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

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In the Matter of	)	
	)	
Standardized and Enhanced	)	MM Docket No. 00-168
Disclosure Requirements for	)	
Television Broadcast Licensee	)	
Public Interest Obligations	)	

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NOTICE OF PROPOSED RULE MAKING

Adopted: September 14, 2000 **Released:** October 5, 2000

By the Commission: Commissioners Furchtgott-Roth and Tristani concurring in part, dissenting in part, and issuing separate statements; Commissioner Powell issuing a statement.

I. INTRODUCTION

1. One of a television broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license. Broadcasters are afforded considerable flexibility in how they meet that obligation. Each broadcaster is required, under current rules, to provide the public with information about how it satisfies its obligation to serve its community. The record developed in the *Notice of Inquiry* (*NOI*) in this proceeding,[1] however, describes some of the difficulties members of the public have encountered in trying to access that information under existing procedures. Accordingly, this *Notice of Proposed Rulemaking* (*Notice*) proposes to standardize and enhance public interest disclosure requirements for television broadcasters. We believe that making information regarding how a television broadcast station serves the public interest easier to understand and more accessible will not only promote discussion between the licensee and its community, but will lessen the need for government involvement in ensuring that a station is meeting its public interest obligation.

2. We seek comment in this *Notice* on our tentative conclusion to require television broadcast station licensees to use a standardized form to provide information on how the station serves the public interest in a variety of areas. We would require that this form be provided on a quarterly basis and maintained in the station's public inspection file in place of the currently required issues/programs lists. We propose to enhance the public's ability to access public interest information by requiring licensees to make the contents of their public inspection files, including the form, available on the station's or a state broadcasters association's Internet website. We also seek comment on our proposal to encourage the use of station websites to conduct on-line discussions and facilitate interaction with the public.

[1] In the Matter of Public Interest Obligations of TV Broadcast Licensees, MM Docket No. 99-360, *Notice of Inquiry*, 14 FCC Rcd 21633 (1999) (*NOI*).

3. The proposals set forth in this *Notice* are intended to enhance the public's ability to access information on the extent to which broadcasters are serving the public interest. In addition, we believe our proposal for enhanced disclosure will increase a broadcaster's ability to interact with its local community. The National Association of Broadcasters (NAB) recently released a report describing the collective efforts that local television and radio broadcasters have taken to provide public interest programming and community services to local communities.[2] NAB asserts in its report that while "American communities have known for nearly a century that they can go to their local television and radio stations for help, [w]hat they haven't known is the full extent of the broadcast industry's community service contributions across the country."[3] We initiate this proceeding to provide a means by which members of the public will have easy access to specific and detailed information on how local broadcasters serve the public interest.

4. As we noted in the *NOI*, the discussion of television broadcasters' public interest obligations "has been renewed by their transition from analog to digital (DTV) technology."[4] Some of the issues raised in the *NOI* relate exclusively to broadcasters' use of digital technology. We sought comment generally, however, on "how broadcasters can meet their public interest obligations on both their analog and digital channels during the transition period, and on various proposals and recommendations that have been made on how broadcasters could better serve their communities of license."[5] Television licensees may continue to broadcast in analog format until at least 2006.[6] The mechanisms proposed below do not relate exclusively to digital transmissions. Given the benefits to be derived from the proposals set forth below, we believe we should not wait until after the digital transition is complete to implement them.[7]

II. BACKGROUND

5. In the *NOI*, we sought comment on several issues related to how broadcasters might best serve the public interest during and after the transition from analog to digital television.[8] Several proposals and recommendations on public interest obligations made in recent years guided the

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[2] National Association of Broadcasters, *A National Report on Local Broadcasters' Community Service* (Apr. 2000) (*NAB Community Service Report*). A copy of this report will be placed in the record of this proceeding.

[3] *NAB Community Service Report* at 2. The report concluded that local radio and television stations contributed $8.1 billion in community service nationwide. As the report states, the $8.1 billion includes "the value of air time that local broadcasters contribute to public service announcements, as well as the funds stations raise for charities, charitable causes, needy individuals and disaster relief activities." *NAB Community Service Report* at 2-3.

[4] *NOI*, 14 FCC Rcd at 21634, ¶ 3.

[5] *NOI*, 14 FCC Rcd at 21637, ¶ 9.

[6] The Balanced Budget Act of 1997 provides that "[a] broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond December 31, 2006" unless the Commission grants an extension based on specific criteria enumerated in the statute. 47 U.S.C. §309(j)(14)(B).

[7] We recognize that the fact that the proposals in this *Notice* apply to analog as well as digital television broadcasters raises the issue of whether we should also consider changes to the disclosure obligations of radio broadcasters. We began this discussion, however, with the *NOI*, which related only to television broadcasters, and are limiting the scope of this proceeding to television.

[8] *NOI*, 14 FCC Rcd at 21637, ¶ 9.

Commission in initiating its inquiry. These included the recommendations made in the December 18, 1998 report from the President's Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters (Advisory Committee Report),[9] and proposals submitted by People for Better TV on June 3, 1999, in a Petition for Rulemaking and Petition for Notice of Inquiry.[10] The work of other advocates regarding broadcasters' public interest obligations, including those proposals not closely tied to the new opportunities inherent in digital technology, also guided our inquiry.[11] Among the areas of inquiry in the *NOI* were questions regarding how broadcasters might make information about how they serve the public interest more accessible to the public. We received thirteen comments and one reply comment specifically addressing this issue.[12]

6. In this proceeding, we propose several means by which television broadcasters can better inform their communities about how they serve the public interest. Broadcasters have a fundamental public interest obligation to serve the needs and interests of their communities of license.[13] To meet that obligation in part, under current rules, commercial television broadcast station licensees must provide coverage of issues facing their communities and place lists of programming used in providing significant treatment of those issues (issues/programs lists) in the station's public inspection files on a quarterly basis.[14] Licensees must also maintain in their station's public inspection files records that substantiate certification of compliance with the commercial limits on children's programming[15] and quarterly Children's Television Programming Reports (FCC Form 398) reflecting the licensee's efforts to serve the educational and informational needs of children.[16] In light of the concerns about disclosure

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[9] Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, *Charting the Digital Broadcasting Future: Final Report of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters* (Dec. 18, 1998) (Advisory Committee Report); *see NOI*, 14 FCC Rcd at 21635-36, ¶ 6 (describing the diverse makeup of the Advisory Committee and the contents of the report).

[10] People for Better TV, Petition for Rulemaking and Petition for Notice of Inquiry (June 3, 1999) (People for Better TV Petition); *see NOI*, 14 FCC Rcd at 21636-37, ¶ 7 (summarizing the proposals in the petition). On November 16, 1999, People for Better TV also sent a letter to Chairman Kennard reiterating its request that the Commission initiate a proceeding to determine the public interest obligations of broadcasters. Letter from Mark Lloyd, Counsel for People for Better TV to Chairman William E. Kennard (Nov. 16, 1999) (People for Better TV Letter); *NOI*, 14 FCC Rcd at 21637, ¶ 7.

[11] *NOI*, 14 FCC Rcd at 21637, ¶ 8.

[12] The parties that submitted comments and replies comments are listed in Appendix A.

[13] *See NOI*, 14 FCC Rcd at 21640, ¶ 14 (citing Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, MM Docket No. 83-760, *Report and Order*, 98 F.C.C. 2d 1076, 1091, ¶ 32 (1984) (*Programming and Ascertainment Report and Order*), *recon. denied*, 104 F.C.C. 2d 358 (1986), *aff'd in part and remanded in part sub nom. Action for Children's Television v. FCC*, 821 F.2d 741 (D.C. Cir. 1987)).

[14] 47 C.F.R. § 73.3526(e)(11)(i).

[15] 47 C.F.R. § 73.3526(e)(11)(ii).

[16] 47 C.F.R. § 73.3526(e)(11)(iii). Television and radio broadcast station licensees must also maintain information in their public inspection files on applications, authorizations, citizens agreements, service contour maps, ownership reports, annual employment reports, written correspondence with the public on station operations, material related to Commission investigations or complaints, and certification that the licensee is complying with its requirements for local public notice announcements. *Id.* § 73.3526(e). In addition, broadcast licensees must (continued....)

expressed in the record of the *NOI*, this *Notice* proposes to replace the issues/programs list with a standardized form and to enhance the public's ability to access information on a station's public interest obligations by requiring broadcasters to make their public inspection files available on the Internet.

III. REQUEST FOR COMMENT

A. Format of Disclosures of Public Interest Information

1. Standardization of Disclosures

7. We initially seek comment on what format a broadcast television licensee should use to provide information to the public regarding how it meets certain public interest obligations. Members of the public currently must contact a station's main studio to review a variety of documents or quarterly reports maintained in the public inspection file that provide information on station operations and management as well as what actions the station has taken to provide community-responsive programming.[17] Station personnel must make the file available to the public at any time during regular business hours and documents must be made available for printing or photocopying upon request made in person. Stations may also maintain all or part of the file in a computer database as long as a computer terminal is made available to the public at the location of the file.[18] Licensees that maintain a station's main studio and public file outside its community of license must provide photocopies of documents to persons within the station's geographic service area by mail upon telephone request.[19]

8. Based upon the comments we received, it appears that members of the public have encountered difficulties accessing information under existing procedures. As one commenter described, individuals wanting access to information from a station's public file, under current rules, might be required to go to different areas in a building to inspect the public files.[20] People for Better TV further explains that when its members reviewed public files, "the most consistent finding is the lack of consistency and uniformity about what is in the files, even within the same community."[21] We sought comment in the *NOI* on the Advisory Committee's recommendation that broadcasters should use a single standardized form to provide information to the public on a station's public interest programming and activities in the community.[22] We also sought comment on the recommendation by People for Better TV and the Advisory Committee Report that broadcasters disclose their public interest programming and

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maintain a separate file within the public inspection file concerning requests by political candidates for broadcast time on the station. *Id.* § 73.3526(e)(6).

[17] *See* 47 C.F.R. § 73.3526(b) (requiring commercial broadcast licensees to maintain public inspection files at a station's main studio).

[18] 47 C.F.R. § 73.3526(c)(1).

[19] 47 C.F.R. § 73.3526(c)(2).

[20] *See* People for Better TV Comments at 28 (quoting a letter from an individual who was denied access to information in a public file because, in part, the public files were not in one location, staff was very busy, staff needed to know exactly what the individual was looking for in the files, and the individual needed to make an appointment).

[21] People for Better TV Comments at 30.

[22] *NOI*, 14 FCC Rcd at 21640, ¶ 15 (citing Advisory Committee Report at 45-46, § III.1).

activities on a quarterly basis.[23]

9. Asserting that standardized, computerized forms would be administratively simpler "than the standard commercial logs station administrative support complete every day," People for Better TV asks the Commission to "create a public service form that is both easy to complete and easy to read."[24] To support its recommendation that broadcasters provide information in standardized format, the Advisory Committee provides in Appendix A of its report a sample "standardized check-off form" that the Committee suggests could be used for reporting public interest obligations (Advisory Committee Programming and Community Service Form).[25] We have reviewed this form and the comments relating to these categories. We tentatively conclude that we should require broadcasters to complete a standardized form that will allow them to disclose how they meet their obligation to serve the public interest.

10. We believe that the use of a standardized disclosure form will facilitate access to information on how licensees are serving the public interest and allow the public to play a more active role in helping a station meet its obligation to provide programming that addresses the community's needs and interests.[26] We further believe that standardized forms will make broadcasters more accountable to the public, and that improving broadcaster accountability will minimize the need for government involvement in monitoring how broadcasters comply with their public interest obligation.[27] We believe standardized disclosure will significantly reduce the time needed to locate information requested by the public and will provide the public with a better mechanism for reviewing a broadcaster's public interest programming and activities. We seek comment on our tentative conclusion. We also ask commenters to provide empirical data on any administrative costs or benefits associated with the requirement that broadcasters, especially small broadcasters, provide public interest

[23] *NOI*, 14 FCC Rcd at 21640, ¶ 15 (citing People for Better TV Letter at 4 and Advisory Committee Report at 45, § III.1).

[24] Comments of People for Better TV (People for Better TV Comments) at 29-30.

[25] Advisory Committee Report at 46, 104-05, App. A "Public Interest Programming and Community Service Certification Form" (Advisory Committee Programming and Community Service Form).

[26] *See* In the Matter of Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398), MM Docket No. 00-44, *Notice of Proposed Rulemaking*, 15 FCC Rcd 6326, 6329, ¶ 8 (2000) (*Children's Television Programming Reports NPRM*) (describing the number of ways in which facilitating access to information contained in the Children's Television Programming Reports helps the marketplace to achieve the goals of the Children's Television Act of 1990).

[27] *See Children's Television Programming Reports NPRM*, 15 FCC Rcd at 6329-30, ¶ 8 (explaining that "requiring broadcasters to identify programming they rely upon to meet their obligation to air educational programming makes broadcasters more accountable to the public" and "[i]mproving broadcaster accountability minimizes the need for government involvement to enforce the [Children's Television Act of 1996] and helps to ensure that broadcasters, with input from the public, rather than the Commission determine which television programs serve children's needs"); Advisory Committee Report at 45 (stating that "[e]ffective self-regulation by the broadcast industry in the public interest requires the availability to the public of adequate information about what a local broadcaster is doing"); *see also* Advisory Committee Report, Separate Statement of Cass R. Sunstein, in which Charles Benton, Frank M. Blythe, Peggy Charren, Frank H. Cruz, Richard Masur, Newton N. Minow, Gigi B. Sohn, and Karen Peltz Strauss join, at 94 (noting that "[i]n the environmental area, [public] disclosure requirements of this kind have done a great deal of good").

programming and activity information in a standardized format. Finally, we tentatively conclude that the form be updated on a quarterly basis, and seek comment on whether this is the appropriate timeframe.

11. Given that these benefits can be realized today and are not limited to digital broadcasts, we tentatively conclude we should not limit application of this requirement to DTV. We seek comment on this, as well as on when broadcasters' first quarterly standardized forms must be placed in their public inspection files.

12. As noted, our public inspection file rules require television broadcast station licensees to maintain in a station's public file quarterly issues/programs lists, information on children's programming, and documents pertaining to the station's management and operation.[28] Licensees also must maintain a separate political file within the public inspection file.[29] People for Better TV states that it is important to require broadcasters to continue to maintain public inspection files on site.[30] We agree that these rules fully apply to analog and DTV broadcasters. We recognize, however, some overlap in the function of the proposed standardized form and the requirement to maintain issues/programs lists.

13. We tentatively conclude that the proposed standardized public interest disclosure form will replace the requirement that broadcasters maintain issues/programs lists in their public files. Currently, this "issues/programs list" must include a description of what issues were given significant treatment and the programming that provided the treatment as well as the time, date, duration, and title of each program.[31] We adopted the requirement for issues/programs lists to provide both the public and the Commission with information needed to monitor a licensee's performance in meeting its public interest obligation of providing programming that is responsive to its community.[32] We now believe, however, that issues/programs lists provide such an assortment of information that the public may have difficulty determining the extent to which the station is serving the public interest. We therefore believe the standardized form as proposed will perform the same intended function as the issues/programs list, while providing better and more easily accessible information on a station's public interest obligations. We seek comment on our tentative conclusion.

14. We note that this proceeding does not affect the other requirements of our public inspection file rules, because these requirements are not made redundant by the proposed standardized form. Thus, licensees must continue to maintain in their public inspection files information on station management and operations, including applications, authorizations, citizens agreements, service contour maps, ownership reports, annual employment reports, written correspondence with the public on station operations, material related to Commission investigations or complaints, and certification that the

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[28] 47 C.F.R. § 73.3526(e)(11).

[29] 47 C.F.R. § 73.3526(e)(6).

[30] People for Better TV Comments at 28.

[31] 47 C.F.R. § 73.3526(a)(11)(i).

[32] *See Programming and Ascertainment Report and Order*, 98 F.C.C. 2d at 1107-11, ¶¶ 71-79 (explaining the purpose of issues/programs lists for commercial television); *see also* In the Matter of Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees, BC Docket No. 81-496, *Report and Order*, 98 F.C.C. 2d 746, 755-56, ¶ 27 (1984) (stating that issues/programs lists will "provide the information necessary for our regulatory oversight of public broadcasting as well as adequate data to permit the public, potential petitioners to deny, and competing applicants to review and evaluate public broadcasters' performance").

licensee is complying with its requirements for local public notice announcements,[33] as well as their political files. They must also continue to maintain in their public files records regarding compliance with commercial limits on children's programming[34] and Children's Television Programming Reports.[35]

2. Types of Disclosures

15. We sought comment in the *NOI* on recommendations made by People for Better TV and the Advisory Committee Report to require licensees to provide specific types of public interest information.[36] The Advisory Committee Report recommends that the enhanced disclosures "include but not be limited to contributions to political discourse, public service announcements, children's and educational programming, local programming, programming that meets the needs of underserved communities, and community-specific activities."[37] People for Better TV advocates requiring broadcasters to "disclose their public interest programming and activities ... matched against ascertained community needs and interests."[38] We also sought comment on whether public files should contain information on programming aired with closed captioning and video description.[39] Finally, we asked parties to address the extent to which the Advisory Committee's and People for Better TV's proposals parallel the Commission's previous ascertainment requirements, which the Commission repealed in the 1980s, and we asked parties to address whether the Commission's reasons for eliminating those requirements apply to our consideration of these proposals.[40]

16. The majority of commenters support requiring licensees to provide specific public interest information. The Benton Foundation, People for Better TV, TDI, United States Catholic Conference (USCC), and WGBH generally support enhanced disclosure requirements[41] and UCC

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[33] 47 C.F.R. § 73.3526(e).

[34] 47 C.F.R. § 73.3526(e)(11)(ii). Section 73.670 prohibits commercial television broadcast station licensees from airing "more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays." 47 C.F.R. § 73.670.

[35] For an experimental three-year period that ended in January 2000, licensees were required to electronically file the quarterly Children's Television Programming Reports with the Commission on an annual basis. 47 C.F.R. § 73.3526(e)(11)(iii). To facilitate public access to these filings, the Commission developed and continues to maintain a database that allows the public to access children's reports from any station in the country on the Commission's website. We have initiated a separate proceeding on whether to amend our rules to continue indefinitely the requirement that commercial broadcast television licensees file with the Commission their quarterly Children's Television Programming Reports. In the Matter of Extension of the Filing Requirement for Children's Television Programming Reports (FCC Form 398), MM Docket No. 00-44, *Notice of Proposed Rulemaking*, 15 FCC Rcd 6326 (2000) (*Children's Television Programming Reports Notice*).

[36] *NOI*, 14 FCC Rcd at 21640-41, ¶¶ 16, 17.

[37] *See NOI*, 14 FCC Rcd at 21640, ¶ 15 (citing Advisory Committee Report at 45-46, Section III.1).

[38] *See NOI*, 14 FCC Rcd at 21640, ¶ 15 (citing PBTV Letter at 4).

[39] *NOI*, 14 FCC Rcd at 21641, ¶ 16.

[40] *NOI*, 14 FCC Rcd at 21641, ¶ 16.

[41] Benton Foundation Comments at 14; People for Better TV Comments at 24-31; TDI Comments at 6; Comments of the United States Catholic Conference (USCC Comments) at 3 and WGBH Comments at 5-6.

specifically supports the Advisory Committee Report recommendations.[42] Broadcasters generally oppose these proposals. NAB states, for example, that it sees no connection between "increases in broadcasters' disclosure obligations and their transmission of a digital" signal and further contends existing disclosure obligations are neither inadequate nor ineffective.[43] The Named State Broadcasters Associations (State Broadcasters Associations)[44] believe the Commission should "hesitate to impose" additional requirements on "the new and rapidly developing digital technology."[45] Noting that "contributions to political discourse" is included while "sports programming" is not, the Media Institute asserts that "[w]hoever chooses the favored categories of programming demanding quantified responses exerts subtle but real pressure on broadcasters' editorial choices."[46] Finally, National Minority T.V., Inc. (NMTV) specifically opposes the Advisory Committee Report recommendations, stating that existing public inspection file requirements already cover some of the recommended areas, such as information on children's programming and lists of programs aired to meet ascertained community needs and interests.[47]

17. As noted above, the current issues/programs lists provide such an assortment of information that the public may have difficulty determining the extent to which the station is serving the public interest.[48] Moreover, People for Better TV has described problems with the "lack of consistency and uniformity" of information contained in public inspection files.[49] We therefore invite further comment on whether the public interest would be better served by requiring television broadcasters to provide information relating to various concrete ways in which they meet certain public interest obligations.

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[42] UCC Comments at 24.

[43] NAB Comments at 24.

[44] The State Broadcasters Associations include the Arizona Broadcasters Association, California Broadcasters Association, Connecticut Broadcasters Association, Idaho State Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Broadcasters Association, Maine Association of Broadcasters, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Missouri Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, South Carolina Broadcasters Association, Texas Association of Broadcasters, Utah Broadcasters Association, and Washington State Association of Broadcasters. State Broadcasters Associations Joint Comments at 1. On July 10, 2000, the State Broadcasters Associations filed a supplemental pleading to include the Arkansas Broadcasters Association, the Tennessee Association of Broadcasters, and the Vermont Association of Broadcasters as co-filers. Supplemental Pleading of the State Broadcasters Associations (July 10, 2000).

[45] State Broadcasters Associations Joint Comments at 4.

[46] Comments of the Media Institute at 32.

[47] Comments of National Minority T.V., Inc. (NMTV Comments) at 4.

[48] *See supra* at ¶ 13.

[49] *See supra* at ¶ 8.

a. Public Interest Programming

18. *Community-responsive programming.* We tentatively conclude that the standardized form should ask questions about categories of programming. We believe that categorization will serve the goal of this proceeding – to make disclosures about public interest efforts more uniform, easier to understand, and more accessible to the public. We seek comment on what categories should be included on the standardized form.[50] In addition to any defined categories, we propose to include a "catch-all" category to ensure that the form enables broadcasters to reflect any public interest programming they aired that does not fit neatly into one of the defined categories. While we would expect that the scope of defined categories would be commonly understood and that broadcasters could exercise discretion as to which programs belong under which categories, we would welcome comment on any benefits to the public and to broadcasters of defining the proposed programming categories.

19. The proposed form is intended to standardize the format and enhance disclosure of the information broadcasters should already be compiling on their issues/programs lists. Consistent with the current requirement for maintaining issues/programs lists, we therefore would expect that licensees would provide a brief narrative description in each category, including a list of the program titles aired, as well as the time, date, and duration of the programs.[51] We do not believe this will impose a substantial additional burden on broadcasters. We seek comment on the burden of providing this type of information on a standardized form.

20. *Closed captioning and video description.* In 1998, we adopted a transition period during which television broadcasters[52] must meet certain benchmarks for providing closed captioning for nonexempt video programming.[53] We have also recently adopted rules for providing video description of programming for the benefit of persons with visual disabilities.[54] We sought comment in the *NOI* on

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[50] The Advisory Committee, for example, proposes to include local and national news programming, local and national public affairs programming, programming that meets the needs of underserved communities, programming that contributes to political discourse, other local programming that is not otherwise addressed in the form, and PSAs. Advisory Committee Report at 104-05, App. A.

[51] *See* 47 C.F.R. § 73.3526(e)(11).

[52] Our closed captioning rules apply to all "video programming distributors," which include any television broadcast station, multi-channel video programming distributor, or any other distributor of video programming for residential reception that delivers video programming directly to the home and is subject to the Commission's jurisdiction. 47 C.F.R. § 79.1(a)(2).

[53] In the Matter of Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Video Programming Accessibility, MM Docket No. 95-176, *Report and Order*, 13 FCC Rcd 3272 (1997) (*Closed Captioning Report and Order*).

[54] In the Matter of Implementation of Video Description of Video Programming, MM Docket No. 99-339, *Report and Order*, FCC 00-258 (Aug. 7, 2000) (*Video Description Report and Order*). Under these new rules, affiliates of the top four commercial broadcast television networks in the top 25 markets must provide 50 hours per calendar quarter of prime time and/or children's programming with video description. Multi-channel video programming distributors with 50,000 or more subscribers must also provide 50 hours per calendar quarter of prime time and/or children's programming with video description on each of the top five national non-broadcast networks they carry. In addition, all broadcast stations, regardless of their market size, must "pass through" any video description they receive from a programming provider, if the broadcaster has the technical capability to do so. All multi-channel video-programming distributors, regardless of their number of subscribers, must also pass (continued....)

whether the public file should contain information on programming aired with closed captioning and video description.[55] NAB states that the Commission "previously rejected requests to adopt recordkeeping or reporting requirements with respect to closed captioning."[56] However, consumers who rely on captions have become increasingly frustrated with the lack of information about which programs are closed captioned.[57] Specifically, TDI asks the Commission to require broadcasters to provide information identifying programs which are closed captioned or which contain video descriptions in their public files or on their websites.[58] We tentatively conclude that the standardized disclosure form should include information on broadcasters' provision of closed captioning and video description. We seek comment on this approach and on what specific information should be provided.

b. Licensees' Communication with Their Communities

21. *Identifying community needs and interests.* The Advisory Committee recommends including information on the efforts licensees take to identify the programming needs of various segments of their communities.[59] In the *NOI*, we sought comment on the extent to which the Advisory Committee's and People for Better TV's proposals parallel the Commission's previous ascertainment requirements, which the Commission repealed in the 1980s. We also asked parties to address whether the Commission's reasons for eliminating its formal ascertainment requirements apply to our consideration of these proposals.[60]

22. NAB and the State Broadcasters Associations oppose any such requirement for the same reasons the Commission eliminated the formal ascertainment requirements in 1984.[61] According to NAB, the Commission eliminated formal ascertainment procedures because the costs of these particular requirements outweighed the benefits, the Commission lacked evidence that the procedures actually ensured that licensees discovered and responded to community programming needs, and it could rely on market incentives to ensure licensees remained familiar with their communities.[62] NMTV argues that such a requirement would be "antithetical to the deregulatory measures the Commission took in the

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through any video description they receive from a programming provider, if they have the technical capability to do so on the channel on which they distribute the programming of the programming provider. *Id.* at ¶ 6.

[55] *NOI*, 14 FCC Rcd at 21641, ¶ 16.

[56] NAB Comments at 24-25. We elected to rely primarily on the complaint process to enforce both our closed captioning and video description rules. *Closed Captioning Report and Order*, 13 FCC Rcd at 20026-27, ¶ 118; *Video Description Report and Order*, FCC 00-258 at ¶¶ 45-47. In the closed captioning proceeding, we also concluded that we would conduct random audits to further ensure compliance with our rules. *Closed Captioning Report and Order*, 13 FCC Rcd at 20026-27, ¶ 118.

[57] TDI Comments at 2.

[58] TDI Comments at 6.

[59] Advisory Committee Report at 105.

[60] *NOI*, 14 FCC Rcd at 21641, ¶ 16.

[61] NAB Comments at 25-26; State Broadcasters Associations Joint Comments at 3.

[62] NAB Comments at 25-26; *see* State Broadcasters Associations Joint Comments at 3, 5.

1980s."[63] People for Better TV and USCC, on the other hand, argue that the repeal of the ascertainment requirements did not alter a broadcaster's obligation to assess community needs.[64]

23. We invite further comment on whether licensees should provide a narrative description on the standardized form of the actions taken, in the normal course of business, to assess a community's programming needs and interests. We believe this requirement would differ from the former ascertainment requirements, which included detailed methodologies for ascertaining the problems, needs and interests of the public within the station's service area.[65] Licensees were required to provide demographic information on a station's community of license,[66] conduct interviews with community leaders[67] and members of the general public[68] to ascertain the community's needs and interests, and provide programming responsive to those ascertained needs and interests.[69]

24. In contrast to these formal and detailed requirements, under our proposal licensees would only provide the public with information on how, in the normal course of business, they assess community needs and interests. We agree with USCC that repeal of the formal ascertainment requirements was not intended to alter a broadcaster's obligation to meet community needs.[70] In their comments, NAB stated that more than 75 percent of broadcast stations say they consult with local community leaders in deciding which issues to address and 85 percent say they involve local businesses

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[63] NMTV Comments at 4.

[64] People for Better TV Comments at 24-25; USCC Comments at 3.

[65] *See* In the Matter of Ascertainment of Community Problems by Broadcast Applicants, Docket No. 19715, *First Report and Order*, 57 F.C.C. 2d 418 (*Ascertainment Report and Order*), *recon. granted in part*, 61 F.C.C. 2d 1 (1976).

[66] For example, the guidelines suggested that a licensee have on file information relating to the population characteristics of its city of license, including the numbers and proportions of males and females, of minorities, of youths (age 17 and under), and of the elderly (ages 65 or older). *Ascertainment Report and Order*, 57 F.C.C. 2d at 441-42, App. B.

[67] Licensees were able to meet this requirement by conducting a suggested number of interviews with community leaders from a list of 19 types of institutions and elements commonly found in a community. The guidelines further suggested that licensees place in their public inspection files information identifying, among other things: (1) the community leader's name and address; (2) the institution or element of the community represented; (3) the date, time, and place of the interview; and (4) the problems, needs or interests discussed. *Ascertainment Report and Order*, 57 F.C.C. 2d at 442-44, App. B.

[68] Licensees were required to consult with a random sample of members of the public and place a statement in their public files describing the methodology used, the number of people consulted, and the ascertainment results of the survey. *Ascertainment Report and Order*, 57 F.C.C. 2d at 444-45, App. B.

[69] The guidelines required that each year, a licensee place in its public inspection file a list of no more than ten significant problems, needs and interests ascertained during the preceding twelve months. The licensee would indicate the programs, excluding PSAs and news inserts of breaking events, broadcast in response to the list, identifying the program title, its source, type, a brief description, and the time broadcast and duration. *Ascertainment Report and Order*, 57 F.C.C. 2d at 445-46, App. B.

[70] *See* USCC Comments at 3 (arguing that repealing the formal ascertainment requirements was "not intended to alter broadcasters' obligation to meet community needs with responsive programming, but only changed the manner that obligation was enforced").

in their community service campaigns.[71] We believe it would be useful for the public to be kept informed of these activities. We recognize that in adopting the requirement to provide quarterly issues/programs lists, the Commission determined that it was not concerned with how a broadcaster became aware of community issues so long as the issues were identified and adequate responsive programming was offered or proposed. As a result, the Commission eliminated the requirement to include in the issues/programs list a description or explanation of the means by which a licensee determined any given issue as one facing its community.[72] We note the concerns expressed, however, by People for Better TV, for example, that broadcasters "ignore certain communities."[73] We also recognize that disclosure to a community of how local broadcasters identify its needs will promote the kind of dialogue between broadcasters and communities intended by our rules without the need for government intervention. As we therefore explain below, we do not currently propose to require broadcasters to routinely file the standardized disclosure form with the Commission. We seek comment on the benefits and burdens of these proposals.

25. *Community service activities.* The Advisory Committee recommends including on the form a description of a licensee's "community service programs, community outreach, or other similar non-broadcast activities directed to serving the community of license."[74] NAB's report on local community service provides some information on industry-wide efforts to participate in community activities. For example, NAB states that the amount of money that television stations raised for charity between August 1998, and July 1999, was $934 million, and 49 percent of television stations reported involvement in on-air or off-air disaster relief campaigns.[75] NAB further describes local broadcasters as providing important support for fundraising and awareness campaigns for community organizations such as hospitals and homeless and domestic violence shelters; supporting and organizing community events such as blood drives and food as well as clothing drives for the needy; and promoting and organizing awareness campaigns covering the full range of issues confronting communities today, including AIDS awareness and prevention, alcohol abuse, and public safety.[76] We seek comment on whether these types of activities should be considered in assessing whether a licensee has served the public interest under the Communications Act and whether they should be listed on an attachment to the standardized form.

B. Access to Public Interest Information

26. In addition to standardizing the information currently required on a station's community-responsive programming, we propose to enhance the public's access to public interest information by requiring broadcast television licensees to maintain a hard copy of the standardized form in their public inspection files and to make a station's public inspection file, including the form, available on the Internet. We seek comment on this proposal and on whether licensees should forward an electronic copy of the disclosure form to the Commission for inclusion in the license file.

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[71] NAB Comments at 26 n.49.

[72] In the Matter of Deregulation of Radio, BC Docket No. 79-219, *Second Report and Order*, 96 F.C.C. 2d 930, 942, ¶ 30 (1984).

[73] People for Better TV Comments at 26.

[74] Advisory Committee Report at105.

[75] *NAB Community Service Report* at 7.

[76] *NAB Community Service Report* at 7.

27. *Public inspection file.* We tentatively conclude that licensees must place a paper copy of the standardized disclosure form and attachments in their public inspection files each quarter and retain those forms until final action on the next renewal application. This is consistent with the current requirement that licensees retain each station's quarterly issues/programs lists in the public inspection file until final action on the station's next license renewal application.[77] We seek comment on this tentative conclusion.

28. *Websites.* We currently allow licensees to maintain their public inspection file in computer databases. Stations that maintain all or part of the file in a computer database must also make a computer terminal available to the public at the location of the file.[78] We also encourage licensees to post their electronic file on any websites they maintain.[79] In the *NOI*, we asked for information on how many broadcasters provide their public file in electronic format, and the costs and benefits of doing so.[80] We did not receive any specific information in response to these questions. We also sought comment on whether broadcasters should be required to make their public files available on the Internet.[81]

29. NAB asserts that converting a station's public file into an electronic format would constitute a "not insubstantial burden, especially for small broadcasters" and providing public files on the Internet "offers little additional public benefits, because persons outside a station's service area have limited interest in that station's performance and persons inside a station's service area already have reasonable access to the local public file."[82] NAB supports voluntary use of the Internet and "sees no reason" for the Commission to alter its decision to encourage licensees to maintain all or part of the public files on a computer database.[83]

30. The Benton Foundation, Telecommunications for the Deaf, Inc. (TDI), the Office of Communications, Inc. of the United Church of Christ *et al.* (UCC), and the WGBH Educational Foundation Media Access Division (WGBH), on the other hand, support requiring DTV broadcasters to make public interest information available on their websites.[84] UCC believes "it is relatively simple and

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[77] 47 C.F.R. § 73.3526(e)(11)(i).

[78] 47 C.F.R. § 73.3526(c)(1).

[79] In the Matter of Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations, MM Docket No. 97-138, *Report and Order*, 13 FCC Rcd 15691, 15715-16, ¶ 53 (1998).

[80] *NOI*, 14 FCC Rcd at 21641, ¶ 17.

[81] *NOI*, 14 FCC Rcd at 21641, ¶ 17.

[82] Comments of the National Association of Broadcasters (NAB Comments) at 27-28.

[83] NAB Comments at 27 and 30.

[84] Comments of the Benton Foundation (Benton Foundation Comments) at 14; Comments of Telecommunications for the Deaf, Inc. (TDI Comments) at 6; Comments of the Office of Communications, Inc. of the United Church of Christ *et al.* (UCC Comments) at 24; Comments of the WGBH Educational Foundation Media Access Division (WGBH Comments) at 5. UCC *et al.* includes the Office of Communications, Inc. of the United Church of Christ; Alliance for Community Media; Association of Independent Video and Filmmakers; Benton Foundation; Black Citizens for a Fair Media; Center for Media Education; Consumers Union; Minority Media Telecommunications Council; National Association of the Deaf; and Women's Institute for Freedom of the Press. UCC Comments at 1.

inexpensive" to require licensees to post public files on their websites.[85] Citing research conducted by NAB in 1998, People for Better TV states that approximately two-thirds of television stations in the top 100 markets had websites.[86] People for Better TV and R. Jackson Pope also assert that the public is much more likely to monitor a station's public interest obligations if that information can be accessed over the Internet.[87] People for Better TV also describes specific situations where members of the public who attempted to review public files received a "decidedly mixed reception from broadcasters."[88]

31. We tentatively conclude that each licensee must, each quarter, post the proposed standardized form and the other contents of its public inspection file on its website or its state broadcasters association's website. We believe that converting the public inspection file into an electronic format and placing it and the standardized form on a website will not be unduly burdensome. Making the information available on the Internet will provide 24-hour access to it and, therefore, greatly increase public access to information on actions a station has taken to meet its public interest obligation. In contrast, the public currently only has access to public inspection files during a main studio's regular business hours. To the extent individuals do not have access to the Internet or do not want to access the information over the Internet, however, they still have the option of contacting the station's main studio. We seek comment on this tentative conclusion. We ask commenters to provide detailed information on the cost of requiring stations that do not already maintain a website to do so. We also seek comment on whether state broadcasters associations' websites are appropriate vehicles for posting the disclosure forms and public files and what costs may be involved. We also seek comment on our tentative conclusion that broadcasters must maintain the disclosure forms on the website until final action has been taken on the station's next renewal license.

32. *Access to persons with disabilities.* In the *NOI*, we sought comment on how websites could be made accessible to persons with disabilities.[89] TDI and WGBH filed comments urging the Commission to ensure that broadcasters design and maintain their websites in a manner that meets the World Wide Web Consortium's Web Accessibility Initiative (W3C/WAI) guidelines.[90] The guidelines, as well as extensive information on the guidelines, can be accessed at http://www.w3.org/WAI. The W3C/WAI guidelines explain how to make Web content accessible to persons with disabilities through design solutions and, according to the WAI, a particular design solution will benefit several disability groups at once, *e.g.*, people who have physical, visual, hearing, or cognitive or neurological disabilities.

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[85] UCC Comments at 25.

[86] People for Better TV Comments at 29 (citing Brian Savoie, Summary of Web Activity of Television Stations at http://www.nab.org/Research/webbriefs/WebActiv.html (visited Jan. 26, 2000)).

[87] *See* People for Better TV Comments at 27-29 (asserting that the burden of requiring Internet-posting of public interest information would be minor compared to the burden on members of the public "who travel several miles only to be turned away or made to feel uncomfortable"); Comments of R. Jackson Pope at 6-7 (pointing out that members of a community would "invariably be much more likely to virtually inspect a licensee's required public filings via the Internet at their convenience than they would be to travel to the licensee's location and physically inspect them").

[88] People for Better TV Comments at 27-29. For example, according to People for Better TV, one individual was told they "could not see anyone without an appointment," and was then refused a telephone and telephone number to set up an appointment. *Id.* at 28.

[89] *NOI*, 14 FCC Rcd at 21641, ¶ 17.

[90] TDI Comments at 6; WGBH Comments at 6.

According to the WAI, designing a new website to be accessible should not add significantly to the development cost and making existing sites accessible can be cost-effective.[91] We seek comment on whether we should require or encourage television broadcasters to design new or make existing websites on which they post the proposed form and public file accessible to persons with disabilities using the W3C/WAI guidelines. We also seek comment on other ways in which broadcasters could make the disclosure form accessible over the Internet to persons with disabilities.

33. *Electronic filing of the Standardized Form with the Commission.* We are not inclined, at this time, to require licensees to file the proposed standardized form electronically with the Commission. While licensees must maintain certain material in a station's public inspection file, they are generally not required to file such information or reports with the Commission. In their comments in response to the *NOI*, UCC proposes that broadcasters should be required to file public interest reports electronically with the Commission and that the Commission should post a link to the filed reports on its own website.[92] We believe that our tentative conclusion to require licensees to make disclosure forms available on individual websites will afford both the Commission and the public adequate access to public interest information. We recognize that this approach differs from that taken in the children's television context,[93] and seek comment on whether the proposed standardized public interest disclosure forms should receive different treatment.

34. *Other methods for distributing public interest information to the public.* Commenters also provide other suggestions for how licensees might make public interest information available to the public. UCC proposes to require licensees to broadcast on-air notifications of the contents of the quarterly disclosure forms and where those forms can be obtained.[94] The Advisory Committee Report and the Benton Foundation also suggest that licensees could provide public interest information in newspapers and local-programming guides.[95] We propose not to make any of these methods of distribution mandatory, but again encourage television broadcasters to provide information to the public under any of these proposals. We seek comment on this approach.

35. *Licensee interaction with the public through Internet websites.* While licensees may already interact with the public through telephone calls and visits in person to assess a community's programming needs and interests, we sought comment in the *NOI* on whether we should require licensees to use Internet websites to ensure that they are responsive to the needs of the public.[96] NAB opposes any mandatory requirement, arguing that broadcasters will voluntarily communicate with viewers through websites if they find that doing so will help them become better informed about their communities.[97] NAB further asserts that the proposal raises practical and legal issues[98] and calls the

[91] W3C Web Accessibility Initiative Website at http://www.w3.org/WAI (visited August 2, 2000).

[92] UCC Comments at 24-25.

[93] *See supra* note 35.

[94] UCC Comments at 25.

[95] Advisory Committee Report at 46; Benton Foundation Comments at 14.

[96] *NOI*, 14 FCC Rcd at 21641, ¶ 17.

[97] NAB Comments at 28.

suggestion to interact with the public via websites "puzzling ... given the Commission's apparent belief about the inaccessibility of the Internet to certain communities."[99] Recognizing that the Internet is not accessible to everyone, People for Better TV suggests using the Benton Foundation's Debate America project as an example of how local television stations might consult with community leaders over the Internet.[100] TDI supports requiring use of the Internet to correspond with the public, particularly as it pertains to the disabled community. Specifically, TDI explains that allowing disabled persons to interact through chat rooms, for example, also provides management with a reliable mechanism for determining whether their station's policies and practices are responsive to the disabled community as a whole.[101]

36. We believe licensees could make very effective use of the Internet to maintain a continuous dialogue with their communities. At this time, however, we are inclined not to mandate interaction with the public through Internet websites, but to encourage broadcasters to use their websites to conduct discussions with members of the public. We seek comment on this approach.

IV. CONCLUSION

37. In this *Notice*, we propose to take steps to enhance the public's access to information on how television broadcasters are meeting their public interest obligation. We believe improving communication between broadcasters and their communities would lead to greater responsiveness by broadcasters to the community's needs and minimize the need for government involvement. We seek comment on the benefits and corresponding burdens of these proposals.

V. ADMINISTRATIVE MATTERS

38. *Comments and Reply Comments.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before December 18, 2000, and reply comments on or before January 17, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

39. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments,

(Continued from previous page)

[98] NAB Comments at 29. NAB asks whether stations would be required to respond to electronic mail messages, alter their programming in response to any messages objecting to certain programs, and if so, how would its compliance with such requirements be measured? *Id.* at n.53.

[99] NAB Comments at 29.

[100] People for Better TV Comments at 27. People for Better TV describe the Benton project as "map[ping] community issues, provid[ing] context, and facilitat[ing] discussion through an Internet web-based program" where discussion leaders "can select participants or allow for a wide field of discussants, and allow for a wide range of discussion styles." *Id.*

[101] TDI Comments at 6.

commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form, <your e-mail address>." A sample form and directions will be sent in reply.

40. Parties who choose to file by paper should also submit comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, S.W., Room 2-C221, Washington D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WORD 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number (MM Docket No. 00-168), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy – Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, S.W., Room CY-B402, Washington, D.C. 20554.

41. *Ex Parte Rules*. This proceeding will be treated as a "permit-but-disclose" proceeding, subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the rules, 47 C.F.R. § 1.1206(b), as revised. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description or the views and arguments presented is generally required. 47 C.F.R. § 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.

42. *Initial Regulatory Flexibility Analysis*. With respect to this *Notice*, an Initial Regulatory Flexibility Analysis (IRFA) is contained in Appendix B. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared an IRFA of the expected impact on small entities of the proposals contained in this *Notice*. Written public comments are requested on the IRFA. To fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small business in the television broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *Notice*, but they must have a distinct heading designating them as responses to the IRFA. The Commission's Reference Information Center, Consumer Information Bureau, will send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §601 *et seq*. (1981), as amended.

43. *Initial Paperwork Reduction Act Analysis*. This *Notice* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the public to take this opportunity to comment on the information collections contained in this *Notice*, as required by the Paperwork Reduction Act of 1996. Public and agency comments are due at the same time as other comments on the *Notice*. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained in this *Notice* should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W., Room 1-C804, Washington, D.C. 20554, or

over the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or over the Internet to edward.springer@omb.eop.gov.

44. *Additional Information.* For additional information on this proceeding, please contact Cyndi Thomas, Legal Branch, Policy and Rules Division, Mass Media Bureau, (202) 418-2130.

VI. ORDERING CLAUSES

45. Accordingly, IT IS ORDERED that this *Notice of Proposed Rulemaking* is issued pursuant to the authority contained in Sections 4(i), 303, 307, 309, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, 307, 309, and 336, and Sections 1.412, 1.413, and 1.415 of the Commission's rules, 47 C.F.R. §§ 1,412, 1.413, and 1.415.

46. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Notice*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A

COMMENTS

1. Benton Foundation
2. Regina M. Lambert
3. Robert Lee McElroy
4. The Media Institute
5. The Named State Broadcasters Associations (State Broadcasters Associations)
   Arizona Broadcasters Association; Arkansas Broadcasters Association;
   California Broadcasters Association; Connecticut Broadcasters Association;
   Idaho State Broadcasters Association; Indiana Broadcasters Association;
   Iowa Broadcasters Association; Kansas Broadcasters Association;
   Maine Association of Broadcasters; Massachusetts Broadcasters Association;
   Michigan Association of Broadcasters; Minnesota Broadcasters Association;
   Missouri Broadcasters Association; Nebraska Broadcasters Association;
   Nevada Broadcasters Association; New Hampshire Association of Broadcasters;
   Oklahoma Association of Broadcasters; Oregon Association of Broadcasters;
   South Carolina Broadcasters Association; Tennessee Association of Broadcasters;
   Texas Association of Broadcasters; Utah Broadcasters Association;
   Vermont Association of Broadcasters; Washington State Association of Broadcasters
6. National Association of Broadcasters (NAB)
7. National Minority T.V., Inc. (NMTV)
8. Office of Communications, Inc. of the United Church of Christ *et al.* (UCC)
   Office of Communications, Inc. of the United Church of Christ
   Alliance for Community Media
   Association of Independent Video and Filmmakers
   Benton Foundation
   Black Citizens for a Fair Media
   Center for Media Education
   Consumers Union
   Minority Media Telecommunications Council
   National Association of the Deaf
   Women's Institute for Freedom of the Press
9. People for Better TV
10. R. Jackson Pope (Pope)
11. Telecommunications for the Deaf, Inc. (TDI)
12. United States Catholic Conference (USCC)
13. WGBH Educational Foundation Media Access Division (WGBH)

REPLY COMMENTS

1. Consumer Federation of America

APPENDIX B

Initial Regulatory Flexibility Analysis
Notice of Proposed Rulemaking

As required by the Regulatory Flexibility Act (RFA),[102] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* (*Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* provided above in paragraph 38. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[103] In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.[104]

Need For and Objectives of the Proposed Rules

On December 20, 1999, the Commission released a *Notice of Inquiry* (*NOI*)[105] seeking comment on several issues related to how broadcasters might best serve the public interest during and after the transition from analog to digital television (DTV). One of a television broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license. As part of this obligation, commercial television broadcast station licensees must currently provide coverage of issues facing their communities and place lists of programming used in providing significant treatment of those issues (issues/programs lists) in the station's public inspection files on a quarterly basis.[106] The record developed in response to the *NOI*, however, provides information on the "lack of consistency and uniformity" in accessing information in a station's public inspection files.

The Commission is now proposing to require analog and DTV broadcast station licensees to use a standardized form to provide certain information on how stations serve the public interest. The form would be provided on a quarterly basis and maintained in the station's public inspection file in place of the issues/programs lists. The Commission is also proposing to require that licensees make the contents of their public inspection files, including the standardized form, available on the station's or a state broadcasters association's Internet website. The Commission believes that making information, regarding how a television broadcast station serves the public interest easier to understand and more accessible will promote discussion between the licensee and its community, lessening the need for government involvement in ensuring that a station is meeting its public interest obligation.

Legal Basis

[102] *See* 5 U.S.C. § 603(b)(3). The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[103] *See* 5 U.S.C. § 603(a).

[104] *See id.*

[105] In the Matter of Public Interest Obligations of TV Broadcast Licensees, MM Docket No. 99-360, *Notice of Inquiry*, 14 FCC Rcd 21633 (1999) (*NOI*).

[106] 47 C.F.R. § 73.3526(e)(11)(i).

Authority for the actions proposed in this *Notice* may be found in Sections 4(i), 303, 307, 309, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, 307, 309, and 336, and Sections 1.412, 1.413, and 1.415 of the Commission's rules, 47 C.F.R. §§ 1.412, 1.413, and 1.415.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[107] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[108] In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act.[109] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[110]

The statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes such definition(s) in the Federal Register.[111] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Nationwide, as of 1992, there were approximately 275,801 small organizations.[112]

The SBA defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business.[113] A television broadcasting station is an establishment primarily engaged in broadcasting visual programs to the public, except cable and other pay television stations.[114] Included in this industry are commercial, religious, educational, and other television stations.[115] According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database on July 11, 2000, fewer than 800 commercial television broadcast stations (65%) subject to our proposal have revenues of less than $10.5 million. We note, however, that under SBA's definition, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Our estimate, therefore, may overstate the number of small

[107] 5 U.S.C. § 603(b)(3).

[108] *Id.* § 601(b).

[109] *Id.* § 601(3).

[110] *Small Business Act*, 15 U.S.C. § 632.

[111] 5 U.S.C. § 601(3).

[112] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[113] 13 C.F.R. § 121.201, SIC code 4833.

[114] 1992 Census of Transportation, Communications, and Utilities: SIC definitions.

[115] *Id.* The definition used by the SBA also includes television broadcasting stations that produce tape television program materials. Separate establishments primarily engaged in producing taped television program materials are, however, classified under another SIC code. *Id.*

entities because the revenue figure on which it is based does not include or aggregate revenues from non-television affiliated companies. It would appear that there would be no more than 800 entities affected.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

Licensees must currently maintain in their station's public inspection files quarterly issues/programs lists,[116] records that substantiate certification of compliance with the commercial limits on children's programming[117] and quarterly Children's Television Programming Reports (FCC Form 398).[118] Television and radio broadcast station licensees must also maintain information in their public inspection files on applications, authorizations, citizens agreements, service contour maps, ownership reports, annual employment reports, written correspondence with the public on station operations, material related to Commission investigations or complaints, and certification that the licensee is complying with its requirements for local public notice announcements.[119] In addition, broadcast licensees must maintain a separate file within the public inspection file concerning requests by political candidates for broadcast time on the station.[120]

The Commission is proposing to standardize and enhance disclosure of information from these public inspection files. Specifically, the Commission proposes to replace the issues/programs list with a standardized form and to require broadcasters to indicate their compliance with closed captioning and video description requirements as well as describe how, in the normal course of business, they assess community needs and interests. In addition, the Commission proposes to require broadcasters to make their public inspection files, including the forms, available on the Internet. This endeavor would not require broadcasters to collect any new information. Rather, the proposals would require television broadcasters to provide public interest information in a new format – on a standardized form as well as on the Internet. The proposals would require the same reporting, recordkeeping, and other compliance requirements for small television station broadcasters as large broadcasters. The *Notice* seeks comment on these issues, including comment specifically directed toward the possible effects of the requirements on small entities.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[121]

[116] 47 C.F.R. § 73.3526(e)(11)(i).

[117] 47 C.F.R. § 73.3526(e)(11)(ii).

[118] 47 C.F.R. § 73.3526(e)(11)(iii).

[119] *Id.* § 73.3526(e).

[120] *Id.* § 73.3526(e)(6).

[121] 5 U.S.C. § 603(c).

The *Notice* requests comment on the Commission's tentative conclusion to replace the issues/programs list with a standardized form. An alternative to the proposed use of a standardized form would be to leave the issues/programs list as it currently exists. Based on comments to the *NOI*, however, we believe that a standardized disclosure would simplify the process of providing requested information. This simplification would significantly reduce the time licensees, including small broadcast television station licensees, need to locate information requested by the public. The *Notice* specifically asks for cost information associated with the requirement that broadcasters, especially small broadcasters, provide public interest information in a standardized format.

By definition, the standardized disclosure form would ask questions about defined categories of programming. Accordingly, the *Notice* seeks comment on what categories should be included on the form. While categories should be defined, the Commission believes it is not necessary to define what type of programming would fall within any category, leaving it to the broadcasters' discretion to determine which programs belong under which categories. The *Notice* also seeks comment on the Commission's tentative view only to require that licensees certify on the standardized form compliance with the minimum requirements for closed captioning and video description.

The *Notice* invites further comment on whether licensees should provide a narrative description on the standardized form of the actions taken, in the normal course of business, to assess a community's programming needs and interests. This requirement would be much less burdensome than the Commission's former ascertainment requirements, which included detailed methodologies for ascertaining the problems, needs and interests of the public within the station's service area. Finally, the *Notice* seeks comment on whether a licensee's activities in its community, including supporting and organizing community events and promoting and organizing awareness campaigns, should be considered in assessing whether a licensee has served the public interest under the Communications Act and whether they should be listed on an attachment to the standardized form. The alternative to this requirement would be to leave the rule as is. Based on our experience and the comments to the *NOI*, we believe that it serves an important public interest to make the information available in a clear and easy to understand format.

The *Notice* also requests comment on the Commission's tentative conclusion to require licensees each quarter to place a paper copy of the standardized form in their public inspection files and to make their public inspection files, including the standardized forms, available on the Internet until final action has been taken on the station's next renewal license. As an alternative to posting the information on each station's website, the Commission has proposed allowing licensees to make the public inspection file available on state broadcasters associations' websites. The Commission has asked for cost information on creating new websites as well as using a licensee's state broadcasters association's website. The *Notice* seeks comment on whether television broadcasters should be encouraged or required to make websites on which they post the proposed form and public file accessible to persons with disabilities and proposes not to require licensees to file the proposed form with the Commission. One alternative that the Commission considered was a requirement to mandate this type of interaction with the public. As the *Notice* states, however, the Commission is disinclined to mandate interaction with the public through Internet websites, but encourages broadcasters to use their websites to conduct discussions with members of the public. The Commission is seeking comment on these proposed alternatives so as to minimize the effect of the proposed rules on small businesses.

Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

None.

STATEMENT OF COMMISSIONER HAROLD W. FURCHTGOTT-ROTH, CONCURRING IN PART AND DISSENTING IN PART

In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MM Docket No. 00-168

I concur in this Notice of Proposed Rulemaking ("NPRM") only in so far as the transition from analog to digital transmission of television broadcast signals necessitates a clarification of the existing rules governing broadcasters' legal obligations under the "public interest" standard. Commenters should feel free to address questions of that nature in this proceeding, and I encourage them to do so. I do not support, however, the notion that the transition provides a basis for increasing or otherwise changing the nature of broadcasters' public interest duties, the theory upon which much of this item is premised.

As I said in the Notice of Inquiry that precipitated today's item:

> The birth of digital television raises discrete issues regarding application of our existing public interest requirements during the transition period and beyond. Section 336(d) of the Act states "[n]othing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience and necessity." That section also requires that "[i]n 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." Thus, the statute supports the Commission's application of its current public interest obligations to DTV."[1]

What the statute does not support, however, is the adoption of "public interest mandates that have no discernible nexus to the transition to digital technology."[2] That seems to be the case with respect

[1] Separate Statement of Commissioner Harold Furchtgott-Roth, Concurring in Part and Dissenting in Part, *Notice of Inquiry, Public Interest Obligations of TV Broadcast Licensees.*

[2] *Id.*

to almost every proposal made in this NPRM. For example, standardization of reports,[3] placement of reports in public files or on the web,[4] and the use of the internet to promote discussions between stations and their viewers[5] have no logical connection to the switch from analog to digital technology. The reasons that the majority gives concerning the asserted need for these changes, whatever their merit, stand or fall irregardless of the transition.[6] In the end, then, the Commission seems to be using the fact of the transition as a Trojan horse for increased regulation of broadcasters.

I also highlight the clear and present First Amendment danger posed by the concept of breaking out categories of programming on broadcasters' FCC forms.[7] Having the government pick one kind of program substance over another, and then ask broadcasters to list what they have done in that particular area at the time of license renewal, necessarily involves the Commission in direct content regulation. Admittedly, such a regulatory scheme imposes no hard quotas for programming. But it necessarily implies that the Commission (1) favors the sort of programming that it has chosen for categorization and (2) cares whether broadcasters air it or not. These proposed rule changes thus would create governmental pressure on broadcasters to air FCC-favored content, thereby creating a soft quota on that content.

The First Amendment questions raised by this sort of scheme are clearly evident. The coercion to air certain kinds of programming that the Commission has deemed to be in the "public interest" is not the sort of "general affirmative dut[y]"[8] that courts have sanctioned under the First Amendment.

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3 *See supra* at para. 7-14.

4 *See id.* at paras. 26, 31.

5 *See id.* at paras. 35-36.

6 I note that I support a reporting requirement on closed captioning and video description as a matter of policy. But such a requirement should be considered in a proceeding that is not premised on the fact of the transition but rather on the need for the requirement itself.

7 *See id.* at para. 15-25.

8 *Banzhaf v. FCC*, 405 F.2d 1082, 1095 (D.C. Cir. 1968).

Rather, these regulations would push the Commission toward the unconstitutional side of the "tightrope [that it walks] between saying too much and saying too little"[9] about content that serves the "public interest." Thus is so because they pull certain content out of the universe of possible programming and expressly inquire about activity in that area. The Commission's traditional and more general approach of deferring to the broadcasters' mode of describing the ways in which their stations serve the public is far preferable, constitutionally speaking.

I would strongly urge broadcasters to resist this potential incursion on their editorial rights. Similarly, I would hope that the Commission ultimately will resist the temptation to micro-manage broadcast content under the guise of the "public interest" standard.

For the foregoing reasons, I narrowly concur in this NPRM for the limited purpose of clarifying the application of existing rules in the digital age. And I dissent vigorously from any suggestion that the Commission tally and review the aggregate content of broadcasters' programs for licensing purposes.

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9 *Id.*

SEPARATE STATEMENT OF COMMISSIONER MICHAEL K. POWELL

Re: In the Matter of Standardized Disclosure requirements for Television Broadcast Licensee Public Interest Obligations, MM Docket No. 00-168

Although I join with my fellow Commissioners in adopting this NPRM, I do so with the concerns and reservations raised in this statement.

Undoubtedly, there are important questions concerning the application of existing public interest obligations to the new digital medium. These new digital possibilities raise questions as to what facet of a multi-dimensional offering the public interest duty runs. However, as I stated in the NOI, I question why the mere use of digital technology, rather than analog, justifies new public interest obligations.

The NPRM also seeks comment on a number of matters which have no nexus with the transition to digital, and I question whether this is an appropriate proceeding to raise these issues. Nonetheless, I address my substantive concerns about those matters here.

While standardizing the information contained in the Issues/Program List may appear to make good sense, the recommendation that certain categories of programming be identified on the form raises serious First Amendment concerns. Selecting one program category over another and then requiring broadcasters to list the programming aired in that particular category involves the Commission in content-based regulation. It would require this Agency to make value judgments as to what programming we deem to be in the "public interest." The Advisory Committee proposes categories that are unclear or duplicative. For example, what distinguishes "public affairs programming" from "programming that contributes to political discourse"? If these categories were established, broadcasters may then be coerced into airing programming that fits into these "public interest" categories.

I am also troubled by what appears to be a slow step backwards to a subjective review of a broadcaster's public interest obligations. Categorizing programming is but one example, and the reintroduction of the ascertainment process is another. The Commission eliminated formal ascertainment of the needs and interest of the community in 1984. It did so presumably because it concluded that market incentives would ensure licensees air programming that serves the needs and interests of the community. While I appreciate the distinction between the prior, more formal ascertainment process, and the one proposed in the NPRM, the fundamental question is the same. I question the policy rationale for resurrecting this requirement at all.

I am equally troubled by the Item seeking comment on whether a broadcaster's community service activities should be considered when assessing whether a licensee has served the public interest. I applaud broadcasters for their civic involvement, but I seriously question how we would possibly make use of this information. One can only imagine the subjective analysis to follow. I ask to what end? To deem a blood drive a more worthy effort than a contribution to a homeless shelter?

Finally, I would strongly encourage a detailed cost/benefit analysis on the recommendation that broadcasters post on their Internet sites their entire public inspection file. This is neither a trivial nor an inexpensive burden, and it requires a thorough review and analysis.

SEPARATE STATEMENT OF COMMISSIONER GLORIA TRISTANI

RE: IN THE MATTER OF STANDARDIZED AND ENHANCED DISCLOSURE REQUIREMENTS OF BROADCASTER LICENSEE PUBLIC INTEREST OBLIGATIONS, MMB DOCKET NO. 00-168

Today I wholeheartedly join in our effort to improve the public's access to information regarding broadcasters' compliance with their public interest obligations. I support standardizing the format by which the information is stored and presented and the use of the Internet to increase public access. The development of categories of programming will assist parents in making choices that impact their families. These are good steps.

I respectfully dissent, however, on two narrow points. First, I conclude our effort to increase the usefulness to the public of the standardized reporting form remains woefully incomplete because the form, while improved, remains in the possession of the broadcast licensee and is not forwarded to the FCC. Until the report is required to be sent to the FCC, and is reviewed at the time of license renewal, Americans will remain at the mercy of a substandard license renewal process. In an era of increasing scrutiny of the impact media images have on our children, the public's interest can be fully protected only when citizen access to information is matched by the FCC's access to the same information. If the information contained in the programming reports is not reviewed at the time of license renewal, the public interest cannot be completely protected.

Second, the standardized form requests information on community activities undertaken by a broadcast licensee. While I support efforts by licensees to be involved in their communities through means other than broadcasting programs, I cannot agree that such measures should be placed in the balance when evaluating whether licensees are meeting their public interest obligations. Because I believe the information in the form should be forwarded to the FCC for review at the time of license renewal, I do not want to be understood as supporting inclusion of this type of information in the standardized report. If a licensee is not meeting its public interest obligations over-the-air, they should not be encouraged to make up the difference with non-broadcast activities.

I hope the Commission will correct these errors and in the future require the licensee to forward these reports to the FCC for the explicit purpose of review at the time of license renewal.