

# 2019 Fourth Quarter Children's Television Programming Documentation

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The fourth quarter of 2019 represents the last time that full power and Class A television stations will submit documentation of compliance with the Children's Television Act of 1990 on a quarterly basis. Following rule changes made in 2019, going forward, such documentation will be submitted annually. To facilitate the transition to the new filing regime, the FCC has adopted interim filing requirements for the fourth quarter as follows: Stations must place documentation of their compliance with their obligations regarding commercial limitations in children's programming for the Fourth Quarter of 2019 in their Public Inspection Files by **January 10, 2020**, and must file their first Annual Children's Television Programming Report by **March 30, 2020**.

### Overview

The Children's Television Act of 1990 requires full power and Class A television stations 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 under, and (2) air programming responsive to the educational and informational needs of children 16 years of age and under. In addition, stations must comply with paperwork requirements related to these obligations. On July 12, 2019, the FCC adopted a number of changes to its children's television programming rules. Substantively, the new rules provide broadcasters with additional flexibility in scheduling educational children's television programming, and modify some aspects of the definition of "core" educational children's television programming. These portions of the revisions went into effect on September 16, 2019.

Procedurally, the new rules eliminate quarterly filing of the commercial limits certifications and the Children's Television Programming Report in favor of annual filings, and change other information collection and reporting provisions. These portions of the revisions will go into effect on January 21, 2020.

Because the new paperwork rules will not be in effect until January 21, 2020, stations must upload documentation of compliance with the commercial limits in children's programming to their Public Inspection Files by January 10, 2020, as was previously the case. Pursuant to the new annual filing requirement, documentation covering the 2020 calendar year will be due by January 30, 2021.

The FCC has waived the January 10, 2020 quarterly deadline with respect to the filing of the Children's Television Programming Report. The rule changes that the FCC adopted require changes to the existing Children's Television Programming Report form on FCC Form 2100, Schedule H (commonly known as "FCC Form 398"), which have only just been approved by the Office of Management and Budget. Therefore, to allow time for the newly approved Children's Television Programming Report to be integrated into the FCC's electronic filing system (expected to occur around January 30, 2020), and for broadcasters to become familiar with it, the FCC has extended the due date for broadcasters' first Annual Children's Television Programming Report to March 30, 2020.

## Commercial Television Stations

### Commercial Limitations

The FCC's rules require that stations limit the amount of "commercial matter" appearing in children's programs to 12 minutes per clock hour on weekdays and 10.5 minutes per clock hour on the weekend. In addition to commercial spots, website addresses displayed during children's programming and promotional material must comply with a four-part test or they will be considered "commercial matter" and counted against the commercial time limits. In addition, the content of some websites whose addresses are displayed during programming or promotional material are subject to host-selling limitations. Program promos also qualify as "commercial matter" unless they promote (i) children's educational/informational programming, or (ii) other age-appropriate programming appearing on the same channel. Licensees must prepare supporting documents to demonstrate compliance with these limits on a quarterly basis through the Fourth Quarter of 2019, and annually thereafter.

Consequently, this proof of compliance should be placed in your Public Inspection File by **January 10, 2020**, covering programming aired during the months of October, November, and December 2019.

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

- 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. The logs should be reviewed by responsible station officials to be sure they reflect compliance with both the numerical and content requirements contained in the rules.
- 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 examining the Public Inspection File. The FCC has not addressed how this approach can be utilized since the advent of the online Public Inspection File.
- 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 personnel to be sure they reflect compliance with both the numerical and content requirements contained in the rule.
- The station and its network/syndicators may certify that as a standard practice, they format and air the identified children's programs so as to comply with the statutory limit on commercial matter, and provide a detailed listing of any instances of noncompliance. Again, the certification should be reviewed on a routine basis by responsible station officials to ensure that it is accurate and that the station did not preempt programming or take other action that might affect the accuracy of the network/syndicator certification.

Regardless of the method a station uses to show compliance with the commercial limits, it must identify the specific programs that it believes are subject to the rules, and must list any instances of noncompliance. As noted above, commercial limits apply only to programs originally produced and broadcast primarily for an audience of children ages 12 and under.

### Programming Requirements

To assist stations in identifying which programs qualify as "educational and informational" for children 16 years of age and under, and determining how much of that programming they must air to comply with the Children's Television Act of 1990, the FCC has adopted a definition of "core" educational and informational programming, as well as license renewal processing guidelines regarding the amount of core educational programming aired.

Under the new rules, the FCC defines "core programming" as television programming that has as a significant purpose serving the educational and informational needs of children 16 years old or under, which is at least 30 minutes in length (with the exception of certain short-form programming that qualifies as core programming, such as PSAs and interstitials),

and which is aired weekly on a regular basis between 6:00 a.m. and 10:00 p.m., although, the new rules permit stations to air a limited amount of non-regularly scheduled programming that will count as core programming. In addition, commercial stations must also identify each core program by displaying an “E/I” symbol throughout the program. Licensees must also provide information identifying each core program they air to publishers of program guides, though they no longer need to indicate a program’s intended age group.

Stations can meet their obligation by airing at least three hours per week of regularly scheduled, weekly, program-length core programming as averaged over a six-month period. Alternatively, stations may also satisfy their programming obligations by airing 26 hours per quarter of regularly scheduled, weekly, program-length educational programming, and airing an additional 52 hours of programming throughout the year that is not provided on a regularly-scheduled basis which is at least 30 minutes in length. These additional 52 hours of non-regularly scheduled programming can also be satisfied by airing educational programming that is less than 30 minutes in length, such as PSAs and interstitials.

For purposes of the portion of 2019 during which the new rules were in effect – September 16 to December 31, 2019, stations must have aired either (i) 45 hours of regularly-scheduled weekly core programming on their primary stream from September 16 through December 31, 2019, or (ii) at least 30 hours of such programming (at least 4 hours on or before September 30) and an additional 15 hours of core programming that is not regularly-scheduled and which may be less than 30 minutes in length. Of those 30 hours, up to 2 hours could have aired on the station’s multicast streams on or before September 30 and up to 13 hours could have aired on the station’s multicast streams from October 1 to December 31. All of the remaining 15 hours of non-regularly-scheduled or short-form programming must have aired on the station’s primary stream.

### **Filing the Children’s Television Programming Report**

The next Children’s Television Programming Report must be filed electronically with the FCC by March 30, 2020. Broadcasters must file their Children’s Television Programming Reports via the Licensing and Management System (LMS), accessible at <https://enterpriseefiling.fcc.gov/dataentry/login.html>. Once filed, the FCC’s electronic filing system will automatically place the Children’s Television Programming Report filing into the station’s Public Inspection File. However, each station should confirm that has occurred to ensure that its Public Inspection File is complete.

### **Preparation of the Programming Documentation**

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

- The Children’s Television Programming Report and documentation concerning commercialization will be very important “evidence” of the station’s compliance when the station’s license renewal application is filed. Preparation of these documents should be done carefully.
- Accurate and complete records of what programs were used to meet the educational and informational needs of children and what programs aired that were specifically designed for particular age groups should be preserved so that the job of completing the Children’s Television Programming Report and creating documentation concerning commercialization is made easier.
- 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 children’s television requirements easier. Please do not hesitate to contact the attorneys in the Communications Practice for specific advice on compliance with these rules or for assistance in preparing any of this documentation.

## Noncommercial Educational Television Stations

Because noncommercial educational television stations are precluded from airing commercials, the commercial limitation rules do not apply to such stations. Accordingly, noncommercial television stations have no obligation to place commercial limits documentation in their Public Inspection Files. Similarly, though noncommercial stations are required to air programming responsive to the educational and informational needs of children 16 years of age and under, they do not need to complete Children's Television Programming Reports. They must, however, 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 be required to have documentation available that demonstrates its efforts to meet the needs of children.

## Class A Television Stations Only

Although not directly related to the requirement that Class A television stations file children's programming reports, it is important to note that Class A television stations 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 FCC's Rules. While the relevant subsection of 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 assesses compliance on a quarterly basis, the prudent course for Class A television stations is to place the Class A certification in the Public Inspection File on a quarterly basis as well.