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Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, D.C. 20554

Dear Ms. Dortch:

August 28, 2013

In its *Second Order on Reconsideration and Second Report and Order* (“*Second Order*”) regarding the children’s television obligations of digital television broadcasters,<sup>1</sup> the Commission directed that “all networks requesting preemption flexibility [with respect to their presentation of “core” children’s programs] . . . file a request with the Media Bureau by August 1 of each year”<sup>2</sup> stating the number of preemptions expected during the upcoming television season, and outlining plans for rescheduling those programs and publicizing such scheduling changes. This letter is submitted on behalf of the CBS Television Network (“CBS”) in response to that directive.

In adopting its license renewal processing guideline establishing a three-hour-per-week benchmark for the broadcast of educational and informational children’s programming, the Commission determined that to qualify as “core” programming – and thus be counted toward meeting the guideline – a program must be “regularly scheduled” to air at least once a week at the same time.<sup>3</sup> The Commission acknowledged, however, that individual episodes of weekly children’s programs are sometimes preempted by breaking news or sports events, and directed that the

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<sup>1</sup> *Second Order on Reconsideration and Second Report and Order, In the Matter of Children’s Television Obligations of Digital Television Broadcasters*, MM Docket No. 00-167, 21 FCC Rcd 11065, 11076 (2006) (“*Second Order*”).

<sup>2</sup> CBS requested and received from the Media Bureau an extension until September 1, 2013 to file this year’s request.

<sup>3</sup> *Report and Order*, MM Docket 93-48, *Policies and Rules Concerning Children’s Television Programming*, 11 FCC Rcd 10660, 10710-11 (1996).

FCC staff determine, "with guidance from the full Commission as necessary, what constitutes regularly scheduled programming and what level of preemption is allowable."<sup>4</sup>

Consistent with the above, CBS has written to the Commission on several occasions seeking flexibility in the application of the "regularly scheduled" requirement so as to permit the broadcast of network sports and breaking news coverage.<sup>5</sup> In requesting such flexibility, CBS proposed a plan intended to limit preemptions of children's programming and to inform viewers of scheduling changes, so as to minimize any disruptive impact of rescheduling on viewers. By letter of July 11, 1997, the staff informed CBS that its "proposal for promoting and rescheduling preempted programming that otherwise meets the core programming definition, if followed by owned and affiliated stations, will not run afoul of our children's television rules."<sup>6</sup>

For the 2013-2014 television season, CBS intends for its owned stations to follow (and will recommend to independently-owned affiliates that they follow) essentially the same plan first approved by the FCC staff in 1997.<sup>7</sup> We briefly reiterate that plan below.

As we have previously informed the Commission, CBS "core" children's programs are not offered to network stations as a "block." Rather, each station is given the option to schedule the programs in mutually acceptable time periods, with the expectation that weekends will provide the most realistic scheduling opportunities to network stations. As a result of the scheduling flexibility thus afforded by the network, and the concomitant discretion stations have to set and adjust their schedules as their programming judgments dictate, we cannot know with certainty the exact times at which "core" programs will air on our individual owned stations and affiliates

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<sup>4</sup> *Id.* at 10711.

<sup>5</sup> See, Letter to Roy J. Stewart from Martin D. Franks, Senior Vice President, Washington, CBS Inc. (June 6, 1997) and Letter to Chairman and Commissioners, Federal Communications Commission, from Martin D. Franks, Senior Vice President, Washington, CBS, Inc. (June 27, 1997). By this letter, CBS also requests that preemptions for coverage of breaking news events be handled in accordance with the guidelines previously approved by the Commission.

<sup>6</sup> See, Letter to Martin D. Franks, *Preemption of Children's Television Educational and Informational Programming*, 12 FCC Rcd 9926 (July 11, 1996).

<sup>7</sup> See, Letter to Martin D. Franks, *Preemption of Children's Television Educational and Informational Programming*, 12 FCC Rcd 9926 (July 11, 1996).

over the course of the upcoming year. Nor, as a consequence, can we definitively predict the exact number of preemptions that each will experience due to network sports programming. However, we can describe what should be the "worst case" in terms of such preemptions for stations following our recommended scheduling guidelines.

In this regard, the CBS owned television stations will schedule two of their three hours of "core" network programming during "essentially inviolable" hours that will rarely be preempted by network sports programming. Stations will be given the option to air the third hour in a higher audience period subject to a greater number of sports preemptions, provided that preempted episodes are rescheduled within one week<sup>8</sup> to an alternative "regularly scheduled" time period of the individual station's choice (a "fixed second home"). Independently-owned CBS affiliates will be advised that, to ensure that their network children's programs retain "regularly-scheduled" status, the shows should be aired in a similar pattern.

Because network sports broadcasts on Saturdays rarely begin before noon Eastern Time, we anticipate that the morning hours on that day (7AM to Noon on the East Coast, 7AM to 11AM in the Central Time Zone, 7AM to 10AM in the Mountain Time Zone, and 7AM to 9AM on the West Coast) will frequently be chosen by stations for the scheduling of their two "essentially inviolable" hours of "core" programming. Likewise, we expect that stations devoting some of their early morning weekend hours to other kinds of programming, such as local newscasts, will choose to air their third hour of "core" programming from 12 Noon to 1PM Eastern Time (11AM to 12 Noon, CT; 10AM to 11AM, MT; and 9AM to 10AM, PT).

Based on the CBS Television Network's present Saturday sports schedule, stations choosing to schedule their "third hour" of children's programming in this time slot will experience preemptions on the following occasions during the 2013-14 television season<sup>9</sup>:

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<sup>8</sup> For this purpose, we regard "one week" as including the Sunday in the weekend following a preempted Saturday broadcast.

<sup>9</sup> For present purposes, we deem the 2013-14 television season to begin with Saturday coverage of the U.S. Open Tennis Tournament on August 31, 2013 and to end on August 29, 2014, just prior to next year's coverage of the Tournament.

| <u>Date</u> | <u>Preempting Program</u>              |
|-------------|--|
| 8/31/13     | U.S. Open Tennis                       |
| 9/07/13     | U.S. Open Tennis                       |
| 10/05/13    | College Football                       |
| 10/19/13    | College Football                       |
| 12/07/13    | NCAA Basketball                        |
| 12/14/13    | NCAA Basketball                        |
| 1/11/14     | CBS Sports Spectacular                 |
| 1/18/14     | NCAA Basketball                        |
| 2/08/14     | College Basketball Pregame Show        |
| 2/15/14     | College Basketball Pregame Show        |
| 2/22/14     | NCAA Basketball                        |
| 3/08/14     | NCAA Basketball                        |
| 3/15/14     | USA Conference Championship Basketball |
| 3/22/14     | NCCA Basketball Tournament             |
| 4/05/14     | Reese's All-Star Game                  |
| 4/12/14     | CBS Sports Spectacular                 |
| 8/23/14     | US Open Series                         |

On five of these occasions only the second half of the "third hour" will be affected, as CBS Sports programming is scheduled to begin at 12:30 Eastern Time. In addition, on three of these occasions network children's programs scheduled in the "second hour" will be preempted due to the early start of CBS Sports programming. This will occur in connection with CBS's coverage of (1) U.S. Open Tennis on August 31, 2013 (starting at 11AM Eastern Time), (2) NCAA Football on October 5, 2013 (starting at 11:30AM Eastern Time), and (2) USA Conference Championship Basketball on March 15, 2014 (starting at 11:30AM, Eastern Time).

It is possible that additional events will be added to our sports schedule, and cause additional preemptions for stations utilizing the 12 Noon-1PM ET time period for children's programming. However, we do not anticipate that, in any event, children's programming scheduled on Saturdays between 7AM and 1PM ET will be preempted on more than nineteen (19) occasions during the entire 2013-2014 season, or that more than eighteen (18) hours of programming will be affected. This is well within the range of the number of preemptions for which CBS has sought and received explicit or implicit approval from the Commission in prior years.<sup>10</sup>

<sup>10</sup> See, Letter to Roy J. Stewart from Martin D. Franks, Senior Vice President, Washington, CBS Inc. (June 6, 1997) and Letter to Chairman and Commissioners, Federal Communications Commission, from Martin D. Franks, Senior Vice President, Washington, CBS, Inc. (June 27, 1997); Letter to Martin D. Franks, *Preemption of Children's Television Educational and Informational Programming*, 12 FCC Rcd 9926 (July 11, 1996); Letter to Roy J. Stewart from Martin D. Franks, Senior Vice President, Washington, CBS

As noted above, on rare occasions network sports programming is scheduled to begin before noon on the East Coast. (There are only two such occasions presently scheduled during the 2013-14 television season.) Because of the additional difficulties that rescheduling up to two hours of children's programming on this and similar occasions may involve, we will, as in the past, instruct our owned stations that the second preempted hour should be rescheduled to any "core" time period within two weeks of the originally-scheduled broadcast.

Other unusual circumstances may occasionally prevent a station from rescheduling a preempted children's program in its "fixed second home." For instance, a West Coast station using a late Saturday afternoon time period for this purpose may sometimes find it necessary to air a preempted children's show at a different time, due to network sports programming overruns that extend into the early evening hours on the East Coast (such as, for example, all-day coverage of the U.S. Open Tennis and the NCAA Basketball Championship tournaments) or a second game of a sports "double-header" that goes into overtime. While it will be necessary to afford stations additional flexibility in rescheduling children's programs in these circumstances, we believe that such instances will be rare, as they have been in the past.<sup>11</sup>

In order to increase the awareness of parents and children about such changes in the scheduling of E/I programs, the CBS owned television stations will continue to provide advance notice of such changes to listing services and program guides, as well as broadcasting on-air notifications of the scheduling changes (by crawl or voice-over),

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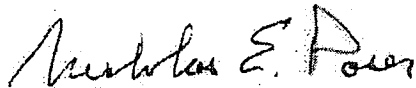
Inc. (July 2, 1999) at 3 (anticipating 20 hours of sports preemptions of children's programming during the 1999-2000 television season); Letter to Marlene H. Dortch from Howard F. Jaeckel, Associate General Counsel, CBS Inc. (August 1, 2008) at 4 (anticipating no more than 18 hours of sports preemptions of children's programming during the 2008-2009 television season); Letter to Marlene H. Dortch from Nicholas E. Poser, Assistant General Counsel, CBS Inc. (August 9, 2012) at 4 (anticipating no more than 18 hours of sports preemptions of children's programming during the 2012-13 television season).

<sup>11</sup> In responding to a Commission request for information regarding the preemption and rescheduling of children's programs during the Fourth Quarter of 1997 and the First Quarter of 1998, CBS reported the following regarding its owned and operated stations: "Out of some 2,184 core programs scheduled to be broadcast during Fourth Quarter 1997 and First Quarter 1998, the 14 CBS stations preempted only 137 programs, or 6 percent. Of these, 80 preempted programs, or four percent, were preempted to fixed second homes. Only 42 programs – representing a mere two percent of all core programs – were preempted to time periods other than a fixed second home." See Letter to Roy J. Stewart from Martin D. Franks, Senior Vice President, Washington, CBS Inc. (July 17, 1998), at pages 4-5.

both during the broadcast of the previously scheduled episodes of the programs in question, and at the time of the preemptions. CBS affiliates will also be notified of our procedures in this regard.

In repealing its previously-adopted ten percent cap on preemptions, the Commission noted the Media Bureau's assessment, following a three year review of broadcasters' implementation of the children's television rules, that the purpose of those rules had not been "unduly affected by . . . limited preemption flexibility," consistent with that described above.<sup>12</sup> We respectfully submit that the considerable record examined by the Bureau in making that finding fully supports the continued allowance of similar preemption flexibility to network stations now.

Sincerely,



cc: Barbara Kreisman, Chief  
Video Division  
Media Bureau

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<sup>12</sup> *Second Order, supra*, 21 FCC Rcd at 11077, citing *Three Year Review of the Implementation of the Children's Television Rules and Guidelines, 1997-1999*, Mass Media Bureau, Policy and Rules Division (January 18, 2001) at 5-6.