and Order, MB Docket No. 04–409, adopted October 11, 2006, and released October 13, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subject in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Maryland is amended by removing Channel 298B1 and by adding Channel 299A at Fruitland.

■ 3. Section 73.202(b), the Table of FM Allotments under Virginia is amended by removing Chester, Channel 266A, by adding Lakeside, Channel 265B1, and by removing Channel 265A and by adding Channel 298A at Warsaw.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–18410 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 00–167; FCC 06–143]

Broadcast Services; Children's Television; Cable Operators

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document resolves a number of issues regarding the obligation of television broadcasters to protect and serve children in their audience. The document addresses matters related to two areas: the obligation of television broadcast licensees to provide educational and informational programming for children and the requirement that television broadcast licensees protect children from excessive and inappropriate commercial messages. The item makes certain modifications to the rules and policies adopted in the Commission's 2004 order in this proceeding. These modifications respond to petitions for reconsideration filed in response to the 2004 rules as well as a joint proposal recommending modifications to those rules filed by a group of cable and broadcast industry representatives and children's television advocates, among others.

DATES: The stay is lifted on § 73.670 paragraphs (b), (c) and Note 1; § 73.671 paragraphs (e) and (f) and § 76.225 paragraphs (b), (c) and Note 1 effective January 2, 2007. The amendments in this final rule are effective January 2, 2007.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Second Order on Reconsideration and Second Report and Order* in MM Docket No. 00–167, FCC 06–143, adopted September 26, 2006, and released September 29, 2006. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. To request materials in accessible formats for people with disabilities (braille, large print, electronic file, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Second Order on Reconsideration and Second Report

1. In this *Second Order* on Reconsideration and *Second Report and Order* (''Second Order'') we resolve issues regarding the obligation of television broadcasters to protect and serve children in their audience. We address matters related to two areas: the obligation of television broadcast licensees to provide educational and informational programming for children and the requirement that television broadcast licensees and cable operators protect children from excessive and inappropriate commercial messages. Some of the rules and policies adopted herein apply only to digital broadcasters, while others apply to both analog and digital broadcasters as well as cable operators. Our goals in resolving these issues are to provide television broadcasters with guidance regarding their obligation to serve children as we transition from an analog to a digital television environment, update our rules protecting children from overcommercialization in children's programming, and improve our children's programming rules and policies.

2. Specifically, this *Second Order* makes certain modifications to the rules and policies adopted in our September 9, 2004 Report and Order and Further Notice of Proposed Rule Making (70 FR 25 and 63, January 3, 2005) (''2004 Order'') in this proceeding. The modifications we make today respond to petitions for reconsideration filed in response to the rules as well as a Joint Proposal of Industry and Advocates on Reconsideration of Children's Television Rules (''Joint Proposal'') filed by a group of cable and broadcast industry representatives and children's television advocates, among others.

3. Our decision today does not alter the new children's core programming ''multicasting'' rule adopted in the 2004 Order, but does clarify the way in which repeats of core programs will be counted under the new rule. We do not make substantial changes to the four-prong Web site rule adopted in the 2004 Order, but do amend the host selling restrictions adopted in the 2004 Order to apply those restrictions less broadly and to exempt certain third party Web sites from the host selling restriction. We also revise the definition of ''commercial time'' adopted in the 2004 Order to limit the kinds of promotions of children's programs that must be counted under the advertising rules adopted in the 2004 Order. In addition, with regard to scheduling of core children's programming, we vacate the percentage cap on the number of permissible core program preemptions adopted in the 2004 Order and return to our prior practice of addressing the number of preemptions and rescheduling of core programming on a case-by-case basis. These modifications will serve the public interest by

ensuring an adequate supply of children's educational and informational programming as we transition to digital television technology, and protecting children from excessive and inappropriate commercial messages in broadcast and cable programming, without unduly impairing the scheduling flexibility of broadcasters and cable operators.

Discussion

4. We commend the parties to the Joint Proposal for their hard work in negotiating a compromise among a group of entities with often widely divergent views on the appropriate rules and policies in the area of children's television. Negotiation among interested parties can often be productive in achieving a workable compromise proposal consistent with the public interest on issues before the Commission, and we encourage such efforts. This private agreement has now been subject to public scrutiny and we will, of course, consider all comments in determining what rules and policies are most consistent with the statute and best serve the public interest. Based on the full record before us, we conclude that the Joint Proposal appropriately balances the concerns and needs of children and parents with those of industry, advertisers, and others, and will result in swift implementation of the rules.

5. We note that the Joint Proposal recommends only relatively minor clarifications to two of the rules adopted in the 2004 Order—the digital broadcasting processing guideline and the Web site address rule. While some of the comments filed in response to the Joint Proposal indicate that some parties remain concerned about aspects of the digital broadcasting processing guideline, by and large the comments support the Joint Proposal. In this item, we retain both the digital programming processing guideline and the Web site address rule with only minor modifications. These and the other modifications we make to the 2004 rules are consistent with the recommendations of the Joint Proposal and with our overall goals of ensuring the provision of sufficient children's educational programming and protecting children from excessive advertising as we transition to the digital era.

Digital Core Children's Programming Processing Guideline

6. Under the core programming processing guideline adopted in 1996, analog broadcasters that air at least three hours per week of core children's educational programming are entitled to staff-level approval of the CTA portion of their license renewal application. With the advent of digital broadcasting and the multicasting ability that technology offers, the Commission determined in the 2004 Order that it would adopt a new method of quantifying the core programming guideline for digital broadcasters that choose to multicast. The Commission made clear that all digital broadcasters continue to be subject to the existing three hours per week core programming processing guideline on their main program stream. In addition, for DTV broadcasters that choose to multicast, the guideline increases in proportion to the additional hours of free programming offered on multicast channels—up to an additional three hours per week for each 24-hour free multicast program stream. Under the revised guideline adopted in the *2004 Order*, digital broadcasters can choose to air some or all of the additional core programming on either the main stream or a multicast stream, as long as the multicast stream receives MVPD carriage comparable to the stream that generated the additional core programming obligation.

7. In order to ensure that digital broadcasters do not simply replay the same core programming in order to meet this revised processing guideline, the Commission required in the 2004 Order that ''at least 50 percent of core programming not be repeated during the same week in order to qualify as core.'' The Commission exempted from this requirement any program stream that merely time shifts the entire programming line-up of another program stream. In addition, the Commission stated that during the digital transition we would not count as repeated programming core programs that are aired on both the analog station and a digital program stream.

8. A number of broadcast interests argued on reconsideration that requiring additional programming obligations for multicast streams would stifle the deployment of specialized channels. Broadcasters also claimed that there is no record evidence of a failure by commercial TV stations to meet children's educational programming needs. To counter the disincentive to air multicast channels, some petitioners supported an exemption for digital program streams that carry non-entertainment programming. Petitioners also argued that the Commission should waive the ''comparable carriage'' element of the guideline, at least until MVPDs are required to carry all free over-the-air channels. In response, children's television advocates argued that history shows that market forces do not ensure that broadcasters serve the educational needs of children and that the record in this proceeding demonstrates that the educational needs of children are not currently being met.

9. The Joint Proposal generally accepts the new multicasting rule but recommends a clarification of the restriction on the number of repeated core programs that can count toward the new programming guideline. Specifically, the Joint Proposal would clarify that at least 50 percent of the core programming counted toward meeting the additional programming guideline cannot consist of program episodes that had already aired within the previous seven days on either the station's main program stream or on another of the station's free digital program streams. This is not a change in the rule, but rather a clearer statement of what the rule was intended to cover. The Joint Proposal would also amend FCC Form 398 to collect information necessary to enforce this limit.

10. We will retain the revised core programming processing guideline as adopted in the 2004 Order. As we stated then, we believe that the revised guideline translates the existing three-hour guideline to the digital environment in a manner that is both fair to broadcasters and meets the needs of the child audience. The previous core programming guideline represented the Commission's judgment as to what constituted a ''reasonable, achievable guideline'' that would not unduly burden broadcasters. Now that digital broadcasters have the capability to significantly increase their overall hours of programming, increasing the amount of core programming will not result in an unreasonable burden. For example, if a station chooses to broadcast a second stream of free video programming twenty-four hours a day, seven days a week, it can satisfy the new guideline by providing merely three additional hours per week of core programming—or less than two percent of the channel's 168 hours of additional weekly programming. In addition, we believe that a guideline that increases the amount of core programming in a manner roughly proportional to the increase in free video programming offered by broadcasters is consistent with the objective of the CTA ''to increase the amount of educational and informational broadcast television available to children.''

11. We also conclude that the revised quantitative processing guideline we reaffirm today is consistent with the First Amendment. It is well established

that the broadcast media do not enjoy the same level of First Amendment protection as do other media. Under this more lenient scrutiny, it is also well established that the government may regulate broadcast speech in order to advance its compelling interest in promoting and protecting the well-being of children. As we discussed in the 2004 Order, our new guideline imposes reasonable parameters on a broadcaster's use of the public airwaves and is narrowly tailored to advance the government's substantial, and indeed compelling, interest in the protection and education of America's children. In enacting the CTA, Congress explicitly found that ''as part of their obligation to serve the public interest, television station operators and licensees should provide programming that serves the special needs of children.'' As noted above, the multicasting rule substantially advances that interest by furthering ''the objective of the CTA 'to increase the amount of educational and informational broadcast television available to children.' '' Moreover, consistent with the First Amendment, the rule is narrowly tailored to achieve its objective. It increases the guideline only for broadcasters that choose to use their digital capacity to air additional free video programming. Broadcasters continue to retain wide discretion in choosing the ways in which they will meet their CTA obligations. Under the rule, the core programming guideline increases in a manner roughly proportional to the additional amount of free video programming multicasters choose to provide. That guideline, by ''giving broadcasters clear but nonmandatory guidance on how to guarantee compliance'' with the CTA, provides ''a constitutional means of giving effect to the CTA's programming requirement.'' We reject the State Broadcasters Associations' argument that our revised guideline is constitutionally unacceptable because it ''dictates the removal of one form of content over another.'' The CTA itself reflects a preference for children's educational and informational programming, and no party has challenged the constitutionality of the CTA's provisions for promoting such programming.

12. A number of broadcast companies and industry associations, none of which are parties to the Joint Proposal, argue that the Commission either should not impose additional core programming requirements on digital multicast channels, or at least should exempt multicast channels that offer educational, informational, and/or public interest programming. These commenters argue that many local broadcasters are planning multicast channels that focus on a single genre of programming, such as weather or news, and that the multicast guideline as adopted would discourage the provision of such specialized channels. These commenters also argue that children are unlikely to watch programming aired on channels primarily devoted to news and other specialized adult programming.

13. We decline to revise our processing guideline as suggested by these commenters. As we stated in the 2004 Order, we do not want to discourage broadcasters from providing channels with a specialized focus. However, we agree with the Children's Media Policy Coalition that the guideline provides broadcasters the flexibility to move core programming to either their main programming stream or other multicast streams, so long as the stream the programming is moved to receives comparable MVPD carriage to the stream triggering the additional obligation. Thus, the guideline preserves the principle that, in order to obtain staff level approval of their CTA compliance, broadcasters must provide three hours of children's core programming for every 168 hours per week of free video programming that they air, while at the same time giving broadcasters flexibility to choose the multicast stream that will air that programming. In addition, broadcasters could meet the guideline by airing children's programming on specialized channels, such as a children's news program on a twenty-four hour news channel or a children's educational weather program on a twenty-four hour weather channel. Furthermore, we note that our rules provide flexibility for licensees that have aired somewhat less core programming than indicated by the guideline but that nonetheless demonstrate an adequate commitment to educating and informing children.

14. Some broadcast commenters also point out that there is no requirement for cable carriage of multicast channels, thereby limiting the flexibility of broadcasters to consolidate their core programming on a multicast stream under the comparable MVPD carriage requirement. While we recognize that the comparable MVPD carriage requirement may limit the flexibility of some broadcasters to consolidate core programming on a single multicast channel, we believe that the comparable carriage requirement is necessary to ensure that, as additional free programming is made available to viewers in the station's service area, the level of children's programming increases as well.

15. As noted, the Joint Proposal suggests a clarification of the number of permissible core program repeats under the processing guideline. Specifically, the Joint Proposal recommends that the Commission clarify that at least 50 percent of the core programming counted toward meeting the additional programming guideline cannot consist of program episodes that had already aired within the previous seven days on either the station's main program stream or on another of the station's free digital program streams. We will adopt this clarification; it makes the rule easier to understand and apply and is consistent with the intent of the 2004 Order. All of the commenters that addressed this aspect of the Joint Proposal supported this clarification. We will also adopt the Joint Proposal recommendation, supported by other commenters, that FCC Form 398 be amended to collect the information necessary to enforce the limit on repeats under the revised guideline. As suggested by commenters, we will permit licensees to certify on Form 398 that they have complied with the repeat restriction and will not require broadcasters to identify each program episode on Form 398. We will require licensees, however, to retain records sufficient to document the accuracy of their certification, including records of actual program episodes aired, and to make such documentation available to the public upon request. The children's programming liaison, whose name and phone number must be included on FCC Form 398, should be able to provide documentation to substantiate the certification if requested.

Preemption

16. To qualify as ''core programming'' for purposes of the children's programming processing guideline, the Commission requires that a children's program be ''regularly scheduled''; that is, a core children's program must ''be scheduled to air at least once a week'' and ''must air on a regular basis.'' In adopting its 1996 children's programming rules, the Commission stated that television series typically air in the same time slot for thirteen consecutive weeks, although some episodes may be preempted for programs such as breaking news or live sports events. The Commission stated in the 1996 Order that it would leave to the staff to determine, with guidance from the full Commission as necessary, what constitutes regularly scheduled programming and what level of preemption is allowable.

17. In the 2004 Order, the Commission stated that core programs moved to the same time slot on another digital program stream would not be considered preempted, as long as the alternate stream has comparable MVPD carriage and the station provides notice of the move on both the original and the alternate program stream. In addition, the 2004 Order limited the number of core programming preemptions for analog and digital broadcasters to no more than ten percent of core programs in each calendar quarter. Any preemption beyond the ten percent limit would cause that program not to count as core under the processing guideline, even if the program were rescheduled. The 2004 Order exempted preemptions for breaking news from the preemption limit and rescheduling requirement.

18. On reconsideration, a number of petitioners argued that the preemption cap is unworkable in light of broadcasters' commitments to air live sports programming on Saturdays, particularly on the West coast. In lieu of the new rules, some petitioners urged the Commission to continue its prior practice of case-by-case staff approval of network preemption practices. Other petitioners supported exempting from the preemption cap live sports programming or children's programs rescheduled in accordance with the Media Bureau's current preemption policies. In their original opposition to these petitions, children's advocates agreed that a modest modification of the new preemption rule would be appropriate to accommodate major sporting events such as the Olympics and World Cup.

19. The Joint Proposal recommends that the Commission not adopt any percentage or other numerical limit on preemptions and instead return to the Commission practice of ensuring, on a case-by-case basis, that broadcasters do not engage in excessive preemptions of core programming. All of the commenters that addressed the issue of preemptions supported the Joint Proposal recommendation to eliminate the cap on the number of preemptions and return to a case-by-case approach.

20. We are persuaded that the burden created by the ten percent cap on preemptions outweighs the benefits the Commission sought to achieve, and therefore hereby repeal the ten percent cap on preemptions adopted in the 2004 Order. We will instead institute a procedure similar to that used by the Media Bureau and the Commission following adoption of the 1996 children's television Order whereby networks sought informal approval of their preemption plans each year. Under the policy formerly developed by the Commission staff, a program counted as preempted only if it was not aired in a substitute time slot (otherwise known as a ''second home'') with an on-air notification of the schedule change occurring at the time of preemption during the previously scheduled episode. The on-air notification must announce the alternate date and time when the preempted show will air. As part of this policy, we will require all networks requesting preemption flexibility to file a request with the Media Bureau by August 1 of each year stating the number of preemptions the network expects, when the program will be rescheduled, whether the rescheduled time is the program's second home, and the network's plan to notify viewers of the schedule change. We will presume that non-network stations are complying with the three hour core programming requirement, and do not need broad preemption relief. We intend to monitor the number, rescheduling, and promotion of preemptions of all stations under this policy by our quarterly review of their Children's Programming Reports to ensure that the interests of the child audience are being served. We find this approach to be a reasonable compromise for programmers that routinely face conflicts between their children's television blocks and sports programming as the result of time differences. We note that the concept of a ''second home'' is familiar to viewers, and are persuaded that those core programs that must be preempted are consistently rescheduled and promoted. Indeed, the Media Bureau has previously found that children's educational and informational programming efforts have not been ''unduly affected by the limited preemption flexibility granted'' under the existing standard.

Limit on Display of Internet Web Site Addresses

21. The CTA requires that commercial television broadcasters and cable operators limit the amount of commercial matter in children's programs to no more than 101/2 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission noted in the 2004 Order that some broadcasters are displaying Internet Web site addresses during children's program material (for example, in a crawl at the bottom of the screen) and expressed concern that the display of such addresses for Web sites established for commercial purposes in children's programs was inconsistent with the CTA's mandate to protect children from excessive and inappropriate commercial messages. Accordingly, the 2004 Order required that, with respect to programs directed to children ages 12 and under, the display of Internet Web site addresses during program material is permitted only if: (1) The Web site offers a substantial amount of *bona fide* program-related or other noncommercial content; (2) the Web site is not primarily intended for commercial purposes, including either e-commerce or advertising; (3) the Web site's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and (4) the page of the Web site to which viewers are directed by the Web site address is not used for e-commerce, advertising, or other commercial purposes (*e.g.*, contains no links labeled ''store'' and no links to another page with commercial material). This restriction applies to analog and digital broadcasters as well as cable operators.

22. On reconsideration, a number of petitioners claimed that the rule exceeds the Commission's authority because the CTA does not authorize regulation of Web site addresses, which petitioners assert are not commercials. We disagree. As the children's television advocates asserted, the Commission has the authority to enact these restrictions because they do not regulate Internet content, but rather the advertising of commercial Web sites in children's programming, a subject clearly within the scope of the Commission's jurisdiction. Several petitioners also challenged the rule on notice grounds. In response, child advocates argued that the Commission gave adequate notice of the potential restriction, because it sought comment on whether to prohibit all direct links to commercial Web sites and the term Web site links can refer to either passive displays or interactive links. We agree that adoption of the Web site display rules was within the scope of the NPRM. Furthermore, the Second FNPRM sought comment ''on the rules and policies adopted in the [2004] Order in light of the recommendations reflected in the Joint Proposal'' and asked for ''any alternative modifications'' to the 2004 rules, in addition to the modifications proposed in the Joint Proposal. Thus, the notice issue is moot.

23. The Joint Proposal does not propose material changes to the Web site rule adopted in the 2004 Order but requests two clarifications: (1) That the rule applies only when Internet addresses are displayed during program material or during promotional material

not counted as commercial time; and (2) that if an Internet address for a Web site that does not meet the four-prong test is displayed during a promotion, in addition to counting against the commercial time limits, the promotion will be clearly separated from programming material. The comments filed in response to the Second FNPRM generally support the Joint Proposal approach.

24. We will retain the rule on Web site addresses and, in addition, adopt the clarifications proposed in the Joint Proposal. As the Commission stated in the 2004 Order, the Web site address rule fairly balances the interest of broadcasters in exploring the potential uses of the Internet with our mandate to protect children from over-commercialization. The display of the address of a Web site that sells a product is the equivalent of a commercial encouraging children to go to the store and buy the product. Thus, including the display during program material converts that program material into commercial matter just as a host telling children to race to their local toy store would. We note that broadcasters are free to display the addresses of Web sites that do not comply with the test during the allowable commercial time, as long as it is adequately separated from the program material; thus, the burden is minimal and outweighed by the benefits discussed above. The minor clarifications recommended by the Joint Proposal make this point clear.

25. We also disagree with petitioners, and conclude that the Web site rule we modify today is consistent with the First Amendment. Because this rule regulates commercial speech, it is subject to less First Amendment protection than noncommercial speech. The rule is therefore permissible under the First Amendment if it ''directly advances'' a ''substantial'' governmental interest in a manner that ''is not more extensive than necessary to serve that interest.'' The Web site rule satisfies these criteria. By limiting the display of commercial Web site addresses during children's programming, the Web site rule advances the government's substantial interest in protecting children from overcommercialization. Numerous Web sites sell products with special appeal to children. Televised references to commercial Web sites are no different from other forms of advertising. A television commercial encouraging children to go to a toy store Web site, for example, is substantially similar to an advertisement telling children to go to their local toy store. As such, a limit on televised advertising of commercial Web sites during children's programming is necessary ''to protect children, who are particularly vulnerable to commercial messages.'' The rule is narrowly tailored. It only limits when certain types of Web site addresses may be televised; it places no limits on displays of Web sites that are not commercial in nature. In addition, these restrictions apply only during non-commercial portions of children's programs, which represent a tiny fraction of a broadcaster's programming. The rule does nothing to prevent broadcasters and cable programmers from publicizing their Web sites as often as they wish during their many hours of other programming or during properly buffered commercial portions of children's programming, regardless of whatever content those Web sites may contain. Further, despite petitioner's passing assertions, the Web site rule as modified is not constitutionally suspect on vagueness grounds. We find that the four-part test is sufficiently clear to give broadcasters reasonable notice of what conduct is proscribed.

26. A number of commenters, including the Ad Council, request that public service announcements (''PSAs'') be exempt from the four-prong Web site rule. The Ad Council states that the rule has created confusion within the broadcast industry and has had a chilling effect on broadcasters' willingness to run PSAs. We agree that further clarification of this issue could help avoid confusion. We agree with the Children's Media Policy Coalition that we should clarify that certain PSAs, which are not commercial matter under our rules, are exempt from the Web site display rules. The Commission has historically encouraged licensees to air PSAs as part of their obligation to fulfill the public interest. Indeed, in the children's television context, as discussed above, licensees that have not aired at least three hours of core programming may count educational and informational PSAs toward the three hour processing guideline. Thus, the Commission has already adopted a policy of encouraging the airing of PSAs during programming directed to children. For these purposes, we will define PSAs exempt from the Web site display rules as suggested by the Coalition: PSAs aired on behalf of independent non-profit or government organizations, or media companies in partnership with non-profits or government entities, that display Web sites not under the control of the licensee or cable company. We believe it is unlikely that PSAs meeting this definition will display addresses for commercially-oriented Web sites, and we are persuaded by commenters that if we do not carve out an exception for PSAs licensees and cable operators will be discouraged from airing them because they do not want to incur the obligation of ensuring that any Web site addresses displayed comply with the four prong test. Given the non-profit nature of PSAs, we do not expect abuse of this exemption. But we will revisit this issue if the need arises.

27. For similar reasons, we also clarify that station identifications and emergency announcements are not subject to the rules governing the display of Web site addresses as long as the display is consistent with the purpose of the announcement. The four prong Web site address rule applies to Web site addresses displayed during program material and, as clarified above, to promotional material not counted as commercial time. Station identifications and emergency announcements are neither program material nor promotions for purposes of the Web site rule. Rather, both are announcements required under the Commission's rules and must comport with certain requirements regarding their composition and timing. To the extent a licensee includes a Web site address to provide more information about an emergency or about how to contact the station, we find it unnecessarily restrictive to require that such a Web site comply with the four prong test.

28. We decline to exempt closing credits from application of the Web site address rules as requested by some commenters. Closing credits are part of the television program material and should, therefore, be subject to the Web site restrictions.

29. We decline at this point to further define terms in the Web site rule. NAB argues that certain terms in the rule are vague and do not provide sufficient guidance to broadcasters on whether a Web site would comply with the Web site rule. We believe that the rule, as clarified herein, is sufficiently clear to guide broadcasters' compliance. Isolated concerns about the clarity of the Web site rule can be addressed by the Commission staff on a case-by-case basis.

30. We also decline to allow broadcasters to avoid liability by relying on representations from program providers that web addresses meet the four-prong test. We do not expect compliance to be burdensome, but we will revisit this issue if we receive evidence that this is imposing an undue burden on broadcasters.

Host Selling

31. The Commission's long standing host selling policy prohibits the use of program characters or show hosts to sell products in commercials during or adjacent to shows in which the character or host appears. Because of the unique vulnerability of children to host selling, the 2004 Order prohibits the display of Web site addresses in children's programs when the site uses characters from the program to sell products or services. In the 2004 Order, the Commission stated that the restriction on Web sites that use host selling applies to Web site addresses displayed both during program material and during commercial material.

32. Several parties argued on reconsideration that the host selling restriction is unnecessarily restrictive. These petitioners contended that familiar television characters are often used in Web sites in ways that are not commercial in nature, such as to adorn a webpage or guide children from one page to the next. Petitioners also argued that any Web site promotion of any product or service incorporating a program-related character appears to violate the rule even though the 2004 Order permits the sale of program-related merchandise on appropriately cabined commercial sections of a Web site. In response, children's advocates argued that there are clear examples of problems with host selling on Web sites, and that the Commission can address any concerns about the clarity of its rules on a case-by-case basis.

33. The Joint Proposal proposes that the host selling rule in the 2004 Order be vacated and replaced with the following rule:

> Entities subject to commercial time limits under the Children's Television Act (''CTA'') will not display a Web site address during or adjacent to a program if, at that time, on pages that are primarily devoted to free noncommercial content regarding that specific program or a character appearing in that program: (1) Products are sold that feature a character appearing in that program; or (2) a character appearing in that program is used to actively sell products.
>
> To clarify, this rule does not apply to: (1) Third-party sites linked from the companies' web pages; (2) on-air third-party advertisements with Web site references to third-party Web sites; or (3) pages that are primarily devoted to multiple characters from multiple programs.

Commenters that addressed the host selling issue generally support the Joint Proposal recommendation.

34. We continue to believe that it is important to restrict the practice of host selling in children's programming. As we have stated before, the trust that children place in program characters allows advertisers to take unfair advantage of the relationship between the hosts and young children. This can occur whether the host selling occurs on the air or on a Web site to which the television program refers children.

35. We agree, however, with those who argue that our original formulation of the host selling rule was overly restrictive, and that we should revise it as recommended by the Joint Proposal. We believe the revised rule achieves a better balance than the existing rule between the goals of protecting children and permitting broadcasters and cable operators to make appropriate use of Web site displays. The 2004 Order expressly states that commercial portions of Web sites that comply with the Web site display rules may sell or advertise products associated with the related television program. As several parties noted, the host selling rule as originally written appeared to prohibit the sale of any merchandise incorporating a program-related character anywhere on a Web site, even if that portion of the site was clearly identified as commercial in nature and the site otherwise complied with the four-prong Web site rule. The revised host selling rule we adopt today permits the sale of merchandise featuring a program-related character in parts of the Web site that are sufficiently separated from the program itself to mitigate the impact of host selling.

36. Univision supports the Joint Proposal revision but states that the revised rule is vague with respect to the proposed exemption for certain third party sites as it fails to provide a definition of the term ''third party.'' We decline to adopt a definition of ''third party'' at this time as we believe that the purpose of the third party exemption from the host selling restriction is sufficiently clear to provide guidance to broadcasters and cable operators about the kinds of ads and Web sites to which the exemption applies. As stated by the Coalition, the intent behind the third party exemption to the rule is to alleviate the need for companies to police third party Web sites over which the company has no control. In addition, the third party Web site would not be included in the relevant children's programming; rather the third party Web site would be displayed in a commercial (subject to the commercial limits) or would merely be linked to from the company's Web site. Advertisements with or without Web site addresses must be separated from programming material by use of bumpers, as currently required under the Commission's existing commercial limits rules and policies. As such, there will be multiple layers of separation between the program and the third party Web site, which will sufficiently attenuate the commercial content from the relevant programming.

37. Television licensees currently certify their compliance with the children's advertising commercial limits on their license renewal forms and are required to maintain in their public inspection file records sufficient to substantiate the certification. As the Commission stated in the 2004 Order, licensees will be required also to certify that they have complied with the requirements concerning the display of Web site addresses in such programming. In addition, licensees will be required to maintain in their public inspection file, until final action has been taken on the station's next license renewal application, records sufficient to substantiate the station's certification of compliance with the restrictions on Web site addresses in programs directed to children ages 12 and under. Cable operators airing children's programming must maintain records sufficient to verify compliance with the Web site address and host selling rules and make such records available to the public. Such records must be maintained by cable operators for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).

Definition of Commercial Matter

38. The limitation on the duration of advertising in children's programming of 10 ½ minutes per hour on weekends and 12 minutes per hour on weekdays applies to ''commercial matter.'' Prior to the 2004 Order, the term ''commercial matter'' was defined to exclude certain types of program interruptions, including promotions of upcoming programs that do not mention sponsors. The Commission noted in the 2004 Order that a significant amount of time is devoted to these types of announcements in children's programming, thereby reducing the amount of actual program material far more than the commercial limits alone might suggest. To address this problem, the 2004 Order revised the definition of ''commercial matter'' to include promotions of television programs or video programming services other than children's educational and informational programming. The revised definition applies to analog and digital broadcasters and to cable operators.

39. On reconsideration, petitioners generally argued that the revised definition of commercial matter would lead to lost ad sales in children's programming and reduced revenues

from such programming as well as diminished opportunities to promote programming. Petitioners claimed that reducing the number of program promotions would reduce the number of children watching the programs. Petitioners also argued that there is no evidence that counting internal promotions as commercials would increase the amount of content in children's shows or reduce program interruptions as programs are produced in a specific length. Children's advocates claimed that new children's programs can be made longer and that the amount of program material in existing shows can be increased by supplementing existing programs with short-form programming, that is, programming lasting less than thirty minutes.

40. As noted above, the 2004 Order included all program promotions other than children's educational and informational programming in the definition of commercial matter. The Joint Proposal would change the revised definition of ''commercial matter'' to exclude (1) promotions for any children's or other age-appropriate programming appearing on the same channel, and (2) promotions for children's educational and informational programming appearing on any channel. Commenters express general support for the Joint Proposal recommendation.

41. We will revise our definition of ''commercial matter'' as recommended by the Joint Proposal. We believe that the revised definition of commercial matter is consistent with the public interest, provides additional flexibility for broadcasters and cable operators, and furthers our goal of making high quality children's programming available to the public. We also note that the CTA explicitly authorizes the Commission to review and evaluate the advertising duration limits; the Commission is therefore authorized to change the definition of ''commercial matter'' consistent with the intent of the CTA and the public interest. Thus, we disagree with parties that argue the revised definition is inconsistent with the CTA.

42. While the revised rule may not limit program promotions in children's programming to the same extent as the rule adopted in the 2004 Order, the revision will still reduce the number of interruptions that were permissible under the original rule and encourage the promotion of programming appropriate for children, including educational and informational programming. As we stated in the 2004 Order, we believe that reducing the number of program promotions will help protect children from overcommercialization of programming consistent with overall intent of the CTA. In addition, exempting program promotions for programming appropriate for children may encourage broadcasters to promote children's programming with educational and informational value, thereby increasing public awareness of the availability of this programming.

Conclusion

43. The rules and policies adopted herein will serve the public interest by both protecting children from excessive and inappropriate advertising on television and ensuring an adequate supply of children's educational programming as we transition from an analog to a digital television environment. Our actions today further the public interest and the mandate of the CTA and provide a reasonable balance between the concerns of industry and protecting the well-being of the nation's children.

Administrative Matters

44. *Final Regulatory Flexibility Analysis* As required by the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') relating to this Report and Order.

45. *Final Paperwork Reduction Act Analysis*. This *Second Order* contains information collection requirements which were proposed in the Second FNPRM, 21 FCC Rcd 3642 (2006), 71 FR 15145 (March 27, 2006), and are subject to the Paperwork Reduction Act of 1995 (''PRA''). The Second FNPRM proposed to revise FCC Form 398 and modify/add new information collection requirements. These proposals were submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. The revised FCC Form 398 and modified/new information collection requirements were approved by OMB on June 23, 2006, OMB Control No. 3060–0754. This *Second Order* adopts the information collection requirements and FCC Form 398 as proposed.

46. Our requirements regarding the requests that may be filed with the Media Bureau by networks seeking preemption flexibility will become effective after approval by the Office of Management and Budget (''OMB''). The Commission will publish a separate **Federal Register** Notice seeking public comment on this new information collection requirement at a later date. Upon OMB approval, we will issue a Public Notice announcing the effective date of this rule.

47. In addition, the general public and other Federal agencies were invited to comment on the information collection requirements in the Second FNPRM. We further note that pursuant to the Small Business Paperwork Relief Act of 2002, the Commission previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' We received no comments concerning these information collection requirements. For additional information concerning the information collection requirements contained in this Report and Order, contact Cathy Williams at 202–418–2918, or via the Internet to *Cathy.Williams@fcc.gov*.

48. *Congressional Review Act*. The Commission will send a copy of this *Second Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

49. *Additional Information.* For additional information on this proceeding, please contact Kim Matthews, Policy Division, Media Bureau at (202) 418–2154, or Holly Saurer, Policy Division, Media Bureau at (202) 418–7283.

Ordering Clauses

50. *It is ordered* that, pursuant to the authority contained in Sections 1, 2, 4(i), 303, 303a, 303b, and 307of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i), 303, 303a, 303b, and 307, this *Second Order* on Reconsideration and Second Report and Order *is adopted.*

51. *It is further ordered* that pursuant to the authority contained in Sections 1, 2, 4(i), 303, 303a, 303b, and 307 of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i), 303, 303a, 303b, and 307, the Commission's rules *are hereby amended* as set forth in the rule changes. It is our intention in adopting these rule changes that, if any provision of the rules is held invalid by any court of competent jurisdiction, the remaining provisions shall remain in effect to the fullest extent permitted by law.

52. *It is further ordered* that the rules as revised in the rule changes *shall be effective* 60 days after publication of the *Second Order* in the **Federal Register**. With respect to renewal applications, we will evaluate compliance with these requirements in applications filed after that date. Licensee performance during any portion of the renewal term that predates the effective date of the rules in the *Second Order* will be evaluated

under current rules, and licensee performance that post-dates the effective date of the revised rules will be judged under the new provisions.

53. *It is further ordered* that the Media Bureau make available to the public an electronic version of FCC Form 398, Children's Television Programming Report, that reflects the changes adopted in this *Second Order*. A revised version of this form has already been approved by OMB. Licensees will be required to use the revised electronic version of FCC Form 398 to report their children's core programming, including their digital core programming, for the first quarter of 2007. Thus, licensees must use the revised electronic version of FCC Form 398 for their quarterly filing due no later than April 10, 2007.

54. *It is further ordered* that the Petitions for Reconsideration and Oppositions to Petition for Reconsideration filed in response to the 2004 Report and Order and Further Notice of Proposed Rule Making in this docket are granted in part and denied in part, as discussed above, and otherwise dismissed as moot.

55. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Second Order* on Reconsideration and Second Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

56. *It is further ordered* that the Commission *shall send* a copy of this Second Order on Reconsideration and Second Report and Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Second Further Notice of Proposed Rule Making (''Second FNPRM'') in this proceeding. The Commission sought written public comment on the proposals in the Second FNPRM, including comment on the IRFA. The Commission received one comment on the IRFA, as discussed below. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

Need for, and Objectives of, the Second Order

The purpose of this proceeding is to determine how the existing children's educational television programming obligations and limitations on advertising in children's programs should be interpreted and adapted to apply to digital television broadcasting in light of the new capabilities made possible by that technology. The *Second Report and Order and Second Order on Reconsideration (''Second Order'')* makes certain modifications to the rules and policies adopted in our September 9, 2004 Report and Order and Further Notice of Proposed Rule Making (''2004 Order'') in this proceeding. The modifications we make today respond in part to a Joint Proposal of Industry and Advocates on Reconsideration of Children's Television Rules (''Joint Proposal'') filed by a group of cable and broadcast industry representatives and children's television advocates, among others. The Commission sought comment on the Joint Proposal in the Second FNPRM.

In the 2004 Order, the Commission updated the children's television rules and policies to ensure that they continue to serve the interests of children and parents as the country transitions from analog to digital television. Among other things, the Commission revised the three-hour core programming processing guideline as it applies to DTV broadcasters that choose to multicast. Specifically, the 2004 Order increased the core programming benchmark for digital broadcasters in a manner roughly proportional to the increase in free video programming offered by the broadcaster on multicast channels. The 2004 Order also permitted the display of Internet Web site addresses during children's programming only if the Web site meets a four-prong test limiting commercial matter on the site, and prohibited broadcasters from displaying Web site addresses during both children's programs and commercials appearing in those programs if the Web site uses host selling. The 2004 Order also imposed a percentage cap on the number of preemptions of core children's programs and revised the definition of ''commercial matter'' for purposes of the commercial limits to include promotions of other television programs unless they are children's educational or informational programs.

Our decision today does not alter the new children's core programming ''multicasting'' rule adopted in the 2004 Order, but does clarify the way in which repeats of core programs will be counted under the new rule. We do not make substantial changes to the four-prong Web site rule adopted in the 2004 Order, but do amend the host selling restrictions adopted in the 2004 Order to apply those restrictions less broadly and to exempt certain third party Web sites from the host selling restriction. We also revise the definition of ''commercial time'' adopted in the 2004 Order to limit the kinds of promotions of children's programs that must be counted under the advertising rules adopted in the 2004 Order. In addition, with regard to scheduling of core children's programming, we vacate the percentage cap on the number of permissible core program preemptions adopted in the 2004 Order and return to our prior practice of addressing the number of preemptions and rescheduling of core programming on a case-by-case basis. These modifications will serve the public interest by ensuring an adequate supply of children's educational and informational programming as we transition to digital television technology, and protecting children from excessive and inappropriate commercial messages in broadcast and cable programming, without unduly impairing the scheduling flexibility of broadcasters and cable operators.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

The U.S. Small Business Administration (''SBA'') filed the only comment in this proceeding responding to the IRFA. The SBA notes that several alternatives were suggested to the FCC by various members of industry which could, according to the SBA, offer significant cost savings to smaller broadcasters while potentially serving the FCC's goals. First, the SBA notes that the Local Broadcasters Alliance (''LBA'') recommends that the FCC limit the applicability of the new core programming requirements to multicast streams that do not already offer educational, informational, and/or public affairs programming. According to the SBA, providing an exemption for small broadcasters who are already providing public affairs content, and who do not yet have the technical capabilities to insert children's programming on their multicast channels, could serve the FCC's goals and provide a reasonable amount of flexibility for small business. Second, the SBA notes that the National Association of Broadcasters (''NAB'') and others recommend that the FCC allow broadcasters to rely on certifications from programming providers that Web site addresses displayed during core programming meet the FCC requirements, instead of requiring stations to continuously monitor and edit programming

containing Web site addresses. According to the SBA, adopting this alternative could offer significant cost savings to small broadcasters. Third, the SBA notes that the multicasting rule would require that at least 50 percent of the core programming counted toward meeting the additional core programming requirements not consist of program episodes that have already aired within the previous seven days. The SBA notes that the NAB recommends that the FCC amend Form 398 to allow broadcasters to certify compliance with the limitation. According to the SBA, adopting this alternative could provide significant compliance cost savings to both small and large broadcasters.

With respect to LBA's argument that the Commission limit the applicability of the new core programming requirements to multicast streams that do not already offer educational or public affairs programming, as noted in paragraph 20 of the *Second Order* a number of commenters joined the LBA in arguing that the Commission either should not impose additional core programming requirements on digital multicast channels, or at least should exempt multicast channels that offer educational, informational, and/or public interest programming. As discussed in paragraphs 18–21 of the *Second Order*, we decline to revise the guideline as suggested by these commenters. The Commission believes that the revised processing guideline translates the existing three-hour guideline to the digital environment in a manner that is both fair to broadcasters and meets the needs of the child audience. Now that digital broadcasters have the capability to significantly increase their overall hours of programming, increasing the amount of core programming will not result in an unreasonable burden. For example, if a station chooses to broadcast a second stream of free video programming twenty-four hours a day, seven days a week, it can satisfy the new guideline by providing merely three additional hours per week of core programming—or less than two percent of the channel's 168 hours of additional weekly programming. That additional programming can be aired on the main program stream or on a multicast stream, at the discretion of the broadcaster. In addition, we believe that a guideline that increases the amount of core programming in a manner roughly proportional to the increase in free video programming offered by broadcasters is consistent with the objective of the CTA ''to increase the amount of educational and informational broadcast television available to children.''

The digital programming processing guideline provides broadcasters flexibility to move core programming to either their main programming stream or other multicast streams, so long as the stream the programming is moved to receives comparable MVPD carriage to the stream triggering the additional obligation. Thus, the guideline preserves the principle that, in order to obtain staff level approval of their CTA compliance, broadcasters must provide three hours of children's core programming for every 168 hours per week of free video programming that they air, while at the same time giving broadcasters flexibility to choose the multicast stream that will air that programming. In addition, broadcasters could meet the guideline by airing children's programming on specialized channels, such as a children's news program on a twenty-four hour news channel or a children's educational weather program on a twenty-four hour weather channel. Furthermore, we note that our rules provide flexibility for licensees that have aired somewhat less core programming than indicated by the guideline but that nonetheless demonstrate an adequate commitment to educating and informing children. With respect to the recommendation of NAB and others regarding reliance on certifications from program providers, as discussed in paragraph 38 of the item we decline to allow broadcasters to avoid liability by relying on representations from program providers that web addresses meet the four-prong test. We do not expect compliance to be burdensome, but we will revisit this issue if we receive evidence that this is imposing an undue burden on broadcasters.

Finally, as discussed in paragraph 23 the item adopts NAB's recommendation, which was echoed by other commenters, that FCC Form 398 allow broadcasters to certify compliance with the revised limitation on the repeat of core digital programming adopted under the multicasting guideline rather than requiring broadcasters to identify each program episode on Form 398. We will require licensees, however, to retain records sufficient to document the accuracy of their certification, including records of actual program episodes aired, and to make such documentation available to the public upon request.

Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' under section 3 of the Small Business Act. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Television Broadcasting. The proposed rules and policies apply to television broadcast licensees, and potential licensees of television service. The SBA defines a television broadcast station as a small business if such station has no more than $13 million in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on October 18, 2005, about 873 of the 1,307 commercial television stations (or about 67 percent) have revenues of $12 million or less and thus qualify as small entities under the SBA definition. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult

at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

Cable and Other Program Distribution. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small.

1. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

2. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The *Second Order* retains the revised core programming processing guideline for digital stations adopted in the 2004 Order but clarifies the number of permissible core program repeats under the guideline. Specifically, we clarify that at least 50 percent of the core programming counted toward meeting the additional programming guideline cannot consist of program episodes that had already aired within the previous seven days on either the station's main program stream or on another of the station's free digital program streams. We also amend FCC Form 398 to collect the information necessary to enforce the limit on repeats under the revised guideline. We permit licensees to certify on Form 398 that they have complied with the repeat restriction and do not require broadcasters to identify each program episode on Form 398. Licensees must retain records sufficient to document the accuracy of their certification, including records of actual program episodes aired, and make such documentation available to the public upon request. The children's programming liaison identified in the FCC Form 398 must be able to provide documentation to substantiate the certification if requested.

The *Second Order* repeals the ten percent cap on preemptions of core children's programming adopted in the *2004 Order* and instead institutes a procedure similar to that used by the Media Bureau and the Commission following adoption of the 1996 children's television Order whereby networks sought informal approval of their preemption plans each year. Under the policy formerly developed by the Commission staff, a program counted as preempted only if it was not aired in a substitute time slot (otherwise known as a ''second home'') with an on-air notification of the schedule change occurring at the time of preemption during the previously scheduled episode. The on-air notification must announce the alternate date and time when the preempted show will air. As part of this policy, we will require all networks requesting preemption flexibility to file a request with the Media Bureau by August 1 of each year stating the number of preemptions the network expects, when the program will be rescheduled, whether the rescheduled time is the program's second home, and the network's plan to notify viewers of the schedule change. We will presume that non-network stations are complying with the three hour core programming requirement, and do not need broad preemption relief.

The *Second Order* retains the rule on Web site addresses adopted in the *2004 Order* with two clarifications: (1) The rule applies only when Internet addresses are displayed during program material or during promotional material not counted as commercial time; and (2) if an Internet address for a Web site that does not meet the four-prong test is displayed during a promotion, in addition to counting against the commercial time limits, the promotion will be clearly separated from programming material. We exempt from the Web site display rules certain PSAs, which are not commercial matter under our rules. Specifically, we define PSAs exempt from the Web site display rules as: PSAs aired on behalf of independent non-profit or government organizations, or media companies in partnership with non-profits or government entities, that display Web sites not under the control of the licensee or cable company. We also clarify that station identifications and emergency announcements are not subject to the rules governing the display of Web site addresses as long as the display is consistent with the purpose of the announcement. Closing credits are not exempt from application of the Web site address rules.

The Commission's host selling policy prohibits the use of program characters or show hosts to sell products in commercials during or adjacent to shows in which the character or host appears. The *Second Order* adopts the following host selling rule with respect to Web site addresses:

> Entities subject to commercial time limits under the Children's Television Act (''CTA'') will not display a Web site address during or adjacent to a program if, at that time, on pages that are primarily devoted to free noncommercial content regarding that specific program or a character appearing in that program: (1) Products are sold that feature a character appearing in that program; or (2) a character appearing in that program is used to actively sell products.
>
> To clarify, this rule does not apply to: (1) Third-party sites linked from the companies'

web pages; (2) on-air third-party advertisements with Web site references to third-party Web sites; or (3) pages that are primarily devoted to multiple characters from multiple programs.

The limitation on the duration of advertising in children's programming of 10½ minutes per hour on weekends and 12 minutes per hour on weekdays applies to ''commercial matter.'' Prior to the *2004 Order*, the term ''commercial matter'' was defined to exclude certain types of program interruptions, including promotions of upcoming programs that do not mention sponsors. The *2004 Order* revised the definition of ''commercial matter'' to include promotions of television programs or video programming services other than children's educational and informational programming. The revised definition applies to analog and digital broadcasters and to cable operators.

The *Second Order* revises the definition of ''commercial matter'' to exclude (1) promotions for any children's or other age-appropriate programming appearing on the same channel, and (2) promotions for children's educational and informational programming appearing on any channel.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

Several steps were taken to minimize the impact on small entities. As noted above, the *Second Order* adopts the alternative recommended by NAB and others that broadcasters be permitted to certify on FCC Form 398 their compliance with the limit on the number of repeats of digital core programming under the revised processing guideline. See paragraph 23, supra. Thus, broadcasters will not be obligated to identify each program episode on Form 398, but will be required to retain documentation sufficient to substantiate the certification on Form 398. This step will make compliance with the rules easier for all broadcasters, including smaller broadcasters. The Commission considered, but rejected, the approach of requiring broadcasters to identify each program episode on the Form 398. That approach, if adopted, would have imposed a greater burden on broadcasters.

The *Second Order* also lifts the cap on the number of preemptions of core programs adopted in the *2004 Order* and instead returns to the prior practice of permitting networks that need scheduling flexibility to accommodate sports and other programming to request such flexibility from the Media Bureau. This change should help all broadcasters, including small broadcasters, by providing more scheduling flexibility. The Commission considered, but rejected, keeping the cap on the number of preemptions as adopted in the *2004 Order*, which would have been more burdensome to broadcasters.

In addition, the *Second Order* also revises the definition of ''host selling'' adopted in the *2004 Order* with respect to Web site address displays in children's programming. The revised definition is less restrictive than that adopted in 2004 and permits the sale of merchandise featuring a program-related character in parts of the Web site that are sufficiently separated from the program itself to protect children from the unique impact of host selling. This change should provide more flexibility to all broadcasters and cable operators, including smaller entities, and should be less burdensome to all affected entities.

Another change made in the *Second Order* that will ease the burden on all entities in complying with the rules is the change in the definition of ''commercial matter.'' The revised definition provides additional flexibility for broadcasters and cable operators and permits them to air program promotions that would not have been permitted under the rule adopted in 2004.

Report to Congress

The Commission will send a copy of the *Second Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Second Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 604(b). A copy of the *Second Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

List of Subjects

47 CFR Part 73

Television.

47 CFR Part 76

Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 76 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

■ 2. Section 73.670 is amended by revising paragraph (b) introductory text and paragraph (c), adding paragraph (d), and revising Note 1 to read as follows (Note 2 remains unchanged):

§ 73.670 Commercial limits in children's programs.

* * * * *

(b) The display of Internet Web site addresses during program material or promotional material not counted as commercial time is permitted only if the Web site:

* * * * *

(c) If an Internet address for a Web site that does not meet the test in paragraph (b) of this section is displayed during a promotion in a children's program, in addition to counting against the commercial time limits in paragraph (a) of this section the promotion must be clearly separated from program material.

(d)(1) Entities subject to commercial time limits under the Children's Television Act shall not display a Web site address during or adjacent to a program if, at that time, on pages that are primarily devoted to free noncommercial content regarding that specific program or a character appearing in that program:

(i) Products are sold that feature a character appearing in that program; or

(ii) A character appearing in that program is used to actively sell products.

(2) The requirements of this paragraph do not apply to:

(i) Third-party sites linked from the companies' Web pages;

(ii) On-air third-party advertisements with Web site references to third-party Web sites; or

(iii) Pages that are primarily devoted to multiple characters from multiple programs.

Note 1: *Commercial matter* means air time sold for purposes of selling a product or service and promotions of television programs or video programming services other than children's or other age-appropriate programming appearing on the same channel or promotions for children's educational and informational programming on any channel.

* * * * *

■ 3. Section 73.671 is amended by revising paragraph (e)(3) and by removing paragraph (f) to read as follows:

§ 73.671 Educational and informational programming for children.

* * * * *

(e) * * *

(3) For purposes of the guideline described in paragraph (e)(2) of this section, at least 50 percent of the core programming counted toward meeting the additional programming guideline cannot consist of program episodes that had already aired within the previous seven days on either the station's main program stream or on another of the station's free digital program streams. This requirement does not apply to any program stream that merely time shifts the entire programming line-up of another program stream and, during the digital transition, to core programs aired on both the analog station and a digital program stream.

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 4. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

■ 5. Section 76.225 is amended by revising paragraphs (b) introductory text, (c), and (d), by adding paragraph (e), and by revising Note 1 to § 76.225 to read as follows:

§ 76.225 Commercial limits in children's programs.

* * * * *

(b) The display of Internet Web site addresses during program material or promotional material not counted as commercial time is permitted only if the Web site:

* * * * *

(c) If an Internet address for a Web site that does not meet the test in paragraph (b) of this section is displayed during a promotion in a children's program, in addition to counting against the commercial time limits in paragraph (a) of this section the promotion must be clearly separated from program material.

(d)(1) Entities subject to commercial time limits under the Children's Television Act shall not display a Web site address during or adjacent to a program if, at that time, on pages that are primarily devoted to free noncommercial content regarding that specific program or a character appearing in that program:

(i) Products are sold that feature a character appearing in that program; or

(ii) A character appearing in that program is used to actively sell products.

(2) The requirements of this paragraph do not apply to:

(i) Third-party sites linked from the companies' Web pages;

(ii) On-air third-party advertisements with Web site references to third-party Web sites; or

(iii) Pages that are primarily devoted to multiple characters from multiple programs.

(e) The requirements of this section shall not apply to programs aired on a broadcast television channel which the cable operator passively carries, or to access channels over which the cable operator may not exercise editorial control, pursuant to 47 U.S.C. 531(e) and 532(c)(2).

Note 1 to § 76.225: *Commercial matter* means air time sold for purposes of selling a product or service and promotions of television programs or video programming services other than children's or other age-appropriate programming appearing on the same channel or promotions for children's educational and informational programming on any channel.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 102606C]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the daily Atlantic bluefin tuna (BFT) retention limits for the Atlantic tunas General category should be adjusted to provide reasonable opportunity to harvest the General category November through January time-period subquota. Therefore, NMFS increases the daily BFT retention limits for the entire month of November, including previous scheduled Restricted Fishing Days (RFDs), to provide enhanced commercial General category fishing opportunities in all areas while minimizing the risk of an overharvest of the General category BFT quota.

DATES: The effective dates for the BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. The 2006 BFT fishing year began on June 1, 2006, and ends May 31, 2007. The final initial 2006 BFT specifications and General category effort controls were published on May 30, 2006 (71 FR 30619). These final specifications divided the General category quota among three subperiods (June through August, the month of September, and October through January) in accordance with the Highly Migratory Species Fishery Management Plan (1999 FMP) published in 1999 (May 29, 1999; 64 FR 29090), and implementing regulations at § 635.27. The final initial 2006 BFT specifications increased the General category retention limit to three fish for the June though August time-period, as