



WOMBLE  
CARLYLE  
SANDRIDGE  
& RICE  
PROFESSIONAL LIMITED  
LIABILITY COMPANY

## Second Further Notice of Proposed Rulemaking Children's Television Obligations

March 28, 2006

**To: Broadcast Clients**  
**From: Joan Stewart**

---

The Federal Communications Commission has issued a Second Further Notice of Proposed Rule Making in the matter of Children's Television Obligations of Digital Television Broadcasters ("Children's NPRM"). Comments are due by April 24, 2006. Reply comments are due by May 8, 2006.

In the Children's NPRM, the Commission asks for comments on the revisions and clarifications to the Children's Television Report and Order ("Order") recommended by the Joint Proposal of Industry and Advocates on Reconsideration of Children's Television Rules ("Joint Proposal").

The Order had been issued in September 2004. However, the effective date of many of the rules adopted in that Order was extended pending resolution of numerous petitions for reconsideration. The Joint Proposal was submitted by representatives of the broadcasting and cable industry as well as public interest groups in order to suggest resolution of some of the outstanding issues. The Commission will consider the comments submitted in response to the Children's NPRM together with the issues raised in the petitions for reconsideration in determining what, if any, revisions it will make to the rules adopted in the Order.

The Joint Proposal encourages the Commission to make the following modifications to the rules adopted in the Order:

**The Website Rule.** The Order provides that if a website address is displayed during children's programming, then it will count toward the time limit for commercial matter – except when the website satisfies a four-part test. The test provides that the website must: 1) offer a substantial amount of bona fide program-related or other noncommercial content; 2) its primary purpose cannot be commercial; 3) the home page and other menu pages must clearly separate the commercial content from the noncommercial content; and 4) the website address cannot direct viewers to a page which is used for commercial purposes.

The Joint Proposal requests the following clarifications: 1) the new website rules will apply not only when the website address is displayed during program material but also during promotional material not otherwise counted as commercial time; 2) if a website does not meet the four-part test, then the display of that website address should be *clearly separated* from program material to avoid being counted against commercial time limits. The Joint Proposal does not provide an example of what is meant by "clearly separated".

**The Host-Selling Rule.** The Host-Selling rule prohibits the display of website addresses during children's programming when the website uses a character from the program to sell either products or services.

The Joint Proposal recommends vacating the following language: "We will prohibit the display of websites addressed in children's programs when the site uses characters from the programs to sell products or services. This restriction on websites that use host selling applies to website addresses displayed both during program material and during commercial material."

In its place, the Joint Proposal recommends a more narrow restriction on host-selling websites, which depends on how the site is used at that time. It proposes replacing the language above with the following: "... will not display a website 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 website references to third-party websites; or (3) pages that are primarily devoted to multiple characters from multiple programs."

The Joint Proposal also recommends that companies should certify compliance with the Host-Selling Rule in the same way they certify compliance with the advertising limits.

**Promotions Rule.** In the Order, the Commission revised the definition of "commercial matter" to include promotions

of other programming (unless that programming is educational or information programming). Thus, promotions of other children's programs could be considered commercial matter.

The Joint Proposal recommends revising the definition of "commercial matter" to exclude "promotions for children's or other age-appropriate programming appearing on the same channel, or promotions for children's E/I programming on any channel."

**Preemption Rule.** In the Order, the Commission revised its preemption rules to provide that if a program is preempted more than 10 % of the time in any calendar quarter then it could not be counted toward the fulfillment of a broadcaster's Educational/Instructional programming obligation.

The Joint Proposal recommends removing this restriction and not adopting any specific percentage or numerical limit on preemptions. Rather, the Joint Proposal recommends that the Commission continue to handle allegations of excessive preemptions on a case-by-case basis.

**Multicasting Rule.** In the Order, the Commission adopted a new rule which requires broadcasters to provide additional Educational/Instructional programming in proportion to the amount of free video programming streams provided by that broadcaster. The Order also limited the percentage of core programming that could be repeated in a week in order to satisfy the additional children's programming requirement.

The Joint Proposal agreed that the new multicasting rule should stay in effect, but asked for clarification on certain language regarding the percentage of programming

that can be repeated. The amendment proposed by the Joint Proposal would clarify that at least 50% of the core programming to be counted toward the additional programming requirements cannot include episodes which have aired during the previous seven days on either the main

program stream or any of the station's other free program streams.

Please contact us if you would like to submit comments in this proceeding.

**The Communications Lawyers at  
Womble Carlyle Sandridge & Rice, PLLC**

Joan D. Stewart, (202) 857-4490, [jstewart@wcsr.com](mailto:jstewart@wcsr.com)

Mark Palchick, (202) 857-4411, [mpalchick@wcsr.com](mailto:mpalchick@wcsr.com)

Gregg P. Skall, (202) 857-4441, [gskall@wcsr.com](mailto:gskall@wcsr.com)

John F. Garziglia, (202) 857-4455, [jgarziglia@wcsr.com](mailto:jgarziglia@wcsr.com)

Peter Gutmann, (202) 857-4532, [pgutmann@wcsr.com](mailto:pgutmann@wcsr.com)

Vincent A Pepper, (202) 857-4560, [vpepper@wcsr.com](mailto:vpepper@wcsr.com)

Howard J. Barr, (202) 857-4506, [hbarr@wcsr.com](mailto:hbarr@wcsr.com)

Michael H. Shacter, (202) 857-4494, [mshacter@wcsr.com](mailto:mshacter@wcsr.com)

Michael B. Hazzard, (202) 857-4540, [mhazzard@wcsr.com](mailto:mhazzard@wcsr.com)

Ross Buntrock, (202) 857-4479, [rbuntrock@wcsr.com](mailto:rbuntrock@wcsr.com)

Cavan Fabris, (202) 857-4536, [cfabris@wcsr.com](mailto:cfabris@wcsr.com)