

ALERT

# FCC Releases Draft Order Modifying Children's Programming Rules

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On June 19, the Federal Communications Commission (FCC or Commission) released a Draft Order in which it proposes to adopt a series of amendments to the FCC's children's television programming (KidVid) rules. The changes proposed in the Draft Order affect both the substantive rules and the reporting requirements.

The Draft Order attempts to balance two conflicting arguments in the record. On one hand, the FCC recognizes that children now have access to educational and informational programming through both broadcast and non-broadcast sources, and that the rise of other media platforms and time-shifted viewing has led to a sharp decline in live broadcast viewing among children. However, the Draft Order also acknowledges that children in minority and low-income households are more likely to have access to over-the-air programming alone and are more likely to watch that programming live. As such, the Draft Order proposes modest rather than sweeping changes in an effort to ensure "that high quality educational programming remains available to all children."

Specifically, the Draft Order would amend the KidVid rules in ten key areas:

(1) Core Programming Hours - Currently, television broadcasters must air Core Programming between the hours of 7:00 a.m. and 10:00 p.m. time frame in which broadcasters were previously required to air Core Programming. Under the Draft Order, stations would be able to begin airing such programming at 6:00 a.m. instead, a change the FCC claims "reflect[s] changing viewing habits among children and creat[es] additional flexibility for broadcasters." The end of the time frame would remain at 10:00 p.m.

## Authors

Ari Meltzer  
Partner  
202.719.7467  
ameltzer@wiley.law

Joan Stewart  
Partner  
202.719.7438  
jstewart@wiley.law

Kathryne C. Dickerson  
Partner  
202.719.7279  
kdickerson@wiley.law

## Practice Areas

Media  
Telecom, Media & Technology

(2) Multicast Streams – The Draft Order would eliminate the requirement that a station air an additional 3 hours of programming for each 24/7 multicast stream. Additionally, the Draft Order would allow stations to shift a limited amount (up to 13 hours per quarter) of regularly scheduled weekly programming from their primary streams to their multicast streams. Thus, a station would be required to air at least two-thirds of its total annual Core Programming hours (i.e., 104 hours) on its primary stream and no more than one-third of its total Core Programming (i.e., 52 hours) on a multicast stream. All Core Programming that is not regularly scheduled weekly programming aired under Category A or B of the processing guidelines (explained below) must be aired on a station's primary stream.

(3) Regularly Scheduled Weekly Programming – The Draft Order would provide some flexibility in the requirement that Core Programming be "regularly scheduled." Under the proposal, although a substantial majority of a station's Core Programming must still be regularly scheduled weekly programming, stations would be permitted to count up to 52 hours annually of programming that is at least 30 minutes in length but not regularly scheduled, such as educational specials and regularly scheduled non-weekly programming.

(4) Core Programming Length – The Draft Order would alter the existing requirement that Core programs be at least 30 minutes in length and allow stations to count a limited amount of short-form programming as Core Programming. Examples of this kind of programming include public service announcements (PSAs), interstitials, and brief programming that is used as a bridge between two longer programs. The FCC noted that it would simply encourage, rather than require, broadcasters to promote any short-form programs aired by the station.

(5) Preemptions – The Draft Order would modify the FCC's preemption policies to allow a station that preempts an episode of a regularly scheduled weekly program to air the rescheduled episode on its primary stream at any point during Core Programming hours within a seven-day span before or after the episode's originally scheduled air date. Stations rescheduling preempted programs would be required to make an on-air notification of the schedule change. The Draft Order would also expand the existing "breaking news exemption," which permits preemption of Core Programming without the need for rescheduling, to include all non-regularly scheduled live programming that is locally produced by the station, such as non-breaking live news like coverage of an elected official's swearing-in, public affairs specials on issues of interest to the community, and live coverage of a local sports team's playoff or championship game. Additionally, networks seeking preemption would no longer be required to file an annual request for such flexibility with the Media Bureau.

(6) Processing Guidelines – The Draft Order proposes a series of modifications to the safe harbor guidelines for determining compliance with the KidVid rules consistent with the above changes.

- *Under Category A* – Media Bureau staff would now be authorized to approve the children's programming portion of a broadcaster's license renewal application if the station either complies with the existing guideline and airs three hours per week of Core Programming (as averaged over a six-month period) or complies with the Draft Order's new guideline of airing 156 hours of Core Programming annually. The annual 156 hours of Core Programming would include at least 26 hours, each quarter, of regularly scheduled weekly programming. Under both options, a Core

Program must be at least 30 minutes in length. The remaining hours of Core Programming under Category A, up to 52 annually, may consist of Core Programs at least 30 minutes in length that are not aired on a regularly scheduled weekly basis.

- *Under Category B* – Media Bureau staff would now be able to approve the children's programming portion of a broadcaster's license renewal application provided that the station airs 156 hours of Core Programming annually. Like Category A, this would include a minimum of 26 hours of regularly scheduled weekly programming at least 30 minutes in length each quarter. The remaining Core Programming hours under Category B – also up to 52 hours annually – would be allowed to consist of Core Programs that are not aired on a regularly scheduled basis. This would include educational specials, other non-regularly scheduled programming, and regularly scheduled non-weekly programming, as well as short-form programming like PSAs and interstitials. Notably, PSAs and interstitials would be permitted only under Category B.

(7) On-Air Notification Requirement – The Draft Order would eliminate the requirement that noncommercial stations identify their Core Programming by displaying the "E/I" symbol throughout the program. However, the requirement for commercial broadcast stations to do the same would remain.

(8) Program Guides – The Draft Order would retain the requirement that broadcasters provide to program guide publishers information that identifies programming specifically designed to educate and inform children. However, broadcasters would no longer be required to provide program guide publishers with an indication of the age group their programming is intended to serve.

(9) Reporting Requirements – The Draft Order would revise the reporting requirements under the KidVid rules in five ways.

- First, it would require that Children's Television Programming Reports (KidVid Reports) be filed annually instead of quarterly, within 30 days after the end of the calendar year.
- Second, KidVid Reports would no longer need to include information describing the educational and informational purpose of each Core Program aired during the current reporting period and each Core Program that the licensee expects to air during the next reporting period.
- Third, stations would no longer be required to identify the program publishers who received information regarding the licensee's Core Programs.
- Fourth, KidVid Reports would be streamlined by eliminating certain fields, with the Media Bureau receiving the authority to identify and implement any necessary changes. However, broadcasters would still be required to at least identify their Core Programs and when they were aired.
- Fifth, stations no longer would need to run on-air announcements letting viewers know where they can find a copy of the report.

(10) Recordkeeping Requirements for Commercial Limits – The draft Order would revise the KidVid rules to allow broadcasters, as well as cable and DBS operators, to file their certifications of compliance with commercial limits in children's programming annually instead of quarterly. Further, the deadline to post these

certifications would be extended, giving broadcasters and cable and DBS operators until 30 days after the end of the calendar year to file.

In addition to the Draft Order, the FCC also released a draft Further Notice of Proposed Rulemaking (FNPRM). The FNPRM would seek further comment on how the FCC could create a framework under which broadcasters would be able to satisfy their KidVid obligations by relying, in part, on special efforts to produce or support Core Programming aired on other in-market stations.

If you are interested in submitting comments or have any question about the Draft Order, please contact the Wiley Rein attorney who regularly handles your FCC matters or the attorneys listed on this client alert.