Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

In the Matter of	)	
	)	
Modernization of Media Regulation Initiative	)	MB Docket No. 17-105

To: The Commission

COMMENTS OF CBS CORPORATION, THE WALT DISNEY COMPANY, 21ST CENTURY FOX, INC. AND UNIVISION COMMUNICATIONS INC.

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EXECUTIVE SUMMARY

More than 30 years ago, the Commission undertook a comprehensive review of its media regulations to determine whether, and to what extent, those regulations continued to serve the public interest. The result was a targeted deletion of rules that, notwithstanding their initial purpose, had come to be seen as harming competition, stifling innovation, and limiting consumer choice.

Today, the marketplace for content creation and distribution is more competitive and diverse than it was in the 1980s or, indeed, at any time in history. The Commission therefore is taking the right step by surveying the media regulatory landscape to ensure that the rules it has been charged with administering and enforcing remain in service of the public interest. As it does so, the Commission should critically reexamine regulations that (1) may be duplicative of or inconsistent with other rules and laws or warrant a fresh look in light of ever-changing marketplace realities; (2) impose substantial paperwork or other administrative burdens on both the industry and the Commission itself without corresponding benefit; or (3) due to intervening judicial, legislative, or regulatory activity, are no longer in effect yet remain in the Code of Federal Regulations.

The Content Companies look forward to working with the Commission as it endeavors to tailor its media regulations for the modern age by ensuring that they continue to serve the public interest and promote consumer welfare.

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INTRODUCTION

CBS Corporation, The Walt Disney Company, 21st Century Fox, Inc. and Univision Communications Inc. (the "Content Companies"), submit these comments in response to the Public Notice in the captioned proceeding.[1]

The Content Companies welcome the Commission's leadership in opening this initiative to modernize its media regulations so that they reflect the realities of the marketplace and thereby promote the public interest in the creation and delivery of innovative, high-quality services to American consumers. This initiative stands on the firm foundation built in the "underbrush" proceedings of the 1980s, in which the Commission removed regulations that imposed unnecessary burdens on broadcasters and consumed personnel and other resources that could be put to better use serving local communities.[2] In the three decades since then, the

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[1] *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, FCC 17-58, MB Docket No. 17-105 (rel. May 18, 2017) ("*Modernization of Media Regulation Notice*").

[2] *See, e.g.*, *Deregulation of Radio*, Report and Order, 84 F.C.C.2d 968 (1981); *Elimination of Unnecessary Broadcast Regulation*, Policy Statement and Order, 94 F.C.C.2d 619 (1983); *Elimination of Unnecessary Broadcast Regulation and Subscription Agreements Between Radio Broadcast Stations and Music Format Service Companies*, Policy Statement and Memorandum Opinion and Order, 48 Fed. Reg. 49,852 (Oct. 28, 1983) ("*1983 Policy Statement*"); *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 F.C.C.2d 1075 (1984); *Elimination of Unnecessary Broadcast Regulation and Subscription Agreements*, Report and Order, 49 Fed. Reg. 33,264 (1984) (continued…)

programming marketplace has changed dramatically. The Commission is correct that the time has come to revisit its regulations to determine which of them require updating to ensure that they continue to serve the public interest.

An assumption underlying much of the Commission's media regulatory regime is that broadcasters and cable programmers are the sole, or even primary, source of content in the marketplace. That assumption, however, no longer is valid—notably, as an example, with respect to children's video programming, which the Commission continues to regulate when it is distributed on broadcast stations or cable channels, but not on any other platform. The programming marketplace is more competitive and diverse today than at any time in history, providing consumers access to an ever-increasing variety of high-quality content. As described in the Commission's most recent *Video Competition Report*, even online video distributors are increasingly creating original programming.[3]

Against this backdrop, the Content Companies have reviewed the Commission's media regulations carefully to identify those that may stand in the way of competition, innovation and investment and thus ultimately disserve the public interest. The Content Companies have identified a number of candidates for reform, which fall into three principal categories: (1) regulations that may be duplicative of or inconsistent with rules and laws administered or enforced by the Commission and other regulatory bodies or warrant fresh review in light of modern marketplace realities; (2) regulations that impose substantial paperwork or

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("*1984 Horse Racing Order*"); *Elimination of Unnecessary Broadcast Regulation*, Policy Statement and Order, 57 RR2d 939 (1985); *Elimination of Unnecessary Broadcast Regulation and Subscription Agreements*, Policy Statement and Order, 50 Fed. Reg. 5583 (1985); *Elimination of Unnecessary Broadcast Regulation*, Second Report and Order, 1986 WL 291500 (1986).

[3] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, DA 17-71, MB Docket No. 16-247, at *4 (¶ 9) (rel. Jan. 17, 2017).

other administrative burdens without corresponding benefits to consumers; and (3) regulations that are no longer in effect but remain in the Code of Federal Regulations. The Commission should revisit all of these rules to determine whether they have outlived their utility and impose unjustified costs on the industry and the Commission—and on the consumers they both serve.

I. THE COMMISSION SHOULD TAKE A FRESH LOOK AT MEDIA REGULATIONS THAT MAY BE DUPLICATIVE OF OTHER AUTHORITIES OR THAT MAY NO LONGER REFLECT MARKETPLACE REALITIES.

As one of many strands in an intricate regulatory web of federal, state, and local actors, the Commission should ensure that its rules are harmonized with the laws and rules of other authorities, as well as with other rules it adopts pursuant to its rulemaking authority. A review of the Commission's media regulations thus requires the reconsideration of rules that may be duplicative of or inconsistent with the laws and rules of other authorities, as well as with those of the Commission itself.

Candidates for further inquiry include those that:

- Impose biennial ownership reporting requirements on any entity that holds an interest in a broadcast licensee that is deemed attributable under the Commission's rules, even for those entities (namely, public companies) that are subject to independent disclosure obligations administered by the Securities and Exchange Commission.[4]

- Require the filing of agreements reflecting changes in holding company officers and directors, even though such information is reflected in biennial ownership reports.[5]

- Require broadcast stations to satisfy detailed requirements to demonstrate compliance with the CALM Act,[6] even though the CALM

[4] *See* 47 C.F.R. § 73.3615(a).

[5] *See id.* § 73.3613(b)(6).

[6] *See id.* § 73.682(e)(2) (requiring the broadcaster to, among other things, "ensure that the dialnorm metadata value correctly matches the loudness of the content when encoding the audio into AC-3 for transmitting the content to the consumer," "[c]ertify that it either has no actual knowledge of a violation of the ATSC A/85 RP, or that any (continued…)

Act itself directed the Commission to adopt "a regulation that is limited to incorporating by reference and making mandatory" the ATSC A/85 recommended practice, and provided that any broadcast station or MVPD that "installs, utilizes, and maintains in a commercially reasonable manner" equipment and software per that regulation "shall be deemed to be in compliance" with it.[7]

- Require stations to maintain and provide access to local public inspection files[8] even though stations already have been (or soon will be) required to migrate their locally stored files to the web for any and all to view.

- Require stations to publish certain regulatory notices in a newspaper,[9] at the same time that the Commission has moved in other areas to allow more modern forms of notification.

- Require licensees to provide notice of their intent to broadcast recorded telephone conversations, despite the applicability of state and federal wiretap laws.[10]

- Instruct the Commission to conduct mid-term reviews of broadcast television licensees' equal employment opportunity ("EEO") practices and require licensees to file FCC Form 397s in connection with such reviews, at the same time that other Commission rules require stations to prepare and file annual reports calling for the disclosure of EEO information that is similar to—and more comprehensive than—that required by FCC Form 397.[11]

The Content Companies encourage the Commission to take a hard look at all of these regulations to determine whether they indeed reflect and are responsive to current

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violation of which it has become aware has been corrected promptly upon becoming aware of such a violation," and "[c]ertify that its own transmission equipment is not at fault for any pattern or trend of complaints").

[7] 47 U.S.C. § 621(a), (c).

[8] *See* 47 C.F.R. § 73.3526(c) (providing local public access requirements); *id.* § 73.3526(e)(11)(i), (12) (providing local public issues/program list requirements); *id.* § 73.3615(g) (requiring ownership reports to be maintained locally). The Commission currently is considering a proposal to modify Section 73.1125 of its rules, which requires each AM, FM and television broadcast station to maintain a "main studio" located in or near its community of license in order to, among other things, facilitate public access to hard copy public inspection files. *See Elimination of Main Studio Rule*, Notice of Proposed Rulemaking, FCC 17-59 (rel. May 18, 2017).

[9] *See* 47 C.F.R. § 73.3580(c).

[10] *See id.* § 73.1206.

[11] *See id.* § 73.2080(f)(2).

conditions in the programming marketplace or whether they are unnecessary or should be modified in light of duplication and/or tension with other authorities and regulations.

The Content Companies also urge the Commission to use this proceeding as an opportunity to conduct a broader inquiry to assess whether certain of its media regulations should be modified to serve the public interest given changed and continuously dynamic conditions in the programming marketplace. As noted above, broadcasters and cable programmers are no longer the sole, or even primary, source of content in the marketplace. The programming marketplace is more competitive and diverse today than at any time in history, providing consumers access to an ever-increasing variety of content. Children's content, in particular, is no exception, and the Content Companies that provide children's television programming are doing so in an environment in which children increasingly are watching both educational and entertainment video programming on alternative platforms, some of which are not specifically designed or even intended for children. It should come as no surprise that, as confirmed in a study published by PricewaterhouseCoopers LLP in 2015, children between the ages of eight and eighteen spend a significant amount of time watching video content exhibited on YouTube and other online platforms.[12] Indeed, in order to capitalize on this audience, YouTube announced in

[12] *See* PricewaterhouseCoopers LLP, *Consumer Intelligence Series: Media-Savvy Kids, Teens Want Engaging Stories on Multiple Devices* 8 (2015), http://www.pwc.com/us/en/industry/entertainment-media/publications/assets/what-kids-want.pdf; *see also, e.g.,* Victoria J. Rideout, Ulla G. Foehr & Donald F. Roberts, Kaiser Family Foundation, *Generation M^{2}: Media in the Lives of 8- to 18-Year-Olds* (Jan. 2010), http://files.eric.ed.gov/fulltext/ED527859.pdf (documenting consumption of online videos and other Internet content by young children); Tracy L.M. Kennedy, Aaron Smith, Amy Tracy Wells & Barry Wellman, Pew Internet & American Life Project, *Networked Families: Parents and Spouses Are Using the Internet and Cell Phones to Create a "New Connectedness" that Builds on Remote Connections and Shared Internet Experiences* (Oct. 19, 2008), http://www.pewinternet.org/files/old-media//Files/Reports/2008/PIP_Networked_Family.pdf.pdf (finding that children increasingly frequent general audience sites not specifically designed for or directed to children in part as a result of evolving patterns of Internet consumption by family members, including the use of social networks).

February 2017 that it will be launching its own slate of original shows aimed at children and families.[13]

Broadly speaking, the Commission's rules regulate the amount, scheduling, and substantive and commercial content of children's programming when distributed by broadcasters or MVPDs, but not by any other entity. The Content Companies share a common goal with the Commission and parents—to ensure that any children's programming they provide is appropriate for their audience and that there continue to be incentives to produce programming that is specifically designed for children. Therefore, the Commission should review its children's programming rules and their implementation with the goal of ensuring that those Content Companies that provide programming specifically designed for children can continue do so in an appropriate, effective and relevant way. The Commission should focus on the implications of current market realities, including (1) the increase in both children's programming available from sources other than cable and broadcast platforms and programming currently viewed by children on other outlets that are not designed for children, and (2) other entities' roles in reviewing children's advertising and content (both the FTC and CARU). Of course, any children's content presented by the Content Companies will continue to be appropriate for children, but—as the PricewaterhouseCoopers report on YouTube usage suggests—the expectations and standards of children and their parents regarding content have changed, and it is time for the Commission to assess whether its rules should change as well.

In undertaking any fresh look, the Commission should revisit and assess a few specific rules. For example, pursuant to the website display rule, the Commission prohibits

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[13] *See* Yvonne Villareal, *YouTube Red Launches Slate of Original Children's Programming*, L.A. Times (Feb. 13, 2017, 6:20 PM), http://www.latimes.com/entertainment/tv/la-et-st-you-tube-red-for-kids-20170213-story.html.

broadcasters and MVPDs distributing cable networks from displaying Internet website addresses during programs directed to children 12 years old and younger or during promotional time otherwise used to promote children's content, unless the website displayed and all sites to which that site links are "not used for e-commerce, advertising, or other commercial purposes."[14] The practical effect of this rule is that a website displayed during or adjacent to a children's program or promotion exhibited on broadcast television or on a channel carried by an MVPD must be two clicks away from commercial content. The Commission should consider how this "two-click" requirement affects the Content Companies' twin incentives to continue to provide high-quality television content that is specifically designed for children, and to provide and promote the availability of that content either *via* free, ad-supported websites or apps *or via* authenticated websites or apps. The authenticated apps offered by the Content Companies contain robust volumes of content and are accessible by parents and kids as part of their MVPD subscription.

The Commission also should consider the rule's impact in an era in which editorial or scripted references to websites or other digital sites are intertwined with and intrinsic to virtually every type of content, as well as the rule's particularized impact on children's content offered by broadcasters or by channels carried by MVPDs, given that other children's programming or other content that children are viewing is not restricted from including digital references. Similarly, the Commission should assess the continuing application and specific implementation of the Commission's host-selling rule to online platforms, particularly given that websites have evolved significantly since the rules were adopted. As we emphasized above, the Content Companies would remain committed to applying appropriate standards to any content they provide that is specifically designed for children.

[14] 47 C.F.R. §§ 73.670(b)(4); 76.225(b)(4).

On a broader level, as part of any review of its rules to protect children, the Commission also should reflect on the *implementation* of the commercial limit rules to ensure that they remain appropriately structured and interpreted for today's audiences. The Commission developed and implemented these rules with a well-intentioned purpose (*i.e.*, out of concern that children "have difficulty distinguishing between program content and commercials"),[15] and the Commission should consider whether the scope and particular implementation of the rules today are sufficiently tailored to that purpose. For example, the rules if broadly implemented or interpreted can affect decisions about whether to air programming that is appropriate and tailored for children but contains incidental background branding not placed as a result of commercial arrangements with the Content Companies, *e.g.*, sports-related or other background branding. Similarly, confusion over the scope of the interpretation or implementation of rules can affect decisions to repurpose programming for other audiences—ultimately limiting the commercial viability of programming originally produced for children and making it less likely that investment will flow to such programming.[16] Again, regardless of such a review of commercial limit and other children's programming rules, the Content Companies will remain committed to ensuring that any content they design for children is appropriate for that audience.

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[15] *Petition of Action for Children's Television (Act) for Rulemaking Looking Toward the Elimination of Sponsorship and Commercial Content in Children's Programming and the Establishment of a Weekly 14-Hour Quota of Children's Television Programs*, Children's Television Report and Policy Statement, 50 F.C.C.2d 1, 36 (1974) (statement of Comm'r Washburn).

[16] Specifically, under a broad interpretation, the commercial time limit and other children's programming regulations could be read to apply regardless of when a program is aired—even when the program is repurposed for airing on dayparts when children are unlikely to be watching or during programming blocks that are targeted to the 13-and-over age bracket.

Finally, for broadcasters, the Commission's core programming processing guidelines presume that to have met their public interest obligations, broadcast television stations must air at least three hours per week of core children's programming for each broadcast stream.[17] The guidelines presume that market forces will otherwise not result in the production of quality educational and informational programming. Given the hundreds if not thousands of hours of children's programming available in the market, the Commission should revisit these processing guidelines to consider whether and how broadcasters should be afforded greater flexibility to meet the needs of children and their parents, including with respect to preemption of individual episodes of programming.[18]

As part of its broad review, the Commission also should consider and review some of the rules that remain in place notwithstanding massive changes in the broadcast marketplace—including, notably, that broadcast networks are no longer the sole source for high-quality, locally-distributed content. Specifically, the Commission should consider whether the network representation rule reflects marketplace realities and, if not, take appropriate action consistent with its findings. This rule, which prohibits networks from representing affiliated broadcast stations in spot advertising sales,[19] was adopted in 1959 to "protect[] broadcast affiliates from the networks exerting influence over affiliate programming decisions" and to

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[17] *See* 47 C.F.R. § 73.671(e)(1).

[18] Any Commission review of the "Core Programming" guideline, as well as the Commission's additional rules governing preemptions, rebroadcasts, and carriage of children's programming on multicast streams and the submission of quarterly children's programming reports and the designation of a children's programming liaison, should take note of the limited statutory directive of the Children's Television Act of 1990. Beyond directing the Commission to adopt commercial limits during children's programming (and granting the Commission the authority to review and modify those limits in the future), *see* 47 U.S.C. § 303a(a), (c)(1)-(2), Congress's statutory directive to the Commission was that the Commission take into account in evaluating a television station licensee's renewal application whether during the renewal term it had (1) complied with the commercial limits, and (2) "served the educational and information needs of children through [its] overall programming," including but not limited to "programming specifically designed to serve such needs," *id.* § 303b(a)(1)-(2).

[19] *See* 47 C.F.R. § 73.658(i).

"foster[] competition in the local and national broadcast television markets."[20] But the rule imposes a categorical ban on a network's representation of any of its affiliated stations—even those that may desire to receive the additional revenue and other financial and operational benefits that could result from such representation.[21] The Commission should conduct a rulemaking to determine whether the rationales underlying the rule are valid in 2017 and, if not, to make appropriate changes.

II. THE COMMISSION SHOULD REPEAL RULES THAT CREATE UNNECESSARY PAPERWORK AND BURDEN RESOURCES THAT COULD BE BETTER USED TO SERVE CONSUMERS.

Broadcasters are subject to many requirements that impose significant administrative and financial burdens without any corresponding public interest benefit. The Commission should take steps to alleviate these burdens, which would not only free up industry resources that could be put to better use for the benefit of consumers but also streamline Commission operations and reduce costs.

For example, the retransmission consent election process generates significant paperwork burdens that could easily be addressed through a tweak to election notice procedures.

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[20] *Amendment of § 73.658(i) of the Commission's Rules, Concerning Network Representation of TV Stations in National Spot Sales; Request of Spanish International Network (SIN) for Waiver of § 73.658(i); Request of Telemundo Group, Inc. for Waiver of § 73.658(i); Request of Latin International Network Corporation for Waiver of § 73.658(i)*, Report and Order, 5 FCC Rcd 7280, 7281 (¶ 6) (1990) ("*Univision/Telemundo/Latinet Network Representation Waiver Order*"); *see also Amendment of Section 3.658 of the Commission's Rules and Regulations to Prohibit Television Stations, Other Than Those Licensed to an Organization Which Operates a Television Network, from Being Represented in National Spot Sales by an Organization Which Also Operates a Television Network*, Report and Order, 27 F.C.C. 697, 714-19 (¶¶ 52-70) (1959).

[21] In its grants of waivers of the rule for several Spanish-language broadcasters, the Commission has acknowledged the value that network representation can have in certain circumstances. *See Spanish Broadcasting System, Inc. (MegaTV) Petition for Waiver of Section 73.658(i) of the Commission's Rules*, Order, 26 FCC Rcd 16,911 (2011) (granting a permanent waiver of the rule to MegaTV); *Liberman Television LLC (Estrella TV) Petition for Waiver of Section 73.658(i) of the Commission's Rules*, Order, 25 FCC Rcd 4725 (2010) (granting a permanent waiver of the rule to Estrella TV); *Azteca International Corporation (Azteca America) Petition for Waiver of Section 73.658(i) of the Commission's Rules*, Order, 18 FCC Rcd 10,662 (2003) (granting a permanent waiver of the rule to Azteca America); *Univision/Telemundo/Latinet Network Representation Waiver Order*, 5 FCC Rcd 7280 (granting permanent waivers of the rule to Univision, Telemundo, and Latinet).

The current requirement is needlessly onerous in two key respects: (1) broadcasters must make elections on a system-by-system basis, even for very large cable operators that have hundreds of systems; and (2) broadcasters must send election notices to each system by certified mail.[22] While these requirements may have been sensible when they were adopted in the early 1990s, they make no sense in the modern media and communications environment.

The system-by-system election requirement creates inefficiencies, both for broadcasters and cable operators, by requiring broadcasters seeking to elect retransmission consent status for all of a cable operator's systems to make such elections in a piecemeal fashion. What is more, due to the difficulty in independently identifying and verifying all of an operator's cable systems and their addresses, broadcasters are incentivized to send duplicative notices to avoid the severe consequence of making a defective retransmission consent election (*i.e.*, a default to must-carry status for the three-year election cycle). In addition, sending retransmission consent election notices by certified mail is both anachronistic and very time-consuming.[23] The Commission's most recent estimate is that commercial broadcasters collectively spend 14,840 hours (about 618 days) per year meeting this burden,[24] representing an extraordinary amount of time and resources that could be better spent elsewhere. The process also is very expensive. For example, it can cost over $6 per certified mailing to send election letters to cable headends. Allowing stations to provide notice of elections online—on their website, in their online public file, or through some other widely available posting mechanism—

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[22] *See* 47 C.F.R. § 76.64(h).

[23] It is not uncommon for a single broadcast station group to send *more than 1,000* letters to cover all of the systems in the markets it serves—all by certified mail.

[24] *See Information Collection Being Submitted for Review and Approval to the Office of Management and Budget*, 81 Fed. Reg. 1627, 1628 (Jan. 13, 2016).

not only would make it easier for broadcasters and cable operators to keep track of elections but also would be consistent with rules applicable in other contexts and in line with the Commission's recent shift toward Internet-based solutions.[25]

Certain other paperwork burdens are imposed in circumstances in which the Commission has no countervailing benefit to obtain the information being sought or paperwork being filed. For example, section 73.624(g) of the Commission's rules requires digital television broadcast ("DTV") stations to remit annually five percent of the gross revenues derived from all ancillary and supplementary services[26] using FCC Form 317.[27] Not all stations have reportable service revenue, however, and in such cases completion of an FCC Form 317 serves no

[25] *See, e.g.*, 47 C.F.R. § 79.1(j)(1)(iii) (2016) (explaining that video programming distributors may satisfy their obligation to use best efforts to obtain closed captioning certifications from each video programmer from which they obtain programming by "locating a programmer's certification on the programmer's Web site or other widely available locations used for the purpose of posting widely available certifications"); *id.* § 79.1(m) (effective pending approval by the Office of Management and Budget) (amending closed captioning certification rules to require video programmers to submit closed captioning certifications directly to the Commission using a web-based form filing system); *id.* § 76.1700(a) (requiring public inspection file records maintained by cable system operators to be placed in the operators' online public file); *id.* § 73.682(e)(3)(i)(A) (providing that broadcasters may demonstrate compliance with rules promulgated under the CALM Act by relying on a network's or other programmer's certification of compliance with such rules, so long as, among other things, "[t]he certification is widely available by Web site or other means to any television broadcast station, cable operator, or multichannel video programming distributor that transmits that programming"); *National Cable & Telecommunications Association and American Cable Association Petition for Declaratory Ruling*, Declaratory Ruling, MB Docket No. 16-126 (rel. June 21, 2017) (permitting cable operators to distribute annual customer service notices required by Section 76.1602(b) of the Commission's rules via email, subject to customer opt-out requirements); *Revisions to Public Inspection File Requirements—Broadcaster Correspondence File and Cable Principal Headend Location*, Report and Order, MB Docket No. 16-161 (rel. Jan. 2017) (eliminating rules requiring cable operators to maintain for public inspection the designation and location of the cable system's principal headend).

[26] Ancillary and supplementary services are defined to include "all services provided on that portion of the station's digital spectrum capacity or bitstream not needed to provide the required one free, over-the-air video broadcast signal to viewers, except that any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary." FCC 317: Instructions for Annual DTV Ancillary/Supplementary Services Report 1, https://transition.fcc.gov/Forms/Form317/317.pdf ("FCC Form 317").

[27] *See* 47 C.F.R. § 73.624(g); FCC Form 317.

legitimate regulatory end. The obvious solution is to revise this rule to exempt stations from the obligation to file an FCC Form 317 if they have no reportable revenue.[28]

Similarly, Section 73.3526(e)(11)(ii) and (iii) of the Commission's rules requires commercial TV and Class A television stations to file records to substantiate the stations' certification that they comply with the commercial limits on children's programming and that they comply with the requirements set forth in the children's programming processing guideline.[29] In truth, however, the Commission's focus should be on whether, and to what extent, stations *do not* comply. Accordingly, the Commission should change the orientation of these rules to require certification and/or disclosure *only* of any non-compliant conduct. This will serve to minimize the paperwork burden applicable to stations while, at the same time, providing the Commission with only the information in which it is truly interested.

More generally, the Commission's filing processes (*e.g.*, license renewal applications, applications for *pro forma* assignments and transfers) often are complicated and time-consuming.[30] This has a significant real-world impact on productivity and costs. These paperwork burdens are the sort of unnecessary regulations that have led Commissioner O'Rielly

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[28] *See Modernization of Media Regulation Notice* at *9 (statement of Comm'r Michael O'Rielly) ("For example, all TV stations are required to file an Ancillary DTV Report annually regarding the 5% DTV ancillary fee. The report must be filed even if the answer, as is often the case, is simply 'no fee due.' This form can and should be eliminated for parties that do not owe a fee.").

[29] *See* 47 C.F.R. § 73.3526(e)(11)(ii)-(iii); *see also* Instructions for FCC 398: Children's Television Programming Report, https://transition.fcc.gov/Forms/Form398/398.pdf.

[30] *See* Instructions for FCC 303-S: Application for Renewal of Broadcast Station License, https://transition.fcc.gov/Forms/Form303-S/303s.pdf (constituting 39 pages of instructions and prompts related to license renewal requests); Instructions for FCC 316: Application for Consent to Assign Broadcast Station Construction Permit or License or Transfer of Control of Entity Holding Broadcast Station Construction Permit or License, https://transition.fcc.gov/Forms/Form316/316.pdf (constituting 18 pages of instructions and prompts related to requests to effect a voluntary pro forma assignment or transfer of control); *see also* 47 C.F.R. § 73.3539 (setting forth rules governing license renewal applications); *id.* § 3540(f) (setting forth rules governing applications for voluntary pro forma assignments and transfers of control); *id.* § 3545 (setting forth rules governing applications for a permit to deliver programs to foreign stations).

to express concerns that the Commission is imposing staggering burdens on certain industries.[31] These figures—which, as Commissioner O'Rielly reported, show that Commission regulations impose over 73 million hours of paperwork burden, at a total cost of just under $800 million—dwarf those associated with information collection at various other federal agencies.[32] The Commission could substantially reduce the degree to which media regulations contribute to these burdens by comprehensively re-evaluating its information collection requirements. The goal of this effort would be to streamline forms and require submission of only the information that the Commission needs to discharge its responsibilities.

Reducing paperwork burdens for broadcasters would lessen the Commission's workload as well, with a corresponding decrease in the demands placed on scarce Commission resources. As Chairman Pai explained when the Commission proposed to eliminate outdated rules affecting other regulated entities: "It is our hope that the resources currently devoted to complying with these unnecessary reporting requirements will be applied to more productive use."[33] The elimination of unnecessary paperwork will enable Commission staff to devote their time and energy to more constructive enterprises that ultimately serve to further the public interest.

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[31] Comm'r Michael O'Rielly, *Taking Stock of FCC Paperwork Burdens*, FCC Blog (Mar. 3, 2017, 4:15 PM), https://www.fcc.gov/news-events/blog/2017/03/03/taking-stock-fcc-paperwork-burdens.

[32] *See id.* (reporting that the total cost of active information collections at the Departments of Agriculture, Education, Energy, Housing & Urban Development, Interior, and Veterans Affairs as of February 2017 ranged between approximately $300,000 and $400 million).

[33] *Section 43.62 Reporting Requirements for U.S. Providers of International Services*, IB Docket No. 17-55; *2016 Biennial Review of Telecommunications Regulations*, IB Docket No. 16-131, Notice of Proposed Rulemaking, at *28 (rel. Mar. 23, 2017) (statement of Chairman Ajit Pai).

III. THE COMMISSION SHOULD DELETE RULES THAT ARE NO LONGER IN EFFECT FROM THE CODE OF FEDERAL REGULATIONS.

While less obvious and significant in impact on the industry and consumers, a number of rules remain on the books despite having been effectively repealed in light of recent—and, in some cases, not so recent—developments. For example, the period within which broadcasters were expected to transition from analog to digital television technology effectively came to a close on September 1, 2015.[34] However, several Commission rules pertaining to the DTV transition—such as those rules requiring stations to air digital transition educational messages, requiring stations to file quarterly DTV transition education reports, establishing a children's programming processing guideline for analog stations, and permitting analog/digital simulcasting of Core Programming—remain on the books.[35] Other rules have been overridden by judicial decisions (*e.g.*, general prohibition on broadcasts of commercial lottery information),[36] subsequent legislative action (*e.g.*, providing for the filing of competing applications and petitions to deny broadcast renewal applications),[37] and the Commission's own activity (*e.g.*, local public file requirements),[38] or lack thereof (*e.g.*, requiring the use of FCC

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[34] All full power and Class A stations were required to have transitioned to DTV by this date.

[35] *See* 47 C.F.R. §§ 73.671(d), 73.671(e)(3), 73.674, 73.3526(e)(11)(iv).

[36] *See id.* § 73.1211(a), *superseded in part by Greater New Orleans Broad. Ass'n, Inc. v. United States*, 527 U.S. 173 (1999) (holding that the Commission's prohibition on broadcasting lottery information could not be held to apply to advertisements of private casino gambling broadcast by radio or television stations in states where such gambling is lawful).

[37] *See* 47 C.F.R. § 73.3516(e), *superseded by* Telecommunications Act of 1996, Pub. L. No. 104-104, § 204, 110 Stat. 56 (eliminating comparative renewal proceedings).

[38] *Compare* 47 C.F.R. § 73.3526(b)(3)(ii) (containing historical references to pre-effective period local political file requirements); *id.* § 73.3526(c) (providing local public access requirements); *id.* § 73.3526(e)(11)(i), (12) (providing local public issues/program list requirements); *and id.* § 73.3615(g) (requiring ownership reports to be maintained locally), *with Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,* Second Report and Order, 27 FCC Rcd 4535 (2012) (adopting online public file rules requiring broadcast television stations to upload public file documents to a Commission-hosted online database rather than maintain paper files locally at the stations' main studio), *and Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016) (continued…)

Form 308 to file applications for a permit to deliver programs to foreign stations).[39] All or part of these rules effectively have been repealed already, since intervening events have rendered them nugatory. As it did in the 1980s,[40] the Commission should eliminate any ambiguity regarding broadcasters' obligations in these areas.

(extending the online public file rules to cable and satellite television operators and broadcast and satellite radio licensees).

[39] *See Forms*, FCC, https://www.fcc.gov/licensing-databases/forms#expired (last visited July 5, 2017) (showing that FCC Form 308 has expired); *see also* 47 C.F.R. § 73.3545 (providing requirement to use FCC Form 308 to file applications for a permit to deliver programs to foreign stations, notwithstanding that form's expiration).

[40] *See 1983 Policy Statement*, 48 Fed. Reg. at 49,858, 49,859 (¶¶ 33-36, 42) (eliminating policies concerning music format service agreements and off-network programs and feature films because, among other reasons, they were either never implemented or were preempted by subsequent Commission action); *1984 Horse Racing Order*, 49 Fed. Reg. at 33,266 (¶ 9) (eliminating policies restricting the broadcast of horse race programming and advertising in part due to the overwhelming adoption by states of laws permitting gambling and horse race betting since the policies' enactment).

CONCLUSION

As it did successfully some 30 years ago, the Commission should take this opportunity to re-evaluate its media rules, especially those that may not reflect modern marketplace realities, may impose substantial paperwork burdens, or are no longer effective.

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