



Virginia Association of Broadcasters Legal Review



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SPECIAL REPORT

Legal Memorandum

—Your Children’s Television Obligations Will Soon Be Changing— Expect Greater Flexibility and Yearly (Rather than Quarterly) Reporting

Last month, the FCC adopted and released a long-anticipated [Order](#) revising its children’s E/I (educational/informational) television rules. This Special Report describes the newly revised rules and their respective effective dates. **Please note: Some of the new rules go into effect soon—on September 16, 2019.** Others—such as the change to an annual, rather than quarterly, filing obligation (as well as certain changes to on-air disclosure requirements)—still require approval by the Office of Management and Budget (“OMB”), and although such approval is likely, it is also likely that the OMB approval process will take a couple of months or more.

The new rules affect (A) the fundamental definition of “Core Programming” (i.e., what exactly qualifies as “Core Programming”); (B) your multicast children’s programming obligations; (C) the frequency and content of your required Children’s Television Programming Report (“Form 398”) filings; (D) the frequency of certifying and uploading to the OPIF (online public inspection file) your records regarding commercial limits in certain children’s programming; and (E) the preemption and rescheduling of Core Programming.

Immediately below is an overview of the new rules. Following the overview is a more detailed discussion of the new rules in Question-and-Answer format, designed to address common questions you may have regarding your obligations under the new rules. Please keep in mind that the FCC’s children’s E/I programming rules apply to full power and Class A commercial and noncommercial television stations, but do not apply to low power television stations.

I. OVERVIEW

A. Core Programming Definition and Amount

Existing Definition of “Core Programming”. Prior to the effective date of the revised rules, the FCC has defined “Core Programming” 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”).

Revised Definition of “Core Programming”. The new rules change all criteria except for numbers 1 and 7 above, in the following manner (with changes *italicized*). When the new rules become effective, Core Programming will be 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 6:00 a.m. and 10:00 p.m.; (3) it is a regularly scheduled weekly program, *except that a licensee may air a limited amount of programming that is not regularly scheduled on a weekly basis, including educational specials and regularly scheduled non-weekly programming, and have that programming count as Core Programming*; (4) it is at least 30 minutes in length, *except that a licensee may air a limited amount of short-form programming, including PSAs and interstitials, and have that programming count as Core Programming*; (5) *for commercial stations only*, 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 *but no longer needs to provide 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 Form 398.

Expanded 6:00 a.m. to 10:00 p.m. Timeframe. As noted above, the new rules slightly expand the timeframe during which children’s E/I programming can be aired and still meet the definition of Core Programming. Stations may begin airing programming at 6:00 a.m., which is one hour earlier than the current timeframe. The current end time of 10:00 p.m. remains the same.

Non-Regularly Scheduled and Non-Weekly Programming Permitted in Limited Amounts. The rules no longer limit Core Programming to regularly-scheduled weekly programming. Rather, the new rules enable you to receive Core Programming credit for a limited amount of programs that are not regularly scheduled on a weekly basis, including educational specials and non-weekly programming.

Short-Form Programming Permitted in Limited Amounts. The new rules do not limit Core Programming to programming that is 30 minutes or more in length. Instead, under the new rules, you can 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).

Requirements Regarding On-Screen “E/I” Identification and Program Guide Information Are Changing Slightly. Commercial stations still must identify Core Programming with the on-screen “E/I” symbol, which must remain on-screen for the duration of each Core Program. On the other hand, the new rules will allow *noncommercial* stations to no longer use the on-screen “E/I” logo for Core Programs. Additionally, both commercial and noncommercial stations still must provide information identifying Core Programming to program guide publishers, but *stations will no longer be required to indicate the age group for which the programming is intended.* The effective date of this rule change is not yet set.

Amount of Core Programming Required Per Week, Per Six Months, and Per Year. In total, each station must air 156 hours per year of Core Programming. To satisfy this obligation, stations have the following options:

Category A Compliance (Full-Length Only Programming): Under Category A, a station has two options: **First**, the station can air (a) three hours per week of (b) regularly scheduled weekly Core Programs (as averaged over a six-month period), each of which is (c) at least 30 minutes in length. **Second**, the station can air (a) a minimum of 26 hours per quarter of regularly scheduled weekly Core Programs that are at least 30 minutes in length (which totals at least 104 hours per year) and (b) up to 52 hours annually of Core Programs that are at least 30 minutes in length but that are not regularly scheduled on a weekly basis.

Under the Category A compliance method, a station may air all of its Core Programs on its primary channel, or it may air the regularly scheduled weekly full-length (i.e., at least 30 minutes long) Core Programs in a manner that splits them between the primary channel and a multicast channel so long as no more than 13 hours per quarter of such Core Programs air on a multicast channel.

-OR-

Category B Compliance (Full-Length Plus Short-Form Programming): Under Category B, a station can air (a) a minimum of 26 hours per quarter of regularly scheduled weekly Core Programs that are at least 30 minutes in length (which totals at least 104 hours per year) and (b) up to 52 hours annually of Core Programming that is *short-form program material* (e.g., PSAs, interstitials) and/or full-length (i.e., at least 30 minutes long) Core Programs that are *not regularly scheduled* on a weekly basis.

Under the Category B compliance method, a station may air all of its Core Programs on its primary channel, or it may air the regularly scheduled weekly full-length (i.e., at least 30 minutes long) Core Programs in a manner that splits them between the primary channel and a multicast channel so long as no more than 13 hours per quarter of such Core Programs air on a multicast channel. In other words, short-form and non-weekly programs that air on a multicast stream cannot be counted towards the 156-hour annual Core Programming total under Category B.

B. Multicast Programming Obligations and Options

Multicast Streams Are No Longer Required to Air Core Programming. Under the “old” rules, stations with multicast streams have been required to air at least three hours per week of Core Programming for each full-time multicast stream. The new rules eliminate this multicast Core Programming requirement.

Stations May Use a Multicast Stream to Assist with Their Core Programming Obligation. While stations are no longer required to air three additional hours of Core Programming per week on each multicast channel, it doesn’t mean that multicast streams are now irrelevant for purposes of children’s E/I programming compliance. In fact, the FCC added a significant opportunity to the new rules to provide stations (especially those affiliated with Big 4 networks) with additional flexibility. Under the new rules, a station *may, if it wishes*, air on a multicast stream up to 13 hours per quarter (52 hours per year) of its regularly scheduled weekly full-length Core Programming and count those hours towards the Core Programming guideline.

C. Frequency and Content of Form 398 Filings

Annual Filings and Streamlined Form 398. Commercial stations will no longer be required to file Children’s Television Programming Reports on a **quarterly** basis. (Under both the old rules and the revised rules, noncommercial stations are not required to file any reports relating to children’s E/I programming.) Instead, commercial stations will be required to file *annual* reports within 30 days after the end of the calendar year. Additionally, in those annual filings stations will *no longer* be required to: (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 report forms, or (4) identify which program guide publishers were sent information identifying each Core Program aired on the station.

Implications for Third Quarter 2019 Children’s Television Programming Report. The FCC Staff has informally advised that stations should plan to file their third quarter children’s report on the “old” version of Form 398 by the usual October 10, 2019, deadline, and that they will release a Public Notice announcing the timeline and procedures for implementing the new annual reporting form.

D. Children’s Commercial Time Limits: Frequency of Certifying and Uploading to the OPIF Records of Compliance with Commercial Limits

Commercial Time Limits Rules Are Still the Same. The FCC specifically declined in this proceeding to consider making changes to the rules governing the commercial time limits for children’s programming that targets children under the age of 13. Thus, commercial stations must continue to be mindful of the commercial load in programs (irrespective of whether the programs are E/I or purely for entertainment) that target children ages 12 and under, the restrictions on

displaying certain website URL addresses during such programs, the host-selling prohibition, and the program-length commercial policy. To reiterate, none of these rules and policies have changed.

Annual, Rather than Quarterly, Certification and OPIF Upload. The FCC did, however, consider certain aspects of the record keeping requirements that relate to programming that targets children under the age of 13, and the FCC has provided some regulatory relief in the hopes of making the recordkeeping process less burdensome for commercial stations. Under the new rules, commercial stations will no longer be required to quarterly upload to the OPIF records of compliance with the commercial limits for children’s programming; the obligation will instead be *annual*, on the same schedule as the filing of Form 398, which means within 30 days of the end of the preceding calendar year.

E. Preemption Flexibility

More Flexibility to Reschedule Preempted E/I Programming—“Second Home” Policy Eliminated. Under the new rules, stations will no longer be required to reschedule preempted Core Programs to a consistent day and time (i.e., a “second home”). Instead, stations must (1) air a rescheduled episode during Core Programming hours *within seven days before or seven days after the originally scheduled time* and (2) provide an on-air notification of the schedule change during the same timeslot as the preempted episode or, if the rescheduled episode is aired before the preempted episode’s originally scheduled time, the on-air notification must be given during the preceding week’s episode of the same Core Program. (Of course, if you *want* to continue to use the overly-restrictive “second home” approach, you can still do so, subject to providing the requisite on-air notifications described above.)

Rescheduling Not Required for Non-Regularly Scheduled Live Programming Produced Locally by the Station. Under the “old” rules, when a station preempted a Core Program episode due to “breaking news,” the station was not required to reschedule the preempted episode but could still “count” it towards the Core Programming total as if it had aired in its entirety. Under the new rules, the FCC has expanded this concept and will apply the same no-rescheduling-required protocol to any preemptions that are caused by a station’s airing of non-regularly scheduled live programming produced locally by the station. A regularly scheduled local newscast would **not** meet the definition of “non-regularly scheduled programming produced locally by the station,” but holiday parade coverage would meet the definition so long as it is live and produced locally by the station. The “breaking news” exemption continues to apply to breaking news, whether or not produced locally by the station.

F. Staggered Implementation Dates for Various Portions of the Newly Revised Rules

Certain portions of the new rules are set to take effect on September 16, 2019. However, other portions of the new rules cannot take effect until they are approved by OMB. Because the timeline for the OMB approval process can vary widely, there is currently no effective date for many important portions of the new rules.

The table below divides the rules into the two preceding categories:

WILL SOON BE EFFECTIVE (September 16, 2019)	NOT EFFECTIVE YET (Implementation Deadline Not Yet Set)
<ul style="list-style-type: none">• New definition of “Core Programming,” including modified guideline requirements, expanded qualifying broadcast times, and permissive use of short-form and non-regularly scheduled programming• Elimination of “second home” policy• Permissive (rather than mandatory) use of multicast streams for E/I compliance• Rescheduling “exemption” for non-regularly scheduled live programming produced locally by the station	<ul style="list-style-type: none">• Elimination of the requirement for <i>noncommercial</i> stations to air an “E/I” bug during Core Programming• Elimination of the requirement to provide age-group information to program guide publishers• Requirement to provide new, particularized on-air preemption/rescheduling notifications• Requirement to file Children’s Television Programming Reports annually (rather than quarterly)

II. Q & A

A. Children's Core Programming Definition and Compliance Options

Q1. What is "Core Programming"?

- A. Under the *current* rules, "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 *new* rules change all criteria except for numbers 1 and 7 above, in the following manner (with changes *italicized*). When the new rules become effective, Core Programming will be 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 6:00 a.m. and 10:00 p.m.; (3) it is a regularly scheduled weekly program, *except that a licensee may air a limited amount of programming that is not regularly scheduled on a weekly basis, including educational specials and regularly scheduled non-weekly programming, and have that programming count as Core Programming*; (4) it is at least 30 minutes in length, *except that a licensee may air a limited amount of short-form programming, including PSAs and interstitials, and have that programming count as Core Programming*; (5) for commercial stations only, 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 *but no longer needs to provide 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 Form 398.

Q2. How many hours of "Core Programming" does each station have to air under the new, more flexible quantitative guidelines?

- A. In total, each station must air 156 hours per year of Core Programming. To satisfy this obligation, stations have the following options.

Category A Compliance: Under Category A, a station has two options: First, the station can air (a) three hours per week of (b) regularly scheduled weekly Core Programs (as averaged over a six-month period), each of which is (c) at least 30

minutes in length. Second, the station can air (a) a minimum of 26 hours per quarter of regularly scheduled weekly Core Programs that are at least 30 minutes in length (which totals at least 104 hours per year) and (b) up to 52 hours annually of Core Programs that are at least 30 minutes in length but that are not regularly scheduled on a weekly basis.

Under the Category A compliance method, a station may air all of its Core Programs on its primary channel, or it may air the regularly scheduled weekly full-length (i.e., at least 30 minutes long) Core Programs in a manner that splits them between the primary channel and a multicast channel so long as no more than 13 hours per quarter of such Core Programs air on a multicast channel.

-OR-

Category B Compliance: Under Category B, a station can air (a) a minimum of 26 hours per quarter of regularly scheduled weekly Core Programs that are at least 30 minutes in length (which totals at least 104 hours per year) and (b) up to 52 hours annually of Core Programming that is short-form program material (e.g., PSAs, interstitials) and/or full-length (i.e., at least 30 minutes long) Core Programs that are not regularly scheduled on a weekly basis.

Under the Category B compliance method, a station may air all of its Core Programs on its primary channel, or it may air the regularly scheduled weekly full-length (i.e., at least 30 minutes long) Core Programs in a manner that splits them between the primary channel and a multicast channel so long as no more than 13 hours per quarter of such Core Programs air on a multicast channel. In other words, short-form and non-weekly programs that air on a multicast stream cannot be counted towards the 156-hour annual Core Programming total under Category B.

Q3. What counts toward the new permissive option to use up to 52 hours per year of non-weekly scheduled full-length Core Programming under Category A?

- A. Under the second option provided by Category A, the new permissive option to count up to 52 hours per year of non-weekly scheduled full-length programming can include something such as a one-time, hour-long educational special or a Core Program that isn't regularly scheduled on a weekly basis. As long as the programming is *specifically designed* to serve the educational and/or informational needs of children ages 16 and under (and the rest of the Core Programming definitional elements including time of day, etc.), it should qualify under this new permissive option.

Q4. What counts toward the new permissive option to use up to 52 hours per year of non-weekly scheduled programming under Category B?

- A. As with Category A, under Category B the new permissive option to use up to 52 hours per year of non-weekly scheduled programming can include something such

as a one-time, hour-long educational special or a Core Program that isn't regularly scheduled on a weekly basis. In addition, Category B also contemplates the use of short-form program material (e.g., a ten-minute PSA about the importance of cultivating friendships at school, or the old "Schoolhouse Rock" videos aired interstitially between two longer programs). As long as the programming is *specifically designed* to serve the educational and/or informational needs of children ages 16 and under (and the rest of the Core Programming definitional elements including time of day, etc.), it should qualify under this new permissive option. Thus, not all PSAs would automatically qualify for use under Category B's permissive option because not all PSAs are specifically designed to serve the E/I needs of children ages 16 and under.

Q5. Under the new rules, does my station have to start airing children's E/I programming that is non-weekly scheduled programming or short-form children's E/I programming?

- A. No. The rule preserves your station's ability to comply (under Category A) by simply airing 3 hours per week of regularly scheduled weekly programs of at least 30 minutes in length that meet all the definitional criteria of Core Programming.

Q6. Does the change to the definition of "Core Programming" affect my obligations regarding commercial time limits in children's programming?

- A. No. Although the filings you must make regarding commercial time limits will change from a quarterly to annual obligation, the time limits themselves remain unchanged for all programming (not only E/I programming, but also non-E/I programming) that is specifically directed to children under the age of 13. It is important to note that the commercial limits *also apply on a pro-rated basis to short-form programming*. For instance a five-minute program (i.e., 1/12 of an hour) would be required to contain no more than 1/12 of the allotted commercial matter for an hour of children's programming. Thus, the use of short-form programming under Category B will require careful attention to the application of the commercial time limits pro-ration concept if the short-form programming is specifically directed to children under the age of 13. Because the FCC takes the commercial time limits very seriously, the use of short-form programming under Category B could prove to be a trap for the unwary!

Q7. When do the new definition of "Core Programming" and the new quantitative guidelines take effect?

- A. The new definition for "Core Programming" and the new, more flexible quantitative guidelines will take effect on September 16, 2019. You should note, however, that other aspects of the new rule—such as the revised reporting requirement—will take effect on a different, later date that has yet to be determined.

Q8. But if the definition of “Core Programming” and the quantitative guidelines change on September 16, 2019, that means the definition changes in the middle of the third quarter of 2019. So, which definition of Core Programming and which quantitative guidelines—the “old” or the “new”—will apply to my station during third quarter 2019?

A. During third quarter 2019, each definition and quantitative guideline that is in effect during the applicable period of time will govern. Thus, the old definition of Core Programming and the old quantitative guideline will apply for the first 11 weeks of the third quarter, and the new definition of Core Programming and new, more flexible quantitative guidelines will apply for the final two weeks of the third quarter. This means that, prior to September 16, 2019, you will need to continue to comply with the current rules, and after September 15, 2019, you can (but do not have to) begin using the additional flexibility provided to you by the new rules. Given the difficulties presented by some of the possible compliance permutations, stations may be well-served by consulting with legal counsel before completely overhauling their compliance approach in mid-September 2019.

Q9. Can I ever count E/I programming that airs at 5 a.m. or 5:30 a.m. or during the overnight?

A. No. The new definition for “Core Programming” only expands the Core Programming window to 6 a.m.

B. Multicast Streaming Obligations and Permutations

Q1. Now that the FCC eliminated the requirement that children’s E/I programming air on each multicast channel, is it OK for my station to continue to air children’s E/I programming on its multicast channels?

A. Yes. You have the discretion to air as much E/I programming on your multicast streams as you like. However, only 13 hours per quarter (up to 52 hours per year) of full-length regularly scheduled weekly E/I Core Programming on a multicast stream will “count” toward your annual Core Programming requirements.

Q2. If my station airs three hours of Core Programming on its primary stream and also airs children’s E/I programming on its multicast streams, how does the station account for the E/I programming that aired on the multicast channels?

A. Up to 13 hours per quarter (52 hours per year) of E/I programming aired on your multicast channel can “count” toward your annual Core Programming requirements, as long as that programming is regularly scheduled weekly full-length Core Programming. The remaining hours of your Core Programming obligation must be comprised of programming aired on your primary channel that complies with one of the options under the new, more flexible quantitative guidelines. We haven’t yet had a chance to see the FCC’s new annual children’s

report form, and so it's unclear precisely how the form will want stations to account for multicast Core Programming when it is used for compliance with the new quantitative guidelines. It is also unclear whether the new report form will continue to have a section where stations can input non-core programming such as additional E/I programs that air on multicast channels.

Q3. My station has a Big 4 affiliation on its primary channel and another Big 4 affiliation on one of its multicast channels. As long as I air at least two hours of Core Programs per week on either one of the Big 4 streams and one hour of Core Programs on the other Big 4 stream, my station will be in compliance, right?

A. Wrong. The new quantitative guidelines do not allow for a compliance plan as described immediately above. One compliance option is for the station to air at least two hours of Core Programs per week on the station's primary stream and up to one hour per week (for a total of three hours of Core Programs per week in total) on a multicast stream, but the maximum amount for any multicast stream (whether it's a Big 4 affiliate or not) that can be counted towards compliance with the quantitative guideline is one hour per week of Core Programming.

C. Frequency and Content of Children's Programming Filings

Q1. Does the new annual reporting obligation take effect at the same time as the other rule changes, such as the changes to the definition of "Core Programming" and the quantitative guidelines?

A. No. The annual reporting obligation must first be approved by a separate federal agency (OMB) prior to taking effect. The timing of that approval process varies widely; accordingly, we do not (and cannot) know at this time when exactly the current quarterly reporting obligation will change to the new annual reporting obligation. The FCC Staff has informally indicated that it will issue a Public Notice in the next several weeks that will forecast when the first annual report will be due.

Q2. Will the third quarter Children's Television Programming Report still be due by October 10, 2019?

A. Most likely, yes. The FCC Staff has informally advised that the third quarter Form 398 will still be due by October 10, and while it doesn't seem likely that there will be any other outcome, we won't know with absolute certainty until the FCC released a Public Notice in the next several weeks.

Q3. So when the new reporting rules take effect, when will I file my reports each year?

A. You will have until *January 30* each year to file your Form 398. The new rule specifies a filing deadline of 30 days after the end of the calendar year, rather than the prior rule's specification of *10 days* after the end of each calendar quarter.

Q4. So I will have to file my Form 398 on January 30 each year?

A. No. You will have *up to and including* January 30 each year to file your report. You will be able to file *any time between January 1 and January 30* each year. As with all FCC filings, we recommend that stations not wait until the last day to make filings. The FCC's databases and filing systems have been known to slow down and even crash during heavy filing periods.

Q5. Will the new Form 398 still require me to include information on the educational and informational programming my station intends to air during the next reporting period?

A. No. The FCC has eliminated this requirement. But because you'll be using the "old" version of Form 398 for your third quarter 2019 report, you will need to be prepared to include this information in your third quarter 2019 report.

Q6. Will the new Form 398 still require me to describe the educational and informational objective of each Core Program and how it meets the definition of Core Programming?

A. No. The FCC has eliminated this requirement. But because you'll be using the "old" version of Form 398 for your third quarter 2019 report, you will need to be prepared to include this information in your third quarter 2019 report.

Q7. Will the Form 398 still require me to identify to which program guide publishers we sent information identifying each Core Program aired on my station?

A. No. The FCC has eliminated this requirement. However, you will still be required to certify that you have sent the required information to program guide publishers. But because you'll be using the "old" version of Form 398 for your third quarter 2019 report, you will need to be prepared to include this information in your third quarter 2019 report.

Q8. Will the Form 398 still require me to identify the target age of my station's Core Programming?

A. Yes. However you will only need to select between two options, by checking a box on the form to indicate whether the programming is designed to serve the

educational and informational needs of young children (ages 12 and under) or teenage viewers (ages 13 to 16). Remember, if a show is for children ages 9-14 or 8-13 or any other permutation that includes ages 12 and under, then it is considered to be a show that is subject to the FCC's commercial time limits rules and policies. This new, more streamlined approach to the question of age ranges in the form should help reinforce for stations which children's programs that are relevant to the commercial time limits rules and policies.

Q9. Will I still be required to publicize the existence and location of my children's reports?

- A. No. The FCC has eliminated this requirement. However, you are still required to ensure that your children's reports are uploaded to your online public file. (Generally, the FCC's online public file system auto-imports the reports that are filed in the FCC's LMS platform, but we strongly urge stations to always check to be sure the children's report successfully appears in the online public file.)

Q10. Will I still need to put records about my station's compliance with the commercial time limits into the online public file?

- A. Yes, but only on an annual basis instead of on a quarterly basis. Once the new reporting rules take effect (see the question immediately preceding this one), you will only need to put records about the commercial time limits for children's programming into the online public file *once a year*—within 30 days of the end of the preceding calendar year. Remember that the FCC Staff expects to see documentation relating to the children's commercial time limits even if your station does not air any programming that is directed to children under the age of 13—in such a case, a station would merely certify that the station aired no programming subject to the FCC's commercial time limits.

Q11. Since I can only count a limited amount of children's programming that airs on multicast streams towards my compliance with the new quantitative Core Programming guidelines, I don't need to worry about the children's commercial time limits for any multicast shows unless those shows count toward my Core Programming compliance, right?

- A. Wrong. The children's commercial time limits rules and policies apply to **ALL** programming that is directed to children under the age of 13 no matter what stream it airs on and no matter whether it is E/I or pure entertainment or whether it counts towards your station's Core Programming compliance. Thus, stations will still need to inventory their program schedule with regularity to identify shows directed to children under the age of 13 and to ensure that such shows do not violate any of the FCC's commercial time limits restrictions.

D. Preemption/Rescheduling Flexibility

Q1. What exactly do the new rules change regarding the rescheduling of preempted Core Programs?

- A. The new rules eliminate the “second home” policy, which requires a station to reschedule a preempted program to a consistent day/time within seven days of the originally scheduled day/time and publicize the rescheduled day/time.

Once the new preemption/rescheduling rule becomes effective, it will require that you:

- air the rescheduled episode at any time during Core Programming hours and within seven days before or seven days after the date the episode was originally scheduled to air;
- provide a prescribed on-air notification of the schedule change that includes the alternate date and time when the preempted program will air;
- broadcast the on-air notification—
 - during the same day/timeslot as the preempted episode (if you choose to air the rescheduled episode during the seven days *after* the date on which the rescheduled episode was to air); or
 - during the same timeslot as the *preceding* week’s episode of the program (if you choose to air the rescheduled episode during the seven days *before* the date on which the rescheduled episode was to air).

Q2. Until the new preemption/rescheduling rule becomes effective, I need to continue to use a “second home” for rescheduling preempted programs, right?

- A. Right. As of the date of this memorandum (i.e., prior to September 16, 2019), the “second home” policy remains fully in effect.

Q3. Okay. So after September 15, 2019, do I still need to use a “second home” for rescheduling preempted programs?

- A. Maybe yes, maybe no—there is an unclear element to the elimination of the “second home” policy, which involves the approval of OMB. We have reached out to FCC Staff for guidance on this issue and they have informally acknowledged that the new preemption/rescheduling flexibility that is replacing the “second home” policy will be able to go into effect on September 16 (because OMB must approve certain aspects of it). Thus, the safest course of action is to continue to adhere to the “second home” requirements until all aspects of the new preemption/rescheduling flexibility have become effective.

- Q4. Do the new, more flexible preemption/rescheduling requirements differ if the rescheduled program is regularly scheduled on a multicast stream?**
- A. No. The procedures described in the answer to the preceding question apply equally to primary and multicast streams.
- Q5. If my station airs breaking news that is locally or nationally produced and it preempts a Core Program, I didn't used to have to reschedule that episode, right?**
- A. Right. Under the FCC's "old" rules, breaking news preemptions of Core Program episodes did not trigger a rescheduling obligation.
- Q6. How do the new rules take into account a station's locally produced content that is aired live and isn't regularly scheduled?**
- A. Under the new, more flexible preemption/rescheduling rules, if a station airs a live, non-regularly scheduled program that is locally produced by the station, then the station is not obligated to reschedule the Core Program episode that was preempted by the live, locally produced non-regularly scheduled program.
- Q7. My station would like to preempt a regularly scheduled weekly Core Program to broadcast a local election debate produced by my station instead. If the station does so, do I need to reschedule the preempted Core Program episode?**
- A. No. A local election debate program that is non-regularly scheduled live programming produced locally by the station will not trigger a need for the station to reschedule the preempted episode. Other examples of such programming include live coverage of a local parade or of a local sports team's playoff or championship game . . . so long as the programming is not regularly scheduled, airs live, and is produced locally by the station.
- Q8. My station would like to preempt a regularly scheduled weekly Core Program to broadcast our local baseball team's regular-season games instead. If the station does so, do I need to reschedule the preempted episodes?**
- A. Yes. Live coverage of a local sports team's regular season games would not count as "non-regularly scheduled live programming produced locally by the station" and therefore would require the station to reschedule any preempted episode. Unlike a playoff game, regular season games would be considered *regularly* scheduled.
- Q9. My station would like to preempt a regularly scheduled weekly Core Program to broadcast a multi-part series we've produced locally. If the station does so, do I need to reschedule the preempted episodes?**

- A. It depends. As an example, the FCC has indicated that “an occasional, multipart series of a special program of local interest to the community, such as a series on opioid addiction in the community,” would not trigger an obligation that the station reschedule any preempted episodes of the Core Program, so long as the programming is aired live. However, a twelve-part, twice-monthly program about our nation’s founding might begin to fall outside of the FCC’s example because such a program lends itself to being considered to be regularly scheduled and might not be aired live.

E. E/I Symbol and Information Provided to Publishers of Program Guides

Q1. Does the revised definition of “Core Programming” mean that my station no longer has to display the “E/I” symbol during “Core Programming”?

- A. It depends. If your station is a **commercial** station, then your children’s E/I programming must still bear the “E/I” symbol throughout each broadcast in order to count towards the quantitative guidelines. If your station is a noncommercial station, then your children’s E/I programming will no longer be required to bear the “E/I” symbol once the elimination of that requirement is approved in the future by OMB.

Q2. I operate a noncommercial station; can I stop displaying the “E/I” symbol during “Core Programming”?

- A. As of the date of this memorandum, no. Once that portion of the revised rules takes effect, you will be able to stop displaying the “E/I” symbol during Core Programming, but the elimination of the “E/I” logo for noncommercial TV stations is something that still needs to be approved by OMB. Accordingly, it is not yet known on what date your requirement to display the “E/I” symbol will terminate. We believe the FCC will release a Public Notice to announce the effective date of the elimination of the “E/I” display requirement for noncommercial stations, and we suspect that PBS will likely notify its affiliates of the effective date of the elimination of the rule too.

Q3. Do the revised rules mean that I no longer have to submit information to program guides?

- A. No. All stations are still required to submit to program guide publishers information identifying programming specifically designed to educate and inform children. However, stations will—once this part of the rule (which also requires OMB approval) goes into effect—be required to indicate the age group intended for the programming.

Q4. Can I immediately stop submitting to program guide publishers the intended age group for my programming?

- A. No. As of the date of this memorandum, none of the newly revised rules have yet taken effect, and the elimination of the requirement that stations notify program guide publishers of the intended age group for Core Programming will need OMB approval before it becomes effective. Accordingly, it is not yet known on what date your requirement to submit to program guide publishers the intended age group for programming will terminate. We expect the FCC to release a Public Notice to announce the effective date.

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

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