

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re:	)	
	)	
Commission Launches Modernization	)	MB Docket No. 17-105
Of Media Regulation Initiative	)	
	)	

**Comments of the Law Offices of Jack N Goodman**

The Law Offices of Jack N Goodman submits these brief comments in the above-referenced proceeding to place into the record two recent articles published in *TV Newscheck*. The first article discussed deregulation or elimination of several procedural rules. The other article pointed out that the Commission's decision to adopt a three-hour processing guideline for educational and informational programming for children and excluding interstitial programming from the programming counted as meeting that guideline rested on assumptions concerning the effectiveness of long-form programming that after more than 20 years should be demonstrated as correct in order to justify the continuation of content-based regulation of broadcast content. Copies of the two articles are attached.

In addition, these Comments respond to two questions that arose after publication of the article proposing procedural deregulation:

First, staff of the Media Bureau informally have stated that some of the changes proposed with respect to the biennial ownership reports have already been adopted by the Commission. The revised ownership reporting form, however, has not been released. If indeed the new form eliminates the need for filing multiple reports for each licensee in a complex ownership

arrangement, that would go a long way towards relieving licensees of the burden of preparing and filing duplicative ownership reports.

Second, in a dissenting statement to the *Public Notice* in this proceeding,<sup>1</sup> Commissioner Clyburn objected to the proposal to reduce the frequency of ownership reporting to every four years, arguing that “the information contained in these reports [is] vital to enhancing viewpoint diversity” and that “[l]ess frequent data collection would do absolutely nothing to further these objectives.” With respect, this comment misapprehends both the value of information that the Commission now collects biennially and its potential relevance to viewpoint diversity.

Any voluntary ownership change that affects control of a broadcast station must be approved by the Commission prior to its taking effect, and Sections 73.3615(b) & (c) of the Commission’s Rules (47 CFR § 73.3615(b, c), already require that a revised ownership report reflecting the new owners be filed within 30 days of consummation. Minor changes in ownership or personnel that do not affect control of a radio or television station, which would be the only information not collected as frequently if the proposal to mandate only mid-term ownership reports were adopted, are ones that the Commission itself has concluded are unlikely to affect programming, and for the same reasons, those changes have little relevance to viewpoint diversity.

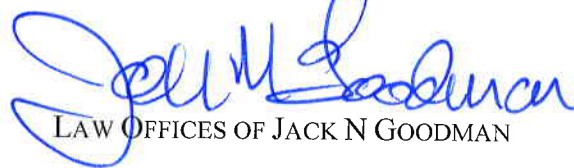
Any change in ownership significant enough to affect programming, and thus to affect viewpoint, must already be reported. Accordingly, Commissioner Clyburn may be correct when she said that less frequent ownership reports “would do absolutely nothing” to further viewpoint diversity, but by the same token, more frequent reports of immaterial changes would equally

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<sup>1</sup> Public Notice, *Commission Launches Modernization of Media Regulation Initiative*, FCC 17-58, MB Docket No. 17-105 (rel. May 18, 2017), Dissenting Statement of Commissioner Mignon L. Clyburn.

have no impact on viewpoint diversity or the Commission's efforts to advance diverse viewpoints. The Commission should eliminate reports which do no more than create a burden on licensees and their owners without any cognizable benefit.<sup>2</sup>

Respectfully submitted,



LAW OFFICES OF JACK N GOODMAN

1200 New Hampshire Avenue, NW  
Suite 600  
Washington, D.C. 20036  
202-776-2045

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<sup>2</sup> Commissioner Clyburn's dissent also rests on an assumption that station ownership is a key factor in determining the viewpoints expressed in station programming. This assumption largely rests on a footnote in the Supreme Court's decision in *NAACP v. FPC*, 425 U.S. 662, 670 n.7 (1976), in which the Court suggested that, unlike the FPC, the FCC could justify regulating employment practices by broadcast stations "to ensure that its licensees' programming fairly reflects the states and viewpoints of minority groups." That footnote, however, addressed employees rather than owners, and as others have pointed out, the Commission's focus on ownership as a means of ensuring viewpoint diversity overlooks the fact that most programming decisions are made by station management rather than indirect owners. See Comments of the National Association of Broadcasters, MB Docket Nos. 09-182, 07-294 (filed Dec. 20, 2012) at 5; Reply Comments of Schurz Communications, Inc., MB Docket Nos. 09-182, 07-294 (filed Jan. 4, 2013) at 1-3.



Open Mike By Jack Goodman

## Five Rule Changes The FCC Should Consider

By Jack Goodman

TVNewsCheck, May 1, 2017 5:41 AM EDT

Sitting at a bar last week at the NAB Show talking with *TVNewsCheck* Editor Harry Jessell about the prospects of broadcast deregulation, I mentioned that in addition to substantive deregulation such as modification or elimination of the FCC's archaic ownership rules, there were lots of other rules that are confusing, complicated and burdensome, but which do the public little or no good.

Harry challenged me to list my top five procedural rule changes. No doubt other people would come up with a different list, and there are other substantive changes I would like (such as eliminating the FCC's contest rules which merely add federal enforcement to agreements which are fully enforceable under state law), but here's my list:

**Ownership Reports** — First, make them quadrennial rather than biennial. If a station changes hands, it has to file a new ownership report at that time. The minor changes in ownership that do not affect control which may occur day-to-day are not something the FCC needs to know about more often than mid-term (if then).

Second, for licensees that have attributable parent companies, the current ownership report regime requires filings at the licensee level for every level of attributable owner. That multiplies the number of reports, adding thousands — perhaps millions — of hours to the burden of filing for no substantive benefit. Instead, there should be one report at the licensee level showing all attributable owners at the next level. Parent companies and investors would then file one report showing the entities in which they directly have attributable interests.

Each company up the line would do the same, each filing only one report. When it developed the current system, the FCC apparently did not understand how a relational database works. It should correct that error now.

**Must Carry/Retransmission Consent Elections** — Currently, stations have to send an election letter every three years by registered mail to each cable system in their DMA. Creating a list of each separate cable system and finding their address is a lot of work and does nothing for the cable operators.

In addition, TV stations have to upload each election letter to their online public file, again for no apparent purpose. Instead, the FCC should allow stations and groups to make their elections for cable systems the way they do for DBS — send one notice to the MSO for all cable systems in the broadcaster's markets.

Additionally, the FCC should permit electronic notification, rather than expensive registered letters. Or going further, the FCC could change the cable default election to retransmission consent as it is for DBS, eliminating the need for most stations to even make an election. And the FCC should jettison the public file requirement for election notices.

**Kidvid Reports** — Change the quarterly reports on the amount of educational and informational children's programming to certifications that the station has or has not complied with the three hours per week processing guideline. Does anyone actually read the pages and pages of program and schedule lists that stations have to get from their networks and upload each quarter?

Or perhaps let networks file one report for all of their affiliates. Even if the FCC does not get rid of the current burdensome system, it should abandon the rule requiring stations to publicize the location and existence of these reports.

Since the reports are in stations' online public files, where else would someone interested in how a station served children be expected to look?

**Ancillary Services Reports** — Every TV station must now file an annual report about any “ancillary and supplementary” digital services it provided and the amount of income it received from providing those services. If it had any income, it then must send 5% of those gross revenues to the FCC.

The overwhelming majority of stations do not provide those types of services or receive any income. The FCC could require filing only by stations that have reportable income, eliminating thousands of reports.

More substantively, to encourage broadcasters to find new ways to use their spectrum, particularly as ATSC 3.0 begins to spread, the FCC should apply the statutory 5% fee to net revenues, rather than gross income.

**Local Public Notice** — Finally, the FCC should revise and largely eliminate the local public notice rule. If you have never looked at this rule, go on the FCC’s website and look at Section 73.3580 of the rules and see if you can understand it.

The rule is a morass of rules, exceptions to those rules and exceptions to the exceptions. Newspaper notice of applications is sometimes required and sometimes not.

Some FCC lawyers interpret the timing of required on-air announcements one way; others reading the same rules come up with a different schedule. And when stations change ownership, they must broadcast often endless lists of the officers and directors of each company involved. Perhaps all of this made sense at one time, but all it is now is a trap for the unwary.

Applications are now posted onto stations’ online public files. At most, all that they should have to do is make a short announcement like “we have filed an application to renew our license. A link to that application can be found on our website.” Any member of the public who is interested can then easily find any information they want.

Harry, that’s my list. FCC, the ball’s in your court.

*Jack Goodman practices communications law in Washington. He was previously general counsel of the National Association of Broadcasters, where he was NAB’s chief legislative counsel on the 1992 Cable Act. He can be reached at [jack@jackngoodman.com](mailto:jack@jackngoodman.com).*

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Open Mike by Jack Goodman

## FCC Kidvid Rule: What's Your Function?

By Jack Goodman

TVNewsCheck, June 6, 2017 5:52 AM EDT

I was struck recently by how many discussions of health care reform after the House passed its Obamacare repeal bill used the “I’m Just a Bill” segment of ABC’s venerable *Schoolhouse Rock* to explain what impact the House action would have and the many steps that remain before health care reform might become law. Media as varied as CBS’s *The Late Show* and the *Slate Magazine Political Gabfest* used “I’m Just a Bill” to explain the congressional process.

*Schoolhouse Rock*, which in addition to civics and history taught math and grammar, disappeared from television 20 years ago, and that made me wonder why a program that clearly had such a significant impact on at least a generation of children went off the air.

The answer lies with the FCC. In 1996, in one of Chairman Reed Hundt’s signature initiatives, the FCC adopted processing guidelines that effectively required all TV stations to provide three hours each week of educational and informational programming for children. The FCC rejected broadcasters’ arguments that interstitial programming such as *Schoolhouse Rock* and CBS’s *The More You Know*, which were broadcast between other kids’ programming, should be counted towards meeting stations’ obligations to serve the educational and informational needs of children. It concluded that only programs lasting at least 30 minutes would be considered in evaluating whether a station met the processing guideline.

(To be sure, stations that did not broadcast three hours of the required programming could cite interstitials as showing that they met the needs of children other ways, but no one expected stations to walk themselves into a license renewal problem by taking that approach and — to my knowledge — few stations have.) The commission’s reasoning was that longer-form programming would be more effective in educating kids.

So what happened? Interstitial educational programming disappeared from the airwaves. And yet one of the programs the FCC thought was ineffective remains the way an entire generation understands how Congress works, and I suspect that much of the other information offered in interstitials also has stuck with the kids who watched them.

The FCC’s core conclusion was that “there is substantial information before us showing that television can educate children.” It also determined that every TV station must offer a minimum amount of educational and informational programming both to make that programming more broadly available and to ensure that the obligation to provide it did not fall on only a few stations.

(Indeed, the FCC subsequently ruled that the three-hour minimum applies to every multicast channel so that even a station broadcasting a 24-hour weather or business information channel has to add three more hours of educational and informational programs for children.)

These rules have been in place for more than 20 years, resulting in 3,000 or more hours of FCC-required programming designed to educate children on each and every television station.

Although the FCC decided that the kidvid rules did not violate the First Amendment, and broadcasters have never challenged the rules in court, the Supreme Court has made clear that “the FCC’s oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations; for although ‘the commission may inquire of licensees what they have done to determine the needs of the community they propose to serve, the commission may not impose upon them its private notions of what the public ought to hear.’”

The FCC, however, believed that it could impose these content-based requirements on broadcasters because “our regulations directly advance the government’s substantial, and indeed compelling, interest in the education of America’s children.”

It seems to me that, after two decades, it is time for the FCC to find out what impact its 1996 rules have actually had. Presumably, the availability of more educational and informational programming on every station, and the associated rules requiring such programming be identified in program guides and publicized by stations, would by now have demonstrably improved the knowledge and abilities of American children. Perhaps the programs mandated by the FCC’s 1996 decision have had a greater impact than programs like *Schoolhouse Rock* did.

But if they have not and the forced enlistment of every television station into the FCC’s plan has had little or no effect, then the basis for the FCC’s conclusions that the processing guidelines would serve the public interest and not violate broadcasters’ free speech rights would disappear.

The court of appeals has told the FCC that it cannot keep longstanding rules in place without examining whether the foundations for those rules remains valid. As the FCC begins a comprehensive review of its media rules, it should include studies to see if the children’s educational and informational program mandate has benefitted kids, or whether instead the loss of *Schoolhouse Rock* and similar programs has in fact lessened the educational benefits of television.

*Jack Goodman practices communications law in Washington. He was previously general counsel of the National Association of Broadcasters, where he was NAB’s chief legislative counsel on the 1992 Cable Act. He can be reached at [jack@jackngoodman.com](mailto:jack@jackngoodman.com).*

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