

---

## 2014 Fourth Quarter Children's Television Programming Documentation

By Lauren Lynch Flick and Scott R. Flick

---

*The next Children's Television Programming Report must be filed with the FCC and placed in stations' public inspection files by **January 10, 2015**, reflecting programming aired during the months of October, November and December 2014.*

---

### **Statutory and Regulatory Requirements**

As a result of the Children's Television Act of 1990 ("Act") and the FCC 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 under, and (2) air programming responsive to the educational and informational needs of children 16 years of age and under.

These two obligations, in turn, require broadcasters to comply with two paperwork requirements. Specifically, stations must: (1) place in their online public inspection file one of four prescribed types of documentation demonstrating compliance with the commercial limits in children's television, and (2) submit FCC Form 398, which requests information regarding the educational and informational programming the station has aired for children 16 years of age and under. Form 398 must be filed electronically with the FCC. The FCC automatically places the electronically filed Form 398 filings into the respective station's online public inspection file. However, each station should confirm that has occurred to ensure that its online public inspection file is complete. The base fine for noncompliance with the requirements of the FCC's Children's Television Programming Rule is \$10,000.

### **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 FCC Form 398. 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.

## Commercial Television Stations

### Commercial Limitations

The Commission'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 children's educational/informational programming or other age-appropriate programming appearing on the same channel. Licensees must prepare supporting documents to demonstrate compliance with these limits on a quarterly basis.

For commercial stations, proof of compliance with these commercial limitations must be placed in the online public inspection file by the tenth day of the calendar quarter following the quarter during which the commercials were aired. Consequently, this proof of compliance should be placed in your online public inspection file by **January 10, 2015**, covering programming aired during the months of October, November and December 2014.

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 who visit the station to examine the public inspection file. The FCC has not addressed how this approach can be utilized since the advent of online public inspection files.
- 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 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

Full power and Class A television stations must electronically file with the FCC the current version of FCC Form 398 (which describes the station's educational and informational programming for children 16 years of age and under) and place a copy of it in the station's online 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 under, and determining how much of that programming they must air to comply with the Act, the Commission 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.

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, and which is aired weekly on a regular basis between 7:00 a.m. and 10:00 p.m. Each core program must be identified by an E/I symbol displayed throughout the program. In addition, the licensee must provide information identifying each core program that it airs, including an indication of the program's target child audience, to publishers of program guides. The licensee must also publicize the existence and location of the station's children's television reports in the public inspection file. The FCC has not prescribed a specific manner of publicizing this information, but enforcement actions indicate that the FCC expects the effort to include an on-air component. We suggest placing an announcement on the station website and periodically running on-air announcements.

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 show 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 Children's Television 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. 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: (1) the date of each preemption; (2) if the program was rescheduled, the date and time the rescheduled program 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

Form 398 must be filed electronically on a quarterly basis. As a result, full power and Class A television stations should file a Form 398 electronically with the FCC by **January 10, 2015**.

## 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:

- FCC Form 398 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 FCC Form 398 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.

## Class A Television Stations Only

Although not directly related to the requirement that Class A stations file children's programming reports, it is important to note that Class A 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.

---

If you have any questions about the content of this Advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors of this Advisory.

Lauren Lynch Flick **(bio)**  
Washington, DC  
+1.202.663.8166  
lauren.lynch.flick@pillsburylaw.com

Scott R. Flick **(bio)**  
Washington, DC  
+1.202.663.8167  
scott.flick@pillsburylaw.com

## About Pillsbury Winthrop Shaw Pittman LLP

Pillsbury is a full-service law firm with an industry focus on energy & natural resources, financial services including financial institutions, real estate & construction, and technology. Based in the world's major financial, technology and energy centers, Pillsbury counsels clients on global business, regulatory and litigation matters. We work in multidisciplinary teams that allow us to understand our clients' objectives, anticipate trends, and bring a 360-degree perspective to complex business and legal issues—helping clients to take greater advantage of new opportunities, meet and exceed their objectives, and better mitigate risk. This collaborative work style helps produce the results our clients seek.

This publication is issued periodically to keep Pillsbury Winthrop Shaw Pittman LLP clients and other interested parties informed of current legal developments that may affect or otherwise be of interest to them. The comments contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice.

© 2014 Pillsbury Winthrop Shaw Pittman LLP. All Rights Reserved.