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Federal Communications Commission
Office of the Secretary**K. J. Benner & Associates**

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Serving The American Broadcasting Industry Since 1959

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
442 12th Street, S.W., Room: TW-A325
Washington, D.C. 20554

January 23, 2015

Via Certified Mail
#7010 1670 0002 3194 4773

Re: Petition for Rule Making Re: CFR Part 73

Dear Madam Secretary,

This petition is respectfully submitted on behalf of the entire American Broadcasting Industry which in recent years has paid a very heavy price for 73-regulations that are poorly defined, mis-leading, confusing and unnecessarily over-complicated. Many such regulations have been added or modified that fail to address the implied purpose for which they exist.

● To illustrate, I cite perhaps one of the most classic examples with the "indecent allegation" of the 2004 Super Bowl incident when a split-second transmission of a personal body part resulting from a "costume malfunction" prompted the Commission to issue CBS-owned TV stations a fine total of \$550,000 for an incident over which CBS had absolutely no control.

While the fines paid were eventually rescinded after common sense entered the enforcement equation, a very heavy cost was incurred in legal expenses paid to achieve that refund.

The purpose of this Petition is to illustrate several other incidents that appear to confuse, frustrate and mislead the interpretation of regulations leading to millions of dollars in needless legal expenses for both commercial and non-commercial radio and television licensees.

● Having visited hundreds of radio and television stations under a Mock or "Alternative FCC certification of compliance program," I found the fear of a random visit by an official FCC inspector so great that all were willing to pay hundreds of dollars in addition to my substantial travel and lodging expenses for my inspection visits every three years.

During and subsequent to these visits, I found several examples of what appear to be incidents of vengeance where disgruntled employees would set a station up for substantial fines with letters of complaint to the FCC.

● I found, for example, after certifying a most professional station in Alaska fined substantially for items missing from its Public File. The fine was rescinded following a formal sworn statement from me to the Commission certifying the "missing" items were found properly filed during my inspection a few weeks earlier. My explanation was accepted by the Commission. It appeared a discharged former employee had maliciously pilfered public file items.

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- From the FCC web site, to complete the renewal for a station license form 303-S plus instructions consisting of 39 pages which according to the Paperwork Reduction Act (PRA) of 1995 "will take from 1.25 to 12 hours." Obviously, most stations hire their legal counsel at the rate of typically \$600+ per hour to complete their renewals. We have documented examples of fees charged for such amount to well in excess of \$1,500. (For 1.25 to 12 hours @ \$600/hour = \$750 to \$7,200 using the PRA calculation above.)

- Discrimination and alleged indecency allegations are frequent sources of problems for broadcast licensees. Race, sex, religion, mate-preference, indecency etc. are states of mind, impossible to clearly define, much less regulate or control but never-the-less a considerable source of legal costs to assure compliance for any of today's broadcasting employers.

CFR ¶73.2080 forces broadcasters into extraordinary costs for compliance. The slightest mis-step can involve substantial additional legal costs and/or license forfeiture or renewal delays. In their Public Files, all stations must document the dissemination widely for every full time (30 hours or more) job opening, notifying regularly a number of sources for recruitment, possible employment opportunities and a substantial litany of other required documentation.

This rule has necessitated very substantial costs for legal assistance. This requirement has also prompted hundreds of small stations to limit employees to part-time employment to under 30 hours per week and to employ unattended, automatic computer controlled satellite-fed programming. In fact, many stations have gone dark, frustrated in their attempts to avoid substantial fines, forfeitures and legal assistance.

Indeed, as a result, the American public today suffers a very serious deleterious denigration in the integrity and quality of broadcasting from the past.

- The political Public File folders must include the date, time, length, source of payment and charge for each political ad to be broadcast. To equalize cost for all candidates, stations may charge only their lowest unit rate regardless of the quantity of political spots ordered. Such has eliminated substantial income for broadcasters. Fearful of political discrimination allegations, today many stations decline to present live on-air political challengers depriving the public of vital comprehensive and decisive voting information.

- According to the FCC, there are about 30,000 broadcast stations in this country, many of which are licensed but are currently off the air. Most of these remaining operations struggle desperately to be compliant by spending millions of dollars each year in organizational memberships and legal expenses to avoid frustrating fines, fees and forfeitures imposed each year by the FCC. Such is no fault of the FCC, but rather Congressional or special interest groups with hidden (generally profit motivated) agendas.

- The Coalition has collected well over one hundred (generally fine-imposed) examples in which the slightest inadvertent, real or perceived misstep has cost broadcasters substantially in legal expenses. I cite for one example, the experiences of Mr. Michael Dudding, licensee of KDSN-AM/FM in Denison Iowa. For his extraordinary professional operation and dedication for over 41 years, he has clearly one of the most classic outstanding examples in U.S. Broadcasting.

He was one of the first to be selected for a "Random EEO Audit". His legal expense for assistance in this effort was \$6,000. In 2011 he was again "randomly chosen" to receive another EEO Audit for which he was temporally denied his license renewal based upon a non-existent EEO requirement. He hired legal assistance at a cost of \$4,500 with a delay of 18 months.

This matter could have been resolved with a two-minute telephone call from his lawyer to the appropriate FCC EEO office. Instead, with the assistance from the office of Iowa Senator Charles Grassley and our in-person (his and mine) visits to the appropriate FCC offices, the matter was resolved in a matter of minutes and Mr. Dudding's licenses were promptly renewed but at a cost of several thousand dollars in time, travel and lodging expenses.

● The undersigned, with substantial broadcasting experience, certification, numerous awards and letters of commendation has been employed either full or part-time in all areas of broadcasting since 1959.

For 17 years I served as a "Mock" FCC inspector employed by numerous State Broadcaster Associations during which I received payments of hundreds of dollars, plus travel costs for an approximate average total cost of \$550 per station certified. The inspections were claimed to prevent "random" official FCC inspections for three years.

Such proved mis-leading as several stations I had certified, following their "mock" inspections were later cited for such things reported by former discharged, disgruntled employees claiming some item of violation, or in some cases competitors seeking to capitalize on a station's legal vulnerability i.e. signal quality, tower painting & lighting, indecency, community service, etc.

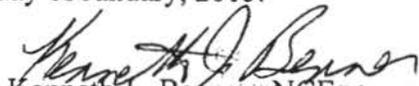
I was frequently criticized for assisting stations to be compliant with simple suggestions, published articles, Power-Point® programs and seminars. I was advised to simply "pass or fail" all stations I was assigned to inspect and to suggest failed stations to seek legal assistance. Common sense dictates every station has some minor violation that could be used to fail such an inspection.

Thus, for the "mock", which later were referred to as "Alternative" compliance inspections, it finally became apparent as simply a means to encourage stations to seek costly legal assistance.

● This petition is an effort to expose some of the more egregious abuses that plague American broadcast licensees based upon my 54 years service to the industry, including a recent 20+ year research project soliciting examples from broadcast licensees in an effort to prompt congressional cooperation and investigation to address the **Transparency, Clarification** and **Simplification** of FCC regulations to reduce the millions of dollars annually that licensees spend in unwarranted fines, fees, forfeitures and most significantly legal expenses.

The (CFTCS) "Coalition for Transparency, Clarification and Simplification of Regulations pertaining to American Broadcasting®," * of which I serve as Executive Director, stands ready to assist the Commission to any extent possible to achieve its defined purposes.

Respectfully submitted sincerely, in good faith, and to the best of my ability as a volunteer effort without remuneration on behalf of the American Broadcasting Industry under my hand and seal, this 23rd day of January, 2015.



Kenneth J. Benner, NCE(Master) #E1-00571, CBRE, #2295

FCC Licenses: PG16-5578, WØLHV(Advanced) (FRN: 0007765852),
Executive Director, CFTCS*



PC: U.S. Senator's Grassley, McCain and others who have expressed interest in the items referenced herein.

*The CFTCS is a non-profit coalition that neither solicits nor accepts funding, operating with a small research grant with only volunteer participants.