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

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

REPLY COMMENTS OF THE WALT DISNEY COMPANY

Preston Padden, Executive Vice President

The Walt Disney Company
1150 17th Street NW
Washington, D.C. 20036

Alan Braverman, Executive Vice President
Sam Antar, Vice President
Townsend Davis, Senior Counsel

ABC, Inc.
77 West 66th Street
New York, New York 10023

February 16, 2001

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To: The Commission

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The Walt Disney Company ("TWDC"), on behalf of itself and its subsidiary, ABC, Inc., submits these reply comments in further response to the Commission's request for comment on the public interest disclosure obligations of television broadcasters during the transition from analog to digital television.[1]

These reply comments are filed primarily in response to the comments of People for Better TV and the United Church of Christ, et al. ("UCC"). The comments in this proceeding have only reinforced the arguments in TWDC's initial comments that 1) there is no demonstrated need for additional public interest reporting requirements, 2) requiring all stations to complete a standardized public interest programming form raises serious First Amendment concerns, and 3) requiring stations to post the entire contents of their public inspection files on a website is unnecessary and burdensome.

1. There is No Significant Evidence That New Regulations Are Necessary.

In our initial comments, we argued that the Commission had failed to establish the need for a new standardized disclosure form. The comments filed in this matter were similarly lacking in significant evidence that such a need exists.

People for Better TV submitted a number of letters that recounted visits by its members to review the public inspection files of several TV stations. Some of the letters reported various difficulties the People for Better TV members encountered in gaining access to the files or deficiencies in the files. These complaints are irrelevant to the issue in this proceeding, namely, whether existing rules mandating quarterly disclosure of public interest programming in issues/programs reports are adequate to allow the public to monitor a station's public interest obligations. At most, the letters suggest that some stations may not be complying fully with the Commission's existing rules. They provide no justification for new and even more burdensome rules.

Only two letters cited by People for Better TV even addressed the adequacy of existing quarterly issues/programs reports. See Comments of People for Better TV, at 6. Many other People for Better TV members apparently found the issues/programs lists useful in assessing stations' compliance with their public interest obligations, and some letters submitted by People for Better TV referred to the issues/programs reports in their assessment. See, e.g., Comments of People for Better TV, Tab B5, Letter from Southeast Michigan Coalition of People for Better TV to Chairman William Kennard, dated December 11, 2000 ("As they reviewed the station's files, the McCornacks observed, to

[1] MM Docket No. 00-168, Report No. FCC 00-345, released October 5, 2000 ("Notice").

the station's credit, that a list of issues and needs that they deemed important to the community was included in the files....”). Even if fully credited as true, letters about perceived inadequacies in the public inspection files at two television stations do not provide credible evidence that the issues/programs reports of licensees are inadequate on a typical or widespread basis.[2]

Similarly, the comments of the UCC do not establish a need for a new standardized form. The UCC states that it found that the issues/programs reports it reviewed made it difficult to conduct meaningful comparisons between stations and analyze industry trends. Comments of the UCC, at 4. That criticism misperceives the purpose of such reports, which is not to facilitate comparative fact gathering, but rather to adequately inform the members of a station's local community of the topics the station has addressed and public interest programming aired in the preceding quarter. The UCC has submitted no evidence that local communities have found the issues/programs reports to be lacking.

In sum, none of the comments submitted in this proceeding constitute a sufficient factual record upon which the Commission may determine that current public interest reporting is inadequate or that new and more burdensome disclosure requirements on all TV stations nationwide are justified.

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[2] TWDC has learned that at least some of the letters describing the condition of the public inspection files at its owned TV stations are partially inaccurate or misleading. In some instances, files that were alleged to be missing were in the file at the time the station received the letter, and in other instances the letters alleged that information was missing that was either not required to be in the file or did not apply to that

2. A Standardized Form Raises Serious First Amendment Concerns.

In our initial comments, we expressed the view that mandatory reporting by program category puts government pressure on broadcasters to air FCC-favored content and imposes a "soft quota" for that content, raising serious First Amendment concerns. The comments filed by certain advocacy groups confirm the validity of our argument.

People for Better TV makes it plain that what it is ultimately seeking is greater FCC program content regulation. See Comments of People for Better TV, at 20 ("[W]e repeat our request for a rulemaking proceeding to establish a minimum level of local programming to serve the local public interest."); see also id. at 2 (characterizing the proposed rules as "very small steps" and stating "that further immediate action is needed"), 19 (proposed rules "small but necessary first steps"). The UCC appears to have a similar agenda, stating that the program categories included in the proposed standardized form "reflect the Commission's traditional view regarding what programming is necessary to serve the public interest." See Comments of the UCC, at iii.

Both of these views run contrary to the Supreme Court's admonition that the Commission may not, consistent with the First Amendment, "impose" upon licensees "its private notions of what the public ought to hear." Comments of the National Association of Broadcasters ("NAB"), at 7 (quoting Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622, 650 (1994)) (internal quotations omitted). The imposition of programming

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station. It is axiomatic that the Commission should base any new regulations on a complete record that includes reliable information to which licensees have had a reasonable opportunity to respond.

categories, some with specific minimums, presents exactly this problem. And, if mandatory content reporting is enacted, groups such as People for Better TV and the UCC will view it as groundwork for further content regulation in contravention of First Amendment principles.

3. Requiring Stations to Post the Entire Comments of Their Public Inspection Files on a Website is Unnecessary and Burdensome.

None of the comments filed in this proceeding rebutted our initial comment that the Commission's website posting proposal would impose unwarranted burdens on television stations.

The UCC argues that because most stations already have websites, the additional cost of complying with the Commission's proposal would be "de minimis." Comments of the UCC, at 25. The only substantiation the UCC offers is a reference to "discussions between counsel for UCC, *et al*. and several web site host operators" at two companies. Comments of the UCC, at 26 n. 42. In addition, the UCC's argument appears to focus simply on the costs of maintaining such a website and does not address the high start-up costs of placing bulky public inspection files onto a website in searchable form.

In contrast, broadcasters, who are more familiar with their own operations and the tasks involved in converting their files to Internet-searchable form, have substantiated that burden. TWDC's survey of its own stations was consistent with the findings of the NAB, which estimated that to implement the proposed web site regulations each station would require an additional staff person full-time and approximately $292,000, and more labor and money if the station did not yet have a website in place. Comments of the NAB, at 19-24. This substantial burden weighs heavily against the proposed rules.

People for Better TV makes no attempt whatsoever to calculate the burden on stations, but instead argues that a cost/benefit analysis "is not appropriate to determinations of the democratic relationship." Comments for People for Better TV, at 17. In essence, it argues that because the benefit of the Commission's proposals, which People for Better TV sees as enhancing the dialogue between broadcasters and their communities, is so high, there is no need even to consider the cost side of the equation.

The Commission has consistently held to the contrary, and it has acknowledged in this proceeding that it is required to assess the costs of the proposed rules on small entities under the Regulatory Flexibility Act and to assess the administrative burden of the proposed rules under the Paperwork Reduction Act. See Notice ¶¶ 42, 43. Moreover, the Commission has routinely employed a cost/benefit analysis and has decided in several recent important rulings that proposals similar to the ones proposed here were not worth their potential cost. See Report and Order, MM Docket No. 97-138, 13 FCC Rcd 15691 (1998), modified, 14 FCC Rcd 11113 (1999) ("Main Studio and Local Public Inspection Files Order"); Report and Order, MM Docket No. 83-670, 98 FCC2d 1076 (1984), recon. denied, 104 FCC2d 358 (1986), rev'd in part, ACT v. FCC, 821 F.2d 741 (D.C. Cir. 1987) ("Ascertainment and Program Guidelines Order"). Nothing in this proceeding justifies a sweeping exception to the sound and legally mandated practice of weighing the costs of proposed regulations before they are adopted.

Second, we continue to challenge whether the benefits touted by proponents of the proposed rules are realistic. There is no reason to believe that merely posting the contents of a public inspection file will promote dialogue between a station and its local community. As the NAB points out, the public already has reasonable access to the files,

and an increasing number of periodic reports included in stations' public files are already available on the Commission's own website. Comments of the NAB, at 24. In the absence of evidence that potential benefits outweigh the substantial costs involved in complying with the proposed rules, the Commission should be reluctant to impose new mandates. TWDC agrees with the NAB, which has proposed the far less burdensome alternative of requiring stations to post certain information about their public inspection files on a website that may assist the public in retrieving their contents by traditional means. Comments of the NAB, at 26-27.

For the reasons set forth above and in its initial comments, TWDC opposes the proposals in the Notice that would require each licensee to complete a standardized form and to post the entire contents of its public inspection file on a website.

Respectfully submitted,

By:_____

Preston Padden, Executive Vice President

Alan Braverman, Executive Vice President
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