



# Virginia Association of Broadcasters Legal Review



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## Legal Memorandum

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- [FCC to Take Up Order Revising Children’s Television Programming Rules](#)
  - [FCC to Consider Order Allowing for Electronic Delivery By TV Stations of MVPD Carriage Election Notices](#)
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### FCC Expected to Revise Children’s Television Programming Rules to Provide Stations with Reasonable Flexibility

The FCC will consider a [Report and Order](#) at its July 10<sup>th</sup> open meeting that, if adopted, would change the Commission’s children’s television programming rules to provide stations with reasonable flexibility (and reduced paperwork burdens). Only a draft of the order has been released at this time (the “Draft Order”). The Draft Order may change before next week’s meeting, and the Draft Order does not constitute official action by the FCC. Of course, we will be monitoring the Commission’s meeting next week, and we will provide a full report on the FCC’s official action.

*Background.* The consumption of video programming has changed in the decades since the FCC first adopted its children’s television programming rules in the early 1990s. Viewers, including children, increasingly watch video programming through DVRs and on-demand rather than at the scheduled broadcast times, and more programming for children is available through non-broadcast platforms such as children’s cable networks and online video providers. At the same time,

however, these changes in programming consumption do not necessarily extend equally to all population segments. For example, data demonstrate that children in minority and low-income households are more likely to continue to rely exclusively on live over-the-air broadcast television.

In light of these developments and disparities, the FCC in its Draft Order aims to provide broadcasters more flexibility in fulfilling their legal obligations, while at the same time ensuring that high quality E/I programming remains available to all children.

Below is a non-exhaustive summary of the principal changes to the children's programming rules as described in the Draft Order. We will provide further details after the Commission's meeting next week.

*Changes to the Definition of "Core Programming."* Full-power and Class A television operators should be familiar with the concept of "Core Programming." Currently, "Core Programming" is defined as programming that meets all of the seven following criteria: (1) it has as a significant purpose serving the educational and/or informational needs of children ages 16 and under; (2) it airs between the hours of 7:00 a.m. and 10:00 p.m.; (3) it is regularly scheduled on a weekly basis; (4) it is at least 30 minutes in length; (5) the symbol "E/I" airs on the screen throughout the program; (6) the station instructs publishers of program guides that the program is educational/informational and provides an indication of the age group for which it is intended; and (7) for commercial stations only, it is accounted for in the station's quarterly Children's Television Programming Report (a/k/a "Form 398").

The Draft Order would revise the definition of Core Programming.

The Draft Order would expand the timeframe during which Core Programming can be aired, allowing stations to begin airing such programming one hour earlier, at 6:00 a.m., while retaining the current 10:00 p.m. end time.

Additionally, although the FCC would continue to require that a majority of Core Programming be at least 30 minutes in length and be regularly scheduled weekly programming, it would also enable broadcasters to receive Core Programming credit for a limited amount of short-form programming, such as PSAs and interstitials (i.e., programming of brief duration that is used as a bridge between two longer programs), and for programs that are not regularly scheduled on a weekly basis, including educational specials and non-weekly programming. We will provide you with further details regarding these changes after the final Order is adopted. The FCC hopes that additional compliance options will provide broadcasters with greater compliance flexibility.

Further, the Draft Order would eliminate the requirement that *noncommercial* stations identify Core Programming with the "E/I" symbol, but would retain the requirement for *commercial* stations. The FCC reasoned that the public can easily discern when a program on a noncommercial station is specifically designed to meet the educational and informational needs of children, given the educational nature of most children's programming on noncommercial stations.

*Quarterly Form 398 Reporting Requirements.* The Draft Order would change the frequency and content of required children's television programming filings. First, the *quarterly* FCC Form 398

filing requirement for commercial stations will be changed to an *annual* filing obligation, with filing required within 30 days after the end of the calendar year.

Second, the Draft Order would simplify and streamline FCC Form 398 by eliminating the Form's requirements that broadcasters: (1) provide information on children's E/I programs that they plan to air in the future, (2) specify the educational and informational purpose of each Core Program, (3) publicize the existence and location of the Forms 398, and (4) identify which program guide publishers were sent information identifying each Core Program aired on the station.

Consistent with these changes to Form 398, the Draft Order would revise the commercial time limit rules to require licensees to place records demonstrating compliance with the commercial time limits in their public files on an *annual* basis, rather than on a quarterly basis. The deadline for stations to do so would also be 30 days after the end of the calendar year.

*Multicast Option.* Under the current rules (for license renewal purposes), each station must air three hours per week of Core Programming (as averaged over a six-month period) on its primary channel and an additional three hours of Core Programming per week for each of its multicast channels. This three-hour-per-week "processing guideline" for the primary channel and for each multicast channel presents significant scheduling challenges for many stations, especially with the growth in live programming such as local news and sports.

The Draft Order would eliminate the processing guideline for multicast stations, so stations would no longer be required to air additional Core Programming on each multicast channel. Instead, although the Draft Order would require stations to air the *majority* of their Core Programming hours on their primary channel streams, a rule change would permit stations to air up to 13 hours per quarter (52 hours per year) of their regularly scheduled weekly Core Programming on a multicast stream. Note that all Core Programming that is not regularly scheduled weekly programming would have to be aired on the station's primary channel.

*Preemption Flexibility.* Under the current rules, when a station preempts a Core Program for any reason other than breaking news, it must—in order to get "credit" for airing the episode—reschedule the preempted episode to a consistent day and time (known as a "second home") and notify the public of the schedule change. The Draft Order would eliminate the "second home" policy and instead require stations to air the rescheduled episode during Core Programming hours within seven days before or seven days after the originally scheduled time and to provide an on-air notification of the schedule change during the same timeslot as the preempted episode (or, if the notification is aired before the preempted episode's originally scheduled time, such notification must be given during the preceding week's episode).

Also, the Draft Order would expand the "breaking news" exemption; a station would be permitted to preempt an episode of a regularly scheduled weekly program to air *non-regularly scheduled live programming produced locally by the station* without any requirement to reschedule the episode. Examples of such live programming include non-breaking live news, public affairs specials on issues of local interest, live coverage of a local parade, a local election debate, or live coverage of a local sports team's playoff or championship game (a local team's regular season games would not meet the definition of *non-regularly* scheduled live programming produced

locally by the station). Such programming must be produced locally by the station to serve its community.

*More to Come.* As noted above, this is a mere summary of the main points that will be considered by the Commission in its expected Report and Order. We will provide a more expansive discussion of the rule changes after the Report and Order is actually adopted.

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## Draft Report and Order Would Help TV Broadcasters, Move Carriage Election Notices from Snail-Mail to Electronic Delivery

Also on the agenda at the Commission’s July 10<sup>th</sup> open meeting is a draft [Report and Order and Further Notice of Proposed Rulemaking](#) (the “Draft Order”) that proposes to move broadcasters’ carriage election notices to primarily electronic means, significantly modernizing the FCC’s carriage election notice rules.

The Draft Order would require broadcasters both (1) to post their carriage elections online and (2) to send notices to covered multichannel video programming distributors (“MVPDs”) by e-mail, only when and if they change their carriage election status. We’ll provide a full report after next week’s open meeting.

As broadcasters are (sometimes painfully!) aware, every three years they must notify MVPDs of whether they wish to elect mandatory carriage of their signal or instead engage in retransmission consent negotiations. Currently, that carriage election notice must be sent by certified mail, and it often requires broadcasters to invest significant time and expense in both searching for MVPD contact information and mailing duplicative notices to help avoid the severe consequences of making a defective election due to using a faulty address.

However, the Draft Order, if adopted, would change the current process in several significant ways:

- First, broadcasters would be required to upload to their online public information files (“OPIF”) a single statement outlining all of their carriage elections. Any election-change notices must be attached to the statement.
- Second, broadcasters would send notices to MVPDs via email, with a carbon copy to a specific Commission email address ([ElectionNotices@FCC.gov](mailto:ElectionNotices@FCC.gov)). As a reciprocal obligation, MVPDs would be required to verify receipt of such emails “as soon as is reasonably possible.” If a broadcaster doesn’t receive an MVPD verification, or if the broadcaster gets an indication that its initial email to the MVPD was not delivered, the broadcaster would have to contact the MVPD by phone to confirm its receipt or to arrange for redelivery. If the broadcaster is still unable to reach the MVPD by phone, and if the broadcaster timely and properly sent the initial notice to the MVPD’s listed email address, the Commission would consider the broadcaster’s notice to be properly delivered so long as a carbon copy was, in fact, sent to the Commission’s address and the notice was timely placed in the broadcaster’s OPIF.

- Third, broadcasters would need to send such notices to MVPDs only if they are changing their carriage election from the previous cycle. Any such notice would need to include, with respect to each station covered by the notice: the station’s call sign; the station’s community of license; the DMA where the station is located; the specific change in election status being made; and an email address and phone number for carriage-related questions.
- Finally, covered broadcasters and MVPDs would be required to maintain a designated carriage election phone number and email address in either the COALS database or the OPIF.

Importantly, although the proposal on which the Order is based related solely to commercial broadcasters and cable operators, the Order would also apply the carriage election requirements to satellite providers, too.

As noted, we’ll be monitoring the Commission’s activity next week, and we will keep you updated on what, if anything, the FCC adopts.

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If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

*Tim Nelson, Editor*

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