3. Regularly Scheduled Weekly Programming – The new rules provide some flexibility in the requirement that Core Programming be “regularly scheduled.” A majority of a station's Core Programming must still be regularly scheduled weekly programming, but stations may count up to 52 hours annually of programming that is at least 30 minutes in length but not regularly scheduled, such as educational specials and regularly scheduled non-weekly programming, toward their programming requirement.
4. Core Programming and Short-Form Programming – To qualify as Core Programming, programs must still be 30 minutes in length. However, the Commission will show greater flexibility in counting some short-form programming such as public service announcements (PSAs), interstitials, and brief programming that is used as a bridge between two longer programs, when evaluating whether a station has complied with its obligation to provide education and informational programming. This programming would be factored into the station's overall compliance when its renewal is processed under Category B (described below). Stations are encouraged, but not required to promote any short-form programs aired by the station.
5. Preemptions – The Commission anticipates that the flexibility that it has built into the new rules will reduce the need for preemptions. Under the current rules, if a station needed to preempt a program, it was required to make it good in a “second home” – basically a set day and time for the make-good. Many stations struggled with this policy as the “second home” time slot could also be preempted during active sport seasons. The new rules modify the FCC's preemption policies to allow a station that preempts an episode of a regularly scheduled weekly program to air the rescheduled episode on its primary stream at any point during Core Programming hours within a seven-day span before or after the episode's originally scheduled air date. Stations rescheduling preempted program will need to make an on-air notification of the schedule change.

The Order also expands the existing “breaking news exemption,” which permits preemption of Core Programming without the need for rescheduling, to include all non-regularly scheduled live programming that is locally produced by the station, such as non-breaking live news like coverage of an elected official's swearing-in, public affairs specials on issues of interest to the community, and live coverage of a local sports team's playoff or championship game. Additionally, networks seeking preemption for events like the Olympics or World Cup will no longer be required to file an annual request for such flexibility with the Media Bureau.

6. Processing Guidelines – The Order includes a series of modifications to the safe harbor guidelines for determining compliance with the KidVid rules consistent with the above changes.
 - *Under Category A* – Media Bureau staff will now be authorized to approve the children's programming portion of a broadcaster's license renewal application if the station either complies with the existing guideline and airs three hours per week of Core Programming (as averaged over a six-month period) or complies with the Draft Order's new guideline of airing 156 hours of Core

Programming annually. The annual 156 hours of Core Programming would include at least 26 hours, each quarter, of regularly scheduled weekly programming. Under both options, a Core Program must be at least 30 minutes in length. The remaining hours of Core Programming under Category A, up to 52 annually, may consist of Core Programs at least 30 minutes in length that are not aired on a regularly scheduled weekly basis.

- *Under Category B* – Media Bureau staff would now be able to approve the children's programming portion of a broadcaster's license renewal application provided that the station airs 156 hours of Core Programming annually. Like Category A, this would include a minimum of 26 hours of regularly scheduled weekly programming at least 30 minutes in length each quarter. The remaining Core Programming hours under Category B – also up to 52 hours annually – would be allowed to consist of Core Programs that are not aired on a regularly scheduled basis. This would include educational specials, other non-regularly scheduled programming, and regularly scheduled non-weekly programming, as well as short-form programming like PSAs and interstitials. Notably, PSAs and interstitials would be permitted only under Category B.
7. On-Air Notification Requirement – The new rules eliminate the requirement that **noncommercial** stations identify their Core Programming by displaying the "E/I" symbol throughout the program. The requirement will not change for commercial broadcast stations.
 8. Program Guides – Under the new rules, broadcasters will no longer be required to provide program guide publishers with an indication of the age group their programming is intended to serve. Broadcasters will, however, still be required to identify the programming as specifically designed to educate and inform children.
 9. Reporting Requirements – The Order revises the reporting requirements under the KidVid rules in five ways.
 - First, Children's Television Programming Reports (KidVid Reports) will only need to be filed annually instead of quarterly, within 30 days after the end of the calendar year.
 - Second, KidVid Reports will no longer need to include information describing the educational and informational purpose of each Core Program aired during the current reporting period and each Core Program that the licensee expects to air during the next reporting period.
 - Third, stations will no longer be required to identify the program publishers who received information regarding the licensee's Core Programs.
 - Fourth, KidVid Reports will be streamlined by eliminating certain fields. At a minimum, broadcasters will still be required to at least identify their Core Programs and when they were aired.
 - Fifth, stations will no longer need to run on-air announcements letting viewers know where they can find a copy of the report.
 10. Recordkeeping Requirements for Commercial Limits – Under the new rules, broadcasters, as well as cable and Direct Broadcast Satellite (DBS) operators, will be able to file their certifications of compliance with commercial limits in children's programming annually instead of quarterly. Further, the

deadline to post these certifications will be extended, giving broadcasters and cable and DBS operators until 30 days after the end of the calendar year to file.

In addition to the Order, the FCC also released a draft Further Notice of Proposed Rulemaking (FNPRM) seeking further comment on how the FCC could create a framework under which broadcasters would be able to satisfy their KidVid obligations by relying, in part, on special efforts to produce or support Core Programming aired on other in-market stations.

If you have any questions about the Draft Order, please contact the Wiley Rein attorney who regularly handles your FCC matters or the attorneys listed on this client alert.