

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

In the Matter of

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

MB Docket No. 00-168

PETITION FOR RECONSIDERATION
NORTHERN CALIFORNIA PUBLIC BROADCASTING, INC.

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SUMMARY

The Commission failed to conduct a meaningful cost benefit analysis concerning the standardized disclosure rules. At least with respect to NCPB and other non-commercial educational (“NCE”) licensees, the minimal speculative benefit of the standardized disclosure rules are clearly outweighed by the crippling costs of complying with the rules.

It will take a substantial amount of time for senior staff to properly analyze and categorize NCPB’s thousands of hours of qualified programming as required by the Form 355. Once completed, it is questionable whether the completed quarterly Form 355 will provide NCPB viewers with any more information about NCPB programming than is already available via NCPB’s online and published viewer guides, automated telephone program information line, and other existing resources. Further, the Form 355 is simply not applicable to NCPB’s programming. In fact, there is not even a place on the Form 355 to report educational programming, one of the cornerstones of NCE licensee’s programming service to their communities. In addition, there is nothing in the record that demonstrates that members of the public find the existing quarterly issues/programs lists to be ineffective. At best, the record demonstrates a need for better communication concerning the existence of the quarterly issues/programs lists. That record does not support the burdensome new standardized reporting rules.

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PETITION FOR RECONSIDERATION

Pursuant to 47 U.S.C. § 405(a) and 47 C.F.R. § 1.429, Northern California Public Broadcasting, Inc. (“NCPB”), licensee of non-commercial educational (“NCE”) television stations¹ KQED-TV (San Francisco), KTEH-TV (San Jose), and KQET-TV (Watsonville/Monterey), hereby submits this Petition requesting that the Commission reconsider *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, FCC 07-205, MB Docket Nos. 00-168, 00-44, 73 Fed. Reg. 13452 (March 13, 2008) (the “*Report and Order*”).

I. BACKGROUND.

On January 24, 2008, the FCC released the *Report and Order*, which, among other things, adopts rules which (1) mandate that television licensees post certain portions of their public inspection file on their websites; and (2) require licensees to file with the Commission a

¹ NCPB is also the licensee of non-commercial FM radio stations KQED (San Francisco) and KQEI (Sacramento).

standardized quarterly programming report which also must be posted on the stations' website and placed in the locally-maintained public inspection file.

For the reasons detailed below, NCPB believes that many of the conclusions in the *Report and Order* are unsupported by the record and impose undue burdens on licensees, particularly NCE licenses such as NCPB. The Commission should reconsider the *Report and Order*, and amend or eliminate the rules established therein, at least with respect to NCE licensees.

II. THE SPECULATIVE BENEFITS OF THE QUARTERLY STANDARDIZED DISCLOSURE REQUIREMENTS ARE SUBSTANTIALLY OUTWEIGHED BY THE ADVERSE FINANCIAL AND OPERATIONAL IMPACTS ON NCPB.

The Commission, in considering the requirement that television licensees post the public inspection file on their websites, conducts a traditional analysis of the cost to the licensees in converting and posting the files versus the benefit to the public of having the files on the Internet. According to the *Report and Order*, the “benefits of licensees placing their public inspection files on the Internet outweigh the costs” to the licensees of complying with the website posting requirement.² *Report and Order* at ¶10.

Unfortunately, the *Report and Order* evidences no similar Commission cost-benefit analysis with respect to the standardized disclosure requirements. This is a significant omission, because at least with respect to non-commercial educational licensees like NCPB, the purported benefits to the public of the standardized disclosure requirements are substantially outweighed by the significant adverse financial and operational impacts. As described below, NCPB expects that the vast majority of its three stations approximately 70,000 hours of programming will have

² Commission staff estimates “one-time” initial costs to be less than \$15,000. *Report and Order*, fn.24.

to be reported annually, a tremendous burden especially for a non-commercial educational broadcaster.

A. NCPB Would Incur Significant Costs to Comply with the Standardized Reporting Requirements.

NCPB is licensee of three NCE television stations: KQED-TV in San Francisco, KTEH-TV in San Jose, and KQET-TV in Watsonville/Monterey. In addition to the primary analog KQED-TV channel, NCPB provides 6 digital channels - KQED HD, KQED Encore, KQED World, KQED Life, KQED Kids, and KQED PBS Kids Sprout. Each of the seven KQED channels is programmed 24 hours a day, seven days per week. Subtracting KQED HD from the mix³, Station KQED alone is providing 144 hours of programming each day, or 52,560 hours of programming per year. Currently, NCPB is providing one channel of programming on KTEH,⁴ and one channel on KQET. Both of these channels are also programmed 24 hours per day, seven days per week, for an additional 17,520 hours of programming per year. Among the three stations, not including digital programming streams that are simulcasts of the analog channels, NCPB is providing an average of 17,520 hours of programming each quarter. Although many commercial broadcasters can cite similar or higher numbers, the significance of NCPB's total quarterly programming hours has to be considered in light of the nature of NCPB's non-commercial educational, community, and arts-focused programming. Applying the standards set forth in the instructions for the forms, NCPB will have to categorize virtually all 17,520 hours of programming, and, as detailed below, report almost all of it somewhere on the standard disclosure form ("Form 355") each and every quarter. For NCPB, the financial costs for such a

³ The programming stream on KQED HD duplicates the programming on the primary analog channel.

⁴ NCPB anticipates that KTEH will in the future offer multiple digital channels.

daunting operational, editorial, and technical task – with no corresponding increase in funding streams – is prohibitive.

Form 355 first requires that television licensees, on a quarterly basis, categorize all programming “on the primary channel *and* all non-primary channels” and calculate the “average number of hours per week” of the following eleven “types” of programming:

- High Definition
- National News Programming
- Local News Programming Produced by the Station
- Local News Programming Produced by and Entity Other than the Station
- Local Civic Affairs
- Local Electoral Affairs
- Independently Produced Programming
- Other Local Programming
- Public Services Announcements
- Paid Public Service Announcement
- Closed Captioning

Report and Order, Appendix B (Form 355), § 2(a).

Form 355 then requires the licensee, for each program or program segment aired in the quarter that meets the defined categories “national news,” “local news,” “local civic affairs programming,” and “local electoral affairs programming,” to identify by title, date and time aired, and length,” each program or segment that “includes significant treatment of community issues and that are not listed elsewhere on the form.” In addition, for each such program or program segment, the licensee must also indicate whether the program has:

- Aired on the primary channel.
- Been locally produced.
- Previously aired on this or another station.
- Been part of a regularly scheduled news program.
- Been broadcast for payment or any sort of consideration to the licensee or any related organization or entity.

Report and Order, Appendix B, §§2(b)-(e). This is a task far more daunting and complex than simply coding the programming. With respect to national news programming, for example, even

if that programming was coded as “national news” in a database, NCPB would still need to make an editorial analysis on each program segment as to whether that segment included “significant treatment of community issues” – a subjective standard at best – before deciding whether and how to report the program or program segment. To cite just one of many examples which occurred in recent weeks, the “NewsHour” program contained a report on the Olympic torch relay in San Francisco. While this event put national Chinese policies in focus, the handling of protesters and the City’s decisions regarding changes to the planned route involved local political issues as well. The program was also of particular relevance to our community’s large Chinese and Tibetan constituencies, thus, as discussed further below, could alternatively be reported in 2(j) as programming serving the needs of underserved communities.

Next, Form 355 requires licensees to list each “independently produced program” that aired on the primary channel during the quarter. *Report and Order*, Appendix B, §2(f). The licensee must report, for each such program, the title, date and time aired, the length, the number of times the program aired, and the producer of the program. *Report and Order*, Appendix B, §2(f). The instructions for Form 355 defines “independently produced programming”, in relevant part, as “programming aired during prime time that is produced by an entity not owned or controlled by an owner of a national television network, including but limited to ABC, CBS, NBC, and Fox.” *Report and Order*, Appendix B at 29. It does not appear that any of NCPB’s programming sources, including PBS, are a “national television network” within the meaning of this definition. Consequently, NCPB will have to report all of the prime-time programming that airs on the primary KQED-TV, KTEH-TV, and KQET-TV channels each quarter, whether produced locally by NCPB, or distributed nationally by PBS or any other distributor of NCE programming.

NCPB's overall task in categorizing and reporting its programming is further complicated by the "independently produced programming" reporting requirement. Form 355 restricts reporting of programming in the National News, Local News, Local Civic Affairs, or Local Electoral Affairs categories – even if the programming properly fits those categories – because, as pointed out above, Form 355 permits programs to be listed in those categories only if the programs or program segments are "not listed elsewhere on this form." Since Section 2(f) of the Form 355 has no such restriction, all 'independently produced programming – which, as pointed out above, is all of NCPB's prime time programming – must be listed in Section 2(f), and thus cannot be listed in the Section 2(b)-(e) categories. Thus, the NewsHour Olympic torch relay segment discussed above, which could justifiably fit within many of the more informative categories, might not be reported in any of them.

The next part of Form 355, Section 2(g), requires the licensee to identify, by title, length, and date and time aired, all "locally originated programming that includes significant treatment of community issues and is not listed elsewhere." *Report and Order*, Appendix B, §2(g). The term "locally originated programming" is not defined in the instructions to Form 355. Thus, it is not clear whether, for example, the term refers only to programming produced by the station the Form 355 is reporting on, or whether it refers to programming produced for local rather than national distribution. For NCPB, the distinction is important. If a program is produced by KQED and aired on KQED, for example, it seems clear that that program can be reported by KQED as locally produced programming that aired during that quarter. The answer is far less clear, however, in the case of a program produced by KQED that airs on KTEH, for purposes of KTEH's Form 355 reporting. Whether that program is locally produced programming for one NCPB station or all three, however, NCPB will still need to make the editorial decision as to whether the program or any program segment includes "significant treatment of community

issues.” And again, if the “locally originated program” aired in prime time, it is also “independently produced programming” within the meaning of Form 355 and must be listed in that category. As such, that particular locally originated program cannot be listed in Section 2(g).

The next section on the Form 355 requires the licensee to report all Public Service Announcements (“PSA”) that “include significant treatment of community issues aired this quarter during the hours of 6 am -12 am.” *Report and Order*, Appendix B, §2(h). Although NCPB stations do not air a large number of PSAs, to comply with Form 355, each PSA aired on any of NCPB’s channels will need to be vetted for “significant treatment of community issues” prior to reporting.

Section 2(j), which is directed to “Underserved Communities,” provides the following instruction:

List the programs that were aired that were aimed at serving the needs of underserved communities, i.e. demographic segments of the community of license to whom little or no programming is directed.

Report and Order, Appendix B, §2(j). Each program listed in this section must be identified by title, program type/format, length and date aired. In addition, for each program listed, the licensee must identify the “underserved community served” and must “describe how the programming met the needs of the underserved community.” *Id.* To fully understand how complex this task would be for NCPB, the Commission must first consider that the communities of license for NCPB’s television stations – San Francisco, San Jose, and Watsonville/Monterey – are located in one of the most demographically diverse regions in this country. There are numerous “communities” within NCPB’s communities of license that can legitimately be characterized as “underserved” within the meaning of Section 2(j), and NCPB has and will continue to provide community, educational, and arts programming which serves the various

needs of each. NCPB's existing quarterly issues/programs lists already exhaustively categorize responsive programming aimed at the various diverse demographic communities.⁵ However, Form 355 escalates this already time-consuming task by requiring a "description of how the programming met the needs of the underserved community." Like other portions of the Form 355, meaningful compliance with this requirement goes well beyond the matter of coding programming in a database, and will require significant effort from personnel not currently on staff, for whom there are no currently budgeted funds.

Other portions of Form 355 call for reporting of Paid Public Service Announcements – (§ 2(i)); Religious Programming (§2(k)); a description of efforts by the licensee to ascertain the programming needs of the community during the quarter (§3); reports on percentages of programming aired during the quarter that met the Commission's closed captioning requirements (§4(a)); total hours of programming where the licensee voluntarily provided video description services (§4(b)); information concerning emergency programming aired during the quarter (§5); and information concerning any local marketing agreements (§6). Each of these reporting requirements adds an additional layer of complexity to the task of complying with the Form 355 requirement.

To compile the existing issues/programs lists, NCPB expends approximately 80 person-hours each quarter. If NCPB is required to meet the Commission's new standard disclosure requirements, we estimate that we would have to hire at least one additional full-time programming specialist whose time would be devoted exclusively to tracking, compiling, and categorizing television programming to ensure that all programming is properly allocated and reported on the Form 355. In addition to this full time person, NCPB would need to allocate the

⁵ A copy of KQED's issues/programs list for 1st Quarter 2008 is attached hereto as

additional technical, legal, and management personnel resources needed to prepare, and senior management time to review, and file the Form 355 each quarter. We estimate that NCPB would incur a minimum of \$25,000 per quarter in human and technical resources to comply with the standardized disclosure requirements. NCPB be forced to divert resources from other station operational and programming areas, unless donors can be found to support this new regulatory activity. In either case, the result is that significant financial and personnel resources that could be devoted to producing the local community, educational, and arts programming NCE stations are charged with providing would instead be devoted to preparing a regulatory report. As detailed below, it is questionable whether the limited public benefits derived from the Form 355 as compared to the current issues/programs lists justify these expenditures, particularly in light of the detailed programming information NCPB already makes available to the viewing public.

B. NCPB Already Makes Detailed Information Concerning its Programming and Ascertainment Efforts Available to the Public.

NCPB already devotes significant resources to providing the public with information concerning the community, educational, and arts focused programming offered on its three television stations. As discussed above, NCPB's existing quarterly issues/programs lists already contain detailed information concerning NCPB's programming and the community needs and interests served by each. Consistent with Commission regulation, the issues/programs lists are available in the public inspection files at each of NCPB's television stations.

However, the programming information NCPB makes available to the public goes way beyond these regulatory reports. NCPB viewers can readily find detailed information concerning television programming in a number of other ways. KQED's online program guide provides listings and program descriptions for programs on each of KQED's programming streams. The

online guide provides details about the programs, including information concerning closed captioning, secondary audio programming (SAP), descriptive video information (DVI) and parental guidelines. NCPB makes this same information available to the public by way of a 24-hour automated program information telephone line. NCPB also provides online program guides for KTEH and KQET on their respective websites. In addition, KQED publishes a monthly programming guide which is available to members. NCPB also publishes an annual "Report to the Community" which features, among other things, information about NCPB programming aired over the previous year. The report highlights programming produced by NCPB stations and aired regionally and nationally.

NCPB's efforts to ascertain the programming needs and interests of the community are also well disclosed to the public. Schedules of NCPB's Board of Director's meetings, where members of the public have the opportunity to address the Board, are posted on KQED's website, and links to that schedule are prominently posted on the KTEH and KQET websites. NCPB also has an active community advisory board, whose members reflect the diverse needs and interests of the communities our stations serve. This board advises NCPB management and the Board of Directors as to whether our programming and services are meeting those needs and interests. The community advisory board is highly visible in the community, staffing tables at numerous community events and actively seeking input and feedback on NCPB's programming.

Beyond the community advisory board's formal outreach efforts, NCPB has dedicated phone lines and a dedicated e-mail address for television viewer comments. Both the website and the phone line are posted on the websites. NCPB also receives input from the community via telephone calls during pledge drives, and often seeks comments on the websites in conjunction with special projects and initiatives. In short, members of the public interested in participating in the license renewal process can easily access detailed information about NCPB's

programming, as well as our efforts to ascertain and respond to community needs and interests. Form 355 provides little, if any, useful additional information.

C. The Proposed Form 355 Does Not Adequately Reflect NCPB’s Community, Educational and Arts Programming.

The one-size-fits-all standardized disclosure approach has the potential to confuse any member of the public who seeks to understand NCPB’s programming, because the “standardized” programming categories on the Form 355 simply do not reflect the way NCE licensees serve the public interest. According to the *Report and Order*, the Commission in 1984 “eliminated many of its specific programming obligations and substituted a general requirement that *commercial* television broadcast station licensees must provide coverage of issues facing their communities” and compile issues/programs lists on a quarterly basis. *Report and Order* at ¶32 (emphasis added). The Commission established the “standard programming disclosure format” – Form 355, to replace the quarterly issues/programs list. *Id.* It seems clear that the Form 355 was designed specifically for commercial broadcasters. Nothing demonstrates this point better than the fact that one of the main missions of NCE licensees like NCPB is not among the programming categories on the Form 355. That is, there is no place on the Form 355 for NCPB and other NCE licensees to report the significant quantities of educational programming provided on its television stations. Nor are there categories for reporting children’s programming or cultural and arts programming.

One of the stated goals of standardized disclosure is “uniformity of reporting.” *Report and Order* at ¶38. Such uniformity is “essential”, according to the *Report and Order*, to those seeking to “compare the efforts of various stations.” *Id.* It is difficult to believe that the Commission’s intent is for the community interest “efforts” of NCE stations to be compared to those of commercial stations at renewal time. Yet Form 355 – if required of NCE licensees as

well as commercial broadcast licensees – does just that. NCPB believes that NCPB’s informative, readily available, programming guides, which allow viewers to easily determine which programming meets their specific interests and needs, are far more useful than a dry listing that subjectively fits multi-faceted programming into single, broad categories.

It is an ironic and hopefully unintended consequence of the *Report and Order* that by virtue of the sheer quantity of public interest programming offered to viewers on a daily basis, NCE licensees like NCPB will be disproportionately burdened by the standardized disclosure rules. The Commission can and should correct this decision by clarifying that the Form 355 is designed for commercial broadcasters, and that NCE licensees are exempt from the rules requiring completion and filing of Form 355.

D. The FCC’s Goals of Facilitating Public Access to Station Programming Information Can Be Achieved in a Less Burdensome Manner.

According to the *Report and Order*, the record being developed in the Commission’s “Localism Proceeding” – resulting from testimony and “open microphone” comments at field hearings – suggests that members of the public “are not fully aware of the community-responsive programming that their local stations have aired. *Report and Order* at ¶39. The Commission notes that the “lack of knowledge” extends to the existing quarterly issues/programs lists – that is, large portions of the public are unaware that the lists exist. *Id.* These findings appear to be consistent with the record in the instant proceeding, concerning the minimal number of people who actually visit the station to inspect the public file. *Report and Order* at ¶11. NCPB’s experience is no different from those broadcasters who commented on this point. The rare visits to our public file are also virtually all from “college students on assignment.” *Id.*

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