Before the
**FEDERAL COMMUNICATIONS COMMISSION**
Washington, DC 20554

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In the Matter of

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| An Inquiry Into, and the | ) | |
| Revision of, Existing | ) | File No. RM- |
| Rules Governing the | ) | |
| Public Interest Standard | ) | |
| For Digital Television | ) | |

To: The Commission

**PETITION FOR RULE MAKING AND**
**PETITION FOR NOTICE OF INQUIRY**

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## SUMMARY

Digital broadcasters cannot be said to operate in the public interest when the public has not had an opportunity to determine what the public interest is. Petitioner is People for Better TV, a broad coalition of concerned citizens and organizations whose membership seeks an inquiry into, and the establishment of clear guidelines regarding, the public interest responsibilities of digital television broadcasters. These proceedings must begin as soon as possible, and must include a full range of services in the public interest made possible with digital broadcasting.

Petitioner respectfully asserts that the Federal Communications Commission must adhere to the mandate of the United States Congress and clearly establish public interest obligations for digital broadcasters. In the Telecommunications Act of 1996, Congress specifically provided that broadcasters' public interest obligations extend into the digital environment.

Despite the mandate of Congress, the FCC has not conducted the required rule making proceeding to determine the public interest obligations of digital broadcasters. And though the Commission indicates that existing public interest requirements apply to all television broadcast licensees, and that digital broadcasters will remain trustees of the public's airwaves, it is not at all clear which obligations apply. Moreover, in light of the enhanced capabilities of digital broadcasters, enhanced service should at least be considered. The Commission has stated that, at an appropriate time, it would institute a proceeding to collect and consider all views. That time most assuredly is now.

Any proceeding must be on as fast a track as the timetable set for digital broadcasts. Digital broadcasts are already being transmitted to viewers in over two dozen markets, and television set manufacturers are establishing standards for new receiving equipment. These transmissions and technical considerations must take into account public interest services to parents, children, and the disabled. This cannot be done in the absence of the requested proceedings. The public interest should not take a back seat to the private interest of broadcasters. It is in the interest of both the viewing public and the broadcasters that some clear and enforceable set of standards are developed by the appropriate body to determine the public interest, convenience, and necessity standard to be applied to digital broadcasters. FCC hearings should be held immediately, and regulations should be in place no later than this November when stations in the top thirty markets are mandated to begin digital television service.

By this filing, the Petitioner proposes revisions to the FCC's existing rules and policies to clarify the extension of all public interest responsibilities of analog television licensees to digital television broadcasters as required by statute. Petitioner also is requesting that the FCC issue a Notice of Inquiry to investigate and consider those public interests responsibilities for DTV licensees about which there is an insufficient record.

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**PETITION FOR RULE MAKING AND**
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People for Better TV ("Petitioner"), a broad coalition of concerned citizens and organizations, respectfully requests pursuant to Sections 1.401 (a) and 1.430 of the Commission's Rules that the Federal Communications Commission ("FCC") initiate a rule making proceeding to determine the public interest obligations of digital broadcasters, and to revise Part 73 of its rules in the manner set forth in Appendix B hereto. The revision of rules in Part 73 is necessary to permit digital television licensees to more fully serve the public interest, convenience and necessity as mandated by the Communications Act of 1934, as amended, and as mandated by Congress in the Telecommunications Act of 1996. In addition, People for Better TV also requests that the FCC issue a Notice of Inquiry to examine the nature of the public interest obligations that extend to digital television licensees which are not addressed in the request for Petition for Rule Making. In both instances, the FCC must hold hearings to allow members of the public to participate in the determination of the digital public interest standard. In support whereof, the following is submitted.

## I. Introduction

People for Better TV is a broad-based national coalition of organizations representing hundreds of thousands of Americans, our steering committee includes the American Academy of Pediatrics, the Civil Rights Forum on Communications Policy, the Communications Workers of America, the Consumer Federation of America, the League of United Latin American Citizens, the National Association for the Advancement of Colored People, the National Council of Churches, the National Organization for Women, and the Project on Media Ownership. Attached is a list of organizations and individuals joining this effort.[1]

People for Better TV has standing to bring this petition calling for a Notice of Proposed Rule Making and a Notice of Inquiry under 47 C.F.R. Sections 1.401 (a)(1998) and 1.430 (1998). Already over fifty broadcasters are using the public airwaves to send digital signals in over twenty different communities. Petitioner is comprised of viewers in many of these communities, such as Washington, D.C., New York, Detroit, and Los Angeles. And while broadcasters have been given the privilege of transmitting digital signals in these communities, there has been no determination of the manner in which these local broadcasters will serve the public interest, convenience, and necessity.

Given the Federal Communications Commission's short timetable for the transition to digital broadcasting, a proceeding must begin immediately to determine the public interest obligations of digital broadcasters. Both proceedings requested herein must consider the full range of benefits the public should receive in exchange for the digital television broadcasters'

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[1] See Appendix A.

free and exclusive use of 6 MHz of public spectrum allocated to digital television broadcasting.

## II. Congress requires the Federal Communications Commission to determine the public interest obligations of digital broadcasters.

The Commission must act upon the request of People for Better TV for a clear determination of the public interest obligations of digital television broadcasters. There are several compelling reasons for the Commission to issue a Notice of Proposed Rule Making and a Notice of Inquiry as requested herein.

### A. The 1996 Telecommunications Act clearly requires digital broadcasters to operate in the public interest.

In Section 336 of the 1996 Telecommunications Act Congress acknowledged that the Commission was authorized to "issue additional licenses for advanced television services."[2] In that same Section Congress made clear that:

> Nothing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity. In the Commission's review of any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, the television licensee shall establish that all of its program services on the existing or advanced television spectrum are in the public interest.[3]

That the spectrum set aside for "advanced television" service is statutorily exempt from auction procedures, unlike other new services,[4] further supports the argument that Congress

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[2] 47 U.S.C. § 336(a)(1996).

[3] 47 U.S.C. § 336(d)(1996).

[4] 47 U.S.C. § 309(j)(2)(B)(1997).

understood broadcasters to "pay" for the valuable gift of public property by performing public service.

Looking behind the statute, both Congress and the President who signed the Act into law made it clear that with the right to broadcast digital signals came an obligation to serve the public interest. The House of Representatives' conference report concerning the Act reinforces the tie to public service for DTV broadcasters. In that report the House explicitly "adopts the Senate language that the Act's public interest obligations extend to the new licenses and services."[5] The message of the President upon signing the bill supports the underlying principle that the public interest standard is an integral element of DTV service as well. The President states:

> This law also recognizes that with freedom comes responsibility. Any truly competitive market requires rules. It guarantees the diversity of voices our democracy depends upon. Perhaps most of all, it enhances the common good.[6]

There can be little doubt that Congress passed the Telecommunications Act of 1996, and that the President signed that Act, with the understanding that digital broadcasters would be obligated to serve the public interest, convenience, and necessity.

B. The 1996 Act directs the FCC to establish a digital public interest standard prior to issuing digital licenses.

The mandate to determine the public interest obligations of digital broadcasters before allowing digital service to begin is clear. This mandate applies to any DTV signals which will

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[5] H.R. CONF. REP. NO. 458, 104th Cong., 2nd Sess. 30 (1996)

[6] Remarks by the President in Signing Ceremony For the Telecommunications Act Conference Report (February 8, 1996).

continue free television service for the viewing public, as well as any remaining spectrum used by the broadcaster for the delivery of supplemental or ancillary services.

This is underscored by the fact that Section 336(b) provides that in "prescribing the regulation required by subsection (a), the Commission shall... (5) prescribe such other regulations as may be necessary for the protection of the public interest, convenience and necessity."[7] Section 336(a) is entitled "Commission Action" and sets out requirements "if the Commission determines to issue additional licenses for advance television services..."[8] The Commission did decide to issue additional licenses to implement a conversion to digital television. However, the FCC has failed to prescribe regulations to protect the public interest.

This statutory requirement for free advanced television service is underscored by the fact that Congress specifically mandated a public interest responsibility for any ancillary or supplemental uses of the DTV spectrum, so that there would be no confusion that the public interest standard attends to <u>all</u> DTV uses of the spectrum. Section 336(a)(2) of the Act states that the Commission

> shall adopt regulations that allow the holders of such licenses to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.[9]

In addition, for ancillary services, Section 336(b), entitled "Contents of Regulations," states that, in prescribing the regulations required by subsection (a), the Commission

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[7] 47 U.S.C. § 336(b)(5)(1996).

[8] 47 U.S.C. § 336(a)(1996).

[9] 47 U.S.C. § 336(a)(2)(1996).

shall (3) apply to any other ancillary or supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person...[10](emphasis added)

The Commission has failed to adopt the required regulations. The language of the statute clearly suggests that without established guidelines, licensees can not offer services. Logic dictates that in the absence of defined responsibilities, neither the Commission nor the licensees could be sure to act as Congress intended, *i.e.* in a way "consistent with the public interest, convenience, and necessity." The same reasoning, *a fortiori*, must apply to the establishment of a clear public interest standard for any non-supplementary DTV use.

C. The 1996 Telecommunications Act adopts the "broadcast licensee as public trustee" model which ties licensing to a public interest standard.

The 1996 Telecommunications Act, even as interpreted by the FCC, keeps intact the broadcast licensee as public trustee model established under the Communications Act of 1934, as amended.[11] The 1934 Communications Act has consistently been interpreted to mean that a license carries with it obligations to serve the public interest. From Supreme Court decisions to FCC decisions and regulations, to the language of Congress itself, the public interest standard is a fundamental element of the broadcast regulatory scheme.[12]

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[10] 47 U.S.C. § 336(b)(3)(1996).

[11] "Further, we recognize that digital broadcasters remain public trustees with a responsibility to serve the public interest." *Fifth Report and Order* in MM Docket No. 87-268,12 FCC Rcd 12809, 12810 (1997).

[12] For a detailed analysis of the history of the public interest standard, See *Charting the Digital Broadcast Future*, the Report of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, sec. II (December 18, 1998)("Gore

The 1934 Act requires the FCC to determine the obligations of broadcast licensees. As the Supreme Court has noted, "the weighing of policies under the 'public interest' standard is a task Congress has delegated to the [Federal Communications] Commission in the first instance."[13]

It would be a violation of all reason to interpret the 1996 Telecommunications Act to suggest that Congress adopted a prior framework but intended to ignore precedent established under that framework. In adopting the framework of the 1934 Act, Congress signaled its intent that the FCC determine how digital broadcasters would serve the public interest before any licensed use of the public airwaves.

## III. The advent of digital broadcasting requires the Commission to consider public interest obligations anew, and clarify whether existing guidelines apply.

Digital broadcasting has been widely recognized as a different medium when compared to analog broadcasting. Distinct rules must be established which take the unique characteristics of digital broadcasting into account. In Congress, the debate surrounding the enactment of the 1996 Act is replete with references to the different digital technology and the requirement for

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Commission Report").

[13] *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 596 (1981) quoting *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775, 810 (1978).

new rules to match the advanced technology.[14]

The FCC, in its *Fifth Report and Order*, specifically addressed the extensive possibilities of DTV technology, as compared to the analog service, particularly in relation to the public interest standard:

> Our current rules were developed when technology permitted broadcasters to provide just one stream of programming over a 6 MHz channel. We recognize, however, that digital technology expands the effective capacity of 6 MHz of spectrum. For example, it permits, but does not require, licensees to provide several program streams, as well as other digital services, on the 6 MHz channel of spectrum that we are assigning them. The dynamic and flexible nature of digital technology creates the possibility of new and creative ways for broadcasters to serve the country and the public interest.[15]

Vice President Gore, upon receipt of the Final Report of the Gore Commission, stated that

> Today, as we bring television into the digital age, we stand at the brink of a great new opportunity. Digital broadcasting represents unprecedented capabilities to entertain our families, educate our children, enlighten our communities and enrich our nation's discourse. As with all great opportunities, there are also great responsibilities -- in this case, to make wise use of the public resource of our nation's airwaves.[16]

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[14] See, e.g., Comments of Sen. Dorgan, 136 CONG. REC. S1528 (daily ed. March 5, 1996) ("The purpose of the FCC allocation is to allow broadcast television to convert from analog to digital, which is a necessity in a digital world, and will allow television to keep pace with vast changes in telecommunications technology."); Comments of Sen. Pressler, 136 CONG. REC. S13310 (daily ed. March 5, 1996)("[T]echnologically speaking, these channels could be used to provide extensive new and competitive offerings, in addition to more TV. Due to advances in digital technology, they could be used for new mobile radio services, for wireless loops that could make the local telephone business more competitive, and for many other services as well.")

[15] *Fifth Report and Order*, 12 FCC Rcd at 12813 (1997).

[16] Statement by Vice President Gore on Bringing Television Into the Digital Era (December 18, 1998).

And yet, two years after the passage of the Act, the Commission has failed to hold a proceeding to determine what the licensees of this new medium owe the public. Any suggestion that the old analog rules apply cannot be supported. The Commission's off-hand extension of analog rules to digital television must, at best, be clarified in light of the very new service of digital television [17].

A. Digital broadcasting is capable of providing increased service to the public.

Until such time as 85 percent of Americans are able to receive digital signals, television broadcasters will have the use of two allotments of broadcast television frequencies. On the first, television licensees will broadcast analog programming. On the other frequency broadcasters will be able to develop a diverse range of new digital television programming and services.

Digital broadcasters have numerous programming options. One is high-definition television, or HDTV. In addition, instead of sending one HDTV signal a broadcast station can send (multicast) as many as five digital standard-definition television (SDTV) signals. Another DTV capability is to provide new kinds of video and data services, such as scrambled subscription television programming, computer software distribution, data transmissions, teletext, interactive services, and audio signals, among others. These choices -- HDTV, multicasting, and innovative video/information services -- are not mutually exclusive. Within a single programming day, a broadcaster will have the flexibility to shift back and forth between

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[17] The Commission stated that, "with respect to digital television service, broadcast licensees and the public are on notice that existing public interest requirements continue to apply to all broadcast licensees . . ." *Fifth Report and Order* 12 FCC Rcd at 12830 (1997).

different DTV modes in different day parts.

Obviously, with this capability, the potential for new public interest programming is enormous as well. For example, digital broadcasters can:

1. send via data transmission services signals for fire, health, and police services;
2. provide special services for sight and hearing disabled persons, such as video descriptive services or enhanced closed-captioning;
3. provide services in different languages, a feature especially useful in emergencies; and
4. provide educational services in collaboration with schools and libraries.

As the broadcasters are benefitted with increased capabilities, the public should benefit from the transition to digital by an increase in service, beyond mere entertainment.

B. Obligations of analog broadcasters do not transfer to digital licensees.

While declining to determine the public interest obligations of digital broadcasters, the FCC has in general terms extended the analog public interest standard to digital broadcasters.[18] However, there has been no clear indication as to how this will be accomplished. While a DTV licensee will have to show at renewal time that a station operated in the public interest, there is no concrete requirement at the beginning of the digital transition period for a DTV programmer to provide public interest service. Consequently, without specific FCC action digital broadcasters cannot be held accountable for failing to provide public interest service.

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[18] *Fifth Report and Order* 12 FCC Rcd at 1283 (1997).

The absence of specific direction regarding the digital public interest standard raises a host of other problems concerning DTV broadcasters. For example, given the fact that insufficient programming is currently available, how is it possible for DTV broadcasters to meet their obligation to provide three hours of children's educational programming if they stay in the HDTV format? Or, how will DTV broadcasters meet the current closed-captioning requirements?

At the very least, a timetable should be set if analog obligations are to transfer to DTV broadcasters. It is only fair that the Commission establish not only specific digital public interest standards but also a specific timetable for their implementation.

It is conceivable that, under one of the scenarios afforded by the flexible digital format, a digital broadcaster might choose during some portion of the broadcast day to air several free, over-the-air channels simultaneously, by multicasting. Such a scenario raises important issues that must be addressed:

1. Are digital broadcasters under an obligation to provide three hours of children's programming on every channel?
2. Are digital broadcasters which multicast obligated to provide three hours of children's programming on pay-per-view scrambled channels?
3. What is required in those situations where digital broadcasters choose to multi-cast during a portion of the day and then revert to a single-channel HDTV format for another portion of the day?

It is obvious from the introduction of just these few issues that the FCC must provide guidance to the broadcasters and viewing public alike so that public interest responsibilities are

clear.

## IV. Both the public and the broadcasters need a basic set of public interest standards.

### A. The public must be allowed to determine how public resources are to be used by prospective federal licensees.

The public has the right to participate in a process to determine what service they are due from broadcast licensees in the "digital future." A determination of public policy is both an occasion to create intelligent technical standards and an opportunity to educate and inform the public. It is not only possible, it is likely, that if given a chance the public will suggest public service options neither the broadcasters nor the Commission would come to on their own.

Moreover, while broadcasters act as public trustees of the airwaves, using federally protected public spectrum in service of the public interest, the public in turn monitors and reports to the FCC on the broadcasters compliance with established standards. The public is the Commission's best watchdog over the actions of the local broadcaster. The public's ability to assist in assuring the public airwaves are used to serve the public interest is weakened when they are kept out of the debate, or brought in only after all of the important decisions are made.

Consequently, the owners of the spectrum, *i.e.*, the viewing public, must be made aware of the public interest services made possible by digital television, and they must be made aware of the obligations of broadcasters if they are going to effectively monitor the actions of their local broadcaster. Quite simply, how can a hard of hearing grandmother know to complain that her local broadcaster's news is not closed-captioned when she doesn't know she has a right to demand that service?

B Broadcasters must know what their obligations are before they are licensed.

The FCC would abuse its authority to issue a broadcast license in the absence of any planned determination of the obligations attached to that license. This is particularly relevant with respect to the DTV public interest standard. First, the courts have held that federal licensees have a right to know the obligations attached to licenses before those licenses are issued. An applicant should not be placed in the position of going forward with an application without knowledge of requirements established by the Commission.[19]

Moreover, common sense dictates that it is grossly unfair to require an applicant to operate a DTV station, and in some cases, construct DTV facilities, without any knowledge of public interest requirements to be established by the Commission, the failure to conform to which may, by statute, result in the loss of the DTV license at the renewal stage. Digital broadcasters are now operating in a vacuum, a vacuum which jeopardizes all digital licensees in the long run, an untenable situation that requires remedy by the FCC immediately.

Consequently, not only will the public benefit from a well-articulated digital public interest standard, but broadcasters will benefit as well.

C. Regulatory certainty is important to operating effectively in the market.

The Commission has established a reliance upon the "invisible hand" of the marketplace as one of its fundamental regulatory principles since the mid-1980s. According to these principles, marketplace mechanisms will bring more services to consumers more effectively and

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[19] *Committee For Effective Cellular Rules v. FCC*, 77 RR 2d 1263, 1268 (D.C. Cir. 1995).

at lower prices. One of the important elements of a well-functioning marketplace is regulatory clarity, and the establishment of some certainty so that businesses can anticipate the full-range of their costs and approach capital markets with confidence. As it stands, there is complete uncertainty with respect to a core element of the digital television business . . . the obligations of the digital broadcaster to the public. Will there be rate regulation of over-the-air pay-per-view programming? Will service to disabled persons be part of the early cost of doing business? Will there be limits on commercials during children's programs that need to be calculated in revenue projections? The value of the broadcast license may be severely affected by an attendant lack of confidence expressed by capital markets as a result of regulatory uncertainty.

Again, what will happen if a business plan is forwarded on the assumption that all multicast channels are not obligated to provide three-hours each of educational programs for children? And this assumption proves to be false? This element of uncertainty can and needs to be eliminated by specific regulations from the FCC concerning the digital public interest standard.

D. Without a rule making proceeding, digital broadcasters may argue that it is unfair for the FCC to establish rules after licensing.

The longer the FCC waits to promulgate the digital public interest standard, the more likely digital broadcasters will oppose any retroactive application of such rules. [20] As the former

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[20] On the other hand, it should be noted that the FCC has already stated during the DTV proceeding that "Broadcasters and the public are also on notice that the Commission may adopt new public interest rules for digital television." *Fifth Report and Order* , 12 FCC Rcd at 12830 (1997).

Chairman of the FCC, Reed Hundt, wisely noted in September 1996,

> [T]he answer to the question of how much public interest programming is enough requires, first, an estimate of the revenues necessary to sustain the economic success of digital TV, and second, a statement of what is missing in our broadcast media today. Little or no debate has occurred in Congress or in the FCC on the connection of either of these broad and terrifically important questions to digital TV. But the last few years have featured engaging and ultimately positive debates about the V-chip and educational TV and other broadcast issues at the Commission and in Congress and in other public forums. These debates ought to be the precursors of the discussion we need to have, and have quickly, about the public interest in digital terrestrial broadcast TV. If we don't have this debate before the digital TV licenses are granted, we will be hard pressed to have it on fair terms later. (Emphasis added.)[21]

Furthermore, it is well-settled that the retroactive application of administrative rules and policies is looked upon with great disfavor by the courts.[22] The FCC should promulgate rules as quickly as possible and, preferably, before any more digital television licenses are issued.

## V. The Commission must act as expeditiously as possible.

The FCC must institute a rule making proceeding, and issue a Notice of Inquiry as quickly as possible. Each proposed proceeding must be on at least as fast a track as the timetable set for digital broadcasts.

First, as we have established, neither the Congress, the President, nor the Commission contemplate that digital broadcasters will operate absent some obligation to serve the public

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[21] "A New Paradigm for Digital Television" Speech delivered by Chairman Reed Hundt (September 30, 1996).

[22] *Yakima Valley Cablevision v. FCC*, 794 F. 2d 737, 745 (D.C. Cir. 1986) ("Courts have long hesitated to permit retroactive rule making and have noted its troubling nature.")

interest. Petitioner argues that it is a violation of Congressional intent to allow digital broadcasting in the absence of a determination of the broadcasters public interest responsibilities. Petitioner also asserts that it is bad policy to issue a license without setting out the obligations attached to that license. However, digital broadcasting has begun, indeed it was mandated to begin in the top ten markets by May 1, 1999. It is too late to take either the mandated or the preferred course of action. The Commission must begin proceedings immediately, with a goal to complete them before November, when the network affiliates of the top thirty markets are mandated to begin broadcasting digital signals.

Second, service on behalf of the public interest should not be relegated to a secondary role of broadcasters. Broadcasters are given licenses to serve the public, in the first instance. To paraphrase *Red Lion*[23], the rights of the viewer to service is paramount over the private pecuniary interest of the broadcaster. The interest of the viewer will suffer if the various other considerations required for the transition to digital television occur in an environment which does not include the given of public interest obligations. How, for example, can the Commission conduct the proper discussions with the manufacturers of television receivers without a firm understanding of the services the broadcasters will be required to deliver? Will receivers be built to accommodate the signals sent to serve persons with disabilities? Will receivers be built to accommodate a variety of independent ratings services? Will receivers be built to allow consumers to block the unwanted collection of data about their viewing or purchasing choices?

The development of digital television should proceed hand-in-hand with the development

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[23] *Red Lion Broadcasting Co. v. Federal Communications Commission*, 395 U.S. 367, 390 (1969).

of guidelines on how broadcasters should serve the public. Luckily, the President's Advisory Commission on the Public Interest Obligations of Broadcasters (Gore Commission)[24] has already begun some of the needed work. However flawed many commentators believe the work of the Gore Commission to be, it is a beginning. The FCC can use the work of that Commission, and the variety of additional comments submitted to that body as a starting point. The failure of the FCC to act immediately on this request will reduce day-by-day the likelihood of generating an enlightened determination for a digital public interest standard in the future, instead of a rush to pick up the scraps left by the market.

## VI. Any proceeding should consider the full range of public interest services made possible by local digital television broadcasting.

In both the rule making proceeding and the Notice of Inquiry requested herein, the FCC should hold hearings and must consider all aspects of the public interest standard for digital broadcasters.

### A. Rules for Consideration in Notice of Proposed Rule Making

The record of public interest obligations is well-established. That record was summarized in the FCC's 1960 report, Report and Statement of Policy re: Commission en banc Programming Inquiry.[25] This report described fourteen "major elements usually necessary to the

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[24] *Charting the Digital Broadcast Future*, the Report of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, sec. III, "Recommendations of the Advisory Committee." (1998)

[25] En banc Programming Inquiry, 44 FCC 2303 (1960).

public interest":[26]

1. Opportunity for local self-expression.
2. The development and use of local talent.
3. Programs for children.
4. Religious programs.
5. Educational programs.
6. Public affairs programs.
7. Editorialization by licensees.
8. Political broadcasts.
9. Agricultural programs.
10. News programs.
11. Weather and market services.
12. Sports programs.
13. Service to minority groups.
14. Entertainment programming.

The FCC noted that the categories were not "a rigid mold or fixed formula for station operations." Instead they were to be considered "indicia of the types and areas of service which, on the basis of experience, have usually been accepted by broadcasters as more or less included in the practical definition of community needs and interests."[27]

This general approach to defining the public interest standard prevailed for the next two decades. In the years following the 1960 Programming Policy Statement, the FCC adopted guidelines for minimum amounts of news, public affairs, and other non-entertainment programming,[28] and primetime access rules (to encourage non-network and local

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[26] Id. at 2314.

[27] Id. at 2313.

[28] FCC guidelines on non-entertainment programming, contained in delegations of authority to FCC staff, provided standards of at least 5 percent local programming, 5 percent informational programming (defined as news and public affairs), and 10 percent total nonentertainment programming. In general, any renewal or assignment application that

programming).[29]

While many of the public interest requirements were eliminated during the de-regulatory minded Commission of the mid-1980's, a presidential panel of broadcasters, scholars, and public interest advocates, the Gore Commission, adopted the approach established by over fifty years of experience, and suggested a set of categories the FCC should use as a starting point in determining the public interest obligations of digital television broadcasters. (See Appendix C.) People for Better TV suggests that the 1960 Report and the Gore Commission recommendations regarding minimum standards should form the basis of the requested Notice of Proposed Recommendation.

In Appendix B, the Petitioner includes proposed language for changes in the existing rules for public interest obligations which attend to analog television broadcast licensees. This list is not intended to be exhaustive, and the Petitioner would request that any Notice of Proposed

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fell short of the guidelines had to be sent to the full Commission for action. These guidelines were adopted in 1976 and repealed by the FCC in 1984. Amendments to Delegations of Authority, 59 FCC 2d 491, 493 (1976).

[29] The Prime Time Access Rule generally limited the television networks from offering more than 3 hours of prime time entertainment programming per day. The rationale for the rule was to allow non-network production houses to produce programming for the vacated time periods. Amendment of Part 73 of the Commission's Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting, Report and Order, 23 FCC 2d 382, 385-87 (1970), aff 'd sub nom. *Mt. Mansfield Television Inc. v. FCC*, 442 F.2d 470 (2d Cir. 1971). The Commission modified the Prime Time Access Rule in 1974. Consideration of the Operation of, and Possible Changes in, the "Prime Time Access Rule" in Section 73.658(k) of the Commission's Rules, 44 FCC 2d 1081 (1974), aff 'd sub nom. *National Ass 'n of Indep. Television Producers and Distributors v. FCC*, 516 F.2d 526 (2d Cir. 1975). The FCC repealed the rules in 1995. Review of the Prime Time Access Rule, 11 FCC Rcd 546 (1995) (repealing the Prime Time Access rule effective Aug. 30, 1996).

Rule Making issued by the Commission in response to the request herein extend to any and all FCC rules which currently involve or in any way affect the public interest standard for analog television licensees.

These language changes are not included in the following section requesting the Notice of Inquiry, because they are existing policies for which an ample record has been developed over the evolution of the public interest standard.

B. Issues for Consideration in Notice of Inquiry

The exhaustive record of the DTV proceeding is replete with demonstrations that the dynamic and flexible nature of digital technology creates the possibility of new and creative ways for broadcasters to serve the country and the public interest. All aspects of this technology must be explored fully by the FCC. In addition, hearings must be held to allow the public to participate and to establish as full a record as possible. Such hearings would constitute reasoned decision making and avoid arbitrary and capricious results.

People for Better TV strongly urges the Commission to issue a Notice of Inquiry and hold hearings on the digital public interest standard, with special emphasis on the following issues:

1. The expansion of services to persons with disabilities.
2. The expansion of services to persons who speak languages other than English.
3. The creation of public access opportunities over multicast broadcast services.
4. The creation of opportunities for independent ratings services.
5. Privacy protection for consumers.
6. Rate regulation of pay-per-view programming over broadcast channels.

Furthermore, People for Better TV is firmly opposed to any implementation of a digital public interest standard where the FCC sets priorities regarding public interest obligations suggesting that one element of the public interest is more important than another. For example, political programming should not be determined to be more important than service to the disabled. Such a ranking would diminish elements of the public interest standard based upon political fads and fancies, rather than the true service capabilities of digital broadcasting matched with the legitimate needs of all the viewing public. Determinations of this type would be arbitrary and capricious on their face. Such a sliding scale of public interest obligations could also open the door for abuse of the public interest by digital broadcasters in the future.

## VII. Conclusion

With all due respect, the Commission has allowed the cart to get ahead of the horse. The broadcasters' desire to experiment with the best way to make a profit from the public's airwaves should not be given prominence over any determination by this Commission on how to best serve the public. The viewing public has no protector against the private interest of the broadcaster but this Commission. This Commission is the only body which can truly balance the needs of the public, the considerations of the full-range of possible public service, and the legitimate aims of private business interests. People for Better TV asserts that the exclusive and extraordinarily valuable license to broadcast digital signals should come with a clear set of obligations the licensee will perform for the public. At the very least, technical flexibility and market experimentation should operate hand-in-hand with a requirement to act in the best interest of the public. This cannot happen, of course, in the absence of a public proceeding to determine

just what is in the public interest.

When it enacted the DTV rules the Commission stated that "... as to the public interest, our action today forecloses nothing from our consideration."[30] Petitioner asks that the FCC immediately act on this promise, that it examine all aspects of the digital public interest standard as expeditiously as possible. People for Better TV requests that the FCC issue a Notice of Proposed Rule Making as well as a Notice of Inquiry on the issues as described in detail above. Petitioner requests that the FCC hold hearings in which the public may participate, as the owners of the spectrum which is held in trust by television broadcasters. Finally, People for Better TV requests that the Commission articulate a digital public interest standard that matches in scope and effectiveness the magnificent capability of the digital television technology, so that all the American people, not just a small class of licensees, will benefit fully from the digital era of television.

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[30] *Fifth Report and Order*, 12 FCC Rcd at 12830 (1997).

Accordingly, Petitioner respectfully requests that the Commission institute a rule making proceeding that implements the statutory mandate to extend the public interest standard to DTV licensees. Furthermore, Petitioner requests that the Commission issue a Notice of Inquiry and hold public hearings to determine the nature of any new public interest standard that should apply to DTV broadcasters.

Respectfully submitted,

PEOPLE FOR BETTER TV
818 18th Street
Suite 505
Washington DC 20005

# Appendix A
## Steering Committee And Other Members

## People for Better TV Coalition Members

Steering Committee Members

American Academy of Pediatrics
Civil Rights Forum on Communications Policy
Communications Workers of America
Consumer Federation of America
League of United Latin American Citizens
NAACP
National Council of Churches
National Organization for Women
Project on Media Ownership

Other Members

American Academy of Child & Adolescent Psychiatry
American Foundation for the Blind
American Society for Deaf Children
Appalshop
Association of Independent Video Filmmakers
Benton Foundation
Chicago Access Corporation
Community Technology Center's Network
Conference of Educational Administrators
of Schools and Programs for the Deaf
Cultural Environment Movement
Fairness and Accuracy in Reporting (FAIR)
Globalvision
Interfaith Broadcasting Commission
Internews Interactive
Libraries for the Future
Loka Institute
Media Education Foundation
National Association of the Deaf
National Center for Policy Research (CPR) for Women and Families (Diana M. Zuckerman)
National Indian Telecommunications Institute
National Institute on Media and the Family
National Association of Latino Elected Officials (NALEO)
National Puerto Rican Coalition
OMB Watch
Rocky Mountain Media Watch
Self Help for Hard of Hearing People
Telecommunications for the Deaf, Inc.

Individuals

Gary Bass
Gene Boggs
Professor Nolan Bowie, Harvard University
Jane D. Brown
Professor Allen Hammond, University of Santa Clara
Mark Huisman
Lillian Jiménez
Sarah Keller
Professor Robert McChesney, University of Illinois
Cara Mertes, Director, Mixed Media
Ralph Neas
Professor Patricia Zimmerman, Ithaca College
Newton Minow

## Appendix B
## Proposed Rules Changes

The proposed language changes are in italics.

Sec. 73.1944 Reasonable access.

(a) Section 312(a)(7) of the Communications Act provides that the Commission may revoke any station license or construction permit for willful or repeated failure to allow reasonable access to, or to permit purchase of, reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy. *This rule section shall apply to both analog and digital television station licenses or construction permits.*

(b) Weekend access. For purposes of providing reasonable access, *an analog or digital* licensee shall make its facilities available for use by federal candidates on the weekend before the election if the licensee has provided similar access to commercial advertisers during the year preceding the relevant election period. *Analog or digital* licensees shall not discriminate between candidates with regard to weekend access.

Sec. 73.1941 Equal opportunities.

(a) General requirements. Except as otherwise indicated in Sec. 73.1944, no *analog or digital* station licensee is required to permit the use of its facilities by any legally qualified candidate for public office, but if any *analog or digital* licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other candidates for that office to use such facilities. Such *analog or digital* licensee shall have no power of censorship over the material broadcast by any such candidate. Appearance by a legally qualified candidate on any:

(1) Bona fide newscast;

(2) Bona fide news interview;

(3) Bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); or

(4) On-the-spot coverage of bona fide news events (including, but not limited to political conventions and activities incidental thereto) shall not be deemed to be use of a broadcasting station. (Section 315(a) of the Communications Act.)

(b) Uses. As used in this section and Sec. 73.1942, the term ``use'' means a candidate appearance (including by voice or picture) that is not exempt under paragraphs 73.1941 (a)(1) through (a)(4) of this section.

(c) Timing of request. A request for equal opportunities must be submitted to the licensee within 1 week of the day on which the first prior use giving rise to the right of equal opportunities occurred: Provided, however, That where the person was not a candidate at the time of such first prior use, he or she shall submit his or her request within 1 week of the first subsequent use after he or she has become a legally qualified candidate for the office in question.

(d) Burden of proof. A candidate requesting equal opportunities of the licensee or complaining of noncompliance to the Commission shall have the burden of proving that he or she and his or her opponent are legally qualified candidates for the same public office.

(e) Discrimination between candidates. In making time available to candidates for public office, no *analog or digital* licensee shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

(f) *All sections of this rule shall apply to both analog and digital television station licensees.*

Sec. 73.1920 Personal attacks.

(a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack, transmit to the persons or group attacked:

(1) Notification of the date, time and identification of the broadcast;

(2) A script or tape (or an accurate summary if a script or tape is not available) of the attack; and

(3) An offer of a reasonable opportunity to respond over

the licensee's facilities.

(b) The provisions of paragraph (a) of this section shall not apply to broadcast material which falls within one or more of the following categories:

(1) Personal attacks on foreign groups or foreign public figures;

(2) Personal attacks occurring during uses by legally qualified candidates.

(3) Personal attacks made during broadcasts not included in paragraph [[Page 301]] (b)(2) of this section and made by legally qualified candidates, their authorized spokespersons, or those associated with them in the campaign, on other such candidates, their authorized spokespersons or persons associated with the candidates in the campaign; and

(4) Bona fide newscasts, bona fide news interviews, and on-the-spot coverage of bona fide news events, including commentary or analysis contained in the foregoing programs.

(c) The provisions of paragraph (a) of this section shall be applicable to editorials of the licensee, except in the case of noncommercial educational stations since they are precluded from editorializing (section 399(a), Communications Act).

(d) *All sections of this rule shall apply to both analog and digital television station licensees.*

Sec. 73.1930 Political editorials.

(a) Where a licensee, in an editorial,

(1) Endorses or,

(2) Opposes a legally qualified candidate or candidates, the licensee shall, with 24 hours after the editorial, transmit to, respectively,

(i) The other qualified candidate or candidates for the same office or,

(ii) The candidate opposed in the editorial,

(A) Notification of the date and the time of the editorial,

(B) A script or tape of the editorial and

(C) An offer of reasonable opportunity for the candidate or a spokesman of the candidate to respond over the licensee's facilities. Where such editorials are broadcast on the day of the election or within 72 hours prior to the day of the election, the licensee shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to

prepare a response and to present it in a timely fashion.

(b) Inasmuch as noncommercial educational stations may not engage in editorializing nor may support nor oppose any candidate for political office (section 399, Communications Act), the provisions of paragraph (a) of this section, do not apply to such stations.

(c) *All sections of this rule shall apply to both analog and digital television station licensees.*

Sec. 73.671 Educational and informational programming for children.

(a) Each commercial and noncommercial educational television broadcast station licensee has an obligation to serve, over the term of its license, the educational and informational needs of children through both the licensee's overall programming and programming specifically designed to serve such needs.

(b) Any special nonbroadcast efforts which enhance the value of children's educational and informational television programming, and any special effort to produce or support educational and informational television programming by another station in the licensee's marketplace, may also contribute to meeting the licensee's obligation to serve, over the term of its license, the educational and informational needs of children.

(c) For purposes of this section, educational and informational television programming is any television programming that furthers the educational and informational needs of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs. Programming specifically designed to serve the educational and informational needs of children (``Core Programming'') is educational and informational programming that satisfies the following additional criteria:

(1) It has serving the educational and informational needs of children ages 16 and under as a significant purpose;

(2) It is aired between the hours of 7:00 a.m. and 10:00 p.m.;

(3) It is a regularly scheduled weekly program;

(4) It is at least 30 minutes in length;

(5) The educational and informational objective and the target child audience are specified in writing in the licensee's

Children's Television Programming Report, as described in Sec. 73.3526(a)(8)(iii); and

(6) Instructions for listing the program as educational/informational, including an indication of the age group for which the program is intended, are provided by the licensee to publishers of program guides, as described in Sec. 73.673(b).

(d) *All sections of this rule shall apply to both analog and digital television station licensees.*

Sec. 73.673 Public information initiatives regarding educational and informational programming for children.

(a) Each commercial television broadcast licensee shall identify programs specifically designed to educate and inform children at the beginning of the program, in a form that is in the discretion of the licensee.

(b) Each commercial television broadcast station licensee shall provide information identifying programming specifically designed to educate and inform children to publishers of program guides. Such information shall include an indication of the age group for which the program is intended.

(c) *All sections of this rule shall apply to both analog and digital television station licensees.*

Sec. 73.3526 Local public inspection file of commercial stations.

(a) Responsibility to maintain a file. The following shall maintain for public inspection a file containing the material set forth in this section.

(1) Applicants for a construction permit for a new station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(2) and (e)(10) of this section. A separate file shall be maintained for each station for which an application is pending. If the application is granted, paragraph (a)(2) of this section shall apply.

(2) Every permittee or licensee of an AM, FM, or TV station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraph (e)(13) of this section. In addition, every permittee or licensee of a commercial TV station shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(11) and (e)(15) of this section, and

every permittee or licensee of a commercial AM or FM station shall maintain for public inspection a file containing the material, relating to that station, described in paragraphs (e)(12) and (e)(14) of this section. A separate file shall be maintained for each station for which an authorization is outstanding, and the file shall be maintained so long as an authorization to operate the station is outstanding.

(b) Location of the file. The public inspection file shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(c) Access to material in the file.

(1) The file shall be available for public inspection at any time during regular business hours. All or part of the file may be maintained in a computer database, as long as a computer terminal is made available, at the location of the file, to members of the public who wish to review the file. Material in the public inspection file shall be made available for printing or machine reproduction upon request made in person. The applicant, permittee, or licensee may specify the location for printing or reproduction, require the requesting party to pay the reasonable cost thereof, and may require guarantee of payment in advance (e.g., by requiring a deposit, obtaining credit card information, or any other reasonable method). Requests for copies shall be fulfilled within a reasonable period of time, which generally should not exceed 7 days.

(2) The applicant, permittee, or licensee shall make available, by mail upon telephone request, photocopies of documents in the file, and the station shall pay postage. Licensees shall mail the most recent version of ``The Public and Broadcasting'' to any member of the public that requests a copy. Licensees shall be prepared to assist members of the public in identifying the documents they may ask to be sent to them by mail, for example, by describing to the caller, if asked, the period covered by a particular report and the number of pages included in the report.

(d) Responsibility in case of assignment or transfer.

(1) In cases involving applications for consent to assignment of broadcast station construction permits or licenses, with respect to which public notice is required to be given under the provisions of Sec. 73.3580 or Sec. 73.3594, the file mentioned in paragraph (a) of this section shall be maintained by the

assignor. If the assignment is consented to by the FCC and consummated, the assignee shall maintain the file commencing with the date on which notice of the consummation of the assignment is filed with the FCC. The assignee shall retain public file documents obtained from the assignor for the period required under these rules.

(2) In cases involving applications for consent to transfer of control of a permittee or licensee of a broadcast station, the file mentioned in paragraph (a) of this section shall be maintained by the permittee or licensee.

(e) Contents of the file. The material to be retained in the public inspection file is as follows:

(1) Authorization. A copy of the current FCC authorization to construct or operate the station, as well as any other documents necessary to reflect any modifications thereto or any conditions that the FCC has placed on the authorization. These materials shall be retained until replaced by a new authorization, at which time a copy of the new authorization and any related materials shall be placed in the file.

(2) Applications and related materials. A copy of any application tendered for filing with the FCC, together with all related material, and copies of Initial Decisions and Final Decisions in hearing cases pertaining thereto. If petitions to deny are filed against the application and have been served on the applicant, a statement that such a petition has been filed shall be maintained in the file together with the name and address of the party filing the petition. Applications shall be retained in the public inspection file until final action has been taken on the application, except that applications for a new construction permit granted pursuant to a waiver showing and applications for assignment or transfer of license granted pursuant to a waiver showing shall be retained for as long as the waiver is in effect. In addition, license renewal applications granted on a short-term basis shall be retained until final action has been taken on the license renewal application filed immediately following the shortened license term.

(3) Citizen agreements. A copy of every written citizen agreement. These agreements shall be retained for the term of the agreement, including any renewal or extension thereof.

(4) Contour maps. A copy of any service contour maps, submitted with any application tendered for filing with the FCC, together with any other information in the application showing service contours and/or main studio and transmitter

location (State, county, city, street address, or other identifying information). These documents shall be retained for as long as they reflect current, accurate information regarding the station. (5) Ownership reports and related materials. A copy of the most recent, complete ownership report filed with the FCC for the station, together with any statements filed with the FCC certifying that the current report is accurate, and together with all related material. These materials shall be retained until a new, complete ownership report is filed with the FCC, at which time a copy of the new report and any related materials shall be placed in the file. The permittee or licensee must retain in the public file either a copy of the contracts listed in such reports in accordance with Sec. 73.3615(a)(4)(i), or an up-to-date list of such contracts. Licensees or permittees who choose to retain a list of contracts must provide a copy of any contracts to requesting parties within 7 days.

(6) Political file. Such records as are required by Sec. 73.1943 to be kept concerning broadcasts by candidates for public office. These records shall be retained for the period specified in Sec. 73.1943 (2 years).

(7) Annual employment reports. A copy of every annual employment report filed by the licensee or permittee for the station, together with all related material (Form 395-B). These materials shall be retained until final action has been taken on the station's next license renewal application.

(8) The public and broadcasting. At all times, a copy of the most recent version of the manual entitled ``The Public and Broadcasting.''

(9) Letters and e-mail from public. All written comments and suggestions received from the public regarding operation of the station, unless the letter writer has requested that the letter not be made public or when the licensee feels that it should be excluded from public inspection because of the nature of its content, such as a defamatory or obscene letter. Letters and electronic mail messages shall be retained for a period of three years from the date on which they are received by the licensee. For purposes of this section, written comments and suggestions received from the public include electronic mail messages transmitted via the internet. Licensees may retain e-mails either on paper or in a computer file. Licensees who choose to maintain a computer file of e-mails may make the file available to the public either by providing the public with access to a computer terminal at the location of the public file, or providing the

public with a copy of such e-mails on computer diskette, upon request. In the case of identical communications, licensees and permittees may retain one sample copy of the letter or electronic mail message together with a list identifying other parties who sent identical communications.

(10) Material relating to FCC investigation or complaint. Material having a substantial bearing on a matter which is the subject of an FCC investigation or complaint to the FCC of which the applicant, permittee, or licensee has been advised. This material shall be retained until the applicant, permittee, or licensee is notified in writing that the material may be discarded.

(11)(i) TV issues/programs lists. For commercial TV broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October--December, April 10 for the quarter January--March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

(ii) Records concerning commercial limits. For commercial TV broadcast stations, records sufficient to permit substantiation of the station's certification, in its license renewal application, of compliance with the commercial limits on children's programming established in 47 U.S.C. 303a and 47 CFR 73.670. The records for each calendar quarter must be filed in the public inspection file by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October--December, April 10 for the quarter January--March, etc.). These records shall be retained until final action has been taken on the station's next license renewal application. (iii) Children's television programming reports. For commercial TV broadcast stations, on a quarterly basis, a completed Children's Television Programming Report (``Report''), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs

of children. The Report for each quarter is to be filed by the tenth day of the succeeding calendar quarter. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in Sec. 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application. Licensees shall publicize in an appropriate manner the existence and location of these Reports. For an experimental period of three years, licensees shall file these Reports [[Page 321]] with the Commission on an annual basis, i.e. four quarterly reports filed jointly each year, preferably in electronic form. These Reports shall be filed with the Commission on January 10, 1998, January 10, 1999, and January 10, 2000.

(12) Radio issues/programs lists. For commercial AM and FM broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October--December, April 10 for the quarter January--March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

(13) Local public notice announcements. Each applicant for renewal of license shall, within 7 days of the last day of broadcast of the local public notice of filing announcements required pursuant to Sec. 73.3580(h), place in the station's local public inspection file a statement certifying compliance with this requirement. The dates and times that the pre-filing and post-filing notices were broadcast and the text thereof shall be made part of the certifying statement. The certifying statement

shall be retained in the public file for the period specified in Sec. 73.3580 (for as long as the application to which it refers).

(14) Radio time brokerage agreements. For commercial radio stations, a copy of every agreement or contract involving time brokerage of the licensee's station or of another station by the licensee, with confidential or proprietary information redacted where appropriate. These records shall be retained as long as the contract or agreement is in force. (15) Must-carry or retransmission consent election. Statements of a commercial television station's election with respect to either must- carry or retransmission consent as defined in Sec. 76.64 of this chapter. These records shall be retained for the duration of the three year election period to which the statement applies.

(f) *All sections of this rule shall apply to both analog and digital television station licensees.*

Sec. 73.3999 Enforcement of 18 U.S.C. 1464 (restrictions on the transmission of obscene and indecent material).

(a) No licensee of a radio or television broadcast station shall broadcast any material which is obscene.

(b) No licensee of a radio or television broadcast station shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent.

(c) *All sections of this rule shall apply to both analog and digital television station licensees.*

## Appendix C

- Minimum Public Interest Requirements Recommendation President's Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters

- Attachment of the Minimum Public Interest Standards Working Group

# Recommendation 3: Minimum Public Interest Requirements

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**Recommendation:**
**The FCC should adopt a set of minimum public interest requirements for digital television broadcasters.**

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The Advisory Committee believes that having the broadcast industry adopt a strong set of voluntary standards of conduct, created and administered by the National Association of Broadcasters, would be a highly desirable step toward creating a digital world meeting the needs and interests of the American public. The Advisory Committee nevertheless recognizes an additional reality: not all broadcasters will subscribe to voluntary guidelines. Importantly, a large number of broadcast stations—perhaps as many as 400—are not members of the NAB and thus would not be affected by an industry-drafted and administered code.

Therefore, despite the Committee's stated preferences for voluntary self-regulation and maximum broadcaster flexibility, the Advisory Committee recommends that the FCC adopt a set of mandatory minimum public interest requirements for digital broadcasters. These minimum standards should be drafted in a way that would not impose an undue burden on digital broadcast stations, and should apply to areas generally accepted as important universal responsibilities for broadcasters—as well as for cable and satellite providers. Any set of minimum standards should be drafted by the FCC in close conjunction with broadcasters and representatives of the public, and phased in over several years beginning with stations' trans- mission of digital signals.

We have a broad consensus on the Advisory Committee that there should be minimum standards. However, our Advisory Committee is not unanimous in its recommendation about what those standards should be, or what form they should take. Some of the disagreements in this regard, including whether areas like free political time should be included in minimum standards, are expressed in the individual views of Advisory Committee members found in Section IV in this report. More generally, we have sharply different views about the specificity of minimum standards. Many of our committee members endorse the idea of detailed standards with defined numerical guidelines of performance, believing that the only way to make standards work and to evaluate whether stations meet them is to make the standards specific. However, others, including many broadcasters on the panel who endorse the concept of minimum standards, object vociferously to that idea, believing that detailed standards with numerical quotas reflect an outdated model of regulation, and simply do not fit the diverse character of digital television stations around the country.

After much discussion, and having reviewed the product of a working group of the Advisory Committee led by James. F. Goodmon of Capitol Broadcasting, the Committee recommends the following categories for minimum standards for digital broadcasters:(3)

- **1. Community Outreach.** Digital stations should be required to develop a method for determining or "ascertaining" a community's needs and interests. This process of reaching out and involving the community should serve as the station's road map for addressing these needs through news, public affairs, children's and other local programming, and public service announcements. Further public input should be invited on a regular basis through regular postal and electronic mail services. The call for requests for public input should be closed captioned. The

and electronic mail services. The call for requests for public input should be closed captioned. The stations should regularly report during the year to the public on their efforts.

- **2. Accountability.** Whatever the mandatory minimums, stations should report quarterly to the public on their public interest efforts, as outlined in recommendation 1, above.
- **3. Public Service Announcements.** A minimum commitment to public service an- nouncements should be required of digital television broadcasters, with at least equal emphasis placed on locally produced PSAs addressing a community's local needs. PSAs should run in all day parts including in primetime and at other times of peak viewing.
- **4. Public Affairs Programming.** A minimum commitment to public affairs program- ming should be required of digital television broadcasters, again with some emphasis on local issues and needs. Such programming should air in visible time periods during the day and evening. Public affairs programming can occur within or outside regularly scheduled newscasts, but is not defined as coverage of news itself.
- **5. Closed Captioning.** A digital broadcast station should provide closed captioning of PSAs, public affairs programming, and political programming. Captioning in these areas should be phased in over the first 4 years of a station's digital broadcasts, where doing so would not impose an undue burden, but should be completed no later than the FCC-imposed deadline of 2006 for captioning most programming.

## MUST CARRY

Our recommendation for mandatory minimum standards stands alone. But it also expresses a recognition that in the digital era it is in the public interest for television broadcasting, which meets significant public interest obligations, to reach all American homes as soon as possible. To "preserv[e] the benefits of free, over-the-air broadcast television"(4) in a digital world, the Advisory Committee recommends that appropriate governmental authorities adopt ways, including digital "must carry" by cable operators, to expedite the widespread availability of digital broadcast television to the public. Congress has required cable operators to carry broadcasters' digital signals. In addition, the intent of the Telecommunications Act of 1996 was to expedite the advance of digital broadcasting.(5) If it is in the public interest to have digital television broadcasting available as soon as possible to the largest number of Americans, policies that encourage that availability should themselves be encouraged, in a manner that does not disadvantage smaller broadcasters as compared to larger broadcasters, and that recognizes the important role of public broadcasting. The Advisory Committee recognizes that implementation of digital "must carry" poses many difficult questions, including technological ones, which the FCC is exploring in an ongoing rulemaking.

**Additional Links**

Supplemental Statements on Minimum Standards

- Statement of Charles Benton, Frank M. Blythe, Peggy Charren, Frank H. Cruz, Richard Masur, Newton N. Minow, Jose Luis Ruiz, Shelby Schuck Scott, Gigi B. Sohn, Karen Peltz Strauss, and James Yee; Cass R. Sunstein and Robert D. Glaser join in Part I only
- Statement of James F. Goodmon Supporting Minimum Standards for Digital Television Broadcasters including the report of the Working Group on Minimum Public Interest Standards with attachment.

**Endnotes**

3) In addition to the following categories, the Advisory Committee assumes that the Children's Television Act will apply to digital broadcasting as it does to analog.

4) Turner Broad. Sys. Inc. v. FCC, 117 S. Ct. 1174, 1186 (1997).

5) See e.g., 47 U. S. C. §336(a)(1) (limiting "the initial eligibility for [advanced television service] licenses to persons that . . . are licensed to operate a television broadcast station or hold a permit to construct such a station").

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On to Recommendation 4

*www.benton.org/PIAC/rec3.html*
*Posted 12/29/98*

# MINIMUM PUBLIC INTEREST REQUIREMENTS FOR DIGITAL TELEVISION STATIONS

Submitted by Working Group on Minimum Public Interest Standards

Attachment

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These are Proposed Ranges and Phase-In Periods for PSAs and Public Affairs Programming Requirements.

**Public Service Announcements.**

(1) **Proposed range.** The suggested range for the number of public service announcements required is from 110 to 150 per week for each station or channel. The suggested breakout by time period follows:

6:00 a.m. – 4:00 p.m 40 – 60 4:00 p.m. – 11:30 p.m. 30 – 40 11:30 p.m. – 6:00 a.m. 40 – 50

(2) **Local Emphasis.** At least one half of the spots should be locally-produced and directed toward local issues.

(3) **Phase In Period.** PSA requirements would be phased in with approximately one-third of the PSAs required in the first year of digital transmission, one third in the second year, and all numerical requirements met in the third year.

**Public Affairs Programming.** While we suggest that broadcasters be required to carry at least two hours of local programming each week, a suggested phase-in period might allow the following:

Year one: Weekly, one-half hour, locally-produced public affairs programming
Year two: Weekly, one hour or two half hours of programming
Year three: Weekly, two hours of public affairs programming

The first one-half hour of programming should be carried between the hours of six p.m. and midnight.

In year two and thereafter, one-half of all public affairs programming should be (a) broadcast between six p.m. and midnight and (b) locally produced and aimed at local community needs and interests.

**Free Political Programming.** Political programming should not be phased in. Minimum requirements should be met following implementation.

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*www.benton.org/PIAC/attach.html*
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