

August 31, 2000

William E. Kennard  
Chairman  
Federal Communications Commission  
445 12th St., S.W.  
Room 8-B201  
Washington, DC 20554

RE: Ex Parte Presentation in a Non-Restricted Proceeding  
Initial Regulatory Flexibility Analysis for Extension of the Filing Requirement for  
Children's Television Programming Reports (MM Dkt. No. 00-44)

Dear Chairman Kennard:

As part of its statutory duty to monitor and report on the FCC's compliance with the Regulatory Flexibility Act of 1980 ("RFA"), as amended by the Small Business Regulatory enforcement Fairness Act of 1996 ("SBREFA"),<sup>1</sup> the Office of Advocacy, U.S. Small Business Administration ("Advocacy") has reviewed the Federal Communications Commission's ("FCC" or "Commission") Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398)<sup>2</sup> and subsequently filed comments.<sup>3</sup>

The Initial Regulatory Flexibility Analysis ("IRFA") prepared by the Commission regarding the extension of filing requirements of children's television programming reports complies with the RFA, as it adequately describes projected compliance requirements and alternatives that will minimize significant economic impact. However, the Office of Advocacy strongly recommends an additional, supplemental IRFA be completed if the Commission adopts the proposals made by the Center for Media Education ("CME") in its comments.<sup>4</sup>

Congress established the Office of Advocacy in 1976 by Pub. L. No. 94-305<sup>5</sup> to represent the views and interests of small business within the Federal government. Advocacy's statutory duties include serving as a focal point for concerns regarding the government's policies as they affect small business, developing proposals for changes in Federal agencies' policies, and communicating these proposals to the agencies.<sup>6</sup> Advocacy also has a statutory duty to monitor

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<sup>1</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. § 601 et seq.) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).

<sup>2</sup> *In the Matter of* Extension of the Filing Requirement for Children's Television Programming Reports, *Notice of Proposed Rulemaking*, MM Dkt. 00-44 (rel. April 6, 2000).

<sup>3</sup> Because this communication is a result of Advocacy's statutory duty, it is exempt from the Commission's rules on ex parte presentations. *See* 47 CFR § 1.1204(a)(5)(1997).

<sup>4</sup> Comments of the Center for Media Education, to the *Notice of Proposed Rulemaking* in MM Dkt. 00-44 (June 12, 2000).

<sup>5</sup> Codified as amended at 15 U.S.C. §§ 634 a-g, 637.

<sup>6</sup> 15 U.S.C. § 634c(1)-(4).

and report to Congress on the Commission's compliance with the Regulatory Flexibility Act of 1980 ("RFA"),<sup>7</sup> as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Subtitle II of the Contract with America Advancement Act ("SBREFA").<sup>8</sup>

The RFA was designed to ensure that, while accomplishing their intended purposes, regulations did not unduly inhibit the ability of small entities to compete, innovate, or to comply with the regulation.<sup>9</sup> The major objectives of the RFA are: (1) to increase agency awareness and understanding of the potential disproportionate impact of regulations on small business; (2) to require that agencies communicate and explain their findings to the public and make these explanations transparent; and (3) to encourage agencies to use flexibility and provide regulatory relief to small entities where feasible and appropriate to its public policy objectives.<sup>10</sup> The RFA does not seek preferential treatment for small businesses. Rather, it establishes an analytical process for determining how public issues can best be resolved without erecting barriers to competition. To this end, the RFA requires the FCC to analyze the economic impact of proposed regulations on different-sized entities, estimate each rule's effectiveness in addressing the agency's purpose for the rule, and consider alternatives that will achieve the rule's objectives while minimizing any disproportionate burden on small entities.<sup>11</sup>

The proposed rule, which would extend the filing requirements of children's television programming from annually to quarterly, is not unduly burdensome on small business since licensees are already required to prepare quarterly reports and place them in their public file at the station. As noted, "submitting the Reports electronically to the FCC "should require only a few additional keystrokes."<sup>12</sup> In this instance, Advocacy agrees with the FCC that public interest outweighs the additional minimal burden placed on licensees. The present IRFA is sufficient for the FCC's proposed rule.

However, if the FCC intends to adopt the additional proposals proposed by the CME, the Office of Advocacy strongly recommends that the FCC conduct a supplemental IRFA to gauge the small business impact of these proposals accurately, since they would impose increased compliance burdens over and above what is currently proposed.

CME proposes that the Commission amend FCC Form 398 to provide more information regarding children's programming and suggests changes to item number five and question number four.<sup>13</sup> The Office of Advocacy contends, however, that these changes impose regulatory burdens on small businesses, which must be analyzed.

In item five, CME proposes that Form 398 include an explanation for each time a broadcaster preempts a program rather than simply listing the number of times a program is

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<sup>7</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980)(codified at 5 U.S.C. § 601 et seq.).

<sup>8</sup> Pub. L. No. 104-121, 110 Stat. 857 (1996)(codified at 5 U.S.C. § 612(a)).

<sup>9</sup> 5 U.S.C. § 601(4)-(5).

<sup>10</sup> See generally, Office of Advocacy, U.S. Small Business Administration, *The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies*, 1998 ("Advocacy 1998 RFA Implementation Guide").

<sup>11</sup> 5 U.S.C. § 604.

<sup>12</sup> NPRM, para. 11.

<sup>13</sup> Comments of CME in MM Dkt. 00-44 (June 12, 2000).

preempted.<sup>14</sup> Licensees who need the preempted programs to meet their three hour “core” programming requirement have the opportunity to list their reasons in question five or in question eleven (which specifically provides space for additional explanations if the licensee chooses to do so). Requiring that all preempted programming be explained may be duplicative and unnecessary.

In question four, CME proposes that licensees list the publishers of program guides and that they provide information on “core” educational programming and track whether or not these publishers print this information.<sup>15</sup> This proposal is particularly burdensome to small businesses as it requires them to monitor the actions of program publishers. Furthermore, reporting this information to the FCC has no practical effect since the Commission has no jurisdiction to require publishers to print information on children’s educational programming.<sup>16</sup>

In addition, CME also proposes that the Commission require broadcasters to post their reports on their Web sites to increase parental access to information concerning children’s educational programming.<sup>17</sup> However, the FCC should consider the following two points.

First, since the FCC Web site serves as a centralized storage area for all reports, requiring that individual broadcasters also post reports on their personalized Web sites may be duplicative. The FCC Web site provides a stronger tool for accessing information on children’ educational programming, as it allows parents to compare programming between stations as well as access to a particular broadcaster’s programming.

Second, this requirement assumes all broadcasters have individualized Web sites set up. The cost of having a Web site, including domain name registration fees and Web site construction and maintenance can run from hundreds of dollars to thousands. Furthermore, the amount of information contained in these reports, especially accrued over many years, could add up to a significant financial burden for small businesses since Web site managers often charge based on the amount of data kept on a server.

In conclusion, while the Commission’s proposed rule to extend the filing requirement for children’s television programming reports has been adequately addressed in the IRFA, a supplemental IRFA would be necessary to address the small business impacts in the Center for Media Education’s proposals if the Commission adopts the proposals made by CME. Advocacy makes no comment on whether CME’s proposals are in the public interest; rather, we point out that such requirements will have a regulatory impact on small businesses.

If there are any additional comments or questions, please feel free to contact either myself or my Assistant Chief Counsel for Telecommunications, Eric Menge, at (202) 205-6949.

Sincerely,

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<sup>14</sup> Comments of CME in MM Dkt. 00-44 at 6 (June 12, 2000).

<sup>15</sup> *Id.*

<sup>16</sup> Reply Comments of the National Association of Broadcasters, to the *Notice of Proposed Rulemaking* in MM Dkt. 00-44 at 5 (July 12, 2000).

<sup>17</sup> Comments of CME in MM Dkt. 00-44 at 8 (June 12, 2000).

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Jere W. Glover  
Chief Counsel for Advocacy

/s/\_\_\_\_\_

Eric E. Menge  
Assistant Chief Counsel for Telecommunications

cc:

Commissioner Susan Ness  
Commissioner Michael Powell  
Commissioner Harold Furchtgott-Roth  
Commissioner Gloria Tristani  
Roy Stewart, Chief, Mass Media Bureau  
Frank Montero, Director, Office of Communications Business Opportunities