

New Children's Television Obligations

The FCC recently released its *Report and Order* addressing the obligations of television stations with respect to children's programming on their digital channels. In addition, the Commission adopted a number of new children's programming obligations and made them applicable to both analog and digital television stations.

Application of Children's Television Obligations to Digital Television Stations

First, with regard to digital children's programming obligations, the Commission applied all of its current analog children's programming rules, including the obligation to air an average of three hours of core educational programming on the main stream, the prohibition against host-selling, and the commercial limit rules, to digital television stations. **Digital stations must begin to comply with these obligations on February 1, 2005, with the exception of the three hours of core programming rule, which will become effective on January 1, 2006.**

In addition, if a digital station airs multiple streams of free video programming, it must increase its core educational programming in proportion to the increase in channels. For every additional full-time (24 hours a day, 7 days a week) stream of video, the station must air an additional three hours of core educational programming each week. Where a station does not operate its additional stream(s) full-time, it must prorate the three-hour requirement as follows: for each increment of 1 to 28 hours per week of programming that the station airs on an additional stream, it must air an additional half-hour of core educational children's programming for children 16 years of age and younger. Digital stations airing multiple streams must begin to comply with these obligations on January 1, 2006.

The Commission has provided digital stations with some flexibility in airing this additional core educational programming. If the station has multiple free video programming streams, it may air the additional hours all together on one of its free

video streams or spread the hours across the multiple video streams, so long as the channels on which it airs the programming have the same cable carriage as the main video stream. Of course, these new requirements do not affect or reduce the requirement that stations continue to air an average of three hours of core educational programming on their analog stations each week.

Beginning on January 1, 2006, stations operating multiple streams of video will have to ensure that no more than 50% of their core educational programming is repeated between the multiple video channels within a one-week time period. If more than 50% of the programs are repeats, they will not qualify as core programs.

Finally, the Commission is currently rewriting the FCC Form 398 to allow digital stations to report their children's programming efforts. When this form is available, the FCC will issue a *Public Notice* setting out the deadline by which stations must start reporting their digital children's programming.

Additional Obligations Applicable to Both Digital and Analog Stations

In addition to the above obligations for digital broadcasters, the Commission adopted a number of new requirements and refinements of existing requirements that are applicable to both digital and analog television operations. These are as follows:

1. **Beginning February 1, 2005**, two new restrictions on the airing of Internet addresses in all programming aimed at children 12 years of age and younger take effect. First, Internet website addresses cannot be displayed during a program or during the commercials in the program if the website uses characters from children's programs to sell products or services. This is essentially an extension of the Commission's host-selling and commercial separation requirements. Second, Internet website addresses may only be displayed during such program content if they meet the following qualifications: (a) the website offers a

substantial amount of *bona fide* program-related or other noncommercial content; (b) the website is not primarily intended for commercial purposes, including either e-commerce or advertising; (c) the website's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and (d) the page of the website to which viewers are directed by the website address is not used for e-commerce, advertising, or other commercial purposes. **The adoption of these requirements means that stations will have to pre-screen children's programs and the commercials appearing in them for the appearance of website addresses to ensure compliance.**

2. Beginning on a date to be announced by the FCC, on or after February 1, 2005, all programs claimed to be "core" educational programs for children 16 years of age and younger must be identified on-air using a uniform symbol: E/I. ***In addition, that symbol must appear on-screen continuously for the entire program.*** Currently, broadcasters are free to choose their own identifiers and need only display them at the beginning of the program. The exact date upon which this new requirement will become effective depends upon how soon it is approved by the Office of Management and Budget. After that date, core programs that are not identified on air with the E/I symbol throughout the airing of the program will not be counted towards the station's obligation to air three hours of core programming on average per week. **Accordingly, children's "core" educational programs must display this new identifier during the entire time they are on the air.**

3. Beginning on January 1, 2006, a 10% limit on the number of times that a "core" educational program can be preempted takes effect. Currently, to qualify as core educational programming, a program must be "regularly scheduled" and air at least once a week. Normally, the program must air at the same time every week unless it is preempted for breaking news or coverage of a live sporting event. Beginning on January 1, 2006, if a "core" educational program is preempted more than 10% of the times it was to air during a quarter, the program cannot be counted as a "core" educational program for that quarter, even if it is rescheduled. A preemption caused by breaking news is exempt from this rule. The implementation of this requirement places pressure on stations to avoid any preemptions of children's programs because the 10% limit means that stations are only entitled to preempt a program approximately one time each quarter. If a station has a preemption and the network it is broadcasting has an additional preemption, the station could lose credit for that program for that quarter and be under its three-hour requirement. Many broadcasters are airing an additional half-hour of children's programming each week to avoid these issues.

Digital television stations will be afforded greater flexibility in rescheduling programs to alternative programming streams. Specifically, if a program is moved to another stream of free video programming that has the same cable carriage as the stream from which it originated, it will not be considered a preemption. However, the program must air at its normal time, and the station must provide on-screen information on the original and alternative channel, telling viewers where they can see the program.

4. Also beginning on January 1, 2006, **the definition of "commercial matter" in programs for children 12 and younger will expand to include program promotions for non-core programs.** Currently, the commercial limit rules restrict stations to airing only 10.5 minutes of commercial matter per hour on the weekends and 12 minutes of commercial matter per hour on weekdays during programs for children 12 and younger. Promotions for other programs do not currently count toward those commercial limits. As of January 1, 2006, however, "commercial matter" will include promotions for other television shows, except for promotions for "core" children's educational programs. Assuming additional program material cannot be added, this change will require stations to utilize more PSAs, short-segment programs, and promotions for their educational children's programs to fill airtime during their children's programs.

For more information on the new rules, please contact any of the lawyers in the Group.

Shaw Pittman LLP

Editors:	Scott R. Flick, Esq. Lauren Lynch Flick, Esq.
Assistant Editors:	Kimberly A. Lacey, Esq.
Managing Editor:	Ricky A. Pursley

Special Bulletin to Television Broadcasters is published by the Communications Practice Group of the law firm of Shaw Pittman LLP, 2300 N Street, NW, Washington, DC 20037-1128, telephone 202-663-8000, facsimile 202-663-8007, website www.shawpittman.com. The **Special Bulletin** is a service to the Group's clients and friends, and is intended to provide general information only. The contents should not be construed as legal or business advice. Legal and business advice should always be obtained for specific facts and circumstances as the need arises. For more information on any of the subjects discussed in the **Special Bulletin**, please contact the Editors or any of the other lawyers in the Group. Copyright © 2004, Shaw Pittman LLP. All rights reserved. rap12202004 1450389

ShawPittman LLP 1954-2004

Celebrating 50 years of practicing law.