

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Broadcast Localism) MB Docket No. 04-233
)
)
)

**COMMENTS OF
BENTON FOUNDATION**

April 28, 2008

TABLE OF CONTENTS

I. Introduction	Page 1
II. Broadcasters Have a Statutory Duty to Serve the Public.	Page 4
III. The Commission Has Failed to Provide Guidance on DTV Broadcasters' Obligations for Over a Decade.	Page 5
• The Commission has not reported on its findings on minimum public interest obligations.	Page 9
• The Commission has not issued a report on its findings on access to the media.	Page 9
• The Commission has not reported on its findings on enhancing political discourse	Page 10
IV. The Commission's Failure to Act Has Been Recognized by Its Own Commissioners and Oversight Committee.	Page 11
V. Conclusion	Page 13
Appendix A: Minimum Public Interest Requirements For Digital Television Stations Submitted by the Advisory Committee on Public Internet Obligations of Digital Television Broadcasters	

I. Introduction

Pursuant to the Notice of Proposed Rulemaking (“NPRM”) adopted by the Commission on December 18, 2007 seeking comments in the matter of broadcast localism, the Benton Foundation¹ hereby submits these comments.

In addition to this proceeding, the Commission on December 18, 2007 adopted a Report and Order on media ownership and the public interest obligations of TV broadcast licensees.² The Commission notes that in the pending proceeding titled *Public Interest Obligations of TV Broadcast Licensees*,³ commenters ask the Commission to impose additional “public interest” obligations on television broadcasters. Some of the issues raised in that proceeding have already been resolved by the Commission.⁴ The Commission also notes that this proceeding addresses actions the Commission will take to ensure that broadcasters are meeting the needs of their local communities. With

¹ The mission of the Benton Foundation is to articulate a public interest vision for the digital age and to demonstrate the value of communications for solving social problems. The foundation is a long-time advocate of defining the public interest obligations of digital broadcasters. Benton Foundation Chairman Charles Benton served on the Presidential Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters and currently serves on the Commission’s Consumer Advisory Committee.

² In the Matter of 2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (MB Docket No. 06-121), 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (MB Docket No. 02-277), Cross-Ownership of Broadcast Stations and Newspapers (MM Docket No. 01-235), Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets (MM Docket No. 01-317), Definition of Radio Markets (MM Docket No. 00-244), Ways to Further Section 257 Mandate and To Build on Earlier Studies (MB Docket No. 04-228), Public Interest Obligations of TV Broadcast Licensees (MM Docket No. 99-360).

³ *Public Interest Obligations of TV Broadcast Licensees*, Notice of Inquiry, 14 FCC Rcd 21633 (1999).

⁴ The notes the two examples: 1) In January 2007, the Commission’s new children’s programming requirements went into effect; and 2) the Commission adopted a requirement that all television broadcasters must file a standardized form on a quarterly basis providing information about their programming, including programming related to local civic affairs, local electoral affairs, public service announcements (whether sponsored or aired for free), and independently produced programming.

respect to other ideas raised in this proceeding, such as whether the Commission should establish more specific minimum public interest requirements for licensees and how broadcasters could improve political candidates' access to television, the Commission declined to take any further action. The Commission found the need to impose additional obligations premature in light of the Commission's recent decision to require broadcasters to file enhanced disclosure reports about the programming they are providing to serve local communities' interests and needs. The Commission also states it will revisit this decision and initiate proceedings as appropriate.

The Commission's failure to address the question of public interest obligations in has been highlighted by its own Commissioners. Commissioner Jonathan Adelstein has remarked that:

“I am concerned that we have not yet provided broadcasters and the public with a concrete understanding of broadcasters' public interest obligations in the digital age. This necessary piece of the transition continues to lag further and further behind. Congress made clear that broadcasters continue to have public interest obligations in the digital world, but left it up to us to specify how to apply them.

Commissioner Adelstein further recommended that the Commission address this subject before it finalizes the transition to all-digital television broadcasting:

“ . . . I urge my colleagues to act on clarifying the public interest obligations of digital broadcasters as soon as possible. . . . We owe it to the public and to broadcasters to devote sufficient time and resources of this Commission to establishing concrete, measurable public interest obligations to fulfill Congress's vision of this enhanced digital viewing experience. Let us not leave the public behind as we continue finalizing the blueprints for digital television.”(Emphasis added.)

Benton cannot agree more. With less than 300 days before the completion of the transition to all-digital television broadcasting in the US, the American public deserves to know how television broadcasters will fulfill their role as public trustees of the airways in the digital age. Benton therefore urges the Commission to issue clear guidelines to ensure that broadcasters adhere to the law and serve the local educational, informational, civic, minority, public safety and security, and disability needs of the children and adults in the communities that TV stations are licensed to serve.

As the nation transitions to digital television, the Commission must decide whether the newest television technologies can support our oldest and most time-honored values of democracy, diversity, localism, and education. It is time to put the remote control back into the public's hands and once again give the public greater control over the children they raise, the kind of democracy they participate in, and the security they deserve.

Public interest obligations are about whether:

- Our children can turn on a television and find truly educational content
- We can be active and intelligent participants in our democracy with sufficient civic programming before elections
- The voices and views on our airwaves reflect the diversity of our country

- Our televisions can keep us alert and informed in national and local emergencies
- People who are sight- or hearing-impaired can access all of TV's educational, informational, and entertainment programming

In fact, existing laws and regulations affirmatively require broadcasters to serve the public in these ways. However, as the Commission's localism and media ownership hearings have demonstrated, we are not in a golden age of television.

II. Broadcasters Have a Statutory Duty to Serve the Public.

Broadcasters have an obligation to serve the public's interests, not just their own commercial interests.⁵ The government provides broadcasters free and exclusive access to a portion of the public airwaves – “spectrum” – for broadcasting. These profitable licenses come in exchange for broadcasters' commitment to serve the “public interest, convenience, or necessity.” Television has never played a more important role in our lives. It is our primary source of news and entertainment.⁶ But today's television is too often out of touch with today's realities: parents struggling to find educational programming for their children, voters struggling to find basic coverage of campaigns and elections so vital to our democracy, and

⁵ The Communications Act of 1934 authorizes the FCC to regulate broadcast licenses “as the public convenience, interest, or necessity requires.”

⁶ Horrigan, J., Garret, K., & Resnick, P. (2004). *The Internet and Democratic Debate*. Pew Internet and American Life Project and the University of Michigan School of Information; Cooper, M. (n.d.). *Media Ownership and Democracy in the Digital Information Age*. Center for Internet & Society, 146. Stanford Law School; Carter, S., Fico, F., & McCabe, J. (2002). *Partisan and Structural Balance in Local Television Election Coverage*. *Journalism and Mass Communications Quarterly*, 79. p.42; Norris, P. (2002). *Revolution, What Revolution? The Internet and U.S. Elections, 1992-2000*.

minorities too often having difficulty finding programming reflective of their lives. In each case, broadcasters have too often lost touch with the needs of the people who own the airwaves.

In 1969, the Supreme Court declared that “it is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of the market,” and thus, it is “the right of the viewers and listeners, not the right of the broadcasters, which is paramount.”⁷

III. The Commission Has Failed to Provide Guidance on DTV Broadcasters’ Obligations for Over a Decade.

For over 12 years, the Commission has recognized the importance of addressing the public interest obligations of digital television broadcasters, but has failed on the legal mandate to do so despite recommendations from a Presidential Advisory Committee, public interest groups, the Commission’s own Consumer Advisory Committee and broadcasters themselves.

In the 1995 Notice of Proposed Rulemaking on Advanced Television Services and Their Impact Upon the Existing Television Broadcast Service⁸ (“1995 NPRM”), the Commission noted that the rules imposing public interest

⁷ *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).

⁸ In the Matter of Advanced Television Services and Their Impact Upon the Existing Television Broadcast Service (MM Docket No. 87-268). Adopted July 28, 1995 (see http://www.fcc.gov/Bureaus/Mass_Media/Notices/1995/fcc95315.txt).

obligations on broadcast licensees originate in the statutory mandate that broadcasters serve the “public interest, convenience, and necessity,” as well as other provisions of the Communications Act.⁹ These obligations include the requirements that broadcasters must provide “reasonable access” to candidates for federal elective office and must afford “equal opportunities” to candidates for any public office¹⁰ and that weekly they must provide three hours of children’s educational programming.¹¹ Licensees must also adhere to restrictions on the airing of indecent programming,¹² must make television programming accessible to people with disabilities,¹³ and must comply with the 1996 Act provisions relating to the rating of video programming.¹⁴ The Commission noted that these current public interest rules were developed under the analog model and therefore were shaped by the limitations inherent in analog technology. The Commission sought comment on whether the greater capabilities afforded by digital technology should affect licensees’ obligations to serve the public interest, and if so, how those obligations might be adapted to the digital context.

Specifically, the Commission asked:

“Should a licensee’s public interest obligations depend on the nature of the services it chooses to provide and, if that is the case, how so? For example, if a broadcaster chooses to provide multiple standard definition services, should public interest obligations attach to each one? [S]hould public interest obligations be seen as

⁹ 47 U.S.C. § 307(c).

¹⁰ 47 U.S.C. §§ 312(a)(7), 47 C.F.R. §§ 73.1944 (reasonable access); 47 U.S.C. 315, 47 C.F.R. § 73.1941.

(equal opportunities). See also 47 C.F.R. § 73.1920 (personal attacks rule); 47 C.F.R. § 73.1930 (right to reply).

¹¹ 47 U.S.C. § 303b, 47 C.F.R. § 73.671, 73.673, 73.3526.

¹² 18 U.S.C. § 1464; 47 U.S.C. § 303; 47 C.F.R. § 73.3999.

¹³ 47 U.S.C. § 613; 47 U.S.C. §§ 303(u); 330(b); 47 C.F.R. §§ 79.1; 79.2.

¹⁴ 47 U.S.C. § 303(w).

attaching not to services but to licensees, each of whom would be required to operate the facilities associated with its 6 MHz [digital] channel in the public interest?”¹⁵

On April 3, 1997, the Commission adopted the Fifth Report and Order on Advanced Television Services and Their Impact Upon the Existing Television Broadcast Service (“Fifth Report & Order”).¹⁶ The order explicitly did not resolve the public interest obligation debate, stating:

“Some argue that broadcasters’ public interest obligations in the digital world should be clearly defined and commensurate with the new opportunities provided by the digital channel broadcasters are receiving. Others contend that our current public interest rules need not change simply because broadcasters will be using digital technology to provide the same broadcast service to the public. ***We are not resolving this debate today.*** Instead, at an appropriate time, we will issue a Notice to collect and consider all views. As we authorize digital service, however, broadcast licensees and the public are on notice that existing public interest requirements continue to apply to all broadcast licensees. Broadcasters and the public are also on notice that the Commission may adopt new public interest rules for digital television. Thus as to the public interest, our action today forecloses nothing from our consideration.”¹⁷ (emphasis added)

Nearly three years after the Fifth Report & Order and one year after a Presidential Advisory Committee concluded, “As this Nation’s 1,600 television stations begin to convert to a digital television format, it is appropriate to reexamine the long-standing social compact between broadcasters and the American people,”¹⁸ the

¹⁵ NPRM at 35.

¹⁶ In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service (MM Docket No. 87-268) April 3, 1997 (see http://www.fcc.gov/Bureaus/Mass_Media/Orders/1997/fcc97116.pdf).

¹⁷ Fifth Report & Order at 50 (emphasis added).

¹⁸ Advisory Committee on Public Interest Obligations of Digital Television Broadcasters. “Charting the Digital Broadcasting Future” (p. xi) 1998

Commission adopted a Notice of Inquiry on the Public Interest Obligations of TV Broadcast Licensees¹⁹ (“1999 NOI”).

The 1999 NOI again raised unresolved questions about multicasting and the “challenges unique to the digital era”:

“It is thus clear that DTV broadcasters must air programming responsive to their communities of license, comply with the statutory requirements concerning political advertising and candidate access, and provide children’s educational and informational programming, among other things. But as People for Better TV ask, how do these obligations apply to a DTV broadcaster that chooses to multicast? Do a licensee’s public interest obligations attach to the DTV channel as a whole, such that a licensee has discretion to fulfill them on one of its program streams, or to air some of its public interest programming on more than one of its program streams? Should, instead, the obligations attach to each program stream offered by the licensee, such that, for example, a licensee would need to air children’s programming on each of its DTV program streams? The Advisory Committee Report contemplates that, under certain circumstances, a digital broadcaster should not have nonstatutory public interest obligations imposed on channels other than its “primary” channel. A majority of the members of the Advisory Committee believe that the FCC should prohibit broadcasters from segregating candidate-centered programming to separate program streams, because they believe that would violate candidates’ reasonable access and equal opportunities. We seek comment on these approaches. In addition, how should we take into account the fact that DTV broadcasters can choose either to multicast multiple standard definition DTV program streams or broadcast one or two HDTV program streams during different parts of the day?”²⁰

(<http://www.ntia.doc.gov/pubintadvcom/piacreport.pdf>). The Advisory Committee was comprised of a broad cross-section of interests, consisting of twenty-two members chosen by the President from the commercial and noncommercial broadcasting industry, computer industries, producers, academic institutions, public interest organizations, and the advertising community.

¹⁹ In the Matter of Public Interest Obligations of TV Broadcast Licensees (MM Docket No 99-360), adopted December 15, 1999 (see

http://www.fcc.gov/Bureaus/Mass_Media/Notices/1999/fcc99390.doc).

²⁰ NOI at 11.

In addition, the FCC asked for comments on the following issues that have not been resolved yet:

- **Minimum public interest obligations:**²¹ The Commission asked for comments on the Advisory Committee recommendation that “[t]he FCC should adopt a set of mandatory minimum public interest requirements for digital broadcasters . . . that would not impose an undue burden on digital broadcast stations, . . . should apply to areas generally accepted as important universal responsibilities for broadcasters,” and should be phased in over several years.²²

The Commission has not reported on its findings on minimum public interest obligations.

- **Access to the media:**²³ One of the Commission’s long-standing goals in the area of broadcast regulation is to enhance the access to the media by all people, including people of all races, ethnicities, and gender, and, most recently, people with disabilities. Congress emphasized this goal when it amended section 1 of the Communications Act in 1996 to refine this agency’s mission as making available “to all people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service....” It further highlighted this goal when it added provisions to the Act concerning people with disabilities, such

²¹ NOI at 20.

²² See Appendix A and Advisory Committee Report at § III.3.

²³ NOI at 24-28.

as section 713 relating to closed captioning and video description.²⁴ Given the efficiencies of digital technology, DTV broadcasters are able to “multicast” and air several programs at the same time, as well as provide more information within the signal of each programming stream. The Commission sought comment on the ways broadcasters can use this technology to provide greater access to the media for people with disabilities and innovative ways unique to DTV that the Commission could use to encourage diversity in the digital era. *The Commission has not issued a report on its findings.*²⁵

- **Enhancing political discourse:**²⁶ The Commission has long interpreted the statutory public interest standard as imposing an obligation on broadcast licensees to air programming regarding political campaigns.²⁷ The Supreme Court likewise has recognized the impact television broadcasting has on our political system.²⁸ The Commission sought comment on ways that candidate

²⁴ 47 U.S.C. § 613.

²⁵ This has become a particular problem for individuals who rely on captioning to view television programming because some broadcasters have taken the position that when they convert a standard definition analog network to a high definition (HD) channel, they are creating a “new network” that automatically qualifies for an exemption from the FCC’s captioning rules for a four year period, even when the HD channel is substantially similar to its analog counterpart. The consequence is that programming captioned in its analog version is no longer captioned when provided over a digital stream.

²⁶ NOI at 34-38.

²⁷ See, e.g., Licensee Responsibility as to Political Broadcasts, 15 FCC 2d 94 (1968).

²⁸ “Deliberation on the positions and qualifications of candidates is integral to our system of government, and electoral speech may have its most profound and widespread impact when it is disseminated through televised debates. A majority of the population cites television as its primary source of election information, and debates are regarded as the ‘only occasion during a campaign when the attention of a large portion of the American public is focused on the election, as well as the only campaign information format which potentially offers sufficient time to explore issues and policies in depth in a neutral forum.’” *Arkansas Educational Television Commission v. Forbes*, 118 S.Ct. 1633, 1640 (1998) [IS THIS QUOTING ANOTHER CASE?].

access to television and thus the quality of political discourse might be improved.

The Commission has not reported on its findings.

IV. The Commission's Failure to Act Has Been Recognized by Its Own Commissioners and Oversight Committee.

The Commission's repeated failure to address broadcasters' public interest obligations in the 1997 NPRM, the 1999 NOI and the 2000 NPRM has not gone unnoticed. FCC Commissioners Michael Copps and Jonathon Adelstein have been vocal about the importance of resolving the public interest obligation debate. During the Commission's consideration of the dual and multicast carriage issues in 2005, Commissioner Copps stated:

“We are told to act now because this proceeding has been pending for so long. Other items integral to this one, prerequisites for today's vote, have been around even longer. Consider that in 1999, more than a year before our first must-carry vote, we opened a proceeding on the public interest obligations of digital TV broadcasters. And in that public interest proceeding, remember that we were not writing on a blank slate. Rather, we were addressing issues raised in a report from a Presidential advisory committee that was issued a full year before that. It is six years later now, and *this Commission still has not provided the American people with a clear idea as to how broadcasters' enhanced digital spectrum is going to improve our viewing experience.* The must-carry decision was a golden opportunity in which to consider this—but we let it slip away. Instead *we have a record of inaction that will go down, I believe, as the Commission's major failing in its efforts to move the digital transition forward.*”²⁹ [emphasis added]

Commissioner Adelstein echoed this sentiment, stating:

“For nearly two years, both internally and externally, I have consistently maintained that it would be premature to decide

²⁹ Statement of Michael J Copps in Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules (see http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-256701A4.doc) (emphasis added).

multicast carriage without assurance that each programming stream would indeed serve its local community through the imposition of concrete and meaningful public interest requirements... Unfortunately, for two years I was unable to engage the industry in an effective fashion to step forward and engage in public interest discussions. Illustrating the resistance, the NAB expressed hostility to the Commission even inquiring into broadcast localism. And aside from concluding a children's programming item last year, the Commission until today continued to sit on an enhanced public disclosure proposal and a more than five-year old general inquiry into digital public interest obligations."³⁰

In February 2007, these same commissioners repeated their warnings to the House Subcommittee on Telecommunications and the Internet. Commissioner Copps stated:

*"Consumer education and outreach are indispensable in gaining consumer acceptance of DTV... Another—and critically important—step we could take is to revive some of our long dormant inquiries into the public service obligations of TV and radio broadcasters after the digital transition. I believe that resolving these questions as soon as possible will help consumers understand the benefits of going digital, which will in turn allow them to make the appropriate buying decisions in advance of the transition."*³¹ [emphasis added]

And Commissioner Adelstein stated:

"The FCC must develop DTV public interest obligations and encourage more PSAs. First, in order to maximize the benefits to the American people, the Commission needs to determine DTV broadcasters' public interest obligations. This proceeding has been pending since 1999, and the Commission has failed to

³⁰ Statement of Jonathan Adelstein in Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules; CS Docket No. 98-120; Second Report and Order and First Order on Reconsideration (see http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-256701A6.doc).

³¹ Responses of FCC Commissioner Michael Copps to Pre-Hearing Questions from the House Commerce Committee's Subcommittee on Telecommunications and the Internet. February 7, 2007 (see http://energycommerce.house.gov/Press_110/110-resp.FCC.020707.Copps.pdf) (emphasis added).

produce final rules. *Quantitative public interest obligations would encourage broadcasters to develop news and entertainment programming that is compelling and relevant to the viewing audience.*³² [emphasis added]

Additionally, in November 2005, the Commission's own Consumer Advisory Committee, expressed similar concerns. Citing a woeful lack of progress, the Committee recommended that FCC should, within six months, issue Reports & Orders in the matters of 1) Public Interest Obligations of DTV broadcast Licensees (MM Docket No. 99-360) and 2) Standardized and Enhanced Disclosure Requirements for Digital Television Broadcast Licensee Public Interest Obligations (MM 20 Docket No. 00-168).³³

V. Conclusion

As the foregoing history makes clear, the Commission has repeatedly failed to redefine broadcasters' public interest obligations in light of the nation's ongoing transition to DTV. In the words of Commissioner Copps, this "record of inaction" may "go down . . . as the Commission's major failing in its efforts to move the digital transition forward."

The obligation of broadcasters to serve local educational, informational, civic, minority, public safety and security, and disability needs of the public has been

³² Responses of FCC Commissioner Jonathan Adelstein to Pre-Hearing Questions from the House Commerce Committee's Subcommittee on Telecommunications and the Internet. February 7, 2007 (see http://energycommerce.house.gov/Press_110/110-resp.FCC.020707.Adelstein.pdf) (emphasis added).

³³ Federal Communication Commission's Consumer Advisory Committee. "Recommendation Regarding Consumer Interest Obligations of Digital Television Broadcasters." November 18, 2005 (see http://www.fcc.gov/cgb/cac/nov05_dtv_recommendation.html).

created by statute and upheld by the courts. Further guidance from the Commission is necessary to clarify how these public interest obligations apply to DTV broadcasters and to answer outstanding questions raised by the increased technological capabilities of the digital medium. Benton urges the Commission to issue clear, concrete guidelines on this subject, and to provide notice to regulated entities and the public regarding how broadcasters will continue to fulfill their public interests obligations in the digital age.

Respectfully submitted,

BENTON FOUNDATION

By: /s/ Charles Benton
Charles Benton
Chairman and CEO
BENTON FOUNDATION
1625 K Street, NW 11th Floor
Washington, DC 20006
847.328.3040
cbenton@benton.org

April 28, 2008

Appendix A

**MINIMUM PUBLIC INTEREST REQUIREMENTS FOR
DIGITAL TELEVISION STATIONS**

Submitted by the
Advisory Committee on Public Interest Obligations of Digital Television
Broadcasters

Recommendation 3: Minimum Public Interest Requirements

Recommendation:

The FCC should adopt a set of minimum public interest requirements for digital television broadcasters.

The Advisory Committee believes that having the broadcast industry adopt a strong set of voluntary standards of conduct, created and administered by the National Association of Broadcasters, would be a highly desirable step toward creating a digital world meeting the needs and interests of the American public. The Advisory Committee nevertheless recognizes an additional reality: not all broadcasters will subscribe to voluntary guidelines. Importantly, a large number of broadcast stations—perhaps as many as 400—are not members of the NAB and thus would not be affected by an industry-drafted and administered code.

Therefore, despite the Committee's stated preferences for voluntary self-regulation and maximum broadcaster flexibility, the Advisory Committee recommends that the FCC adopt a set of mandatory minimum public interest requirements for digital broadcasters. These minimum standards should be drafted in a way that would not impose an undue burden on digital broadcast stations, and should apply to areas generally accepted as important universal responsibilities for broadcasters—as well as for cable and satellite providers. Any set of minimum standards should be drafted by the FCC in close conjunction with broadcasters and representatives of the public, and phased in over several years beginning with stations' transmission of digital signals.

We have a broad consensus on the Advisory Committee that there should be minimum standards. However, our Advisory Committee is not unanimous in its recommendation about what those standards should be, or what form they should take. Some of the disagreements in this regard, including whether areas like free political time should be included in minimum standards, are expressed in the

individual views of Advisory Committee members found in [Section IV](#) in this report. More generally, we have sharply different views about the specificity of minimum standards. Many of our committee members endorse the idea of detailed standards with defined numerical guidelines of performance, believing that the only way to make standards work and to evaluate whether stations meet them is to make the standards specific. However, others, including many broadcasters on the panel who endorse the concept of minimum standards, object vociferously to that idea, believing that detailed standards with numerical quotas reflect an outdated model of regulation, and simply do not fit the diverse character of digital television stations around the country.

After much discussion, and having reviewed the product of a working group of the Advisory Committee led by James. F. Goodmon of Capitol Broadcasting, the Committee recommends the following categories for minimum standards for digital broadcasters:³⁴

- 1. Community Outreach.** Digital stations should be required to develop a method for determining or “ascertaining” a community’s needs and interests. This process of reaching out and involving the community should serve as the station’s road map for addressing these needs through news, public affairs, children’s and other local programming, and public service announcements. Further public input should be invited on a regular basis through regular postal and electronic mail services. The call for requests for public input should be closed captioned. The stations should regularly report during the year to the public on their efforts.
- 2. Accountability.** Whatever the mandatory minimums, stations should report quarterly to the public on their public interest efforts, as outlined in [recommendation 1](#), above.

³⁴ In addition to the following categories, the Advisory Committee assumes that the Children’s Television Act will apply to digital broadcasting as it does to analog.

3. Public Service Announcements. A minimum commitment to public service announcements should be required of digital television broadcasters, with at least equal emphasis placed on locally produced PSAs addressing a community's local needs. PSAs should run in all day parts including in primetime and at other times of peak viewing.

4. Public Affairs Programming. A minimum commitment to public affairs programming should be required of digital television broadcasters, again with some emphasis on local issues and needs. Such programming should air in visible time periods during the day and evening. Public affairs programming can occur within or outside regularly scheduled newscasts, but is not defined as coverage of news itself.

5. Closed Captioning. A digital broadcast station should provide closed captioning of PSAs, public affairs programming, and political programming. Captioning in these areas should be phased in over the first 4 years of a station's digital broadcasts, where doing so would not impose an undue burden, but should be completed no later than the FCC-imposed deadline of 2006 for captioning most programming.

MUST CARRY

Our recommendation for mandatory minimum standards stands alone. But it also expresses a recognition that in the digital era it is in the public interest for television broadcasting, which meets significant public interest obligations, to reach all American homes as soon as possible. To “preserv[e] the benefits of free, over-the-air broadcast television”³⁵ in a digital world, the Advisory Committee recommends that appropriate governmental authorities adopt ways, including digital “must carry” by cable operators, to expedite the widespread availability of digital broadcast television to the public. Congress has required cable operators to carry broadcasters' digital signals. In addition, the intent of the

³⁵ Turner Broad. Sys. Inc. v. FCC, 117 S. Ct. 1174, 1186 (1997).

Telecommunications Act of 1996 was to expedite the advance of digital broadcasting.³⁶ If it is in the public interest to have digital television broadcasting available as soon as possible to the largest number of Americans, policies that encourage that availability should themselves be encouraged, in a manner that does not disadvantage smaller broadcasters as compared to larger broadcasters, and that recognizes the important role of public broadcasting. The Advisory Committee recognizes that implementation of digital “must carry” poses many difficult questions, including technological ones, which the FCC is exploring in an ongoing rulemaking.

³⁶ See e.g., 47 U. S. C. §336(a)(1) (limiting “the initial eligibility for [advanced television service] licenses to persons that . . . are licensed to operate a television broadcast station or hold a permit to construct such a station”).

MINIMUM PUBLIC INTEREST REQUIREMENTS FOR DIGITAL TELEVISION STATIONS

Submitted by Working Group on Minimum Public Interest Standards

Mandated Minimum Requirements

A. Community Outreach. Stations should be required to develop a method for determining or “ascertaining” a community’s needs and interests. This process of reaching out and involving the community should serve as the station’s road map for addressing those needs through news, public affairs programming, and public service announcements. Further public input should be invited on a regular basis through regular postal and electronic mail services. The call for requests for public input should be closed captioned. On a quarterly basis, the stations should report to the Federal Communications Commission and the public on how ascertained needs determined management decisions on developing public interest programming.

B. Accountability. Whether or not there are required minimums, stations should report quarterly to the FCC and the public on their public interest efforts. This report would include quantitative and qualitative information about PSAs, public affairs programming, news programs, children’s programs, ascertainment, etc. These quarterly reports should be broadcast by the station and also provided through an on-line internet service. In addition, we believe the NAB Public Interest Report provided valuable information to this Committee and others and we would encourage the NAB to offer this report on an annual basis. Standardized Quarterly Reports from the stations would aid the NAB in this effort. (Another subcommittee has been assigned the task of preparing a proposed quarterly checklist for stations to place in their public files.)

The station’s public file documents would be made available by mail or posted through an on- line service to the community. “Electronic filing” opportunities for stations should be explored by the FCC.

C. Public Service Announcements. A minimum number of public service announcements should be required with an emphasis placed on locally-produced PSAs addressing the community’s local needs. A certain percentage of those PSAs should be mandated to run in prime time and other day parts. (See Attachment for a suggested range of required numbers for PSAs and for a suggested phase-in period.)

D. Public Affairs Programming. Each broadcast station also should be required to devote a minimum amount of time to public affairs programming, again with an emphasis on local issues and needs. Highly visible time periods should also be spelled out for these important programs. Segments within a regularly scheduled newscast should not be counted toward the minimum time requirements for public affairs programming. (See Attachment for suggested minimum requirements and a suggested phase-in period.)

E. Free Political Programming. Programming time should be set aside for key political races. One of two methods could be selected for this requirement:

(1) Broadcasters should provide at least five minutes of free political discourse each evening for the thirty nights prior to a primary or general election of candidate-centered races. Those programs should air between 6 p.m. and 11:30 p.m. In no case, would the minimum length of these political blocks be less than two minutes.

(2) Broadcasters would offer at least four hours of free political program time in the 60 days preceding primaries or general elections. One-half of this programming should be broadcast between 6 p.m. and 11:30 p.m. (For example, stations could program one-half hour per week for eight weeks prior to the election.) Station management could make the decision on how to block the time.

In either selection made above, news interviews of candidates would not count toward the total requirements of time.

Large political races often pose problems for broadcasters because of the sheer number of offices and candidates available. Local broadcasters should be encouraged to work together to provide outlets for as many candidates as possible. As an example, stations could work together to divide the offices and candidates among themselves.

F. Closed Captioning. A broadcast station should be required to provide closed captioning of all PSAs, public affairs programming, and political programming. A station should provide one fourth of such captioning by the close of the first year of its digital transmission, and increase the amount of such captioning by one fourth over each subsequent year. Because most stations will begin digital transmissions after 2002, this schedule will be consistent with the captioning schedule imposed by recent FCC rules that require most new programming to be captioned by 2006.

G. Lowest Unit Charge. The current “lowest unit charge” system used by stations for political advertising is very complex and difficult for stations and candidates to administer. Further, because of a change in industry sales policies to more of an “auction” selling system, the current “lowest unit charge” plan is confusing. For purposes of simplification and to provide a preferred rate to candidates, the current “lowest unit charge” used by stations shall be replaced by a “bonus rate” plan whereby one bonus political spot would be provided for every three spots paid for by the candidate. These “bonus rates” would apply only in commercials where the candidate appears and voices 75 percent of the total commercial spot.

H. Issue Advertising. Recent years have seen a sharp expansion of television advertising close to elections that qualifies as “issue advocacy,” falling outside the legal definition of political advertising but is obviously purchased by groups with names like “Citizens for Good Government,” that disguise from viewers the sponsor or founder of the message. To preserve the principle of disclosure to the public, stations should require purchasers of issue advertising, who use the name

or likeness of a candidate for office within the viewing area of the station, to provide full information about the sponsor and officers of organizations funding the advertising within sixty days of an election, which the station should in turn make public before the election.

I. Multi-casting. Digital television offers opportunities for broadcasters to carry programming on multiple channels. And while the committee has discussed many alternatives for providing public interest requirements for these additional channel opportunities, it is the subcommittee's recommendation that a station's primary channel must meet all the public interest minimum requirements outlined in this document. The larger committee should have some latitude in developing requirements for these additional channels but in no case should a broadcaster be allowed an opportunity to pay a fee rather than meet these requirements on any channel unless that channel is a designated "ancillary" channel under FCC rules and a government imposed fee is charged.

J. Diversity in Employment. The committee recognizes that Equal Opportunity Rules implemented by the FCC resulted in significant improvements in diversity of employment in the broadcast industry. Realizing the courts have, at this time, invalidated those rules, the committee encourages the FCC to look for other opportunities to establish employment standards that meet the legal criteria and ensure non-discrimination in employment practices. If this is not possible, individual broadcasters should be encouraged to develop non-discriminatory policies for employment under a voluntary code.

MINIMUM PUBLIC INTEREST REQUIREMENTS FOR DIGITAL TELEVISION STATIONS

Submitted by Working Group on Minimum Public Interest Standards

Attachment

These are Proposed Ranges and Phase-In Periods for PSAs and Public Affairs Programming Requirements.

Public Service Announcements.

(1) Proposed range. The suggested range for the number of public service announcements required is from 110 to 150 per week for each station or channel. The suggested breakout by time period follows:

6:00 a.m. – 4:00 p.m. 40 – 60 4:00 p.m. – 11:30 p.m. 30 – 40 11:30 p.m. – 6:00 a.m. 40 – 50

(2) Local Emphasis. At least one half of the spots should be locally-produced and directed toward local issues.

(3) Phase In Period. PSA requirements would be phased in with approximately one-third of the PSAs required in the first year of digital transmission, one third in the second year, and all numerical requirements met in the third year.

Public Affairs Programming. While we suggest that broadcasters be required to carry at least two hours of local programming each week, a suggested phase-in period might allow the following:

Year one: Weekly, one-half hour, locally-produced public affairs programming

Year two: Weekly, one hour or two half hours of programming

Year three: Weekly, two hours of public affairs programming

The first one-half hour of programming should be carried between the hours of six p.m. and midnight.

In year two and thereafter, one-half of all public affairs programming should be (a) broadcast between six p.m. and midnight and (b) locally produced and aimed at local community needs and interests.

Free Political Programming. Political programming should not be phased in. Minimum requirements should be met following implementation.