

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

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

COMMENTS OF THE WALT DISNEY COMPANY

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May 12, 2008

EXECUTIVE SUMMARY

The Walt Disney Company (“TWDC”) hereby submits these comments in response to the notice (“PRA Notice”) of the Federal Communications Commission (“FCC” or “Commission”) seeking comment on the information collection requirements imposed by the FCC in its *Enhanced Disclosure Order*—specifically, the requirement that broadcasters complete a standardized disclosure form, FCC Form 355 (“Form 355”), and post their stations’ public file to the Internet.

As an initial matter, these comments support, incorporate by reference, and supplement the extensive comments filed in response to the PRA Notice by the National Association of Broadcasters (“NAB”). In its comments, the NAB unequivocally demonstrates that the FCC’s proposed information collection burdens do not comply with the Paperwork Reduction Act of 1995 (“PRA”). The NAB provides extensive data to demonstrate that the total gross burden of Form 355 is well in excess of the information collection burdens of the FCC’s former program logging requirement which the General Accounting Office had deemed to be the single largest paperwork burden imposed by the federal government. In addition, the NAB demonstrates at length the ambiguity raised by Form 355’s “lack of clarity and absence of detailed instructions” and the lack of guidance regarding how to categorize programming. The NAB also explains that Form 355 is not necessary for the proper performance of the Commission’s functions because it provides only limited public interest benefits and because it is not “premised on the existence of rule violations or the failings of a particular station” or the industry generally.

The experiences of WJRT-TV, Flint, Michigan (“WJRT”), an ABC television station ultimately owned by TWDC, also demonstrate that the FCC has failed to estimate correctly the burdens imposed by Form 355. WJRT compiled most of the information required by Form 355, and completed Form 355, for a one week test period. WJRT estimates that this task took nearly 75 hours for that one week of programming, almost nineteen times greater than the maximum 52 hours per quarter estimated by the Commission, and WJRT did not review and analyze all programming required to be reported on Form 355.

In making its estimates, the FCC appears to have overlooked a critical issue—the fact that Form 355 cannot be completed without a review of every piece of programming on a segment-by-segment basis. Contrary to the FCC’s assertions, Form 355 is much more burdensome than the existing requirement to prepare quarterly issues/programs lists because Form 355 requires broadcasters to provide detailed information regarding the steps taken to ascertain community needs and to list *all* programming aired in various categories in the preceding quarter. Although the FCC states that Form 355 will serve the public interest by providing the public with uniform reports regarding coverage of community issues and by increasing public involvement in the license renewal process, the FCC fails to explain how these goals are furthered by Form 355.

The FCC’s proposed information collection requirements impose additional burdens on national television networks and their affiliates that the FCC likely has not

taken into account in its estimates. In order to meet the FCC's goal of uniform reporting, networks and their affiliates will be required to coordinate to ensure that programming is reported consistently and properly. Moreover, coordination will be required to enable local affiliates to ascertain whether a program qualifies as independently produced, or if a national network distributes the programming or owns or controls a financial interest in, or the copyright of, the programming. These are substantial burdens that cannot be overlooked in determining whether the proposed information collection complies with the PRA.

Finally, the requirement that broadcasters post email correspondence received from the public on the Internet imposes significant burdens on broadcasters. Broadcasters will be required to review each piece of email correspondence to ensure that the content of such correspondence does not make the station vulnerable to claims under libel, slander, invasion of privacy or other laws. The FCC has not considered these burdens.

In sum, these comments and the NAB's comments demonstrate that FCC cannot certify that the proposed information collection satisfies the standards mandated by the PRA.

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COMMENTS OF THE WALT DISNEY COMPANY

The Walt Disney Company (“TWDC”), by its attorneys, files these comments on behalf of the ABC Owned Television Stations¹ and The ABC Television Network in response to the notice of the Federal Communications Commission (“FCC” or “Commission”) seeking comment on the information collection requirements imposed by the FCC’s actions in the above-captioned proceedings.² These comments support,

¹ TWDC is the ultimate corporate parent of the following ten commercial television stations (collectively, the “ABC Owned Television Stations”): WABC-TV, New York, New York; KABC-TV, Los Angeles, California; WLS-TV, Chicago, Illinois; WPVI-TV, Philadelphia, Pennsylvania; KGO-TV, San Francisco, California; KTRK-TV, Houston, Texas; KFSN-TV, Fresno, California; WTVD(TV), Raleigh-Durham, North Carolina; WJRT-TV, Flint, Michigan; and WTVG(TV), Toledo, Ohio.

² See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, 23 FCC Rcd 1274 (2008) (“*Enhanced*”).

incorporate by reference, and supplement the extensive comments filed in response to the PRA Notice by the National Association of Broadcasters (“NAB”).³ In addition, these comments illustrate how the FCC has materially underestimated the burden of its proposed information collection requirements on television broadcast licensees, while simultaneously overstating the purported benefits of such requirements. As demonstrated herein and in the NAB Comments, the Commission cannot make the required certifications that the proposed information collection burdens comply with the standards established by the Paperwork Reduction Act of 1995 (“PRA”).⁴

I. INTRODUCTION

In the *Enhanced Disclosure Order*, the FCC reverses nearly 25 years of consistent Commission policy and adopts rules requiring television broadcast licensees to (a) prepare, on a quarterly basis, a new Standardized Television Disclosure Form (“Form 355”) and place such form in its public file and (b) post the contents of their stations’ public inspection files on the Internet.⁵ The FCC concludes in the PRA Notice without

Disclosure Order”); Notice of Public Information Collection(s) Being Reviewed by Federal Communications Commission, Comments Requested, 73 Fed. Reg. 13541 (Mar. 13, 2008) (“PRA Notice”).

³ See Comments of National Association of Broadcasters on Proposed Information Collection Requirements, OMB Control No. 3060-0214 (filed May 12, 2008) (“NAB Comments”).

⁴ See 44 U.S.C. §§ 3506(c)(3). As discussed in more detail in the NAB Comments, the Commission should refrain from submitting the proposed information collection burdens to the Office of Management and Budget (“OMB”) for review until all petitions for reconsideration and judicial appeals of the *Enhanced Disclosure Order* have been resolved to avoid a potentially unnecessary OMB review process that will waste scarce administrative resources.

⁵ See *Enhanced Disclosure Order* at para. 1.

explanation that Form 355 will impose an information collection burden of 2.5 to 52 hours per station per response.⁶

As demonstrated herein and in the NAB Comments, Form 355 requires television stations to compile and report an unprecedented amount of very detailed information, and the Commission has grossly underestimated the information collection burdens imposed by this requirement.⁷ Accordingly, the Commission cannot certify that its estimate of the amount of time necessary for the collection of information required by Form 355 represents an accurate estimate, as is required by the PRA. The Commission also has failed to demonstrate that its proposed collection of information satisfies the PRA's mandate that, *inter alia*, the collection (a) is necessary for the proper performance of the FCC, (b) is not duplicative with information otherwise accessible to the FCC, (c) has practical utility, and (d) is written clearly and unambiguously.⁸ In short, the Commission cannot certify that the proposed information collection burdens satisfy standards mandated by the PRA.⁹

II. DISCUSSION

A. **The NAB Comments Unequivocally Demonstrate that the Commission's Proposed Information Collection Burdens Do Not Satisfy the Standards Established by the PRA**

In its comments, the NAB presents extensive data demonstrating that the FCC has radically underestimated the reporting burdens associated with Form 355 and the online

⁶ See PRA Notice.

⁷ See PRA Notice (seeking comment on "the accuracy of the Commission's burden estimate").

⁸ See 44 U.S.C. §§ 3506(c)(3); 5 C.F.R. § 1320.5(d)(i)-(iii).

public file posting requirements. Specifically, the NAB (a) sets forth an assessment of the hours and costs that will be incurred to review the Form 355 and its instructions, review all programming, gather and compile required data, and complete Form 355 and (b) concludes that the FCC has understated these information collection burdens by approximately 1,000 percent. Indeed, the NAB estimates that the total gross burden of Form 355 is over four million hours per year, well in excess of the information collection burdens of the FCC's former program logging requirement, which the General Accounting Office had deemed to be the single largest paperwork burden imposed by the federal government. The sample survey of stations upon which the NAB based its burden estimate showed that participating stations spent an average of approximately 34 hours in a single week to compile and record the information needed for and to complete the Form 355. On a quarterly basis, this translates into 442 hours, as compared to the FCC's unrealistic estimate of between 2.5 to 52 hours per response. Based on this real world empirical data, the NAB correctly concludes that the Commission cannot certify to the OMB that it accurately has estimated the burdens imposed on broadcast stations by the proposed information collection, as is required by the PRA.

The NAB also demonstrates that, given the extensive and detailed information required by Form 355, the FCC cannot certify to the OMB that the proposed information collection has reduced the burden on respondents to the extent practicable and appropriate in accordance with the PRA. Although the Commission justifies Form 355 as

⁹ See 44 U.S.C. §§ 3506(c)(3).

not imposing an “unduly burdensome” requirement on licensees,¹⁰ the NAB Comments establish that just the opposite is true. For example, Form 355 requires every television station to review *all* programming responsive to issues facing their communities— basically, all of their local, syndicated and network news and public affairs programming, and all paid and unpaid public service announcements—on a segment-by-segment basis and categorize each segment in one of thirteen different categories. To further complicate the task, licensees also are required to subtract time for local civic affairs and local electoral affairs programming from national and local news programming. Licensees also must engage in due diligence to determine whether programming qualifies as independently produced or has been aired previously on another station. In addition, Form 355 requires licensees to provide detailed information regarding closed captioned and video described programming, as well as emergency broadcasts. Licensees also must describe their community outreach efforts in specific detail, a requirement that appears to be a return to the formal programming ascertainment requirements the FCC eliminated over twenty years ago as overly burdensome. These tasks will only become exponentially more burdensome as licensees begin to multicast more prevalently; indeed, these burdens could well provide a serious disincentive to broadcasters considering airing large amounts of news programming on their multicast channels. In short, a review of the NAB’s detailed description of the enormous amount of data required to complete Form 355 makes it clear that the FCC cannot possibly justify Form 355 as having reduced the regulatory burden on licensees to the extent practicable and appropriate.

¹⁰ See, e.g., *Enhanced Disclosure Order* at para. 34.

In addition, the NAB demonstrates at length the ambiguity raised by “the lack of clarity and absence of detailed instructions” for FCC Form 355 and the lack of guidance from the FCC regarding how to categorize programs. For example, the NAB points out the inconsistent use of the term “locally originated programming” in the instructions to Form 355 and the use of the term “locally oriented programming” in Form 355 itself, and the lack of instructions to explain whether the FCC considers these two terms synonymous despite their different meanings (*e.g.*, programming may be locally originated but not locally oriented). The NAB provides additional examples of lack of instruction on how to categorize programming or otherwise complete Form 355. The examples cited by the NAB illustrate that the FCC cannot certify that Form 355 satisfies the PRA’s mandate that information collections are written clearly and unambiguously.

The NAB also explains that Form 355 is not necessary for the proper performance of the Commission’s functions because it provides only limited public interest benefits and is not “premised on the existence of rule violations or the failings of a particular station” or the industry generally. Moreover, although the FCC claims that Form 355 will provide uniformity in program reporting, the vagueness and ambiguity of Form 355, the categories, and the reporting rules will inevitably produce just the opposite—wide variations in interpretation and application by broadcasters trying in “good faith” to comply with the FCC’s mandates.¹¹ Equally significant, as aptly pointed out by the NAB, the FCC’s belief that the Form 355 will improve public participation in the license renewal process through station comparisons is incorrect because such comparisons, even

assuming *arguendo* that the Form 355 generated uniform information, are not permitted under the statutory requirements for license renewal.

In sum, the NAB unequivocally demonstrates that the Commission simply has not met its burden to certify that the proposed information collection burdens comply with the standards established by the PRA. Accordingly, TWDC supports, and incorporates by reference, the NAB Comments and the arguments set forth therein.

B. ABC-Owned Television Station WJRT-TV's Attempts to Complete Form 355 Demonstrate that the Commission Has Grossly Underestimated the Burdens Imposed by Form 355

In the PRA Notice, the Commission estimates the burden imposed by Form 355 to be 2.5 to 52 hours per response. As an initial matter, the Commission has not explained in the PRA Notice how it made this determination. Thus, TWDC cannot address the accuracy of the assumptions underlying these estimates at this time. In addition, the Commission does not define the term “response” in the PRA Notice; however, TWDC assumes that the Commission is estimating that each television station will expend between 2.5 and 52 hours to compile the required information and complete Form 355 each calendar quarter to report the required information for the preceding quarter. Based on its own attempts to complete Form 355, TWDC believes the regulatory burden imposed by Form 355 for the ABC Owned Television Stations would easily average 75 hours per *week*—975 hours per quarter—or more.

TWDC arranged for WJRT-TV, Flint, Michigan (“WJRT”), one of the ABC Owned Television Stations, to compile the information required by Form 355, and to

¹¹ See *Enhanced Disclosure Order* at para. 43.

complete the form, for a mere one-week period, from April 14 through April 20, 2008 (the “Test Period”). WJRT estimates that this task—reviewing, categorizing and documenting 33 ½ hours of station-produced news programming plus ½ hour of station-produced public affairs programming¹² plus 163 station-aired public service announcements, as well as answering the other questions on Form 355—took approximately 74 hours and 45 minutes, or the equivalent of two full-time employees dedicating their entire work week to the task of documenting only one week of programming.¹³ This is almost nineteen times greater than the maximum 52 hours per *response* estimated by the Commission and nearly four hundred times greater than the minimum 2.5 hours per response estimate.¹⁴ Even this estimate is understated, however, because, in completing this task, WJRT considered only the programming on its primary channel, not on any of its multicast channels, one of which also airs significant amounts of news and public affairs programming each day. Moreover, WJRT did not review any of the many ABC Television Network-provided news programs broadcast on the station (including World News with Charles Gibson, Good Morning America, Nightline, World News Now, This Week with George Stephanopolous, and 20/20) to determine which segments from the programs should be included in the station report because they (a) contained a significant treatment of community issues and therefore also qualified as

¹² WJRT produced 30 minutes of public affairs programming which it aired four times during the test period, for a total of two hours.

¹³ See Declaration of Sara Jo Gallock, attached hereto as Exhibit A.

¹⁴ TWDC estimated the burden by multiplying 75 hours per week by 13 weeks per quarter to determine the burden per response, and compared this result to the FCC’s estimate.

local news, or (b) qualified as local news, local civic affairs or local electoral programming. WJRT also made no attempt to determine whether any programming aired during the Test Period (x) qualified as “independently produced” programming or (y) was aimed at underserved communities.¹⁵ In addition, WJRT’s estimate does not include approximately ten hours of time spent by TWDC’s in-house attorneys providing counsel to WJRT regarding how to categorize programming and otherwise complete Form 355.

In estimating the information collection burdens of Form 355, the Commission appears to have overlooked a critical issue—the fact that Form 355 cannot be completed without reviewing every piece of news on a segment-by-segment basis. For example, to complete Section 2 of Form 355, WJRT was required to review individually every segment broadcast during its 33 ½ hours of local newscasts to (a) determine how to categorize such programming (*e.g.*, local news, local civic affairs programming, local electoral affairs programming, etc.) and (b) provide a laundry list of detailed information regarding the segment (*e.g.*, the dates and times on which the program aired, whether the program was locally produced, etc.). WJRT found this review process to be incredibly time- and resource-intensive. In addition, in WJRT’s experience, it is difficult to

¹⁵ WJRT initially attempted to make these determinations but found the instructions to Form 355 to be confusing such that the station could not conclude with certainty whether news stories that covered local electoral or civic affairs should be included in the specific categories for such programming, or if these categories were solely for programming other than news. Accordingly, WJRT categorized all news as local or national only.

categorize programming as required by Form 355 without creating a misleading impression as to the amount of programming broadcast on the station.¹⁶

In the *Enhanced Disclosure Order*, the FCC states that Form 355 “will not be unduly burdensome for licensees” because it is simply trying to obtain uniformity in existing reporting obligations.¹⁷ In fact, however, it is attempting to achieve uniformity in part by requiring that all broadcasters for the first time provide a comprehensive list of *all* of their issue-responsive programming. Broadcasters are currently obligated to prepare issues/programs reports that describe the community issues that were given the most significant treatment during the preceding quarter and to list *representative* examples of programming that addressed that particular subset of issues. By contrast, Form 355 requires broadcasters to provide detailed information regarding the steps taken to ascertain community needs and to list *all* programming responsive to issues facing their communities, broken down into thirteen predetermined categories, from local to national, civic to electoral, and religious to minority-oriented.

As described above, contrary to the Commission’s belief, this task is extremely burdensome, as it involves an extensive review and analysis of a station’s entire programming schedule, as well as an exhaustive survey and tally of all news, public affairs and other programming by type or source (*e.g.*, local or national news, independently produced, etc.) and by content (*e.g.*, electoral affairs coverage or coverage of underserved communities). There is no question that implementing Form 355 will

¹⁶ *See id.*

¹⁷ *See Enhanced Disclosure Order* at para. 34.

require the hiring of additional personnel.¹⁸ Moreover, because (a) the information collected on Form 355 is intended not merely to be representative but to be an exhaustive list of all responsive programming, (b) any information not included on the form is presumed to not be responsive to community issues, and (c) license renewal challenges may attempt to focus on such programming, television licensees must expend the necessary time and resources to fill out the form completely and accurately as to every segment of every locally produced, network-provided and syndicated news or public affairs program, and every public service announcement, aired on the station during any time during the calendar quarter, or risk having responsive programming excluded from later consideration.

Despite all of these burdens, the Commission justifies the proposed information collection requirements on the grounds that the public interest will be served by providing the public with increased access to information about how television stations serve their communities, thus enabling more public participation in the license renewal process.¹⁹ As is made clear in the NAB Comments, however, the Commission does not explain how the overly burdensome proposed information collection delivers these purported benefits. Indeed, the benefits on which the FCC relies to support its actions are illusory, as the FCC does not explain (a) how Form 355 will produce uniformity when broadcasters are left with discretion to determine how to fit programming into vaguely defined categories or (b) how the public's ability to participate in license renewal

¹⁸ Accordingly, Form 355 will impose an especially onerous burden on broadcasters in small and mid-size markets.

proceedings is enhanced by having access to uniform reports given that the license renewal process is not conducted through comparative hearings.²⁰ Nor does the FCC explain how the current reporting requirements are inadequate to serving the public interest in obtaining information about a broadcaster's service to the community.

C. Form 355 Imposes Additional Burdens on National Television Networks and their Affiliates

Categorization of programming as required by Form 355 imposes an additional burden on television networks and their affiliates. For example, local broadcast stations are required to report on all national news stories that “include a significant treatment of community issues and are not listed elsewhere” on Form 355.²¹ Because the affiliates will need to obtain at least preliminary information about network programming from the networks, this obligation imposes a burden on the networks as well as the affiliates. Certain news may be local for one affiliate and national for another affiliate (*e.g.*, a story about Hurricane Katrina is local news in New Orleans but national news elsewhere in the country). Thus, networks may be required to work with their affiliates on an individualized basis to ensure that they have the information necessary to complete Form 355. However, because national networks are not required to complete Form 355 for themselves, the Commission's estimates necessarily do not take into consideration the burdens imposed on the networks by Form 355.

¹⁹ See *Enhanced Disclosure Order* at paras. 37, 40.

²⁰ The FCC also does not explain the degree to which posting public inspection files on the Internet will improve public access to information that is already publicly available.

²¹ See Instructions for Specific Items on FCC Form 355, Question 2(a).

Moreover, most of the categories created by the Commission are vague and undefined. Accordingly, it is possible that one station may determine that a particular segment run in a network program qualifies only as national news programming, whereas another station may determine that that same segment also qualifies as local news programming. In order to meet the Commission's goal of uniform reporting, networks and their affiliates will be required to coordinate to ensure that programming is reported consistently and properly. It is not clear that the FCC has taken into account the time required for such coordination when determining the burden imposed by the proposed information collection.

In addition, Form 355 requires television stations to provide detailed information regarding independently produced programming. Local affiliates are not in a position to ascertain whether a particular program qualifies as independently produced because, without network involvement, the affiliates cannot know whether the national network "owns or controls more than a one-third financial interest in the program, acts as a distributor of such program in syndication, or owns the copyright in such program."²² Accordingly, both the networks and their affiliates are burdened by this information collection requirement.

Not only is this requirement burdensome, it also has no nexus to the Commission's broader goal of ensuring that programming is responsive to community needs. Whether a program is independently produced, produced by an entity partially owned by a national network or produced by a national network simply has no bearing on

whether that program addresses community issues. In addition, it is illogical and furthers no policy objective to require, for example, a TWDC owned and operated affiliate to categorize on its Form 355 an NBC-distributed syndicated program aired on the TWDC station as owned and controlled by ABC simply because the ABC-owned affiliate broadcasts such NBC distributed program in syndication. Moreover, in these circumstances, it is possible that the same program may be categorized differently by two networks, both of which may be deemed to “own” the programming.²³ Such a result is contrary to the FCC’s stated objective of uniformity in reporting and could only be avoided by inter-network coordination, an additional information collection burden the Commission did not consider in its estimates.

D. The Requirement to Place Public Email Comments on the Internet Imposes Significant Burdens on Broadcast Licensees

The Commission concluded in the *Enhanced Disclosure Order* that the costs and burdens on television licensees of placing their public inspection files on the Internet were outweighed by the benefits to the public.²⁴ The FCC, however, failed to consider the very substantial and very time-consuming burdens that the rules would impose on stations to review email correspondence from the public before posting it. Many

²² See *Enhanced Disclosure Order* at para. 42 (citation omitted).

²³ Specifically, if a TWDC owned and operated affiliate broadcasts an NBC-produced programming in syndication, under the FCC’s Form 355 definition of independently produced programming, ABC would be deemed to own the NBC programming. If NBC distributes that same program, however, NBC also would be deemed to own the program. It is quite possible that the affiliates of the two networks may categorize the programming differently, resulting in inconsistent reports for ABC and NBC network affiliates.

²⁴ See *Enhanced Disclosure Order* at para. 10.

members of the public writing to their local television station would not expect their name, address, email address and comments to be accessible at the push of a button on a worldwide basis via the Internet. Licensees would be required to review each piece of email correspondence individually to confirm that the content of such correspondence does not make the station vulnerable to claims under libel, slander, invasion of privacy or other laws. To the extent additional disclosures, consents, redactions or other protective measures need to be obtained, stations would bear the additional cost of implementing these safeguards.

III. CONCLUSION

As demonstrated herein and in the NAB Comments, the Commission has significantly underestimated the burdens imposed by its proposed information collection requirements and has not demonstrated that these requirements comply with the standards established by the PRA. At the same time, the FCC overstates the purported benefits that would result from the expansive and detailed information collection requirements.

Accordingly, the Commission should decline to forward the information requirements for OMB approval until such time as the pending challenges to the *Enhanced Disclosure Order* have been resolved.

Respectfully submitted,

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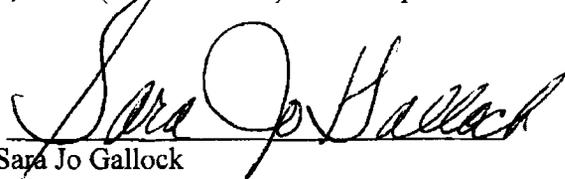
May 12, 2008

Exhibit A

DECLARATION OF SARA JO GALLOCK

I, Sara Jo Gallock, hereby declare, under the penalty of perjury, that the foregoing is true and correct, to the best of knowledge, information, and belief:

1. I am the Director of Programming for commercial television station WJRT-TV, Flint, Michigan ("WJRT"), licensed to Flint License Subsidiary Corp., an indirect, wholly-owned subsidiary of The Walt Disney Company.
2. It took my team approximately 74 hours and 45 minutes to compile information required by FCC Form 355 ("Form 355") for WJRT for a one-week test period, from April 14, 2008 through April 20, 2008 ("Test Period") and complete Form 355 for the Test Period.



Sara Jo Gallock
Director of Programming
WJRT-TV, Flint, Michigan
Flint License Subsidiary Corp.

May 12, 2008