

SUPPORTING STATEMENT

A. Justification:

1. Commercial television broadcast stations and Class A television broadcast stations¹ are both required to file FCC Form 398.² FCC Form 398 is a standardized form that:

- (a) provides a consistent format for reporting by all licensees, and
- (b) facilitates efforts by the public and the FCC to monitor compliance with the Children's Television Act.³

These commercial television broadcast station licensees and the Class A television broadcast station licensees both use FCC Form 398:

- (a) to identify the individual station, and
- (b) to identify the children's educational and informational programs, which the station broadcasts on both the regularly scheduled and preempted core programming,⁴ to meet the station's obligation under the Children's Television Act of 1990 (CTA).

Each quarter, the licensee is required to place in its public inspection file a "Children's Television Programming Report" and to file the FCC Form 398 each quarter with the Commission. The licensee must also complete a "Preemption Report" for each preempted core program during the quarter. This "Preemption Report" requests information on the date of each preemption, if the program was rescheduled, the date and time the program was aired, and the reason for the preemption.

History:

On September 26, 2006, the Commission adopted a *Second Order On Reconsideration And Second Report And Order* in MM Docket 00-167, FCC 06-143, *In the Matter of Children's Television Obligations of Digital Television Broadcasters*. The Commission received OMB approval for the proposed recordkeeping and reporting requirements on June 23, 2006.⁵ These recordkeeping and reporting requirements were adopted as proposed when FCC 06-143 was adopted by the Commission on September 26, 2006.⁶

On March 17, 2006, the Commission adopted a *Second Further Notice of Proposed Rule Making* in MM Docket 00-167, FCC 06-33, *In the Matter of Children's Television Obligations of Digital Television Broadcasters*. The *Second FNPRM* sought public comment on a Joint Proposal of Industry and Advocates

¹ A Class A station is a low power television broadcast station that has met the eligibility and licensing requirements in 47 CFR 73.6001.

² See *Establishment of a Class A Television Service*, MM Docket No. 00-10, FCC 01-123, 15 FCC Rcd 6355 (2000), 65 FR 29985, May 10, 2000, reconsideration granted in part, 16 FCC Rcd 8244 (2001), 66 FR 21681, May 1, 2001.

³ Children's Television Act of 1990, Pub. L. No. 101-437 104 Stat 996-1000, *codified* at 47 USC 303a, 303b, 394.

⁴ Core programming is children's programming that meets the Commission's educational requirements as discussed in 47 CFR 73.671(c).

⁵ See FCC 06-33.

⁶ The Commission submitted FCC 06-143 to OMB for their records/files. OMB issued a no material or nonsubstantial change to a currently approved collection on July 19, 2007 noting that the proposed information collection requirements were adopted as proposed.

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on Reconsideration of Children's Television Rules, filed in MM Docket 00-167 in February 2006. The Commission sought public comments to make a determination as to whether the Joint Proposal will be adopted by the Commission.

In the Commission's *Second Further Notice of Proposed Rule Making*, the Commission also sought comment on, among other things, whether to revise FCC Form 398 to clarify the way in which DTV broadcasters determine whether a core children's educational program meets the limits on repeats of core programs, which is part of the core programming processing guideline applicable to digital broadcasters.

The Commission adopted a *Report and Order and Further Notice of Proposed Rule Making* in MM Docket 00-167, FCC 04-221, *In the Matter of Children's Television Obligations of Digital Television Broadcasters* on September 9, 2004. Among other things, the *Report and Order* addressed several matters relating to the obligation of television licensees to provide educational programming for children. Some of the rules and policies adopted in the *Report and Order* apply only to digital broadcasters while others apply to both analog and digital broadcasters as well as cable operators.

The *Report and Order* adopted a revised core programming processing guideline for digital broadcasters pursuant to which broadcasters must air at least 3 hours/week of core programming on their "main" programming stream. For digital broadcasters that multicast,⁷ the guideline increases the amount of core programming beyond the baseline 3 hours/week in a manner proportional to the increase in free video programming offered by the broadcaster on multicast channels. Digital broadcasters can choose to air some or all of the additional core programming, beyond the 3 hours on the main stream, on either the main stream or a multicast stream as long as the multicast stream receives Multichannel Video Programming Distributor (MVPD) carriage comparable to the stream whose programming generates the core programming obligation under the revised guideline.

The *Report and Order* also required analog and digital, commercial and noncommercial, broadcasters to identify their core children's educational programming by displaying throughout the program the symbol "E/I." FCC Form 398 has been revised to permit noncommercial, commercial, analog and digital broadcasters to inform the Commission of their compliance with this requirement.

On May 1, 2001, the Commission released a *Memorandum Opinion and Order on Reconsideration*, MM Docket No. 00-10, FCC 01-123, paragraph 24 of the Class A R&O, 15 FCC Rcd 6355, 6366 (2000), explicitly made applicable to Class A licensees the children's programming and reporting requirements governing commercial television broadcasters, including the filing of the quarterly Form 398's. Nothing in either the Class A R&O or the *Order on Reconsideration* modified Form 398 itself.

On September 14, 2000, the Commission adopted a *Report and Order and Further Notice of Proposed Rule Making*, *In the Matter of Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398)*, in MM Docket 00-44, FCC 00-343. In the *Report and Order*, the Commission adopted a number of changes to the children's educational television reporting requirements. The Commission extended indefinitely the requirement that commercial TV licensees file their quarterly FCC Forms 398 with the Commission. The Commission also changed its requirement that these reports be filed with the Commission quarterly at the time that they are prepared rather than annually. In addition, the Commission revised FCC Form 398 to make the information in the reports clearer and more useful to the FCC and the public. Specifically, the *Report and Order* added a "Preemption Report" to be completed for each preempted core program during the quarter. This "Preemption Report" requested information on the

date of each preemption, if the program were rescheduled, the date and time the program was aired, and the

⁷ Multicasting occurs when a programmer is airing the same signal on its analog and digital channel.

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reason for the preemption. The revised FCC Form 398 also asked (1) whether promotional efforts were made to notify the public of the time and date the rescheduled program would air, and (2) required licensees

to identify the publishers of program guides that provided information about the licensee's core educational programming. Finally, licensees were required to indicate on the revised forms the station's next license renewal date.

On October 22, 1998, the Commission adopted a *Report and Order*, In the matter of 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules and Processes, in MM Docket Nos. 98-43/94-149. Among other things, this *Report and Order* adopted a mandatory electronic filing requirement for the FCC Form 398.⁸

On August 8, 1996, the Commission adopted a *Report and Order*, In the matter of Policies and Rules Concerning Children's Television Programming, MM Docket No. 93-48. This rulemaking was initiated to explore ways to implement the Children's Television Act of 1990 (CTA) more effectively: (1) by facilitating broadcasters' compliance with their obligation to air educational and informational programming for children, including programming specifically designed for this purpose, and (2) by furthering the CTA's goal of increasing the amount of educational and informational programming available to children. With adoption of the *Report and Order*, the Commission strengthened its enforcement of the CTA. The rules that the Commission adopted in this rulemaking were intended to provide greater clarity about broadcasters' obligations under the CTA to air programming "specifically designed" to serve educational and informational needs of children and to improve public access to information about the availability of these programs.

The Commission is seeking a three year extension for this collection from the Office of Management and Budget (OMB).

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Statutory authority for this collection of information is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

2. This standardized FCC Form 398 facilitates consistency of reporting among all licensees, assists in efforts by the public and the Commission to monitor station compliance with the CTA, and lessens the burden on the public and Commission staff.

3. The Commission implemented mandatory electronic filing of the FCC Form 398, with the annual report filing on January 10, 1999. (Quarterly filing was instituted with the release on September 14, 2000 of the *Report and Order and Further Notice of Proposed Rule Making*, In the matter of Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398), in MM Docket 00-44, FCC 00-343, as noted above). Paper-filed copies of the form will be accepted only if accompanied by an

appropriate request for waiver of the electronic filing requirement. Waivers will not be routinely granted, and filers should plead with particularity the facts and circumstances warranting grant of a waiver.

⁸ The Commission changed the annual filing requirement to the current quarterly filing requirement when it adopted the *Report and Order and Further Notice of Proposed Rule Making*, In the matter of Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398), in MM Docket 00-44, FCC 00-343, on September 14, 2000, as noted above.

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4. No other agency imposes a similar information collection on the respondents. There are no similar data available.
5. The Commission has exempted noncommercial educational, low power television, and television translator stations from these requirements. Therefore, this information collection does not impose a significant economic impact on a substantial number of entities/businesses.
6. The CTA requires the Commission to ensure that the licensee has served the educational and informational needs of children through the licensee's overall programming, as well as programming specifically designed to serve these needs.
7. This collection of information is consistent with the guidelines in 5 CFR Section 1320.5(d)(2).
8. The Commission published a notice in the Federal Register as required by 5 CFR § 1320.8(d) seeking public comment. See 76 FR 78919 on December 20, 2011. No comments were received as a result of this notice.
9. No payment or gift was provided to the respondent.
10. There is no need for confidentiality with this collection of information.
11. This information collection does not address any private matters of a sensitive nature.
12. We estimate that there are 1,962 licensees: 1,370 commercial television stations and 592 Class A television stations. Each quarter, each licensee is required to place in its public inspection file a Children's Television Programming Report and to file electronically the quarterly forms with the Commission. We estimate that completion of the form and maintaining a record of it will have an average burden of 12 hours per quarter for each licensee. These estimates are based on FCC staff's knowledge and familiarity with the availability of the data required.

Total Number of Respondents:

1,370 commercial TV stations
+ 592 Class A TV stations
1,962 respondents

Total Number of Annual Responses:

1,962 FCC Form 398 x 4 quarters for filing and recordkeeping requirements/form = **7,848 FCC
Form 398
(responses)**

Total Annual Burden Hours:

1,962 FCC Form 398 x 12 hours/form x 4 quarters for filing and recordkeeping requirements/form
= **94,176**

Hours

We assume that a station manager will complete the FCC Form 398 and that a clerical staff will be responsible for typing. It is estimated that the station manager will have an average burden of 11.5 hours

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per quarter and that the clerical person will have an average burden of 0.5 hours. A station manager is estimated to have an average salary of \$48.08/hour. A clerical person is estimated to have an average salary of \$12/hour.

1,962 FCC Form 398 x 11.5 hours x \$48.08/hour x 4 quarters = \$4,339,316 (Station Manager)

1,962 FCC Form 398 x 0.5 hour x \$12/hour x 4 quarters = \$ 47,088 (Clerical Staff)

Total Annual "In House" Cost: \$4,386,404

13. The licensee will use a communications attorney to review each FCC 398 Form for accuracy and completeness once the licensee has completed each FCC Form 398. The attorney will charge \$300 per hour for 2 hours per quarter of legal review.

1,962 FCC Form 398 x 2 hours/form x \$300/hour x 4 quarters = \$4,708,800

Total Annual Cost: \$4,708,800

14. Cost to the Federal Government: Quarterly reports would be reviewed and processed by a paraprofessional at the GS-13, step 5 level (\$48.35/hour).

1,962 FCC Form 398 x \$48.35/hour x 0.75 hours x 4 quarters = \$284,588.10

Total Cost to the Federal Government: \$284,588.10

15. There are adjustments of +\$1,569,600 to the annual costs. These adjustments are due to increases in consulting fees. There are no program changes to this information collection.

16. The data will not be published.

17. The Commission requests an extension of the waiver not to publish the expiration date on FCC Form 398. This will obviate the need for the Commission to update electronic forms upon the expiration of the clearance. OMB approval of the expiration date of the information collection will be displayed at 47 CFR Section 0.408.

18. There are no exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods

This information collection does not employ any statistical methods.