

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

**JOINT COMMENTS OF
BENEDEK BROADCASTING CORPORATION, LIN TELEVISION CORPORATION,
POST-NEWSWEEK STATIONS, INC., AND RAYCOM MEDIA, INC.**

Benedek Broadcasting Corporation, LIN Television Corporation, Post-Newsweek Stations, Inc., and Raycom Media, Inc. (collectively, "Joint Commenters")¹ believe that the Commission's proposals to "standardize" and "enhance" analog broadcasters' public interest obligations would impose unjustifiably large costs and unrealistic burdens on broadcasters without providing substantial countervailing public interest benefits.² Requiring all television stations to launch Internet websites and to take the other actions necessary to convert and post the entire contents of their public inspection files (most of which are hard copies) would cost the industry tens of millions of dollars per year in return for negligible public interest benefit. The *Notice's* proposal to replace the current, court-approved issues-programs list with a standardized form containing different FCC-designated program categories amounts to re-imposing the type of requirements which the Commission previously determined to be counterproductive and which would amount to unnecessary content-based regulation. The

¹ Benedek Broadcasting Corporation owns and operates 27 TV stations in 22 markets. LIN Television Corporation owns or operates 15 TV stations in 11 markets. Post-Newsweek Stations, Inc. owns and operates six TV stations in six markets. Raycom Media, Inc. owns and operates 34 TV stations in 27 markets.

² See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rulemaking, MM Docket No. 00-168, FCC 00-345 (rel. Oct. 5, 2000) ("*Notice*").

record, moreover, falls far short of demonstrating that the proposed new obligations for analog broadcasters are supported by and tied to, as the *Notice* contends, the transition to digital broadcasting.

I. THE BURDENS OF REQUIRING OVER 1,600 TV STATIONS TO POST THEIR PUBLIC INSPECTION FILES ON THE INTERNET FAR OUTWEIGH THE PURPORTED BENEFITS.

The *Notice* tentatively concludes “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.” *Id.* at ¶ 31 (emphasis added). While the new requirement would apply to over 1,600 television stations – large and small, those with or without websites – the *Notice* expresses the view that posting the entire contents of a station’s public inspection file on the Internet “will not be unduly burdensome.” *Id.* Despite the sweeping nature of its proposal and its serious financial implications, particularly for small business entities, the *Notice* reaches this conclusion without providing the public with any cost-benefit analysis.³ In the view of Joint Commenters, the equipment and manpower costs of the new proposals would be considerable and would be especially detrimental to smaller stations. The benefits to the public from imposing the new requirements, on the other hand, appear to be minimal – and certainly not sufficient to justify the additional cost burdens.

A. The Website Posting Rule Would Impose Very Significant Costs.

According to the *Notice*, “approximately two-thirds of television stations in the top 100 markets had websites” in 1998. *Notice* at ¶ 30. But the Commission would impose its Internet posting requirement on *each television station* regardless of whether it has established a website. Thus, as many as one-third of the top-100 market stations in the country might have to launch websites to be in a position to try to meet the new requirement. Moreover, it is reasonable to conclude that a much higher percentage of smaller market stations – those least able to shoulder the new equipment and

³ The unsupported conclusion that the costs of Internet public inspection file posting “will not be unduly burdensome” recalls the Commission’s contention in implementing the Communications Assistance for Law Enforcement Act that costs of some burdens on carriers were not “so exorbitant” as to warrant exclusion. As the court (continued...)

manpower burdens – would have to establish website sites.⁴ The *Notice* also fails to consider that even for stations with websites, the Internet posting proposal would create substantial additional costs and burdens.⁵

Just two years ago, the Commission wisely declined to require stations to maintain public inspection files electronically, in part because of the burdens on stations “given current technology and stations’ current computer capabilities.”⁶ Suddenly, without analysis of any significant changes in these areas, the *Notice* proposes to require that stations convert their public inspection files to an electronic format and that they make them accessible on websites. Such an Internet posting requirement would require many stations to purchase, maintain, and continually upgrade computer systems and related equipment sophisticated enough to handle the volume of materials required to be made available for public inspection. In addition, stations would have to pay the personnel necessary to continually maintain such a system, both technically and clerically. One Raycom station estimates that the start-up and first-year costs per station, alone, for equipment and personnel would be in the \$35,000 range – and there would be further significant costs to continually convert, index and upload documents. Even for stations with websites, the website-posting requirement would impose significant costs for converting paper documents to electronic format,⁷ greater hardware speed and capacity,⁸ new software, and increased firewall protection. Stations unable to undertake the burdens of

held on appeal, however, costs must be justified by more than the Commission’s *ipse dixit*. See *United States Telecom Ass’n v. FCC*, 227 F.3d 450, 461-62 (D.C. Cir. 2000).

⁴ The *Notice*’s alternative proposal to use a state broadcasters associations’ websites does little to ameliorate the financial burden, which ultimately would be borne by the association’s members.

⁵ Stations with websites maintained by third parties would face significant cost increases from those vendors for additional storage and retrieval capacity.

⁶ *Review of the Commission’s Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd 15691, 15702 (1998) (“*Public File R&O*”).

⁷ One Raycom station was given an estimate of over \$10,000 for converting its existing paper public inspection file to electronic format and indexing the documents (with electronic conversion estimated to be just under \$1.00 per page and with indexing estimated at an additional \$2,000).

⁸ One station was advised that a server to handle the volume of material that would be available through a station’s website would cost in the \$10,000 to \$15,000 range.

maintaining a website themselves would have to outsource the task, but at even greater expense.⁹

While the figure might vary from station to station, the industry-wide costs certainly would amount to tens of millions of dollars per year.

The *Notice* omits any consideration of the volume of materials in stations' public inspection files. Television stations across the country have file cabinets full of documentation that, in most cases, is not currently available in an electronic format.¹⁰ To post a public inspection file on the Internet, typical stations would have to convert into an electronic format and then take the further actions necessary to upload to a website such materials as (to name but a few):

- service contour maps;
- letters and comments from the public for the past three years;¹¹
- cable must-carry and/or retransmission consent election notices for the last election cycle (sometimes covering more than 100 cable systems);
- quarterly issues-programs reports (each of which comprises many pages) for the entire license term;
- quarterly documents regarding compliance with children's programming and commercial requirements (both for the station and its network) for the license term; and
- records of requests for political broadcast time and the disposition of each request for a two-year period.¹²

⁹ TV stations in smaller towns, moreover, may not have a local vendor which could convert and index the documents and maintain their website with their public inspection file.

¹⁰ Nor can it be assumed that the filing of a document electronically with the FCC means that it can be readily uploaded to a station's website. For example, stations do not receive an electronic copy of quarterly Children's Television Programming Reports which could be readily uploaded to a station website. Additionally, outside counsel will have to review not just what is filed with the FCC but what is posted on websites.

¹¹ One Raycom station estimates that the folders of public letters and comments to be 18 inches thick. Additionally, stations that receive e-mail comments would have to convert the sometimes thousands of comments archived on diskettes to a form that could be posted on a website.

¹² The process of over 1,600 TV stations converting and uploading data in the political section of the public inspection file alone would be daunting. For example, one Raycom station estimates that its file for the most recent election cycle is more than 54 inches thick. During hectic political seasons, it already strains stations' resources to meet the obligation to place required information in the public file "immediately, absent extraordinary circumstances."

B. The Website Posting Rule Would Not Provide Countervailing Benefits.

The Commission requires that stations maintain an accessible main studio and local public file to promote a meaningful local presence in and dialog with their communities. A station's main studio generally is easy to locate and is the place that the public expects to find the public inspection file. *See Public File R&O*, 13 FCC Rcd at 15702. As a resource for *local* community residents, the public inspection file must be located at a station's main studio.¹³ The Commission recognizes that in-person visits to that studio enhance dialogue between the public and stations. *See Public File R&O*, 13 FCC Rcd at 15700. Plainly, the public inspection file rule was never designed as a means to make station records available to those located outside a station's service area.

Less than two years ago, the Commission concluded that a broadcaster that locates its main studio within the city limits of its community of license should *not* have the burden of accommodating telephone requests for information in its public inspection file.¹⁴ It reasoned that “[i]f a station chooses to locate its main studio and public inspection file in its community of license under the new rules, the public inspection file will be reasonably accessible just as before, and there should be no need for the accommodation.” *Id.* It further determined that stations that wish to locate their studios outside the community of license should honor telephone requests, but only from residents of “the geographic service area of the station in question,” *see id.*, and not with respect to information in the political portion of the public file.¹⁵ According to the Commission, “we believe the accommodation should be tailored to the listeners and viewers that are served by the station.” *Id.* at 11119-20.

¹³ *See* 47 C.F.R. §§ 73.3526(b), 73.3527(b); *Public File R&O*, 13 FCC Rcd at 15701.

¹⁴ *See Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Memorandum Opinion and Order, MM Docket No. 97-138, 14 FCC Rcd 11113, 11119 (1999) (“*Public File MO&O*”)

¹⁵ The Commission exempted the political file from the accommodation requirement because of the burdens on broadcasters, because candidates likely would have greater resources to visit stations, and because the exemption affected candidates “rather than the general public.” *Id.* at 11122.

In a stark about-face, the *Notice* proposes a far more burdensome requirement on stations – a requirement that is anything but narrowly tailored. Internet public inspection file posting may or may not make a station’s public inspection file material more accessible to its listeners or viewers depending on the level of Internet access in the community. But clearly, Internet posting makes public inspection file material available to persons outside a station’s service area for very little, if any, practical benefit. Nor does the new proposal further the goals of the public inspection file rules – “to strike an appropriate balance between ensuring that the public has reasonable access to each station’s main studio and public inspection file while minimizing regulatory burdens on licensees.” *Id.* at 11113. The proposal runs counter to those goals.¹⁶

C. The Commission Should Conduct A Thorough Cost-Benefit Analysis And Carefully Consider Less Drastic Alternatives.

Due to the significant economic impact of the proposals, especially on small entities, the Commission needs to do much more to ascertain and quantify the benefits to the public as well as to understand the enormous costs before imposing any form of Internet public inspection file posting requirement. As Commissioner Michael Powell stated, “I would strongly encourage a detailed cost-benefit analysis on the recommendation that broadcasters post on their Internet sites their entire public inspection file.” *Notice* at 27.

The Commission has proposed one less drastic alternative in its *CTV Filing Requirement* Proceeding. That proceeding proposes to require a broadcaster *if it maintains a website*, to post its quarterly Children’s Television Programming Reports or *to create a link to the FCC’s website* which contains the reports.¹⁷ This more limited requirement – while probably unnecessary and still

¹⁶ Joint Commenters recognize that as more stations launch websites and more information becomes digitized the cost-benefit analysis of posting public inspection files on the Internet may shift. Rather than institute its posting requirement now, the Commission should continue to monitor the situation in anticipation of a time when the burdens on broadcasters will not be nearly as great.

¹⁷ See *Extension of the Filing Requirement for Children’s Television Programming Reports (FCC Form 398)*, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 00-44, FCC 00-343, at ¶ 26 (rel. Oct. 5, 2000).

potentially burdensome and chilling to stations that would launch websites but for fear of engendering too many obligations – certainly is more reasonable than a blanket website-posting requirement. The Children’s Television Programming Report proposal would apply only to stations that maintain websites; it would apply to a report that already must be filed electronically; and stations with websites could satisfy the requirement by providing a link to the FCC website which already maintains the reports on-line. Thus, under this proposal, stations would not have to create websites, nor would they have to convert paper documents to electronic form and then take the steps necessary to upload the information to their websites. To the extent that the Commission finds, after thorough analysis and explanation of the departure from prior policy, that it intends to impose any Internet-related requirement on broadcasters, the more limited requirement of the Children’s Television Programming Report proposal is much more narrowly tailored, less burdensome, and equally suited for the intended purpose.

II. THE PROPOSED STANDARDIZED FORM WOULD UNNECESSARILY RAISE PROBLEMS AND RUN COUNTER TO PAST PRECEDENT.

The *Notice* proposes to replace broadcasters’ quarterly issues-programs lists with a standardized quarterly public interest performance disclosure form that would ask questions about various categories of programming.¹⁸ Two Commissioners express concern that the proposed categorization and quantification of programming raise significant First Amendment concerns. As noted by Commissioner Powell, “[s]electing 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.” *Id.* at 27. Commissioner Furchtgott Roth adds, “Having the government pick one kind of program substance over another, and then ask[ing] broadcasters to list what they have done in that particular area at the time of license renewal, necessarily involves the Commission in

¹⁸ See *Notice* at ¶¶ 13, 18. According to the Form proposed by the President’s Advisory Committee, to which the *Notice* refers, broadcasters would supply detailed and quantified information about programming categories.

direct content regulation.” *Id.* at 25. Beyond these concerns, the proposed standardized form would reverse long-standing Commission policy.

In the 1980s, the Commission opted for a quarterly issues-programs lists requirement to avoid the type of intrusive governmental requirements now being considered.¹⁹ In general, the Commission found that the public interest was best served by providing broadcasters “with the maximum latitude permissible” in fulfilling their public interest obligations.²⁰ In the Commission’s view, “the broadcast industry had matured beyond the point where it must be burdened with step-by-step instructions on the operations of stations in the public interest.” *Id.*

The Commission should not retreat from those important public interest goals. Nor is it necessary to do so to meet the goal of the standardized form – making the information currently in the issues-program lists more accessible and understandable to the public. *See Notice* at ¶¶ 1, 13. If the record of this proceeding eventually should reflect evidence to demonstrate that, in fact, information generally is not presented in an understandable manner, the problem can be more easily resolved by modest changes to the issues-programs lists. The format of the issues-programs list could be made more uniform. For example, the format could include an introductory cover page or two which list (and briefly describe) the principal long-form and short-form programming (local, syndicated, and network) used by a station to address community needs, noting their general air times and duration.

The *Notice* also tentatively proposes to re-institute community needs and interests ascertainment procedures, albeit more limited ones than it had previously abolished. *See Notice* at ¶ 23. As discussed by Commissioner Powell, even the proposed ascertainment narrative rests on an infirm policy rationale. *See id.* at 27. In 1984, the Commission eliminated a formal ascertainment

¹⁹ *See Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, MM Docket No. 83-670, 98 F.C.C. 2d 1076, 1107-08; Memorandum Opinion and Order, 104 F.C.C. 2d 358, 372 (1986).

²⁰ *Deregulation of Radio*, Report and Order, BC Docket No. 79-219, 87 F.C.C. 2d 797, 815 (1981).

requirement because “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.”²¹ To now require any form of ascertainment simply because People for Better TV claim that broadcasters “ignore certain communities”²² appears to attempt to coerce broadcasters into providing certain types of public interest programming. And it does so in contravention of the Commission’s long-standing policy that an explanation of stations’ ascertainment procedures is unnecessary.

III. THE DTV TRANSITION DOES NOT JUSTIFY THE NEW REQUIREMENTS ON ANALOG BROADCASTERS.

The *Notice* premises the proposed imposition of new public interest obligations of analog broadcasters on changes brought about by the transition to digital broadcasting. *See id.* at ¶ 4. As Commissioners Furchtgott-Roth and Powell point out, however, the *Notice* does not provide any nexus between the increased analog regulation and the DTV transition. *See id.* at 24-25, 27. As they observe, “standardization of reports, placement of reports in public files or on the web, and the use of the internet to promote discussions between stations and their viewers have no logical connection to the switch from analog to digital technology.” *Id.* at 25, Separate Statement of Commissioner Harold W. Furchtgott-Roth (footnotes omitted); *see id.* at 27, Separate Statement of Commissioner Michael K. Powell. To be sure, we believe digital operations, if they get off the ground by resolution of cable interoperability and carriage issues, will enable broadcasters to better serve the public. At this time, however, it is premature to do more than carry over to digital the obligations that apply to analog (as various carriage obligations should be carried over). There will be time enough in the future to consider application of those obligations when more than one channel is broadcast or fee services are

²¹ *Notice* at ¶ 24 (citing *Deregulation of Radio*, Second Report and Order, BC Docket No. 79-219, 96 F.C.C. 2d 930, 942 (1984)).

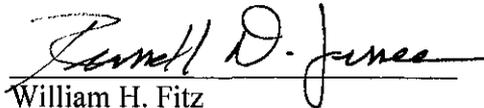
²² *Id.* (citing People for Better TV Comments at 26). It is noteworthy that the record does not contain any evidence that broadcasters’ issues-programs lists omit key issues in the community.

provided. But the proposals in the instant *Notice* do not address questions relating to public service obligations in the new digital environment.

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For the reasons stated above, Joint Commenters respectfully submit that the burdens imposed by the proposed new rules on the operations of analog broadcasters significantly outweigh their proposed benefits; that the requirements are not narrowly tailored to meet their goals; and that the requirements on analog broadcasters are not justified by the transition to digital operations.

Respectfully submitted,



William H. Fitz
Russell D. Jessee
COVINGTON & BURLING
1201 Pennsylvania Avenue, NW
Washington, DC 20004
Phone: (202) 662-6000

*Attorneys for Benedek Broadcasting Corporation,
LIN Television Corporation,
Post-Newsweek Stations, Inc.,
and Raycom Media Inc.*

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