

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Standardized and Enhanced
Disclosure Requirements for
Television Broadcast Licensee
Public Interest Obligations

MM Docket No. 00-168 /

To: The Commission

COMMENTS OF SINCLAIR BROADCAST GROUP, INC. ON NOTICE OF PROPOSED RULE MAKING

Sinclair Broadcast Group, Inc., by its attorneys, hereby submits its Comments on the Notice of Proposed Rule Making ("NPRM"), FCC 00-345, released by the Commission in the above-referenced proceeding. The NPRM advances the Commission's tentative conclusion that it should require television broadcast licensees to prepare and place in the public inspection file on a quarterly basis a standardized form providing information on how the station serves the public interest in a variety of areas. The standardized form would replace the current quarterly issues/programs lists. In addition, the NPRM proposes that a station's entire public file, including the standardized form, should be placed on a station's or state broadcaster's website. The Commission also seeks comments on the use of station websites for on-line discussions and to facilitate interaction with the public.

For the reasons set forth herein, Sinclair submits that the Commission has not established a reasonable rationale for replacing the issues/programs list with the proposed standardized form. The proposed standardized form raises First Amendment issues and will be more burdensome for broadcasters to complete but will not contribute to the public discourse. Moreover, the

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Commission's proposals to use station websites as the location of a station's entire public file and for on-line discussions are beyond the jurisdiction of the FCC. And even if the Commission could control a station's website, the cost and burden of putting the entire public file of a television station, which involves hundreds and possibly thousands of pages, on a website would be substantial and would require the hiring of additional personnel.

I. Introduction

At the outset, Sinclair submits that the Commission should avoid imposing additional costly and burdensome regulatory requirements on the nascent digital broadcast industry. Broadcasters face substantial costs in constructing and outfitting new digital facilities. There is no assurance that they will recoup their investment from the shift from analog to digital broadcasting. As the Advisory Committee conceded, "No one knows whether digital television will maintain, much less increase, broadcasters' revenues." *Advisory Committee Report, p.43; see also page 11.* The Committee further noted that "some observers caution that the ways in which DTV will interact with media markets will be highly unpredictable for many years," and "...anticipating the nature of DTV programming and services is made complex by the new competition among different media, especially cable, direct broadcast satellite, and the Internet." *Id. at 11.*¹ These comments are still true today and counsel against adoption of the proposals set forth in the NPRM.

II. The NPRM Would Resurrect a Regulatory Environment that was Eliminated Years Ago

Almost 20 years ago, the Commission deregulated radio, removing numerous burdensome recordkeeping requirements and establishing the use of quarterly issues/programs

¹ See, *Charting the Digital Broadcast Future: Final Report of the Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters* (1998).

lists. *See Deregulation of Radio*, 84 FCC 2d 968 (1981), *recon. denied*, 87 FCC 2d 797 (1981), *rev'd in part on other grounds*, *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983), *cert. denied*, *Black Citizens for a Fair Media v. FCC*, 467 U.S. 1255 (1984). In 1984, the deregulatory efforts which commenced with radio were extended to television. *See The Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 FCC 2d 1076 (1984). After careful consideration of the record, the Commission concluded that “the best method of documentation suitable and adequate to our new regulatory scheme for television broadcasting is a quarterly issues/programs list requirement.” 98 FCC 2d at para. 71. The Commission added: “We are no longer interested in amounts of programming in categories such as “news” and “public affairs” because we have eliminated programming guidelines.” *Id.* at para. 74. A few months later, the FCC extended its deregulatory initiatives to public television stations and permitted them to use issues/programs lists. *In the Matter of Revision of Program Policies and Reporting Requirements Related to Public Broadcast Licensees*, 98 FCC 2d 746 (1984). At that time, the Commission said: “In our view, this issues/programs list requirement 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.” *Id.* at p. 755-756. These deregulatory measures were taken after the compilation of a detailed record showing that broadcasters were airing news, public affairs and other non-entertainment programming and otherwise serving the public interest. The procedure of using quarterly issues/programs lists has thus been in place since 1981 for radio stations and since 1984 for commercial and public television stations. There is no record evidence that there is anything wrong with the current system.

Despite the lack of any difficulties with the system of using quarterly issues/programs lists which are placed in broadcasters' public files, the NPRM proposes to overhaul the existing system and replace it with a more burdensome procedure that harkens back to the period prior to the Commission's deregulatory measures. Yet there is no basis in the record for taking this step. The NPRM refers to a filing by People for Better TV which claimed that "the most consistent finding is the lack of consistency and uniformity about what is in the files, even within the same community." Aside from the fact that this statement does not even address issue/programs lists or complain about any deficiencies in them, it would be odd indeed if there were consistency and uniformity given the fact that one community may contain numerous licensees. Surely, the Commission does not want every licensee to be addressing identical issues and airing the same programming.

The NPRM tentatively concludes that the proposed standardized form should ask questions about categories of programming – such as for instance, local and national news, local and national public affairs programming, programming that meets the needs of underserved communities, programming that contributes to political discourse, other local programming and PSAs. The Commission would have licensees 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 program. While the NPRM states that "this will not impose a substantial additional burden on broadcasters" (NPRM, para. 19), in fact, the proposed standardized form will be far more burdensome than the existing issues/programs lists which were implemented to reduce burdensome reporting requirements. In the issues/programs lists, broadcasters need only list between five and ten ascertained issues and representative programs that addressed those issues. The proposed form asks about programming in numerous categories and requires a complete

listing. The issues/programs list does not establish any specific issues that must be addressed or any recommended programs. In contrast, the proposed standardized form will have governmentally-established categories of programming that each broadcaster will feel pressured to address. Without a doubt, the proposed form intrudes into the editorial discretion of broadcasters and raises serious First Amendment implications.

In addition, the NPRM would include much more material in the standardized form than the issues/programs lists presently must report. For instance, the NPRM states that the Commission tentatively concludes that the standardized form should include information on broadcasters' provision of closed captioning and video description. And the NPRM seeks comment on whether licensees should provide a narrative description of the actions they have taken to assess a community's programming needs and interests –information that was eliminated back in the early 1980s when the former ascertainment requirement was eliminated. Furthermore, the NPRM asks whether broadcasters should report on their community service activities on an attachment to the standardized disclosure form.

Without a doubt, the FCC seems to be returning full circle to its prior ascertainment and programming reporting requirements that were eliminated long ago. While there was a voluminous record in the early 1980s to support deregulation, there is no comparable record now that the marketplace has not worked or that broadcasters are not serving the public interest. Indeed, there are more stations now, and more programming is available now than ever. In 1981, the Commission stated: "it is time ... to reduce the regulatory role played by Commission policies and rules, and to permit the discipline of the marketplace to play a more prominent role. It is our conclusion that the regulations we are retaining and the functioning of the marketplace will result in service in the public interest that is more adaptable to changes in consumer

preferences and at less financial cost and with less regulatory burden.” *Deregulation of Radio, supra* 98 FCC 2d at para. 117. In contrast, the measures proposed in the NPRM will replace the marketplace with Commission-mandated programming categories and increase the costs and burdens that broadcasters must bear. Station personnel will have to devote substantial time to collecting the information sought by the Commission and preparing the standardized form.

III. The FCC Has No Jurisdiction Over Websites and Should Not Require Broadcasters to Clutter Their Websites With Material That is Already Available in the Public File

In various recent actions, the Commission has proposed or implemented requirements that broadcasters place information on their websites. For instance, the FCC now requires that broadcasters place their EEO Public File Reports on their websites. Depending on the size of the station and the number of personnel, these reports can be lengthy and staff time is required to input the information on the website. Now, the FCC is proposing that licensees place their entire public inspection file on the website, even though the public file is available at each station. Moreover, the NPRM seeks comment as to whether the website should be made accessible to persons with disabilities and whether broadcasters should be encouraged to use their websites to conduct discussions with the public.

The FCC does not have jurisdiction over websites and therefore simply lacks the authority to enforce these requirements. Moreover, many of the proposed requirements raise the distinct spectre of government intervention in the decision-making of broadcasters. In addition, the proposed requirements are extremely burdensome and costly. As noted earlier, the public file of a television station can contain numerous documents. The Commission need only review its public file rule to see that the file must contain many kinds of documents. Substantial staff time would be required to place all of this material on the website, to keep the website up to date, and to make the website accessible to those with disabilities. And much of this material would have

to be kept on the website for the entire license renewal period of eight years. This would so clutter a station's website that no one would have any interest in looking at it. Many broadcasters have their own websites and are using those sites in an innovative way. The FCC should not interfere in this area.

Conclusion

Sinclair respectfully submits that the FCC has lost sight of the rationale behind the deregulatory measures that were taken in the early 1980s. Those measures were taken to reduce burdensome governmental requirements which did not serve the public interest. There is no reason to reinstate onerous requirements that are unusually similar to those that were eliminated, particularly when broadcasters are now faced with the costly transition to digital. The FCC should retain the existing issues/programs list requirement and terminate this rule making proceeding.

Respectfully submitted,

SINCLAIR BROADCAST GROUP, INC.

By: 
Martin R. Leader
Kathryn R. Schmeltzer

CERTIFICATE OF SERVICE

I, Mary Nolan, a secretary in the law firm of Shaw Pittman, do hereby certify that true copies of the foregoing *Comments of Sinclair Broadcast Group, Inc on Notice of Proposed Rule Making*. were served by first class mail, postage pre-paid, on this 18th day of December 2000 to the following:

Ms. Judy Boley **
FCC
445 Twelfth Street, S.W.
Room C-1804
Washington, D.C. 20554

Mr. Edward Springer
OMB Desk Officer
10236 NEOB
725 17th Street, N.W.
Washington, D.C. 20503

**Served by hand via messenger



Mary Nolan