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## FCC Modifies and Confirms Children's Television Obligations for Digital TV

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**To: Television Clients**  
**From: Peter Gutmann**

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The FCC has issued a *Report and Order* to clarify the obligations of digital television broadcasters to ensure the provision of sufficient children's educational programming and to protect children from excessive advertising. The clarifications effectively adopt recommendations contained in a February 2006 *Joint Proposal* presented by the four major broadcast networks, major children's programming networks, cable operators, advertisers and a coalition of children's advocacy groups. The *Joint Proposal*, in turn, addressed the FCC's 2004 plan to apply its prior children's television requirements to the digital transition. The present decision focuses upon the following areas:

**Core Children's Programming Processing Guideline** – Since 1996 the broadcast of three hours per week of "core" children's educational programming has satisfied the Commission's quantitative requirement. Digital broadcasters are to continue to be subject to the three-hour guideline on their main program stream. In addition, one-half hour of core programming will be required for every increment of up to 28 hours of free video programming provided on a multicast program stream. (Thus, three more hours would be added for another full-time program stream.) Digital broadcasters have flexibility to run core programming on either their main programming stream or other multicast streams (including specialized channels, such as a children's news program on a 24 hour news channel), so long as the stream receives MVPD carriage comparable to the stream triggering the additional obligation. At least 50% of the core programming to be counted toward meeting the additional programming guideline cannot consist of episodes that had already aired within the previous seven days on the station's main program stream or another of the station's free digital program streams. Nor does mere time-shifting of an entire programming lineup qualify to satisfy the requirement.

The Commission's Form 398 (the quarterly Children's Television Programming Report) will be amended to include a certification that a licensee has complied with the repeat restriction. While specific repeated program episodes will not need to be identified, documentation to support the accuracy of the certification, including records of actual program episodes aired, will have to be made available to the public upon request. As before, licensees that have aired less core programming than their required amount may demonstrate that they have aired other types of programming that significantly educate and inform children.

**Preemption** – The Commission’s 2004 proposals would have limited the number of core programming preemptions to no more than 10% of core programs in each calendar quarter. Instead, the Commission will revert to the procedure under its 1996 policies that permits a preempted program still to be considered “core” if it is aired in a “second home” subject to certain notification requirements of that substituted time slot. Networks are to request preemption flexibility by filing a plan with the Media Bureau by August 1 of each year stating the number of preemptions the network expects, when the programs will be rescheduled, and the network’s plan to notify viewers of the schedule changes.

**Display of Internet Website Addresses** – In 2004 the Commission proposed prohibiting the display of Internet website addresses during programs directed to children ages 12 and under unless the websites were primarily program-related, non-commercial, labeled to distinguish non-commercial from commercial content, and satisfied a four-prong test. The Commission has retained the four-prong test and has now clarified that the rule does not apply during program or promotional material counted as commercial time. However, the display of a website address that sells a product converts that time to commercial matter and thus not only would affect the amount of commercial time in the children’s program block but must be clearly separated from program material. However, to encourage the airing of public service announcements during children’s programming, the Commission will permit website displays during PSAs aired on behalf of independent non-profit or governmental organizations so long as the displayed website is not under the control of the licensee. The Commission has further exempted website displays relating to station identifications and emergency announcements. The Commission noted that it will not permit broadcasters to avoid liability by relying on representations from program providers that web addresses meet these requirements.

**Host Selling** – Due to the trust that children place in program characters, the Commission continues to prevent advertisers from taking unfair advantage of the relationship between such hosts and young children, whether on the air or on a website to which a program refers. However, the Commission now will permit the sale of merchandise featuring a program-related character in parts of a website that are sufficiently separated from the program itself to mitigate the impact of host selling. Thus, the rule prohibiting host selling will no longer 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.

**Definition of Commercial Matter** – The 2004 proposal had defined “commercial matter” to include all promotions other than for children’s educational and informational programming. The Commission now also will exclude promotions for any other type of children’s or other age-appropriate programming appearing on the same channel.

Pending reconsideration of the matters reflected in its 2004 decision, the Commission had indefinitely suspended implementation of those changes to its rules and policies concerning children’s television obligations. Current plans are for the changes, as modified by the recent decision, to take effect 60 days after publication in the *Federal Register*.

A revised electronic version of FCC Form 398 has already been approved by the Office of Management and Budget and is to be used to report core programming beginning with the report for the first quarter of 2007 (due April 10).

Please let us know if we can provide any further details or information.

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