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COMMUNICATIONS / BROADCAST

Special Advisory to Television Broadcasters
September 2003

2003 Third Quarter Children's Television Programming Documentation Advisory

Statutory and Regulatory Requirements

As a result of the Children's Television Act of 1990 and the FCC's rules adopted under the Act, full power and Class A television stations are required, among other things, to: (1) limit the amount of commercial matter aired during programs originally produced and broadcast for an audience of children 12 years of age and younger; and (2) air programming responsive to the educational and informational needs of children 16 years of age and younger. Each of these requirements translates into the obligation to prepare supporting documents quarterly.

Specifically, stations must: (1) place one of four prescribed types of documentation demonstrating their compliance with the commercial limits in children's television in their public inspection files; and (2) complete FCC Form 398, which requests information regarding the educational and informational programming aired for children 16 years of age and under. The Form 398 must be filed electronically with the FCC and placed in the public inspection file.

Noncommercial Stations

Since noncommercial stations are precluded from airing commercials, the commercial limitation rules do not apply to noncommercial stations. Accordingly, noncommercial television stations have no obligations to place commercial limits documentation in their public inspection files. Similarly, while noncommercial stations are required to air programming responsive to the educational and informational needs of children 16 years of age and under, they are exempt from the obligation to complete FCC Form 398. However, they must maintain records of their own in the event their performance is challenged at license renewal time. In the face of such a challenge, a noncommercial station will have to have documentation readily available which demonstrates its efforts to meet the needs of children.

Commercial Stations

Commercial Limitations

For commercial stations, proof of compliance with the commercial limitations must be placed in the public inspection file by the tenth day of the calendar quarter following the quarter during which the commercials were aired. This requirement is identical to the station's Quarterly Issues/Programs List, although the commercialization documentation should be kept separately. **Accordingly, this proof of compliance should be placed in your public inspection file by October 10, 2003 (covering programming during the months of July, August and September 2003).**

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

(1) Stations *may*, but are not obligated to, keep program logs in order to comply with the commercial limits rules. If the logs are kept to satisfy the documentation requirement, they must be placed in the station's public inspection file.

(2) Tapes of children's programs will also satisfy the rules, provided they are placed in the station's public inspection file and are available for viewing by those who visit the station to examine the public inspection file.

(3) A station may create lists of the number of commercial minutes per hour aired during identified children's programs. The lists should be reviewed on a routine basis by responsible station officials to be sure they reflect compliance with the limitations.

(4) The station and/or network/syndicator may certify that as a standard practice, it formats and

airs identified children's programs so as to comply with the statutory limit on commercials, and provide a detailed listing of any overages. Again, the certification should be reviewed on a routine basis by responsible station officials. For example, a program producer might submit an affidavit stating that its practice is to format a given program with only four minutes of availabilities, so that it would be impossible, unless adjacencies were added by the station, to exceed the commercial limits. The station would also have to keep similar records showing that no additional commercials, or at least no commercials in excess of the statutory limits, were added by the station, and certify to that compliance. Any instances where the limits were in fact exceeded would have to be detailed.

Regardless of which method a station uses to show its compliance with the commercial limits, it must identify the specific programs that it believes are subject to the rules, and must list any overages. It should be remembered that the commercial limits apply only to programs originally produced and broadcast primarily for an audience of children 12 and under.

Programming Requirements

Full power and Class A television stations must also file the current version of FCC Form 398 (which describes the station's educational and informational programming for children 16 years of age and under) with the FCC and place it in the station's public inspection file by the tenth day of the calendar quarter following the quarter to which it pertains.

To assist stations in identifying which programs qualify as "educational and informational" for children 16 years of age and younger and determining how much of that programming they must air to comply with the Act, the Commission adopted a definition of "core" educational and informational programming and license renewal processing guidelines that became effective on September 1, 1997. *The FCC now defines "core programming" as television programming that has as a significant purpose meeting the educational and informational needs of children 16 years old or younger, whose educational purpose is specified in writing, which is at least 30 minutes in length, aired weekly on a regular basis between 7:00 a.m. and 10:00 p.m., and is identified at the time of airing and to program guide publishers as being "core programming" designed for a specific age range of children.*

Under the current license renewal processing guidelines, stations must air an average of at least three hours of "core programming" each week during the quarter in order to receive staff-level approval of the children's programming portion of the station's license renewal application. Stations that air "somewhat less" than an average of three hours per week of "core programming," *i.e.,* two and one-half hours, may still receive staff-level approval of their renewals if they demonstrate that they aired a package of programming that demonstrates a commitment at least equivalent to airing three hours of "core programming" per week. Stations failing to meet one of these guidelines will have their license renewal applications reviewed by the full Commission for compliance with the Act.

FCC Form 398 is designed to provide the public and the Commission with the information necessary to determine compliance with the license renewal processing guidelines. In Question 5, the report captures information regarding the preemption of children's programming, and requires stations to create an addendum to the form called a "Preemption Report" which provides information on the following: (1) the date of each preemption; (2) if the program was rescheduled, the date and time the program was aired; (3) the reason for the preemption; and (4) whether promotional efforts were made to notify the public of the time and date that the rescheduled program would air.

Filing of FCC Form 398 with the FCC

Form 398 must be filed electronically on a quarterly basis at the same time that it is placed in the public inspection file. **As a result, full power and Class A television stations must file a Form 398 electronically with the Commission by the October 10, 2003 deadline.** We previously provided more specific guidance with respect to the electronic filing requirement in **Special Bulletin to Television Station Clients**, SB No. 98-15 (November 25, 1998), and on the *Report and Order and Further Notice of Proposed Rulemaking* in **Memorandum to Broadcast Clients**, BC No. 00-06 (October 12, 2000).

Preparation of the Children's Programming Documentation

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

(1) FCC Form 398 and documentation concerning commercialization will be very important "evidence" of the station's compliance with the Act when the station's license renewal application is filed, and their preparation should be approached very carefully.

(2) Accurate and complete records of what programs were used to discuss or treat specific children's needs and issues and what programs aired were specifically designed for each particular age group should be preserved so that the job of completing the FCC Form 398 and creating documentation concerning commercialization is made easier.

(3) A station should prepare all documentation in time for it to be placed in the public inspection file by the due date. If the deadline is not met, the station should give the true date when the information was placed in the file and explain its lateness. A station should avoid creating the appearance that it was timely filed when it was not.

These are only a few ideas as to how stations can make complying with the station's children's television obligations easier. Please do not hesitate to contact the Communications Practice Group for specific advice on compliance with these rules.

Class A Television Stations Only

While not directly related to children's programming, Class A stations should note that they must certify that they continue to meet the FCC's eligibility and service requirements for Class A television status under Section 73.6001 of the Commission's rules. While the public inspection file rule, Section 73.3526(e)(17), does not specifically state when this certification should be prepared and placed in the public inspection file, we believe that since Section 73.6001 requires compliance on a quarterly basis, the prudent course for Class A television stations is to place that certification in the public inspection file on a quarterly basis as well.

Accordingly, we recommend that the certification be prepared and placed in the public inspection file at the same time that the proof of compliance with the commercial limitations and Form 398 are prepared and placed in the public inspection file. For assistance in preparing and completing the documentation required by Section 73.6001, please contact any of the lawyers in the Communications Practice Group.

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