

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

In the Matter of)	
)	
Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations)	MM Docket No. 00-168
)	
Extension of the Filing Requirement For Children's Television Programming Report (FCC Form 398))	MM Docket No. 00-44
)	
Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission)	OMB Control No. 3060-0214
)	

**COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS
ON PROPOSED INFORMATION COLLECTION REQUIREMENTS**

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The National Association of Broadcasters (“NAB”),¹ by its attorneys, hereby submits these comments in response to the Commission’s Paperwork Reduction Act Notice regarding the information collection mandated by the above-captioned *Enhanced Disclosure Order*.²

I. INTRODUCTION AND SUMMARY

The *Enhanced Disclosure Order* modifies the Commission’s rules to require television broadcasters to prepare each calendar quarter a new Standardized Television Disclosure Form, FCC Form 355, and to place the form in their public inspection file.³ Reversing nearly 25 years of consistent Commission policy, Form 355 replaces the current quarterly issues-programs list

¹ NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Commission and other federal agencies, and the courts.

² See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 23 FCC Rcd 1274 (2008) (“*Enhanced Disclosure Order*”); Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested, 73 Fed. Reg. 13541 (Mar. 13, 2008) (“PRA Notice”).

³ *Enhanced Disclosure Order*, 23 FCC Rcd at 1287.

and requires each television station to compile and provide extraordinarily detailed information regarding each program or program segment aired, as well as information about how the licensee determined the programming needs of its community and designed responsive programming.⁴ The *Enhanced Disclosure Order* also requires television broadcasters to make their public inspection files available on their websites, with limited exceptions for certain material.⁵

Consistent with the Paperwork Reduction Act (“PRA”),⁶ the Commission is asking for comment on, *inter alia*, “[w]hether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility,” and “the accuracy of the Commission’s burden estimate”⁷ Based upon these comments, the Commission must certify to OMB that the collection of information meets the standards set out in the PRA, which include, *inter alia*, that the collection “is necessary for the proper performance of the functions of the agency, including that the information has practical utility,” “reduces to the extent practicable and appropriate the burden,” and “is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond.”⁸ As discussed below, however, the Commission cannot meet these standards and thus cannot make the required certification. The Commission’s estimate of the burden imposed upon broadcasters by the new Form 355 and on-line posting requirements is wildly inaccurate and does not reduce the burden to the extent practicable. Nor is Form 355 unambiguous and understandable. Further, the information collections are not necessary for the proper

⁴ *Id.* at 1290-93.

⁵ *Id.* at 1277-86.

⁶ 44 U.S.C. §§ 3506(c)(2)(A)(i),(ii).

⁷ PRA Notice, 73 Fed. Reg. at 13541.

⁸ 44 U.S.C. § 3506(c)(3)(A), (C), (D).

performance of the Commission's functions, and the Commission overstates the benefits of this form.

The Commission has radically understated the associated information collection burdens *by more than 1,000 percent.*⁹ NAB estimates that the new Form 355 alone will result in a net increase of approximately *2.6 million burden hours* per year rather than the 254,811 net burden hours increase estimated by the Commission.¹⁰ This works out to a net increased burden of approximately 21.5 hours per station per week, rather than the 2.1 hours per station per week estimated by the Commission. As explained below, based on information from stations' actual experiences with the form, NAB estimates that the gross (total) burden of Form 355 is over four million burden hours per year, exceeding the gross burden of the former television program logging requirement, which, before the Commission eliminated it in 1984, had been deemed by the then-General Accounting Office ("GAO") to be the single largest paperwork burden imposed on business by the Government.

For all these reasons, NAB urges the Commission not to submit its PRA certification of Form 355 to OMB. At the very least, the Commission must recognize the true magnitude of

⁹ The Commission has not previously asked for comment on the true costs and burdens caused by Form 355 as adopted. The Commission appears to have taken the text of Form 355 virtually unchanged from an *ex parte* filing by Public Interest, Public Airwaves Coalition made in 2004, well over three years after the comment cycle in this matter closed. *Enhanced Disclosure Order*, 23 FCC Rcd at 1290-91.

¹⁰ See PRA Notice, 73 Fed. Reg. at 13542. NAB calculated the details of the Commission's estimate of the net burden of Form 355 and on-line posting rules by first taking the Total Annual Burden of 2,072,814 hours reported in the PRA Notice, *id.*, and subtracting the Total Time Burden of 1,818,003 hours for complying with the Commission's existing TV and cable public inspection rules as presented on the Office of Management and Budget ("OMB") website. See http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200803-3060-006 (last viewed April 9, 2008). This calculation produced a net increase of 254,811 burden hours associated with Form 355 and the on-line posting rules. NAB then divided this net increase by 2315, the total number of VHF/UHF/Class A stations as reported in the Media Bureau's Report, "Broadcast Station Totals as of December 31, 2007" (rel. March 18, 2008), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280836A1.doc. This produced an annual burden of approximately 110 hours per station, or 2.1 hours per station per week.

what it is doing. Moreover, given the numerous legal challenges the Commission faces with regard to the new Form 355 and on-line reporting requirements, it is far from clear that these requirements will remain intact.¹¹ To avoid a premature and potentially unnecessary OMB review process, the Commission should decline to submit these requirements to OMB for approval until after pending petitions for reconsideration and NAB's pending appeal of the *Enhanced Disclosure Order* have been resolved.

II. THE COMMISSION SIGNIFICANTLY UNDERESTIMATES THE REPORTING BURDENS ASSOCIATED WITH THE NEW FORM 355 AND ON-LINE POSTING REQUIREMENTS

A. The Commission's New Form 355 Requirement Will Impose Significant Reporting Burdens on the Television Broadcast Industry

Prior to 1984, the Commission required television broadcasters to maintain a contemporaneous listing of all programs they broadcast, including the program type and source.¹² According to a 1978 GAO report, this program logging requirement was the single

¹¹ Several parties filed petitions for reconsideration of the *Enhanced Disclosure Order* asking the Commission to significantly revise or eliminate altogether the Form 355 and on-line posting requirements. See Petition for Reconsideration of Broadcasting Licenses Limited Partnership *et al.* (filed Apr. 14, 2008) ("Broadcasting Licenses Petition"); Petition for Reconsideration of Northern California Public Broadcasting, Inc. (filed Apr. 14, 2008); Joint Petition for Reconsideration of Block Communications, Inc. *et al.* (filed Apr. 14, 2008); Joint Petition for Reconsideration of the Named State Broadcaster Associations (filed Apr. 14, 2008); Petition for Reconsideration of Ball State University *et al.* (filed Apr. 14, 2008); Joint Petition for Partial Reconsideration and Clarification of Association of Public Television Stations and Public Broadcasting Service (filed Apr. 14, 2008); Joint Petition for Reconsideration of Alabama Educational Television Commission *et al.* (filed Apr. 14, 2008). NAB did not file for reconsideration but has filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit challenging the *Enhanced Disclosure Order*. See *Nat'l Ass'n of Broadcasters v. FCC*, Case No. 08-1135 (filed Mar. 27, 2008).

¹² *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 FCC 2d 1076, 1106 (1984) (subsequent history omitted) ("*Commercial TV Deregulation Order*"). These logs had to be maintained for a period of two years and, although the logs were not required to be filed with the Commission, licensees were required to make these logs available for public inspection if the requester of the information met certain procedural safeguards. See *id.*

largest government burden on business in the United States in terms of total burden hours, with a burden of nearly 2.5 million hours per year.¹³

In light of this extraordinary burden, the Commission eliminated its television program log requirement in favor of a requirement that, in its slightly revised current form, requires broadcasters to place lists of programming that provide the station's most significant treatment of community issues in the station's public inspection file on a quarterly basis.¹⁴ The Commission reasoned:

The quarterly, no limit issues/programs list is capable not only of providing data needed to evaluate a licensee's individual performance but can be utilized to monitor the effect of the action taken earlier in this document deregulating the commercial television broadcast service. We believe this approach is the best means of meeting our information needs while minimizing the recordkeeping burdens on licensees.¹⁵

The Commission estimated that moving from program logs to the quarterly issues-programs list for television broadcasters would reduce the record keeping burden by more than 1.9 million work hours, *i.e.*, to no more than 568,000 hours per year or 647 hours per station per year.¹⁶

The Commission has now reversed course by adopting a form that is, for all practical purposes, a program logging requirement. In the Commission's view, the new requirements "will not be unduly burdensome for licensees" because much of the information required is

¹³ *Id.* (citing GAO, *Federal Paperwork: Its Impact on American Business*, 43-44 (1978)).

¹⁴ *Id.* at 1110-11. *See also* 47 C.F.R. §§ 73.3526(e)(11)(i), 3527(e)(8).

¹⁵ *Commercial TV Deregulation Order*, 98 FCC 2d at 1111.

¹⁶ *Id.* at 1109 n.110 (reduction of at least 1.9 million work hours), 1138 (Appendix C) (878 television licensees as of April, 1984). NAB estimated the burden hours associated with the issues-programs list by subtracting the 1.9 million reduction in burden hours resulting from the change from program logs to issues-programs lists from the total burden hours for the program logging requirement, 2,468,000 hours. *See id.* at 1106. This resulted in a total of 568,000 burden hours for the television issues-programs list. NAB then divided the total burden hours for the issues-programs list by 878, the number of television stations in 1984 obligated to maintain the issues-programs list. This resulted in an estimate of approximately 647 burden hours per station per year.

already provided in the quarterly issues-programs list.¹⁷ This conclusion seriously misapprehends the enormous burdens each station will incur to track and compile information, and then complete the Form 355. Even a cursory review of the Form 355 belies the Commission's conclusion.

1. Section 2 of FCC Form 355 requires each station to review, gather, and maintain an enormous amount of data regarding virtually all of its programming

Section 2 of the new Form 355 requires each television station to track and review all programs or, in most instances, program segments to determine whether they fall within one or more of 13 programming categories: (1) high definition; (2) national news; (3) local news produced by station; (4) local news produced by entity other than station (identify the entity); (5) local civic affairs; (6) local electoral affairs; (7) independently produced programming; (8) other local programming; (9) unpaid public service announcements; (10) paid public service announcements; (11) closed captioned programming; (12) programming for underserved communities; and (13) religious programming.¹⁸ Each station will also have to determine whether each program or, in most instances, program segment was broadcast on a primary or non-primary channel, and whether it was video described, or related to a current emergency.¹⁹

A station must also provide additional detailed information regarding each program or, in most instances, program segments.²⁰ The information required, however, is not uniform, but differs depending on the category.²¹ For national news, local news, local civic affairs, and local electoral affairs programming, for example, each station must indicate with respect to each

¹⁷ *Enhanced Disclosure Order*, 23 FCC Rcd at 1287, 1292.

¹⁸ *Id.* at 1305-08.

¹⁹ *Id.*

²⁰ *Id.* at 1306-09.

²¹ *Id.*

program or segment: (1) the title; (2) the dates/times; (3) the length; as well as whether it has been (4) aired on the primary channel; (5) locally produced; (6) previously aired on this or any other station; (7) part of a regularly scheduled news program; and (8) broadcast for payment or any sort of consideration to the licensee or any related organization or entity.²² For independently produced programming, a station must provide (1) the title, (2) the dates/times aired, (3) the producer, (4) the length, and (5) the number of times aired.²³ Stations must report on PSAs aired during the hours of 6 a.m. – 12 a.m., and must also keep track of the percentage of times PSAs were aired during prime time (but only for unpaid PSAs).²⁴ Stations will also have to review each PSA in order to evaluate the “general goal” of the PSA, but the Commission provides no guidance regarding how a station is to determine what the general goal of a PSA may be. Local programming, programming for underserved communities, and religious programming each require slightly different information.²⁵

Thus, at a minimum, each station is required to review and categorize every minute of its programming and provide detailed information regarding each categorized program or program segment. With regard to news programming, each station will have to review every news broadcast looking for the elements that will allow the station to categorize individual stories and segments for the report. The station must also be careful to subtract time for local civic affairs and local electoral affairs programming from local and national news programming. This task is further complicated by the fact that much news is “live” or “breaking” news and is not scripted,

²² *Id.*

²³ *Id.* at 1307.

²⁴ *Id.* at 1308.

²⁵ *Id.* at 1307-08.

making categorization exceptionally difficult for such stories, voiceovers, or live breaking interviews.

Broadcasters will not only have to review each and every program or program segment, but also will have to undertake due diligence research with regard to that programming in some instances. The instructions to Form 355 define independently produced programming as:

[P]rogramming aired during prime-time that is produced by an entity not owned or controlled by an owner of a national television network, including but not limited to ABC, CBS, NBC, and FOX. *If an owner of a national television network owns or controls more than a one-third financial interest in the program, acts as the distributor of such program in syndication, or owns the copyright in such program, the owner of a national television network will be considered to be the producer of that program.*²⁶

In other words, to determine whether a given program or programming segment is independently produced programming, which it is required to do for every program run in prime time, a station must investigate the financial arrangements underlying the programming and the property rights associated with that programming.

Similarly, for several categories of programming, broadcasters are required to indicate whether such program or programming segment “has previously aired on this or another station.”²⁷ Thus, stations will need to research whether each of the relevant programs or program segments it airs has been previously aired.

Completing Form 355 is made even more difficult by the lack of clarity and the absence of detailed instructions, particularly with regard to Section 2.²⁸ For instance, the instructions to section 2(g) direct stations to list “all locally oriented programming that includes significant

²⁶ *Id.* at 1302 (emphasis supplied).

²⁷ *Id.* at 1306-07.

²⁸ The lack of clarity discussed in the examples that follow underscore that the Commission cannot certify that Form 355 “is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond,” as required by the PRA. *See* 44 U.S.C. § 3506(c)(3)(D).

treatment of community issues. . . .”²⁹ Section 2(g) of the Form, by contrast, asks stations to list “all locally originated programming”³⁰ The terms “locally oriented programming” and “locally originated programming,” however, are not synonymous – programming may be locally oriented and not be locally originated and vice versa.

Form 355 also calls for a number of judgments as to the classification of each program and program segment, but provides little to no guidance as to how those judgments are to be made. There are also threshold definitional questions that Form 355 leaves unanswered. Sections 2(b), (c), (d), (e), (g), (h), and (i) require information regarding programs or program segments that “include significant treatment of community issues,” but nowhere does the Commission define this term. This leaves broadcasters to wrestle with questions such as what is significant treatment of community issues in the context of a news broadcast, whether local or national, or other programming.

Indeed, even determining whether a program segment constitutes local news or other local programming will be challenging. By way of example, assume a station airs a report covering an elected official who is running for reelection and pledges to support a long-standing local transportation project. Such a report could reasonably be characterized as local civic affairs programming, local electoral affairs programming or local news, and the Commission’s definitions provide no guidance regarding how broadcasters are expected to make this judgment.

The Commission similarly fails to provide any reasonable direction regarding what constitutes programming “aimed at serving the needs of underserved communities, *i.e.*, demographic segments of the community of license to whom little or no programming is

²⁹ *Enhanced Disclosure Order*, 23 FCC Rcd at 1302.

³⁰ *Id.* at 1307.

directed.”³¹ As currently drafted, this category is internally inconsistent – if a station provides any significant programming to a foreign language community, for example, then the community has more than a “little” programming directed at it and is presumably not underserved.

The burdens associated with tracking, categorizing and reporting every minute of programming will only grow over time as broadcasters transition to digital technology and begin multicasting. Stations will then have to track and report programming not simply on a single channel but on multiple channels.

2. Sections 4 and 5 of FCC Form 355 require stations to provide even more information regarding programs or program segments that are closed captioned, video described, or related to a current emergency

Sections 4 and 5 require that stations review *all* their programming to determine whether the programming was closed captioned, video described or related to a current emergency.³² Specifically, Form 355, Section 4(a) requires each station to (1) confirm that it is in compliance with the closed captioning requirements, (2) state the number of hours and percentage of non-exempt programming in the four relevant programming categories (new English language programming, pre-rule English language programming, new Spanish language programming, and pre-rule Spanish language programming) that was aired during the quarter, and (3) list programs that were not captioned due to an exemption and the basis for the exemption.³³ This requirement too carries significant burdens. Section 79.1(d) of the Commission’s Rules contains 13 separate exemptions to the closed captioning requirements, including programming distributed between 2 a.m. and 6 a.m. local time.³⁴ Thus, stations will have to list in Section 4(a)

³¹ *Id.* at 1308.

³² *Id.* at 1309-10.

³³ *Id.* at 1309.

³⁴ *See* 47 C.F.R. § 79.1(d).

every non-captioned program aired between 2 a.m. and 6 a.m. (even though they are categorically exempt) as well as any other program that was not closed captioned.

Section 4(b) requires each station to (1) confirm whether it voluntarily provided video description services for the vision impaired, (2) state the total number of hours of video description, (3) state the type of programming that contained the video description, and (4) state the channel on which the video description was broadcast.³⁵

Section 5 requires each station to state whether, during the past quarter, it broadcast emergency information about a current emergency that was intended to further the protection of life, health, safety, and property as defined in 47 C.F.R. § 79.2 and to identify the channels on which such information broadcast and the situation that prompted the broadcast.³⁶ For each such broadcast, a station must also state whether that information was accessible to persons with disabilities consistent with the FCC's regulations and, if not, list the emergency information that was not accessible and the reason it was not accessible.³⁷ This section will be particularly burdensome since it requires stations to report every time any emergency information covered by the rules is broadcast (even the screen crawls broadcast for tornadoes, hurricanes, floods, icing conditions, heavy snows and "warnings and watches of impending changes in the weather")³⁸ and when such information is not accessible to persons with disabilities. This requirement is further complicated by the fact that such emergency broadcasts are not necessarily scripted and do not appear on pre-printed program logs.

³⁵ *Enhanced Disclosure Order*, 23 FCC Rcd at 1309.

³⁶ *Id.* at 1310.

³⁷ *Id.*

³⁸ 47 C.F.R. § 79.2(a)(2).

3. Sections 1, 3 and 6 of FCC Form 355 require stations to provide yet more information not directly related to the programs or program segments reported in the other sections of the form

Sections 1, 3 and 6 require each station to provide general identifying information about itself, describe its community outreach efforts and to identify and explain any local marketing agreements and joint sales agreements.³⁹ While the time required to complete these sections is less than the time needed to complete other portions of Form 355, filling-out Sections 1, 3, and 6 still constitute a part of the overall burden associated with the form. Section 1 is redundant in part, requiring stations to provide certain ownership information that is already provided in the stations' biennial ownership reports.⁴⁰ Also, identifying all affiliates and parent companies (including their type of ownership) can be a relatively complicated task for a number of stations. Further, by requiring stations to describe its community outreach efforts, Section 3 of the form appears to be a return to the formal ascertainment requirements the Commission previously eliminated as being overly burdensome.⁴¹

4. Stations must tabulate the programming data, record it on the form, and review the data collection

Each television station must gather, tabulate and record all of this information on the relevant portions of the form.⁴² Once all of this is accomplished, the Form 355 must be reviewed

³⁹ *Enhanced Disclosure Order*, 23 FCC Rcd at 1304-05, 1309-10.

⁴⁰ *Id.* at 1304.

⁴¹ *See Commercial TV Deregulation Order*, 98 FCC 2d at 1076.

⁴² *See generally Implementation of Section 22 of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 266, 277 (1993) ("Public reporting burden for this collection of information . . . includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.").

by the station manager who must execute and certify the information contained in the form.⁴³

All of these tasks will have to be repeated each and every quarter.

B. Individual Television Stations Estimate that the Burden of Complying with the Form 355 Requirement Will Exceed the Commission's Estimate of 2.1 Hours by Several Orders of Magnitude

The inescapable conclusion of NAB's review of Form 355 discussed above is that the form represents an additional regulatory burden substantially greater than the 2.1 hours per station per week the Commission estimates. In fact, data collected by NAB substantiates the conclusion that the Commission has radically understated the work involved in reviewing the form and instructions, reviewing all of the station's programming, gathering and maintaining the data required (including searching outside data sources where necessary), and completing and reviewing the form *by approximately 1,000 percent*.

NAB arranged with a number of stations to compile the information required by Form 355 for a one-week test period, complete the form for that seven-day period and estimate the amount of time involved.⁴⁴ In estimating the burdens of completing Form 355, each station counted the time for all efforts taken to compile and record the information (including obtaining information from others) and to complete the form. The results of this test confirm that the Commission underestimates the burden associated with the new information collection

⁴³ *Enhanced Disclosure Order*, 23 FCC Rcd at 1310-11.

⁴⁴ The following stations participated in the Form 355 trial run: Station WTNH, Hartford, CT (LIN Television); Station WISH-TV, Indianapolis, IN (LIN Television); Station KWCH, Wichita, KS (Sunflower Broadcasting Inc.); Station WCAX-TV, Burlington, VT (Mt. Mansfield Television Inc.); Station WOWT-TV, Omaha, NE (Gray Television Licensee Inc.); Station WTVF, Nashville, TN (NewsChannel 5 Network LLC (Landmark Communications Inc.)); Station WYTV, Youngstown, OH (Parkin Broadcasting of Youngstown License, LLC); Station WATE-TV, Knoxville, TN (WATE G.P); Station KLKN, Lincoln, NE (Citadel Communications LLC); Station WUNC-TV, Research Triangle Park, NC (University of North Carolina); Station WXII-TV, Winston-Salem, NC (WXII Hearst-Argyle Television, Inc.); and Station WJRT, Flint, MI (ABC).

requirements. On average, each participating station spent *approximately 34 hours* in a single week to compile and record the relevant information and complete the Form 355 for that week.⁴⁵

Assuming a burden of 34 hours per week, the total annual burden of responding to Form 355 will be approximately 4,092,920 hours,⁴⁶ *more than the burden associated with the former television programming log requirement, which GAO said was the most burdensome requirement imposed on business by the Government.*⁴⁷ The net increase in the total annual burden hours is approximately 2,595,115 (more than ten times the net increase of 254,811 annual burden hours estimated by the Commission).⁴⁸ Applying the average salary reported by the stations of \$33 per hour for the employees doing the work, this burden represents a gross cost of approximately \$135 million and a net cost of approximately \$86 million, which far exceeds the Commission's estimate of \$11.6 million for overall compliance with the public file rule.⁴⁹ These burden estimates reveal the extraordinary degree to which the Commission's estimates understate the total burden imposed by the *Enhanced Disclosure Order*.

⁴⁵ This average is roughly consistent with data provided in the Broadcasting Licenses Petition. Specifically, Broadcasting Licenses state that one station that undertook to complete the Form 355 with respect to a 24-hour period found that categorizing and reporting programming for a single day took 3.75 hours (or approximately 26 hours for a seven-day week). Broadcast Licenses Petition at 14.

⁴⁶ NAB estimated the total gross annual burden by multiplying 34 hours per week by 52 weeks per year and by a total of 2315 television licensees for a total of 4,092,920 hours.

⁴⁷ The number of television stations has increased from 878 in 1984 to 2315 today. *See supra* text at nn. 10, 16.

⁴⁸ NAB estimated the net increase in the total annual burden hours by first estimating the total annual burden associated with maintaining the issues-programs list today. NAB multiplied the 647 per station per year burden hours it estimated for the television issues-programs list, *see supra* text at n.16, by 2315, the number of television licensees required to maintain the issues-programs list today. This calculation results in a total annual burden of 1,497,805 burden hours for the issues-programs list requirement. NAB assumed that this figure would represent the burden saved by eliminating the issues-programs list and thus subtracted 1,497,805 hours from 4,092,920 hours, NAB's estimate of the total annual burden associated with Form 355. This results in a net increase in the total annual burden hours of approximately 2,595,115 burden hours.

⁴⁹ *See* PRA Notice, 73 Fed. Reg. at 13542.

C. The On-Line Posting Obligation Will Impose Additional and Significant Burdens on Television Broadcast Stations

An analysis of the on-line posting requirement further confirms that the Commission has underestimated the new reporting burdens imposed upon broadcasters. Indeed, the record before the Commission already contains substantial evidence demonstrating the costs and time burdens associated with converting and maintaining the public inspection file electronically.⁵⁰ The Commission, however, dismisses this evidence as “grossly inflated”⁵¹ and instead assumes that the cost of placing the public inspection file on a station’s existing website “would involve a one-time cost less than \$15,000 and the cost of maintaining that volume on a service should be less than \$20 a month.”⁵²

The Commission’s analysis assumes that placing the public file on the Internet should not be overly difficult in part because much of the material already exists in electronic format.⁵³ This conclusion, however, ignores the fact that many (if not most) of these electronic files are in the common Portable Document Format (“PDF”) and are thus not compliant with the Conformance Level A of the World Wide Web Consortium’s Web Content Accessibility (“W3C/WAI”) Guidelines.⁵⁴ Further, converting documents from PDF to a W3C markup

⁵⁰ NAB submitted a detailed consultant’s report, estimating the cost for scanning, converting, and indexing approximately 14,000 pages of documents to be \$128,000. *See* Comments of the National Association of Broadcasters, Attachment B (filed Dec. 18, 2000); *see also Enhanced Disclosure Order*, 23 FCC Rcd at 1277 (“According to Benedeck [Broadcasting], to convert a public inspection file to electronic format and index the documents would cost an estimated \$10,000. State Broadcasters Associations estimate that it would take a professional listserver approximately fifteen minutes to one and a half hours, at a cost of \$65 per hour, to post each page of a broadcast station’s public file.” (citations and footnotes omitted)).

⁵¹ *Enhanced Disclosure Order*, 23 FCC Rcd at 1278.

⁵² *Id.* at n.24.

⁵³ *Id.*

⁵⁴ The Commission requires the on-line public inspection file to be W3C/WAI Level A compliant. *Id.* at 1284-85. It is NAB’s understanding, however, that scanning documents — even all-text documents — into PDF does not result in files that comply with the Accessibility Guidelines, without additional steps

language, such as HTML or XML, is a complicated, multi-step process⁵⁵ that does not always create an accessible document.⁵⁶ The situation is further complicated for material such as maps and graphics for which the Accessibility Guidelines appear to require stations to provide text equivalents (*e.g.*, text descriptions of the contents of their coverage maps).⁵⁷

The Commission should also recognize the burdens stations will bear in complying with applicable privacy policies, rules, and statutes, as they relate to posting public inspection files on the internet. The Commission concludes, for example, that e-mails should be posted in the on-line public files “because stations will incur no cost other than the cost of electronic storage.”⁵⁸ In fact, however, each station will likely incur significant costs and burdens other than electronic storage. Stations will likely have to review each and every e-mail to identify and mask personal information, to assure that the submitters are of appropriate age, and then create a new electronic file of the masked e-mail.

III. THE PROPOSED COLLECTION IS NOT NECESSARY FOR THE PROPER PERFORMANCE OF THE COMMISSION’S FUNCTIONS

The burdens associated with the new Form 355 and on-line posting requirements articulated above are simply not justified given the limited benefits the Commission hopes to

being taken. *See* W3C, “Web Content Accessibility Guidelines 1.0,” Guideline 11, available at <http://www.w3.org/TR/WAI-WEBCONTENT/> (last visited April 10, 2008) (“Accessibility Guidelines”) (“Many non-W3C formats (*e.g.*, PDF, Shockwave, etc.) require viewing with either plug-ins or stand-alone applications. Often, these formats cannot be view or navigated with standard user agents Avoiding non-W3C and non-standard features . . . will tend to make pages more accessible to more people using a wider variety of hardware and software. When inaccessible technologies (proprietary or not) must be used, equivalent accessible pages must be provided.”).

⁵⁵ *See* Adobe, “Creating Accessible PDF Documents with Adobe Acrobat 7.0, A Guide for Publishing PDF Documents for Use by People with Disabilities,” Section 5: Converting scans to accessible Adobe PDF content, 28-35, available at <http://www.adobe.com/accessibility> (last visited April 10, 2008).

⁵⁶ *See* Accessibility Guidelines, Guideline 11.

⁵⁷ *Id.*, Guideline 1. The fact that stations can link to documents already on the Commission’s website also does not resolve any of these issues. Many, if not most, of these documents are PDF documents and, thus, not likely to be W3C/WAI-compliant.

⁵⁸ *Enhanced Disclosure Order*, 23 FCC Rcd at 1284.

obtain from these requirements. Specifically, Form 355 is not intended to mitigate any “rule violations by licensees or the failings of a particular station” or even the television industry generally, but rather merely to address a perception that the current issues-programs lists lack uniformity and accessibility to the public and to allow the public to “more effectively” participate in television license renewal proceedings.⁵⁹ Similarly, the on-line disclosure requirement is intended to make “material more accessible to the public.”⁶⁰

It is not at all clear how such modest goals warrant re-imposing regulatory requirements that were once the single largest regulatory burden on business in the United States. The new Form 355, for example, will not remedy any lack of uniformity among the issues-program lists. Indeed, it is likely that the form itself will produce an additional lack of uniformity. As discussed above, many of the program categories in Form 355 are closely related (*i.e.*, local news, local civic affairs programming, local electoral affairs programming, local programming) and could easily be misinterpreted by both broadcasters and the public.⁶¹ This is not a recipe for uniformity. Nor did the Commission consider how its uniformity goals could be achieved through less intrusive means, such as standardizing the current issues-programs reports.

The notion that Form 355 will assist members of the public to participate in license renewal proceedings through station comparisons is similarly flawed. The statutory standards for broadcast license renewals do not involve comparisons among stations.⁶² In short, the public’s ability to participate in renewal proceedings would not be significantly enhanced by any minimal uniformity created by Form 355. There are also less burdensome ways to assist the

⁵⁹ *Id.* at 1288, 1292.

⁶⁰ *Id.* at 1280.

⁶¹ *Id.* at 1292.

⁶² 47 U.S.C. § 309(k).

public in participating in stations' license renewals, such as by enhancing public awareness of the renewal process.

The on-line posting requirement also offers relatively limited, if any, additional public benefit. Stations are already required to make their public files available for inspection "at any time during regular business hours."⁶³ Also, a station that maintains its main studio outside of its community of license must make its public file available by mail and must be "prepared to assist members of the public in identifying the documents they may ask to be sent to them by mail."⁶⁴ Further, as the Commission recognizes, much of the material in question is already available to the public through the Commission's own website. Making such material available through each station's website is therefore a redundancy, not a new or different mechanism for accessing such information. Thus, it is not clear the degree to which posting public inspection files will actually improve the public's access to this information, which is already available at the stations' offices.⁶⁵

The Commission has also not considered less burdensome means of enhancing the public's access to information in stations' public files.⁶⁶ Especially because the Commission has not demonstrated any general or widespread problem with the public obtaining access to stations' public files, the agency should have considered less intrusive and burdensome

⁶³ 47 C.F.R. § 73.3526(c).

⁶⁴ *Id.* §73.3526(c)(2)(iii).

⁶⁵ This requirement thus conflicts with yet another PRA standard – that the information collection "is not unnecessarily duplicative . . ." 44 U.S.C. § 3506(c)(3)(B).

⁶⁶ As one option, various State Broadcasters Associations suggest that television stations could file certain additional information electronically with the Commission (*e.g.*, annual EEO reports) that is kept in public inspection files but is not currently available on the Commission's website. *See* Joint Petition for Reconsideration of the Named State Broadcasters Associations at 7 (filed Apr. 14, 2008). This would provide ease of access for members of the public via a single website, and would be much less burdensome than requiring thousands of stations to convert their paper public files for online posting.

alternatives, rather than requiring thousands of individual stations to post their public files online.

In short, the public benefits associated with the Commission's efforts to create a more uniform program reporting regime simply do not justify the extensive new burdens the Commission is placing on broadcasters. Indeed, when it eliminated the programming logging requirements almost 25 years ago, the Commission implicitly recognized that it would reinstate such requirements only where "there is significant market failure with respect to" non-entertainment programming.⁶⁷ The Commission has not identified such a market failure in this or in any other proceeding. A "costly general logging requirement" designed to "guard against the mere possibility that at some future time adequate amounts of non-entertainment programming may not be broadcast" is simply unjustified.⁶⁸ The Commission, however, is imposing the functional equivalent of a general logging requirement on television licensees without even considering whether there has been a significant market failure.

IV. CONCLUSION

As detailed above, the Commission radically underestimates the additional reporting burdens associated with stations complying with the reporting requirements of the *Enhanced Disclosure Order*. Moreover, the Commission overstates the benefits that would result from this vast expansion of its information collection requirements. The Commission simply cannot meet the standards for certification set forth in the PRA. The Commission therefore should decline to forward the information collection requirements to OMB for approval until such time as pending challenges to the *Enhanced Disclosure Order* have been resolved. At the very least, if the Commission does proceed to submit the requirements to OMB, it must correct its estimates to

⁶⁷ *Commercial TV Deregulation Order*, 98 FCC 2d at 1109.

⁶⁸ *Id.*

reflect the fact that it proposes to impose a monumental information collection burden of a magnitude unheard of for broadcasters in the past two and a half decades.

Respectfully submitted,

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