surfing." Sometimes I stumble upon some quality programming or programs that are "in the public interest," but most of the time I give up and find something else to do. However, I really do believe that there are programs worth watching.

The FCC could perform a great service to this country if they required broadcasters to coordinate their resources to produce a single weekly Internet publication that contains detailed programming information. It is not practical for someone to go to each broadcaster's web site to see what they will be airing that week. Moreover, the advertisements and other sources of propaganda that clutter most websites and other print media obscure the information the people should have easy access to.

The solution: (1) create a site that has a clever address; such as www.whatsontv.com; (2) require all broadcasters to provide information about their programs; such as time, suggested audience, content description, and whether the program has closed captioning or other disability features; (3) limit the number, size, and location of advertisements; and (4) require broadcasters to advertise this website in a "reasonable" manner.

Requiring broadcasters to combine all of their broadcasting information and publish it on one website may

decrease the revenues generated from their current, highly commercialized sites. This problem could be alleviated by allowing broadcasters to provide links to their home pages so that people who want more information about their favorite shows can, with the click of a button, transport themselves back to destination capitalism.

Conclusion

Increasing the public interest obligations of broadcasters could give a competitive advantage to cable companies who do not have to satisfy this requirement. This could forestall the long anticipated competition to cable and other multiple channel programming that digital broadcasting may bring. Consequently, the FCC could better serve this country if they focussed more resources on public broadcasting which does not have to respond to the market force of ratings.

Although the FCC should focus more of its resources on public broadcasting, the FCC still needs to ensure that broadcasters cover local affairs by providing them with economic incentives to do so. If the FCC simply required broadcasters to cover local affairs this could also give cable companies an advantage if consumers are not concerned about local affairs or would rather get this information

from other sources. The FCC could also provide a great service to this country if they required broadcasters to create one website that contained detailed programming information. Thank you for your consideration.

Cordially,

Stephen E. Verotsky

RECEIVED
MAR 23 2000
FCC MAIL ROOM

Before the Federal Communications Commission

Comments of Dationa Osborn
Regarding the proposed
Public Interest Obligations of Television
Broadcast Licensees

Introduction and Background

In deciding whether the Commission should establish more specific minimum requirements or guidelines regarding television broadcasters' public interest obligations, the Commission must first decide what it's objectives would be in establishing such guidelines and whether it would benefit the public to make these new guidelines.

Current public interest programming include educational children programs, public affairs and general educational programming. If the commission wants to see these types of programs enhanced and improved, and if the commission wants the programs to play an important part of the 21st century, it will want to make the programs part of the new opportunities that digital television is bringing.

A. A need to move from deregulation to regulation

One thing is certain, the 1996 Telecom Act specifically states that the public interest standard is applicable to television broadcasting including digital TV. [1] However, if regulations are made, they should be regulated not deregulated. This has not always been the case in the

[1] Telecommunications Act of 1996, 47 U.S.C. δ336(d)(1994).

past. The current public interest regulations are somewhat vague. The Commission's guidelines for local or informational programming are neither effective nor objective.[2]

Dean Burch once said in an address to the International Radio and Television Society in 1993, that "neither the Broadcasters of that group or the FCC could probably state what the specific guidelines and renewal policies were."

B. Clearly Defined Guidelines will be Essential

Because of the "lightweight" handling with regards to standards and guidelines in the past, the Commission should strive to establish clearly defined guidelines that will be promulgated properly. This will assure compliance by each broadcaster who expects to get their license renewed. This is especially important for when the FCC is confronted with possible licensee violations.

C. Postcard Renewal Is Outdated

One thing that the Commission may think about abolishing, is the license renewal by postcard. This requirement, which was adopted in the 1980s, has also contributed to the deregulation if broadcasting. Although they may be quick and efficient, postcards tend to undermine the whole concept of making the public interest requirements effective. For example, with a post card there is no room to show how or

[2] Broadcast renewal License: Hearing Before the House Subcomm. on Comm., 93d Cong., 1st sess., ser. 93-36, pt.2, at 1120 (testimony of Chairman Dean Burch).

when guidelines were complied with. And although broadcasters are required to keep a file with this type of information, no one from the Commission conducts routine checks to make sure the files are complete or that they even exist.

Discussion

A. Stricter Regulations

The Communications Act awards short-term broadcasters' licenses to parties that volunteer to service the public's interest. The Act imposes several basic public service requirements. The broadcasters are required to serve the local needs with community issue-oriented programming. They are required to contribute to an informed electorate through informational and political broadcast. And, the broadcasters are required to serve the educational and informational needs of children.

These general requirements are good, but they should be more detailed. This may take time and a little research. When meeting the needs of the public, the FCC wants to be sure that the public is receiving the benefit. Therefore, the programming should be tailored or scheduled so that the particular audience, whether it is children or adults, is watching the TV at that time. Effectiveness is better than quantity. What do I mean by that statement? Well, for example, a one hour requirement of educational programming at a time when the audience is sure to be watching is better than a five hour requirement that is used between 1 am and 6 am.

Requiring 2 to 4 hours of public interest programming for each audience (local, adult, and children) per day at a time when the audience for that particular program is watching, seems to be more than enough. Anyone who watches more television than that is probably not making good use of his or her life. Plus, we shouldn't leave the burden on the broadcasters to meet all of the public needs. There are other interactive things that take place in the community that can fulfill those needs.

Using the Children's Television Act of 1990 as a model, the FCC could require broadcasters to serve the educational and informational needs of children and adults with specifically designed programming. Also equally important are the types of programs, which the broadcasters consider educational and informational. For example, if animated programming is used, would shows such as "Pokemon" or "Catdog" be considered educational or would the program resemble shows like "Barney" or "Arthur?" Even with adult programming, would the news be considered informative? Or what about game shows like "How to be a Millionaire?"

The FCC should be specific in what types of programming or commercials are considered and which types of programming absolutely would not pass.

B. Compliance

This takes us into compliance. If the Commission creates the

type of guidelines that I have mentioned, the FCC should make sure that the licensees comply with the new guidelines. Since most of the rules dealing with compliance are already in place, the Commission just needs to assure that the broadcasters abide by the statue.

First, instead of using postcards, the FCC could receive programming information to help it assess whether the public service efforts of particular licensees are being met. The broadcaster could be asked to keep semi-annual reports in their files, which focus in their public service record. The file should include the current programming used, including the number of hours and which audience it is intended to serve. Secondly, the file should also have plans for any new programming and changes and suggestions. The programming should include educational, cultural, and in-depth informational programming.[3]

The FCC should conduct random inspections where representatives would go to the broadcasting company and evaluate their public service efforts. If that process becomes too costly, the Broadcast Company could mail in annual reports, which indicate significant treatment of community issues, along with illustrative programs. If nothing else, the records could be kept on disk or CD-Rom.

Other things the FCC may want to start doing more effectively is investigating complaints by people dealing with programming or some

[3] Actually, broadcasters are asked to keep a file under the present guidelines, but the files do not have to be submitted to the FCC.

content feature. Having a copy of the file or access to the file allows the Commission to address the public's issues quicker and more effectively.

Failure to comply with these guidelines should result in non-renewal of the license. The license renewal should be conditional upon compliance.

C. The Unconstitutionality Argument

Along with new regulations is often someone or some group who will oppose the regulation. A broadcaster from the National Association of Broadcasters (NAB) stated that "clearly defined guidelines for public service would violate the broadcaster's first Amendment right."[4] However, I feel that if the NAB really thought that the public interest obligation was problematic, they would have opposed it much sooner than now.

The lack of strict compliance of public interest guidelines in the past by the FCC has likely created a false sense of control among the broadcasters. Therefore, when the Commission try to enforce the new clearly stated guidelines, the NAB may retaliate by non-compliance or by filing first amendment violation claims.

Neither one of these choices will be a good idea for the NAB to exercise. First, if they refuse to comply with the guidelines, they will lose their license renewal and there are plenty of other companies wanting to get one of these licenses at the small price of complying with some minimum public interest obligations. Second, going to court costs

[4] Edward Fritts, Response to FCC Chairman Reed Hundt, Broadcasting and Cable, April 7, 1967, at 36.

money and it take time and then there is no guarantee that they would win in the end. It sounds good to say that your first amendment rights have been violated, but how would that argument stand against a "substantial" or "compelling" public interest need which serves an audience much greater than a broadcast company.

The best thing to do so that no one feels threatened is the hold a session between the FCC and the broadcaster which give the broadcaster a chance to express their views in a face to face forum, or maybe their needs can be met by sending in comments to the Commission on the new proposed guidelines.

One other thing that may help is for the Commission to define what they consider public interest programming as mentioned above. If the Commission comes up with a liberal definition the NAB may be more susceptible to the entire process. Other things would include the choice of how many hours are required and the freedom to choose among both non-commercial programs and commercial.

Conclusion

Whatever guidelines the Commission decides to use, it should also keep its objective in mind. It shouldn't be that difficult to consider the NAB wants while meeting the public's need. The NAB should feel that they are a part of the regulation and not just a victim of it. Taking the feelings of everyone who will be effected by this new guideline into consideration assures that no one looses in the end.

RECEIVED
MAR 23 2000
FCC MAIL ROOM

To: Magalie Roman Salas

From: Nicholas J. Peterson

CC: Professor Glenn H. Reynolds

Re: Comments on Proposed "Public Interest Obligations of Television Broadcast Licensees" Regulations

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In response to the Federal Communications Commission's request for public comments, 65 Fed. Reg. 4211, (January 26, 2000), I wish to express my views as a law student at the University of Tennessee. As consumers of television programming, my family, myself and the community in which we live will be directly affected by the new Digital Television (DTV) era. I am commenting in particular on the issue of the broadcasters' duty to provide programming in the public's interest, specifically children's programming. Further, I am submitting comments on the issue of enhancing political discourse through the use of DTV.

Introduction

"Television is the most influential image and information machine of American society."[1] This quote is most probably a true depiction of the twentieth century. Some may argue that computers and the Internet have been, and will become the most influential. But as American society moves further into the digital age of TV and its convergence with user interactive capabilities, the argument becomes moot. There is no denying, however, that television shapes, influences, and changes vital aspects of our society. Legislation regulating broadcasters dating back to the nineteen-twenties and thirties still remains virtually unchanged today. Unfortunately the current regulations in place fail to instruct television broadcasters regarding specific public

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[1]http://www.bettertv.net/takeback.html

interest obligations such as children's programming and political campaign discourse. As the technology surrounding DTV continues to evolve, so should the requirements on broadcasters to better serve the public's interest.

Children's Programming

The typical American child consumes "nearly five and one-half hours of media outside school" per day; half of that figure consists of television.[2] Currently, broadcasting networks assert that they are complying with the three hour per week rule for children's programming. Special interest groups like the People for Better TV argue that three hours per week is just not enough. But before the issues of how, when and how much children's programming should be available on the DTV format, I need to make a general assumption.

For the purposes of this comment, I will assume that given an option, broadcasters will choose to multicast rather than to produce one HDTV signal. In support of this assumption, the ABC TV Network President Preston Padden stated that "his company is leaning toward multichannel digital broadcasts rather than dedicating its stations' spectrum to a single HDTV channel." CBS has also mentioned that it is "eyeing multiplexing as a potential revenue source." And NBC indicated that it will likely broadcast in both HDTV and multicast at different times of the day.[3] It is unlikely that the networks will waste precious spectrum with HDTV when four to six video or data channels can be utilized in the same space. Based on the likelihood that networks will multicast programs on several channels, the FCC should redefine the standards for which the networks are required to air children's programs.

A good starting point is to ask whether broadcasters of DTV should be required to abide by any of the traditional public interest requirements regarding children's programming that

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[2]Communications Daily, Vol. 19; Issue 222; November 18, 1999.
[3]John M. Hggins, Glenn Dickson, Broadcasting & Cable, "HDTV Falling Out of Favor" Vol. 127, No. 34, August 18, 1997

analog broadcasters must follow. There is no legitimate reason why broadcasters of DTV should not be required to maintain at least the minimum requirements that have been in place for nearly 70 years. Broadcasters have received what equates to "rent-free office space - the public airwaves."[4] In return for free access to the airwaves, broadcasters are required to "repay" the American citizens by providing some public interest programming and features like closed captioning. It should be viewed as an affirmative duty that the broadcasters have to the American people to provide at least the minimum standards set forth in the Telecommunications Act of 1996, even on the new digital spectrum.

The next step is to ask whether increased, and more specific standards of public interest programming (specifically children's and educational shows) are permissible in the new spectrum of DTV. Of course the broadcasters answer adamantly in the negative. Broadcasters argue that the First Amendment applies to them just as it does to the press, and forbids the government from mandating the programming aired on their channels. "However, because broadcasters are licensed to use a scarce public property, the Supreme Court has consistently ruled that with regard to the public airwaves it is the First Amendment rights of the viewers, not the broadcasters, which is paramount."[5] Others argue that if the broadcasters want to be treated like the press, they should pay for the digital spectrum that they are using. Furthermore, the constitutionality of clear and concrete public interest obligations was upheld in 1997 in Time Warner Entertainment Co. v. FCC.[6] The District of Columbia District Court held that the educational and informational programming requirements were constitutional for at least two reasons. First, the spectrum in which broadcasters air their programs is scarce and the public is therefore entitled to condition its use. And second, a specific public interest requirement may be justified as payment in kind for the use of the public spectrum. (see footnote 6) Therefore, it is clearly permissible, not to mention

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[4]http://www.bettertv.net/takeback.html
[5]http://epn.org/prospect/22/22suns.html
[6]Reed Hunt, Broadcasting & Cable, "First Things First" Vol. 127, No. 9, March 3, 1997

desirable that the FCC place new and more specific standards on broadcasters of DTV regarding children's programming.

One problem with setting firm requirements on DTV broadcasters that choose to multicast is whether to provide for children's programs on all the channels (potentially 6 channels or more per network), or treat the network as one single unit and apply programming requirements that way. While it might seem easiest to simply apply the programming requirements equally "across the board", one must take into account the fact that many multicasted channels will not lend themselves to video formatted programming. Such channels include those that the broadcasters will use for datacasting or e-mail. In fairness to the broadcasters, the three hour educational/children programming requirement could potentially create serious problems when interjected into a channel which is dedicated to providing e-mail service to customers. However, in fairness to the public, the broadcaster should still be held accountable to provide public interest programming for the free use of that spectrum.

What I propose can be classified as somewhat of a compromise between the two. For the broadcaster who chooses to multicast, the educational and children's programs could be aired on DTV channels which are more conducive to video broadcasts. Each of the multicasted channels should be counted as "one" spectrum unit, which is required to broadcast programs in the public's interest. But where a broadcaster can demonstrate that airing children's programs on certain channels (such as data channels) is a substantial burden, the broadcaster may have the option to air the programming on video DTV channels. For example, if CBS chose to multicast its DTV signal and broadcast 6 different channels (4 video and 2 data), every channel should be responsible for airing at least the minimum 3 weekly hours of children's programming. When considering the 2 data channels, the required 6 weekly hours of children's programming could be distributed among the remaining 4 video channels, provided that CBS could show a substantial burden in airing the shows on the data channels. The outcome is fair and equitable to both the public and networks. The public would continue to receive a satisfactory level of children's

programs, while the broadcasters would still air the same hours of children's programming per week, per channel as the analog system.

Enhancing Political Discourse

In this portion of the comment, I will provide suggestions pertaining to the use of DTV to enhance the political discourse and the democratic election process in America. It is safe to assume that the vast majority of Americans would benefit from enhanced coverage and accessibility to the political process and its candidates. Television (including DTV) is, and will continue to be one of the most utilized formats in which the American population receives its information on candidates. DTV provides a new forum with greater possibilities in which to engage candidate debate and audience participation.

New and more stringent regulations regarding DTV air time allotments for political candidates however will not enhance political discourse. While more air time for candidates and easier access to the airwaves would likely benefit the public, there is little guarantee that the majority of DTV consumers will even watch it. Broadcasters have said that they "don't hear a lot of clamoring from the public for more time for politicians."[7] It does seem clear though that reform in some manner regarding the requirements on broadcasters is needed to further the political discourse coverage on DTV in the future.

The debate on whether to require broadcasters to provide free air time to political candidates has been raging for several years. One of the possibilities for a solution would be to formally require broadcasters who are granted DTV licenses to provide a minimum amount of free air time for political candidates. The "Gore Commission" has recently addressed the issues in this debate. In fact, the Commission has said that at the very least, the FCC "should consider the

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[7]Kathy Chen, The Wall Street Journal, "Regulators Weigh How to Expand Standards for Digital Broadcasting" December 15,1999

committee's recommendation that broadcasters voluntarily give candidates five minutes of free air time in the last month of an election campaign."[8] And in early 1998, in President Clinton's State of the Union Address, he called for requirements on TV stations to provide free air to political candidates.[9] These suggestions from the Commission and Clinton have come under heavy attack from both the broadcasters and Congress.

First, broadcasters rightly argue that additional public interest requirements, especially those that require free air time for candidates, are unnecessary and that there is no compelling reason for saddling the industry with additional obligations. Requirements in the current Act already provide for lower advertising rates for political candidates. And in compliance with the Act, the broadcasting industry currently offers "political candidates advertising at the lowest rates." (see footnote 8) Broadcasters, on their own accord have offered free air time to political candidates in the past. During the last election cycle, "broadcasters gave $148 million in free time" to political candidates for advertising.[10] However, $15 million of that free air time was turned down by the candidates. "The dirty little secret about free time is that when broadcasters offer it, it's often turned down." (see footnote 10) Furthermore, broadcasters assert that requirements for free air time on DTV channels are not needed "particularly in a time when alternative media outlets are exploding", like the Internet. (see footnote 10)

The simple fact is that any formal minimum requirement for free air time is unnecessary. It is not required in the current Act, and candidates aren't even taking advantage of the free air time that the broadcasters currently offer voluntarily. Taking such an affirmative step would result in at least one problem. What do you do with the broadcaster who does not fill the minimum air time with political discourse, not because the broadcaster chose not to do so, but because candidates chose not to take advantage of the free time to advertise on TV? Is it the

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[8]Jim Landers, Knight-Ridder Tribune Business News, "Digital Broadcasters May Have to Give Candidates Free Time" December 16, 1999
[9]Kathy Chen, The Wall Street Journal, "Regulators Weigh How to Expand Standards for Digital Broadcasting" December 15,1999
[10]Brooks Boliek, Hollywood Reporter, "FCC Begins Public Service Work" December 16,1999

broadcaster's fault for not airing the minimum campaign advertisements, or is it the political candidate's fault for not taking full advantage of the free air time? The requirement will very likely result in an accountability problem.

Next, in addition to the "unnecessary" argument, broadcasters, and in particular the NAB, maintain that free air time requirements will not make for better campaigns. (see footnote 10) This argument stands up best with a simple analogy that functions under the fundamental economic principle of supply and demand. For example, we all know that exercise is good for us, and there is no dispute that if the majority of the population would exercise, we would be happier and healthier. Now assume, based on this fact that Congress passes a statute that requires every exercise equipment manufacturer in America to produce some minimum number of free workout videos to the American public. Just because so many workout videos are now available does not necessarily mean that everyone, or even a majority will take advantage of the videos, much less use them. The regulation will result in many unused videos that heavily outnumber the demand for such videos. The same goes for placing minimum requirements for free air time for political candidates. Just because the rule provides free time for the talking heads on the DTV screen does not guarantee that anyone will watch them, or that the candidates will make use of the "free air".

Another of the possibilities, and the one I endorse, is for the FCC to suggest *voluntary* DTV industry standards for free air time coverage for political candidates. Generally, Broadcasters have been much more receptive to providing voluntary free air time for political discourse. In response to the proposition of statutory mandates on air time for political campaigns, Dennis Wharton of the NAB said that "the opposition comes when you turn to federal mandate."[11] Voluntary standards could have a sweeping effect on broadcasters, especially when reminded that they do indeed occupy and to a great degree control a scarce commodity with

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[11]Kathy Chen, The Wall Street Journal, "Regulators Weigh How to Expand Standards for Digital Broadcasting" December 15,1999

estimated values in excess of $70 billion per license, essentially for free.[12] Further, suggesting voluntary standards would result in an equitable "middle ground" and most networks that currently offer free air time to candidates will likely continue to do so. In addition to suggesting standards for broadcasters to voluntarily provide free air time, it also makes good sense to continue the regulations under the current Act that require broadcasters to charge candidates a reduced rate for advertisements.

Once again, what I propose here can be classified as a compromise for both the public and the broadcasters. DTV broadcasters should maintain the current public interest standards that apply to analog stations, such as reduced advertising rates for political candidates. In addition, the FCC should suggest voluntary industry standards for providing free time for political discourse. The result would be a satisfied public that receives just the right amount of politics and is not "overdosed" with campaign advertisements. In addition, the public would have access to the voluntary industry standards that the FCC sets by which to measure broadcasters' compliance. Lastly, broadcasters bear no additional unfair financial burden as they would if mandates required them to involuntarily give away valuable air time.

Conclusion

In summary, I feel the public still deserves to be repaid for allowing broadcasters to maintain free air waves. However, I see no need to substantially increase those requirements on broadcasters. Through some compromise and minor modifications, analog broadcasting requirements can be translated equitably to DTV. The broadcasters who multicast should be responsible for providing the three hours of children's programming per week, per channel. If it can show substantial burden to air the children's shows on some channels, the broadcaster may air

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[12]Jube Shiver Jr., Los Angeles Times, "FCC Weighing Free TV Time for Candidates" December 16, 1999

the shows on other channels more conducive to video programming. Furthermore, the FCC should only suggest industry standards regarding voluntary free air time for political candidates. Changes in the rule, structured as I have suggested, will result in fair and equal treatment for both the public and broadcasters.

To: The Honorable William E. Kennard, Federal Communications Commission

From: Nichole D. Bass

CC: Professor Glenn Harlan Reynolds

Date: March 17, 2000

Re: Public Interest Obligations for Broadcasters Changing to Digital Technology

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Dear Chairman Kennard,

In response to your Notice of Inquiry, MM Docket No. 99-360, (December 15, 1999), I want to express my views as a law student and a consumer of digitally televised media through DirecTV. I support the transference of the current analog public interest obligations of broadcasters to digital broadcasters, and I support further obligations that may be necessary due to new technological advances. One such area that should be considered because of advancements in digital technology is that of invasion of privacy.

Introduction and Background

On December 20, 1999, the Federal Communications Commission published an advance notice of proposed rulemaking regarding potential changes in broadcasters' public interest obligations as they transition to digital transmission technology. The Commission has received proposals of requirements for consideration, namely from the President's Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters ("Advisory Committee") and from People for Better TV. The Advisory Committee released its report on December 18, 1999, in which they proposed that many of the same analog standards should apply to digital television in a voluntary self-regulation scheme supplemented by minimum public interest obligations to be regulated

by the FCC.[1] People for Better TV assert that "the Federal Communications Commission must adhere to the mandate of the United States Congress and clearly establish public interest obligations for digital broadcasters," citing the Telecommunications Act of 1996, as showing that public interest obligations extend to digital transmission technology.[2] People for Better TV and the Advisory Committee further assert that this additional spectrum given to digital media broadcasters is a gift that could have been auctioned by the government to acquire funds for public interest needs.[3]

The Commission was interested in how broadcasters can best serve the public interest as they transition to digital transmission technology. In particular, the Commission desired comments on whether and how existing public interest obligations should translate to the digital medium, and whether the Commission should adopt any different requirements for DTV broadcasters regarding Disaster Warnings. I am pleased to respond.

Briefly, the current public interest obligations for analog broadcasting should transfer to digital broadcasting. Because of this new technology, further requirements become necessary to ensure protection of the public interest in areas such as the right to privacy. The implications of pinpointing a home for a disaster warning[4] are deserving of consideration and regulation.

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[1] *The Gore Commission Report on Public Interest Obligations of Digital Broadcasters: Self-Regulation and Increased Flexibility,* by James M. Burger, Esq. and Todd Gray, Esq. www.digitaltelevision.com/law199p.shtml.
[2] *People for Better TV- Petition,* www.bettertv.org/petition.html.
[3] *The Gore Commission Report on Public Interest Obligations of Digital Broadcasters: Self-Regulation and Increased Flexibility,* by James M. Burger, Esq. and Todd Gray, Esq. www.digitaltelevision.com/law199p.shtml, and *People for Better TV- Petition,* www.bettertv.org/petition.html

Discussion

Under the regime proposed by the Advisory Committee, six obligations should be regulated by the FCC: (1.) disclosure of public interest activities by broadcasters, (2.) voluntary standards of conduct, (3.) minimum public interest requirements, (4.) improving education through digital broadcasting, (5.) multiplexing and the public interest, and (6.) new approaches to public interest obligations in the new television environment.[5] Some members of the Advisory Committee support a kind of "pay-or-play" model in which broadcasters are given a choice of either adhering to these minimum public interest standards or paying a fee which would be used toward public interest needs.[6]

Current Obligations with Flexibility for Future Developments

The current requirements, as noted in the six aspects above, should be implemented with special consideration and flexibility for future concerns. These obligations that current licensees now have should transfer to the digital transmissions: providing coverage of issues facing their communities and place lists of programming used in providing significant treatment of such issues in their public inspection files (consideration of making it available on the internet is an example of the flexibility needed for digital media), providing political broadcasting with equal opportunities, providing children's educational and informational programming under the Children's Television Act of 1990, restrictions of "indecent" programs during certain times, providing closed captioning, having equal employment opportunities, providing

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[4] *Proposed Rules,* Federal Communications Commission, 47 CFR 73, MM Docket No. 99-360, 65 FR 4211, 4213 (January 26, 2000).
[5] Charles Benton's letter to FCC Chairman Kennard, www.benton.org/PIAC/cb103099.html.
[6] *Id.*

sponsorship identification, and regulating advertisements during children's programming.[7] More access and accountability to the public can only enhance and focus attention on what the public really wants and needs. Measures such as making information available for discussion via the internet would serve much the same purpose as these comments serve in rule-making procedures.

"Pay-or-Play" Model

While the "pay-or-play" model seems tidy and expeditious, relieving digital broadcasters of this duty will only lessen the public's awareness of diverse ideas and discourse. Without regulation, digital broadcasters are allowed to control the flow of ideas by replacing educational programs with advertisements and commercial programs.[8] The alternatives do not serve as substitute goods because the stations used for educational, cultural, and informational programs would be reduced to a pay-per-view type of situation[9] or would be perceived as inferior or cerebral just as many perceive the current analog public access stations such as public access on cable or PBS. "Television is the primary source of news and information to Americans...children spend far more time watching television than they spend with any other type of media."[10] With a responsibility this prodigious, surely the networks and broadcast executives are not entrusted to dutifully tend the minds of the American public. These same media leaders make daily decisions and deals that sell airtime to corporations for advertising in order to

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[7] *Proposed Rules,* Federal Communications Commission, 47 CFR 73, MM Docket No. 99-360, 65 FR 4211, 4211 (January 26, 2000).
[8] *A Consumer Perspective on Economic, Social, and Public Policy Issues in the Transition to Digital Television: A Report of the Consumer Federation of America to People for Better TV,* by Mark Cooper, www.bettertv.org/consumerperspective.html.
[9] *Id.*
[10] *Proposed Rules,* Federal Communications Commission, 47 CFR 73, MM Docket No. 99-360, 65 FR 4211, 4211 (January 26, 2000).

keep the organization in the black. These are the people who run a for-profit company. I am sure there are many amiable, responsible people in these leadership roles, but as with any human, it is more difficult to see your own interests gored rather than those of the invisible, faceless public's.

Invasion of Privacy Concerns

"The Advisory Committee Report explains that digital technology will provide innovative and new ways to transmit warnings, such as pinpointing specific households or neighborhoods at risk, and suggests that DTV broadcasters take advantage of these technological advances."[11] Certainly any sane person would desire to promote the health and general welfare of the public by alerting possible victims that a hurricane, flood, or blizzard is on the way to their home or neighborhood. However, the concern should lie with the implications of this pinpoint warning.

> "A program can also be non-television data. Using 'opportunistic' or left over bandwidth, broadcasters can transmit data over the air. What kind of data? Web content, stock reports, electronic coupons that a computer printer could print out, or even a telephone directory... data can be television, non-television data, or a combination of both."[12]

This area is deserving of regulation especially in light of the recent concerns with internet "cookies" that trade information about internet users every day without their knowledge or permission. If left unchecked, corporations will have the capability to buy, sell, and trade consumer information and profiles gained from this new digital

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[11] *Id.* at 4213.