

**Before the  
Federal Communications Commission  
And the Office of Management and Budget**

In the Matter of	)	
	)	
	)	
Standardized and Enhanced Disclosure	)	OMB Control No. 3060-0214
Requirements for Television Broadcast	)	
Licensee Public Interest Obligations	)	MM Docket No. 00-168
	)	
Extension of the Filing Requirement	)	MM Docket No. 00-44
For Children’s Television Programming	)	
Report (FCC Form 398)	)	

**PAPERWORK REDUCTION ACT COMMENTS**

**Association of Public Television Stations**

Lonna M. Thompson  
Senior Vice President and General Counsel  
Malena F. Barzilai  
Senior Counsel

**Public Broadcasting Service**

Katherine Lauderdale  
Senior Vice President and General Counsel  
Matthew S. DelNero  
Senior Counsel and Communications Counsel

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To: Cathy Williams, Federal Communications Commission  
Nicholas A. Fraser, Office of Management and Budget

**PAPERWORK REDUCTION ACT COMMENTS OF  
THE ASSOCIATION OF PUBLIC TELEVISION STATIONS AND  
THE PUBLIC BROADCASTING SERVICE**

The Association of Public Television Stations (“APTS”)<sup>1</sup> and the Public Broadcasting Service (“PBS”)<sup>2</sup>, (collectively referred to as “Public Television”) hereby respond to the request for comment on the requirements, adopted in the Commission’s *Report and Order*,<sup>3</sup> that broadcast television licensees file FCC Form 355: Standardized Television Disclosure Form and post a portion of the contents of their public files on their websites. The Form 355 requirement,

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<sup>1</sup> APTS is a non-profit organization whose membership comprises the licensees of nearly all of the nation’s CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American public.

<sup>2</sup> PBS is a media enterprise that serves 355 public noncommercial television stations and reaches nearly 73 million people each week through on-air and online content. A trusted community resource, PBS uses the power of noncommercial television, the Internet and other media to enrich the lives of all Americans through quality programs and education services.

<sup>3</sup> *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children’s Television Programming Report* (FCC Form 398), Report and Order, MM Docket Nos. 00-168, 00-44, FCC 07-0205 (rel. Jan 24, 2008) (“*Report and Order*”).

as applied to local public television stations that are qualified to receive funding from the Corporation for Public Broadcasting (CPB) (hereinafter “Public Television Stations”), does not satisfy the requirements of the Paperwork Reduction Act (PRA) or advance its goals. Therefore, as Public Television has urged in its Joint Petition for Partial Reconsideration and Clarification of the *Report and Order*, the Commission should revise this rule to provide an exemption for Public Television Stations.<sup>4</sup> Public Television has not opposed the website posting rule—though the rule does present a greater burden than the Commission has estimated—but we express concern that, if the Commission strictly interprets the associated “accessibility” requirement, this rule would be unduly burdensome for Public Television Stations and would not meet the criteria for certification under the PRA.

### **SUMMARY AND INTRODUCTION**

Minimizing the paperwork burden that federal laws impose on educational and nonprofit institutions—such as all Public Television Stations—is a primary goal of the PRA.<sup>5</sup> Congress recognizes that the burdens of regulatory compliance can force educational and nonprofit institutions to divert scarce resources from their core public service activities. Thus, federal law requires the Commission and other agencies to undertake this process of rigorously examining their information collections and submitting them to the Office of Management and Budget (OMB) for approval. Public Television is particularly grateful for this chance to comment on the information collection adopted in the *Report and Order* because the public has not heretofore

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<sup>4</sup> See *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children’s Television Programming Report* (FCC Form 398), MM Docket Nos. 00-168, 00-44, Joint Petition for Partial Reconsideration and Clarification of APTS and PBS (April 14, 2008).

<sup>5</sup> See 44 U.S.C. § 3501(1) (A purpose of the PRA is to “minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions . . . resulting from the collection of information by or for the Federal Government”).

been given an adequate opportunity to comment on the specifics of the Form 355 requirement; the Commission proposed this requirement only in very general terms.<sup>6</sup>

Public Television, whose core mission is to serve the public interest by providing educational and informational programming, fully supports the Commission's goal of ensuring that the American public has adequate access to information on how stations are serving their local communities. As the Commission has noted, local public television stations historically have provided their communities with "significant alternative programming designed to satisfy the interests of the public" and with coverage of significant local issues that might not be addressed by other media.<sup>7</sup> More recently, the Government Accountability Office ("GAO") commented in a report to Congress on public television, "Public television stations' most visible activity is broadcasting programs to serve the educational and cultural needs of their communities."<sup>8</sup> But while Public Television shares the Commission's goals, it is concerned that

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<sup>6</sup> In its *NPRM*, the Commission proposes "to require television broadcast station licensees to use a standardized form to provide information on how the station serves the public interest in a variety of areas," but does not actually propose a form. See *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rule Making, MM Docket No. 00-168, FCC 00-345 (October 5, 2000) ("*NPRM*"), at ¶ 2. The form attached to the *Report and Order* is essentially identical to a form proposed in an *ex parte* presentation after the comment period had expired. See *Ex Parte Presentation of Public Interest*, Public Airwaves Coalition, MM Docket No. 00-168 (June 8, 2004). The Director of OMB's Office of Information and Regulatory Affairs (OIRA) has full discretion to disapprove an information collection where "the Director determines that the agency has substantially modified in the final rule the collection of information contained in the proposed rule." 44 U.S.C. § 3507(d)(4)(D)(i).

<sup>7</sup> In the *Matter of Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees*, *Report and Order*, BC Docket No. 81-496 (rel. Aug. 22, 1984), at ¶ 13 (hereinafter "*1984 Order*").

<sup>8</sup> *Issues Related to the Structure and Funding of Public Television*, Government Accountability Office, GAO 07-150, 10 (Jan. 2007), available at <http://www.gao.gov/new.items/d07150.pdf> (hereinafter "*GAO Report*").

the Commission, in fashioning the requirements at issue in this proceeding, has failed to recognize the inherent—and distinctive—localism of Public Television Stations.

As mandated by the PRA, the Commission seeks comment on four issues: (a) whether 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; (b) the accuracy of the Commission’s burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents.<sup>9</sup> As to each issue, the response of Public Television demonstrates that the current Form 355 cannot withstand scrutiny under the PRA:

- In light of Public Television Stations’ demonstrated commitment to airing issues-responsive programming, and given the current availability of extensive information on how Public Television Stations are serving their local communities, the imposition of the Form 355 requirement on Public Television Stations is not necessary for the proper performance of the functions of the Commission.
- Form 355 does not contemplate the differences between Public Television Stations and their commercial counterparts and, vis-à-vis Public Television Stations, the form does not enable a clear and useful picture of how stations are serving their communities with issues-responsive programming.
- The Commission has severely underestimated, by at least a factor of ten, the burden this requirement would impose on Public Television Stations.
- The interests of all parties involved—the Commission, stations, and the public—would be served best if Public Television Stations are exempted from the requirement to complete a standardized quarterly programming report form.

Thus, prior to certifying this information collection under the PRA, the Commission should revise it to exempt Public Television Stations from the Form 355 requirement.

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<sup>9</sup> See *Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, 73 Fed. Reg. 13541-2 (March 13, 2008) (“PRA Notice”); 44 U.S.C. 3506(c)(2)(A).

Public Television generally does not oppose the Commission’s new mandate that stations place their public inspection files on their websites—though we note that the Commission apparently has severely underestimated the burden of this requirement as well. However, we have sought clarification of the requirement that licensees adhere to the most recent Conformance Level A of the World Wide Web Consortium’s Web Content Accessibility (W3C/WAI) guidelines. In particular, Public Television desires clarification on what is required of licensees with respect to older documents, especially those that include material such as maps and graphics that cannot readily be uploaded in a format that is compatible with text-reading software. A strict interpretation of this requirement would run afoul of the PRA, and we urge the Commission to clarify this requirement in such a way that minimizes the burden on Public Television Stations while still reasonably serving the needs and interests of the disabled community.

## **DISCUSSION**

### I. AN EXEMPTION FOR PUBLIC TELEVISION STATIONS FROM THE FORM 355 REQUIREMENT WILL SERVE THE GOALS OF THE PRA.

#### A. Imposition of the Form 355 Requirement on Public Television Stations Is Not Necessary For the Proper Performance of the Functions of the Commission.

The PRA requires that a federal agency “certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information . . . is necessary for the proper performance of the functions of the agency . . . .”<sup>10</sup>

Yet as to Public Television Stations, Form 355 is unnecessary and in fact harmful. Given Public Television Stations’ long history of providing issues-responsive programming, and given the availability to the Commission—and through the Commission to the public—of extensive

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<sup>10</sup> 44 U.S.C. § 3506(c)(3)(A).

information on stations' programming and outreach activity, much of which is already collected in a standardized format by the CPB, requiring Public Television Stations to complete Form 355 is not necessary for the proper performance of the functions of the Commission, and an exemption for Public Television Stations would be consistent with the Commission's goals.

- i. Public Television Stations Have a Long History of Providing Vast Amounts of On-air Programming That Is Responsive to Issues of Importance to Their Local Communities.

As reflected in federal statute and policies established by the Commission and CPB, the fundamental purpose of Public Television is to serve the public interest by providing educational and informational services to the public.<sup>11</sup> While local Public Television Stations fulfill this mission in a variety of ways—including person-to-person outreach and the provision of educational and informational materials through the Internet, datacasting, and other media—they achieve their broadest reach through on-air programming that is targeted to the needs of all members of their communities, from the youngest to the oldest. Many local Public Television Stations devote at least one-third of their broadcast schedule to a slate of children's programming that, more than any other on television, is aimed at readying young children for the academic rigors of school.<sup>12</sup> During the rest of the day, Public Television Stations offer varied

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<sup>11</sup> See, e.g., 47 U.S.C. § 396(a)(5) ([I]t furthers the general welfare to encourage public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, which will constitute an expression of diversity and excellence, and will constitute a source of alternative telecommunications services for all citizens of the Nation"); 47 CFR § 73.621 (FCC rules requiring public television stations primarily to serve the educational needs of the community and requiring a noncommercial educational service).

<sup>12</sup> For an in-depth examination of the current state of children's programming on Public Television, see Joint Comments of the Association of Public Television Stations and the Public Broadcasting Service, *In the Matter of Children's Television Obligations of Digital Television Broadcasters*, MM Docket No. 00-167 (June 1, 2007).

programming for all viewers that is designed to enhance public awareness and knowledge of history, politics, science, literature, and the performing arts, among other topics.

With the transition to digital-only broadcasting, local Public Television Stations are leveraging their new digital capabilities to expand their educational and informational offerings through multicasting. Highlighting their stewardship of the public airwaves entrusted to them, many Public Television Stations are utilizing their multicasting capabilities to provide dedicated channels for public affairs programming or programming designed to reach underserved audiences. As just one example, a number of local Public Television Stations are using a multicast stream to offer “V-me,” a Spanish-language educational and informational service developed by Thirteen/WNET, a Public Television Station serving the New York City area. There can be no doubt that Public Television has led the broadcast industry in taking advantage, to the benefit of local communities, of the added capacity offered by digital broadcasting.

Though a significant portion of many Public Television Stations’ programming is focused on issues of broad interest and national import, each local station has complete autonomy to select and schedule programs in a way it deems will best serve the interests of its local community. As the GAO noted, “Public television began as, and continues to be, a largely decentralized enterprise, with ownership and control of the stations maintained at the state or local level.”<sup>13</sup> For example, while most Public Television Stations have the right to air PBS-distributed programs such as *NOVA* and *Frontline*, which provide the most rigorous treatment on television of important issues of the day, Public Television Stations independently select and schedule their programming lineups.

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<sup>13</sup> GAO Report at 8.

Furthermore, despite their limited resources and the fact that it costs a Public Television Station at least *20 times* as much to produce its own programming than to acquire it from PBS or other suppliers,<sup>14</sup> Public Television Stations are producing and airing a wide array of programs focused specifically on their local communities and the issues that affect them. In many communities, Public Television Stations serve as the sole sources of local programming unrelated to news or sports.<sup>15</sup> Attached as Exhibit A are some recent examples of the local programming produced and aired by licensees of local Public Television Stations.

In the Commission's last major evaluation of television stations' program reporting requirements, it held a separate proceeding in which it reviewed the "special status of public broadcasting" and the "implications of this status in terms of programming responsibilities."<sup>16</sup> The Commission noted that "the very definition of the service, the status of its operating stations, and its essentially non-profit, noncommercial programming nature make public broadcasting stations very different, in programming terms, from their commercial counterparts" and that it expected "the programming of these stations will reflect their special status."<sup>17</sup> The Commission recognized the unique funding structure of Public Television, including local stations' dependence on contributions from individual viewers, and that "public stations have a substantial interest in presenting programming that will encourage continued and increased financial

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<sup>14</sup> See CPB's Station Performance Report, which aggregates information from stations' SABS reports, *available at* [http://www.cpb.org/stations/sabs/05peers/SPR1AllPTVStations\\_All.pdf](http://www.cpb.org/stations/sabs/05peers/SPR1AllPTVStations_All.pdf). In Fiscal Year 2005, stations spent \$1,785 per hour aired on local programming, versus \$24 to \$119 per hour aired for all other programming sources. In FY2004, stations spent \$3,647 per hour aired for local programming, versus \$29 to \$129 for all other programming sources.

<sup>15</sup> GAO Report at 22.

<sup>16</sup> *1984 Order* at ¶ 12.

<sup>17</sup> *Id.* at ¶ 13.

support” by their varied patrons.<sup>18</sup> It concluded that “this essential economic relationship . . . will ensure that public stations discover and serve local needs” and further that public stations will “add[] diversity by addressing needs unmet by commercial stations.”<sup>19</sup> Recognizing these facts, the Commission abolished an onerous program-logging requirement in favor of the current issues/programs list rule.<sup>20</sup>

In this proceeding, the Commission essentially has reversed course and instituted a form that is, for Public Television Stations, tantamount to and in some respects more onerous than a program-logging requirement. The Commission apparently has not considered, as it once did, the distinct nature of public television, and has not evaluated whether any change in the circumstances of Public Television Stations or their service of local needs has warranted a change in the way that they are required to provide information about their issues-responsive programming. Such an evaluation would demonstrate that Public Television Stations’ interest and success in presenting issues-responsive programming have not wavered and that the changes the Commission has instituted are unnecessary. Given Public Television Stations’ track record in providing issues-responsive programming, the Commission cannot certify to OIRA that Form 355 is “necessary” until it exempts such stations from the information collection.

- ii. Public Television Stations Are Already Required to Report to CPB on Their Community Outreach Activities and Issues-Responsive and Local Programming.

As a condition for the receipt of their grants from CPB, all Public Television Stations are required to complete extensive periodic surveys that require submission of detailed financial and operational information. CPB uses the data as part of its oversight of the system and aggregates

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<sup>18</sup> *Id.* at ¶¶ 18-19.

<sup>19</sup> *Id.* at ¶ 19.

<sup>20</sup> *Id.* at ¶ 27.

the data in various ways to provide stations and national organizations with a tool to support decision-making, understand performance issues and identify improvement opportunities. These surveys, the Station Activities Survey (SAS) and Station Activities Benchmarking Study (SABS) survey, collect a substantial amount of information related to stations' community outreach activities and categories of programming. In many respects, the information collection in Form 355 is duplicative of these efforts and thus is inappropriate for certification by the Commission pursuant to the PRA.<sup>21</sup>

The SABS survey includes comprehensive sections on programming, production and educational services. In the "Programming" section, each station is required to report the number of original and repeated hours of programming aired on its main broadcast channel, and all other broadcast channels, from a variety of sources, including "Local Production".<sup>22</sup> In the "Production" section, each station is required to enter the number of hours of content produced by the station and intended for station use as National or Local content. Each station must then place this content in categories: State/local government or election coverage, Informational call-in broadcast, News, Public Affairs, Arts and Culture, Sports Programming, Pledge Programs, Pledge Breaks & Auction, Educational, and All Other Local Production.<sup>23</sup> In addition, for this locally produced content, stations are required to list the total hours employing closed-captioning

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<sup>21</sup> See 44 U.S.C. § 3506(c)(3)(B) (Agency must certify to the Director of OIRA that the information collection "is not unnecessarily duplicative of information otherwise reasonably accessible to the agency").

<sup>22</sup> See SABS FY2007 Instruction Guide, Programming, Section 8.1, and excerpt from completed SABS Survey Report, attached hereto as Exhibit B.

<sup>23</sup> See SABS FY2007 Instruction Guide, Production, Section 9.2, and excerpt from completed SABS Survey Report, attached hereto as Exhibit C.

and the total hours using the Secondary Audio Programming (SAP) channel.<sup>24</sup> Finally, in the “Educational Services” section, each station must report the number of hours of educational programming on its main broadcast channel and all other broadcast channels, categorize this programming by type (K-12 Instructional TV, GED, Workplace Essential Skills and Adult Literacy on TV, etc.), and report on the number and type of educational workshops and professional development conducted by the station.<sup>25</sup>

The SAS asks several questions aimed to elicit information on stations’ community outreach and how they address issues of importance to their local viewers:<sup>26</sup>

- In what local community outreach or educational activities has your station been involved this year that supports unserved or underserved audiences? Please describe in detail: outcomes, audience served, community response.
- In what production activity has your station been involved that supports unserved or underserved audiences?
- Do you provide program content in languages other than English? If so, please list your services in this area.
- What types of on-air programs and off-air activities are you planning in the upcoming year that will connect your station more closely with your community? What goals are you setting in conjunction with these initiatives, and how will you measure your success?

Thus, the SABS and SAS surveys elicit much of the same information requested in Form 355, including volume and types of local programming, closed-captioning activities, programming targeted at serving the needs of underserved communities and efforts to connect stations more closely to their communities. Though stations’ completed SABS and SAS surveys are not

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<sup>24</sup> Under the FCC’s Rules, a station is not required to caption programming if a channel’s gross revenues are less than \$3,000,000 during the previous year.

<sup>25</sup> See SABS FY2007 Instruction Guide, Educational Services, Sections 11.4 and 11.5, and excerpt from completed SABS Survey Report, attached hereto as Exhibit D.

<sup>26</sup> See Excerpt from Station Activities Survey, attached hereto as Exhibit E.

currently made public (CPB currently makes available only reports aggregating the data in various ways), CPB states that it would not object to making available to the FCC and the public these portions of the surveys, which do not include confidential financial information.

In addition to this mandatory reporting to CPB, all Public Television Stations, to the best of the knowledge of PBS and APTS, post on their websites detailed program schedules that date back at least one year. Through a combination of stations' issues/programs lists, detailed program schedules, and SABS and SAS surveys, the public would have easy, on-line access to extensive—and in many respects standardized—information on how public television stations are serving their local communities without requiring Public Television Stations to devote additional resources to completing Form 355. The superfluous nature of the new information collection further undermines the Commission's ability to certify the Form's "necessity" to OIRA unless it provides an exemption for Public Television Stations.

**B. Form 355 Does Not Contemplate the Differences between Public Television Stations and Their Commercial Counterparts and, vis-à-vis Public Television Stations, Does Not Enable a Clear and Useful Picture of How Stations Are Serving Their Communities with Issues-responsive Programming.**

The PRA requires that the Commission certify that the information sought in an information collection has "practical utility."<sup>27</sup> Form 355 clearly was not created with the unique status of Public Television Stations in mind, and with respect to Public Television Stations, the form is particularly devoid of practical utility.

For example, the form requires stations to log each episode of "Independently Produced Programming," which is defined as programming aired during prime-time that is produced by an entity not owned or controlled by an owner of a national television network. While this categorization might have some utility in the context of some commercial stations, Public

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<sup>27</sup> 44 U.S.C. § 3506(c)(3)(A).

Television Stations operate entirely outside the network/affiliate system. PBS is not a “network”, but a membership organization consisting of noncommercial educational licensees. Through its membership, a Public Television Station receives access to the children’s, cultural, educational, public affairs and other programming acquired, promoted, and distributed by PBS; however, the programming itself is produced by individual Public Television Stations and outside production companies, not PBS.<sup>28</sup> In addition, Public Television Stations create their own local programming and acquire programming from non-PBS distributors such as American Public Television (APT) and National Educational Telecommunications Association (NETA). Thus, *all* of the programming aired by Public Television Stations is “independently produced programming” as defined by the Commission, and this category has no real meaning when applied to the public television system. Public Television Stations are apparently required to log *all* of their prime-time programming—every separate episode—on Form 355. This requirement is extremely burdensome, as will be discussed below, and it is hard to imagine how this categorization, vis-à-vis Public Television Stations, provides any useful information to the Commission or the public.

Form 355 further falls afoul of the PRA by failing to use “plain, coherent, and unambiguous terminology [that] is understandable to those who are to respond.”<sup>29</sup> The form lists numerous categories of programming—some of which are undefined—and indicates that each program or program segment should be listed under only one category, but the Commission offers no guidance as to how stations should select a categorization when a program fits into several categories. For example, an episode of Connecticut Public Broadcasting’s *On the Record*

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<sup>28</sup> See, e.g., GAO Report at 15-16.

<sup>29</sup> 44 U.S.C. § 3506(c)(3)(D).

in which a public official who is up for reelection discusses how he may vote on a local issue would appear to qualify as Local Civic Affairs, Local News, Local Electoral Affairs, or Independently Produced Programming. The form provides no guidance about what methodology a station should use when categorizing such programming. Different stations will inevitably characterize similar programs differently, and even a single station's Form 355 is likely to contain inconsistencies in the categorization of programming.

Simply put, Form 355 actually undermines the Commission's stated goals. The Commission states that through Form 355 it is "attempting to obtain uniformity in reporting" of issues-responsive programming.<sup>30</sup> However, because the form is ambiguous and unclear, stations' interpretations, assumptions, and methodologies in reporting will vary and any "uniformity" that results will be illusory. Certainly, the forms will provide, for example, the number of hours of what each station categorizes as Local Electoral Affairs Programming, but if stations employ different methodologies, this data actually has little to no practical utility. The Commission's main stated goal, to "facilitate access" by the public and provide the public "with a better mechanism for reviewing broadcaster public interest programming and activities" likewise is not served by the Form 355 requirement. In the case of Public Television Stations, Form 355 will be voluminous and unwieldy for the public to use, and any conclusions the public draws from the data would be questionable because of stations' differing interpretations and methodologies. Therefore, Form 355, particularly as applied to Public Television Stations, lacks clarity and practical utility and is inappropriate for PRA certification.

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<sup>30</sup> *Report and Order* at ¶ 38.

C. The Commission Has Severely Underestimated the Burden This Requirement Will Impose On Public Television Stations.

The Commission has estimated the amount of time it will take stations to fulfill this information collection—including the completion of Form 355 and the posting of the public inspection file on the internet—at 2.5 to 52 hours per quarter, and seeks comment on the accuracy of this estimate. Based on consultations with numerous licensees, Public Television believes that the Commission has underestimated, by at least a factor of 10, the burden that just the Form 355 requirement will place on Public Television Stations.

Ironically, the Form 355 requirement is most burdensome for stations, such as Public Television Stations, that are doing the best job of fulfilling the goal this requirement is designed to foster: providing viewers with local, independent, and issues-responsive programming. It is easy to imagine that Form 355 would be no more time-consuming than the current issues/programs list for (to cite just one example) a commercial station that broadcasts only a few hours per week of issues-responsive programming. However, for a Public Television Station that broadcasts up to five distinct channels of educational and informational programming that would fit into the categories on Form 355, this format, which requires stations to key in every episode of every program individually,<sup>31</sup> creates a massive incremental burden.

Many Public Television Stations currently broadcast or plan to broadcast entire multicast programming services that are comprised only of local civic and electoral affairs. To cite just one example, WFSU (Florida State University) operates, and several Florida Public Television Stations air, the Florida Channel, which features live, gavel-to-gavel coverage of the Florida Senate and House of Representatives, as well as live coverage of the Florida Supreme Court,

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<sup>31</sup> The instructions for Form 355 state that licensees may not incorporate any other documents or exhibits.

Public Service Commission, and meetings of the Governor and his cabinet. Each individual segment of this programming must be logged individually on Form 355. The Form 355 requirement in essence punishes stations for providing this type of service by requiring them to expend substantially more effort to log these programs than stations who do not undertake such service. As such, the Form 355 requirement provides a substantial financial disincentive to provide these services at all. Surely that is not the Commission's intent in this proceeding.

APTS surveyed its members on the expected cost of complying with the Form 355 requirement, and the results were eye-opening. While most stations indicated that 52 hours per quarter was a reasonable estimate of the burden of the current issues/programs list, on average, licensees estimated that Form 355 would require *more than 500 hours per quarter*—at least a tenfold increase over the resources required by the current requirement. Accordingly, there is no basis for the Commission's current estimate of the burden imposed by the new information collection.

As the Louisiana Educational Television Authority, which operates six stations, explained, the requirements would necessitate screening a significant amount of programming for which the licensee is not provided with specific topic information by the distributor, and the data collection and entry tasks would need to be done on a daily basis. Many licensees stated that they would need to hire at least one additional full-time employee—at salaries ranging from \$20,000 to \$100,000 based on local market conditions and other factors—to handle the additional workload. For example, Idaho Public Television, which has five full-power stations throughout the state, explained that it would need to hire a new staff person—at an estimated annual cost of \$33,015—to translate seven program channels' individual program genre categories and descriptions into those required by Form 355. Because Public Television Stations

are constantly strapped for money,<sup>32</sup> nearly all respondents said that the new form requirement would divert resources currently allocated for local production, outreach, or program acquisition.

Below is a table featuring some representative responses concerning the information-collection burden imposed by the Form 355:

<b>Licensee</b>	<b>Time/quarter Current I/P list</b>	<b>Time/quarter New Form 355</b>	<b>New hire necessary?</b>	<b>Source of additional resources</b>
Alamo Public Telecom. Council (KLRN/San Antonio, TX)	40 hours	195 hours (3 streams x 65 hrs/stream)	Maybe	Funds for new digital programming services
Delta College (WDCQ/WDCP in Michigan)	20 hours	160 hours	Yes	Undetermined
KCTS Television (KCTS/Seattle and KYVE/Yakima)	6-8 hours	180 hours	Yes	Funds for program acquisition
Louisiana Educational TV Authority (six stations in state)	16 hours	1 full-time employee (FTE)	Yes	Would have to change job responsibilities of existing employee, thus losing a position
Maryland Public Broad. Comm'n (six stations)	4-8 hours using ProTrac	240-320 hours	Yes	Would need to cut personnel and/or services from existing programs
Mississippi Auth. For Educational Television (eight stations)	32-40 hours	1 FTE	Yes	State appropriation or limiting other services
Missouri State University (KOZK/Springfield, MO)	52 hours	1 FTE	Yes	Reduce local production projects

<sup>32</sup> In addition to threats to state and local funding and private contributions because of the worsening economy, and stations' difficulty maintaining current corporate and individual support levels, public broadcasting is currently facing the threat of deep cuts in federal funding. In its most recent budget, the administration proposes to cut in half the \$400 million allocated by Congress to CPB for fiscal year 2009 and to cut \$220 million from the \$420 million authorized in advance for FY 2010. In addition, the President's budget proposes eliminating advance funds for FY 2011. These represent the deepest cuts yet proposed by the Bush administration.

New Hampshire Public Television (3 stations)	120 hours	360 hours	Yes (75% FTE)	Cut a program or service
University of North Carolina (9 stations)	Not listed	1 FTE because schedules all digital channels internally	Yes	Would take resources from core mission
Northern California Public Broadcasting (3 stations)	80 hours	1 FTE	Yes	Would need additional donor funding or divert existing resources from operation/programming
Ohio University (WOUB/ Athens)	56 hours	Up to 224 hours	Preferred	Current/projected budget doesn't allow for additional employee; funding would need to come from external source
Oregon Public Broadcasting (5 stations)	32 hours	270 hours	Yes – 0.5 FTE	Program acquisition funds, local outreach activities, local television productions
South Dakota Public Broad. (9 stations)	40 hours	2 FTEs	Yes	Locally produced programming
Valley Public Television (KVPT/ Fresno, CA)	20 hours	100 hours	No	Would have to use current staff, compromising ability to provide localism over the air to current extent
Twin Cities Public Television (KTCI and KTCA/ St. Paul)	40 hours	1-2 FTEs to report on 7 unique program streams	Yes	Undetermined
West Tennessee Public Television Council (WLJT/ Lexington, TN)	20 hours	120 hours	Yes	Undetermined

The Commission states in its *Report and Order*, without citation, that “adoption of this revised disclosure requirement . . . will not be unduly burdensome for licensees”<sup>33</sup> and that the “benefits of a standardized form that requires broadcasters to list all relevant programming outweighs the burdens placed upon broadcasters.”<sup>34</sup> Public Television respectfully submits that,

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<sup>33</sup> *Report and Order* at ¶ 34.

<sup>34</sup> *Id.* at ¶ 44.

vis-à-vis Public Television Stations, the Commission has severely underestimated the burden imposed by this new requirement and its power to undermine rather than advance stations' fulfillment of their public service mission. Based on the record before it, the Commission cannot submit to OIRA its initial estimate of the information-collection burden imposed by Form 355.

D. The Interests of All Parties Involved—the Commission, Stations, and the Public—Would be Served Best if Public Television Stations Are Exempted From the Form 355 Requirement.

As discussed above, the record clearly shows that Public Television Stations are committed, both by their mission and because of the economic structure of the public television system, to providing programming that addresses issues of importance to their local communities. These stations have and will continue to broadcast an outstanding array of national and local issues-responsive programming despite significant financial hurdles. Reflecting this commitment, PBS and Public Television for five consecutive years have been recognized as the most trusted public institution in the nation.<sup>35</sup> In addition, through detailed program schedules available on the internet, the current issues/programs lists, and information from SABS and SAS surveys that could be made public, interested citizens and the FCC already have easy access to extensive—and in many respects standardized—information on how Public Television Stations are serving their local communities. Finally, data from stations themselves demonstrates that the new Form 355 requirement is extremely burdensome for Public Television Stations and would require them to divert scarce resources away from their core mission.

Accordingly, if Form 355 is to withstand scrutiny under the PRA, the Commission must substantially amend the information collection. The most appropriate remedy would be to exempt Public Television Stations from the obligation to complete Form 355. Any incremental

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<sup>35</sup> See, e.g., Greg Feldmann, *Editorial: PBS is Still Necessary and Relevant*, The Roanoke Times, March 11, 2008, at B9 (citing the annual GfK Roper Public Affairs & Media Poll).

benefit to the public and to the FCC that would accrue from requiring Public Television Stations to submit Form 355 does not outweigh the substantial burden the requirement places on stations. In fact, if the Form 355 requirement, as we expect, forces stations to cut back on their provision of local services and programming, then the requirement will harm *all* parties. Without an exemption or significant revision for Public Television Stations, this information collection does not satisfy the requirements of the PRA.

The present situation is analogous to the Commission's consideration in 1996 of a children's programming reporting requirement. There the Commission held that commercial broadcasters must prepare quarterly reports detailing with their compliance with the Commission's requirement that they air educational and informational children's programming; however, the Commission exempted noncommercial educational broadcasters from the obligation: "In light of Congressional intent to avoid unnecessary constraints on broadcasters, and in view of the commitment demonstrated by noncommercial stations in general to serving children, we believe it is inappropriate to impose reporting obligations on such stations."<sup>36</sup>

In that case, the Commission's decision did not encourage Public Television Stations to shirk their responsibilities to air educational and informational children's programming; on the contrary, many stations broadcast as many as 11 hours per day, airing award-winning programs such as *Sesame Street*, *Arthur*, *Reading Rainbow*, *Cyberchase* and *Between the Lions*.<sup>37</sup>

Likewise, an exemption from the Form 355 requirement here would not lead stations to retreat from their well-established commitment to issues-responsive programming; it would merely

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<sup>36</sup> In Re Policies and Rules Concerning Children's Television Programming; Revision of Programming Policies for Television Broadcast Stations, *Report & Order*, FCC 96-335, 11 FCC Rcd. 10660 n.119 (Aug. 8, 1996).

<sup>37</sup> *See supra* note 12.

permit them to continue to devote the bulk of their limited resources toward their core mission of providing informational programming of particular interest to their local communities.

While Public Television believes an exemption from the Form 355 requirement for Public Television Stations is appropriate, we recognize that the Commission might deem some form of a standardized disclosure necessary. If so, Public Television requests that the Commission permit Public Television Stations—in lieu of the Form 355 requirement—to file electronically with the Commission on an annual basis, and include in their public inspection files, their quarterly issues/programs lists and copies of the portions of their CPB Station Activities Survey (SAS) and Station Activities Benchmarking Study (SABS) that address local community outreach, issues-responsive programming, origin and types of programming, and amount of closed-captioning. As noted above, these documents together provide the Commission and the American public with a detailed picture of how Public Television Stations are assessing issues of importance to their local communities and providing issues-responsive programming. Furthermore, requiring Public Television Stations to file these materials with the Commission would ensure that it is no more difficult for the government or the public to locate this valuable information than it would be for them to access stations' Form 355. Public Television feels that such a revision to the Commission's requirement would strike a better balance of the interests of the parties—minimizing the additional burden on Public Television Stations while ensuring that the Commission and the American public have access to reliable and meaningful information on how stations are serving their local communities.

Finally, if the Commission deems it absolutely necessary for all stations to file a Standardized Television Disclosure Form, Public Television urges the Commission to revise the current Form 355, as it applies to CPB-qualified television stations, to more closely model the

format and content—including categorization of programs—of the SAS and SABS surveys that stations now prepare for CPB. Public Television and our member stations would welcome the opportunity to work with the Commission to develop a format that would pass muster under the PRA, satisfy the needs of the Commission and the public, *and* capitalize on stations’ existing reporting systems to minimize additional, unnecessary burdens.

II. THE COMMISSION MUST CLARIFY THE ACCESSIBILITY COMPONENT OF THE WEBSITE POSTING REQUIREMENT IN A WAY THAT IS NOT UNDULY BURDENSOME FOR STATIONS.

As an outgrowth of its universal service mission,<sup>38</sup> Public Television has always made the utmost effort to ensure that persons with disabilities have access to its programs and services, and was a pioneer of closed-captioning and descriptive video. We appreciate the Commission’s focus on ensuring that stations’ public inspection files are accessible to the disabled. Thus, Public Television does not generally oppose the Commission’s new mandate that stations place their public inspection files on their websites, though we must note that the Commission has underestimated the burden of this requirement on Public Television Stations.

However, to satisfy the requirements of the PRA and avoid unnecessary and harmful burdens, the Commission should clarify its requirement that licensees, when placing their public files on their websites, adhere to the most recent Conformance Level A of the World Wide Web Consortium’s Web Content Accessibility (W3C/WAI) guidelines.<sup>39</sup> In particular, Public Television seeks clarification on what is required of licensees with respect to older documents. It is our understanding that scanning existing documents—even all-text documents—into the oft-

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<sup>38</sup> *See, e.g.*, 47 U.S.C. § 396(a)(9) (“[I]t is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies”).

<sup>39</sup> *Report and Order* at ¶¶ 26-28.

used Portable Document Format (PDF) will not result in files that comply with the W3C/WAI guidelines. Compliance with the guidelines is apparently further complicated in the case of documents that include material such as maps and graphics that cannot readily be uploaded in a format that is compatible with text-reading software. In addition, Public Television seeks clarification on stations' obligations with respect to documents that reside on the Commission's website or other websites that apparently are not currently compliant with the W3C/WAI guidelines.

If the Commission strictly interprets this accessibility requirement, stations estimate that it would add tens of thousands of dollars in personnel time and outside consultant costs, which would come at the expense of local programming and outreach services. Thus, Public Television urges the Commission to interpret this requirement in such a way that acknowledges and minimizes the potentially significant burden on Public Television stations, and that renders this information collection PRA-compliant. One possible approach would be to set forth a phase-in process whereby licensees would be required to make all documents added after the effective date of these rules W3C/WAI-compliant, with the exception of documents such as contour maps that are essentially pictorial in nature, but would not be obligated to retrofit older documents. Public Television submits that the accessibility requirement may be clarified in such a way that is sensitive to the needs and interests of both the disabled community and local Public Television Stations.

In addition, Public Television notes that the Commission, in its estimate of the information-collection burden of the new rules, has failed to include a separate calculation of the burden related to the requirement to post portions of the public file online. Online posting of the public file will require a substantial one-time investment of time and resources—as stations place

the existing contents of their public inspection files on their websites—and a smaller investment in periodic updates and maintenance. In terms of document scanning, stations’ biggest single expense (excluding from consideration the cost of compliance with the Commission’s accessibility mandate) is the uploading of their quarterly Issues/Programs lists dating back to their most recent license renewals.<sup>40</sup> Furthermore, because stations are not permitted to take their public inspection files off-site, they must perform document scanning on-site, often at greater expense, or copy the file in-house to provide to an outside scanning service. And once public file documents have been scanned into electronic format, stations must employ a Web developer to design and build the public inspection file pages and to create a content management system so internal staff can make updates to the online public file as needed.<sup>41</sup> The burden of this requirement is not insubstantial, and prior to submitting this rule to OIRA, the Commission should conduct and publish its calculation of the burden of this portion of the information collection.

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<sup>40</sup> For some stations, this means scanning thousands of pages dating back eight or more years; KCSM (San Mateo, California), whose license renewal is being delayed because of an indecency complaint, is obligated to upload 12 years’ worth of Issues/Programs lists.

<sup>41</sup> Oregon Public Broadcasting, for example, estimated that web development would require 200 hours of personnel time at a cost of \$20,000.

**CONCLUSION**

Based on the foregoing, the Association of Public Television Stations and the Public Broadcasting Service respectfully request that the Commission revise its information collection consistent with the positions set forth in these Comments.

Respectfully submitted,

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Lonna M. Thompson  
Senior Vice President and General Counsel  
Malena F. Barzilai  
Senior Counsel  
Association of Public Television Stations  
2100 Crystal Drive  
Suite 700  
Washington, D.C. 22202  
Phone: 202-654-4200  
Fax: 202-654-4236

/s/

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Katherine Lauderdale  
Senior Vice President and General Counsel  
Matthew S. DelNero  
Senior Counsel and Communications Counsel  
Public Broadcasting Service  
2100 Crystal Drive  
Arlington, Virginia 22202  
Phone: 703-739-5000  
Fax: 703-837-3300

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