Before the
Federal Communications Commission
Washington, D.C. 20554

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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	)	MM Docket No. 00-44
For Children's Television Programming	)	
Report (FCC Form 398)	)	

JOINT PETITION FOR PARTIAL RECONSIDERATION AND CLARIFICATION

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

April 14, 2008

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Extension of the Filing Requirement For Children's Television Programming Report (FCC Form 398)	)	MM Docket No. 00-44

JOINT PETITION FOR RECONSIDERATION AND CLARIFICATION

The Association of Public Television Stations ("APTS")[1] and the Public Broadcasting Service ("PBS")[2], (collectively referred to as "Public Television"), pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, respectfully request that the Commission reconsider the portion of its *Report and Order* in the above-captioned proceeding, released on January 24, 2008 (FCC 07-205), that adopts a standardized programming report form to replace the existing quarterly issues/programs disclosure for all television broadcasters. Public Television strongly supports the Commission's efforts to examine and improve localism practices among broadcasters. Local Public Television Stations are in many cases the last locally owned and operated television stations in their areas, and their success—indeed, their survival—depends on

[1] 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.

[2] 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.

their ability to connect with their communities and serve local needs through on-air programming and other initiatives. Furthermore, Public Television Stations recognize the importance of transparency and accountability vis-à-vis their local communities, and they already make available to the public significant information about their issues-responsive programming and services. Given these facts, an exemption for Public Television Stations from the new standardized disclosure requirement is warranted and will ensure that these stations do not have to divert scarce resources from their core public service activities. In addition, Public Television seeks 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 when posting their public inspection files on their station websites.

INTRODUCTION AND SUMMARY OF ARGUMENT

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.[3] 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

[3] In the Matter of Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees, *Report and Orde*r, BC Docket No. 81-496 (rel. Aug. 22, 1984), at ¶ 13 (hereinafter "*1984 Order*").

communities."[4] In addition, Public Television strongly supports the Commission's broader focus on enhancing localism practices among broadcasters. Public Television Stations are in many cases the last locally owned and operated television stations in their areas, and their success—indeed, their survival—depends on their ability to connect with their communities and serve local needs through on-air programming and other initiatives.

This proceeding, however, is more than just a referendum on the undoubtedly worthy goal of ensuring transparency and accountability with respect to stations' localism programming and practices. In its *Report and Order*, the Commission goes a step further, addressing whether regulation is necessary to achieve this goal, and, if so, what regulations are the most appropriate and effective and least burdensome, considering the nature and interests of all parties involved. Public Television is compelled to file this Petition because it feels that, with respect to local public television stations that are qualified to receive funding from the Corporation for Public Broadcasting (CPB) ("Public Television Stations"), the Commission has erred in its consideration of these questions.

In the text of its *Report and Order*, the Commission never uses the terms "noncommercial educational" or "public" television station, and never differentiates between commercial and noncommercial television stations. In so doing, the *Report and Order* fails to acknowledge three facts that are essential to a rational analysis of these issues:

- 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.
- Public Television Stations already are required to report to CPB on their community outreach activities, issues-responsive and local programming, and much of this data is public or would be provided to the Commission upon request.

[4] *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").

- Form 355: Standardized Television Disclosure Form does not contemplate the differences between Public Television Stations and their commercial counterparts, and presents an undue burden for Public Television Stations, which rely *entirely* on locally produced, independently produced and issues-responsive programming.

The purpose of this Petition is to bring to the Commission's attention information that could only be gleaned as a result of (i) being able to review, for the first time, the detailed regulations actually adopted by the Commission, particularly the draft Form 355, and (ii) receiving detailed feedback from many of our member stations who have had a chance to evaluate the actual regulations and their impact on station operations. The goal of Public Television is not to evade oversight, but to ensure that these regulations are rational, effective and minimally burdensome, considering the nature and interests of all parties involved.

To that end, Public Television respectfully requests that the Commission exempt all Public Television Stations from the requirement to complete a quarterly standardized programming report form in place of the existing quarterly issues/programs disclosure. Given Public Television's long history of providing issues-responsive programming, and given the availability to the Commission—and through the Commission to the public—of extensive information on stations' programming and outreach activity that is already collected in a standardized format by CPB, such an exemption would serve the Commission's goals. Unlike the new rule, these existing methods of transparency do not force Public Television Stations to divert limited resources from their core mission of providing educational and informational programming to their local communities.

In the alternative, if the Commission deems a standardized disclosure necessary, Public Television requests one of the following approaches: (i) that the Commission permit Public Television Stations to file with the Commission, on an annual basis, 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; or (ii) that the Commission revise its Standardized Television Disclosure Form, as it applies to Public Television Stations, to more closely model the format and content of the SAS and SABS forms that stations currently submit to CPB. Such revisions to the Commission's requirements would minimize the additional burden on Public Television Stations while still ensuring that the Commission and the American public have access to reliable and meaningful information on how all stations are serving their local communities.

Finally, while Public Television generally does not oppose the Commission's new mandate that stations place their public inspection files on their websites, we seek 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 seeks 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. We urge the Commission to interpret this requirement in such a way that minimizes the burden on Public Television Stations, perhaps by setting forth a phase-in timeline in which the accessibility mandate applies only with respect to documents added after the effective date of these Rules.

DISCUSSION

I. THE COMMISSION HAS ERRED IN FAILING TO NOTE DISTINCTIVE FEATURES OF CPB-QUALIFIED PUBLIC TELEVISION STATIONS.

Not once does the 23-page *Report and Order*—in text or footnotes—use the term "noncommercial educational" or "public" television station or differentiate or acknowledge any

differences between commercial and noncommercial television stations. This omission indicates that the Commission so far has failed to consider several points that are essential to a reasoned analysis of the basis for regulation of Public Television Stations in this area and of the burdens and benefits of the Commission's rules vis-à-vis Public Television Stations.

A. 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.[5] 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

[5] 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"); § 396(a)(6) ("[I]t is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities"); § 396(a)(8) ("[P]ublic television and radio stations and public telecommunications services constitute valuable local community resources for utilizing electronic media to address national concerns and solve local problems through community programs and outreach programs"). In addition, CPB is authorized to "facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are obtained by diverse sources, will be made available to public telecommunications entities, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature." 47 U.S.C. § 396(g)(1)(A). *See also* 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).

that, more than any other on television, is aimed at readying young children for the academic rigors of school.[6] During the rest of the day, Public Television Stations offer varied 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 the new digital capabilities to expand their educational and informational offerings through multicasting. While many of their commercial counterparts have been slow to capitalize on the added capacity digital broadcasting offers, 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, some local Public Television Stations are using a multicast stream to transmit "V-me," a Spanish-language educational and informational service presented by Thirteen/WNET, a Public Television Station serving the New York City area.

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."[7] 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

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[6] 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).

[7] GAO Report at 8.

television of important issues of the day, Public Television Stations independently select and schedule their programming lineups.

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,[8] Public Television Stations are producing and airing a wide array of programs focused specifically on their local communities and the issues that affect them. Below are just a few recent examples:

- **Detroit Educational Television Foundation (WTVS, Detroit, MI):** Detroit Public Television is the only locally owned and operated television station in the Detroit market. Even with no university support or funding from the State of Michigan, DPTV produces five half-hour programs per week: *In the Frame: Exploring the DIA*, which goes behind the scenes at the Detroit Institute of Arts; *American Black Journal*, which presents information from African American perspectives; *Am I Right?*, which offers news analysis from liberal and conservative viewpoints; *The Detroit Economic Club Presents*, which features America's political and business leaders; and *Due Process*, which explores legal issues of relevance to the community. In addition, DPTV produces specials on young African American and Latino classical musicians (*The Sphinx Concerts*), Artistic and literary achievement (*Governor's Arts Awards*, *Reading Rainbow Awards*), and local issues (*Bridging the Racial Divide*, *Emerald Ash Borer*).

- **Idaho State Board of Education (Five stations throughout the state):** Each year, Idaho Public Television provides more than 2,900 hours of free local programming available statewide and in portions of six surrounding states. Local programs include *Outdoor Idaho*, which recently celebrated its 25th anniversary; *Dialogue*, a statewide public affairs program that has aired since 1994; *D4K* (Dialogue For Kids), a science program; *Idaho Reports*, which addresses legislative news and analysis; and *Legislature Live*, which features gavel-to-gavel coverage of the state legislature. Healthcare is a major focus of local programming, because Idaho has the fewest number of doctors per resident of any state, and by 2020, Idaho will be nearly 60 percent short of needed nursing staff. Recent episodes of *Dialogue* have focused on SCHIP, West Nile Virus and the Medicare Prescription Plan and their impact on Idaho citizens.

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[8] *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. 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.

- **Shenandoah Valley Educational Television Corporation (WVPT, Staunton, VA, and WVPY, Front Royal, VA):** As Harrisonburg and the Shenandoah Valley's last truly "local" broadcaster, WVPT was able to provide almost 300 hours of local programming in 2007, including several regularly scheduled programs: *Consider This*, a weekly public affairs program which provides coverage of the state Legislature's session and in-depth discussions on relevant topics; *Miller Center Forums*, a broadcast version of a popular nonpartisan weekly lecture series at the University of Virginia; and *Virginia Farming*, the Commonwealth's only local, weekly farm program on television. In addition, *Virginia Reports* is a documentary series focusing on compelling local issues and topics of importance in communities across the WVPT viewing area. A recent episode entitled "The Latino Underground" explores the complicated topic of illegal immigration and its effect on the Shenandoah Valley region.

In many cases, Public Television Stations are the only source in their community of local programming unrelated to news or sports.[9] Many more examples of locally produced issues-responsive programming by local Public Television Stations are included in Exhibit A.

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."[10] 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."[11] 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

[9] GAO Report at 22.

[10] *1984 Order* at ¶ 12.

[11] *Id.* at ¶ 13.

support" by their varied patrons.[12] 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."[13] Recognizing these facts, the Commission abolished an onerous program-logging requirement in favor of the current issues/programs list rule.[14]

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. In so doing, however, 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. We submit that if the Commission undertakes such an evaluation, it 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.

B. 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 the data in various ways to provide stations and national organizations with a tool to support

[12] *Id.* at ¶¶ 18-19.

[13] *Id.* at ¶ 19.

[14] *Id.* at ¶ 27.

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: Standardized Television Disclosure Form is duplicative of these efforts.

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".[15] 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.[16] In addition, for this locally produced content, stations are required to list the total hours employing closed-captioning and the total hours using the Secondary Audio Programming (SAP) channel.[17] 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

[15] *See* SABS FY2007 Instruction Guide, Programming, Section 8.1, and excerpt from completed SABS Survey Report, attached hereto as Exhibit B.

[16] *See* SABS FY2007 Instruction Guide, Production, Section 9.2, and excerpt from completed SABS Survey Report, attached hereto as Exhibit C.

[17] 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.

Literacy on TV, etc.), and report on the number and type of educational workshops and professional development conducted by the station.[18]

The SAS asks several questions aimed to elicit information on stations' community outreach and how they address issues of importance to their local viewers:[19]

- 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 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 SABS and SAS surveys, which do not include confidential financial information.

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[18] *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.

[19] *See* Excerpt from Station Activities Survey, attached hereto as Exhibit E.

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.[20] 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.

C. Form 355 Does Not Contemplate the Differences Between Public Television Stations and Their Commercial Counterparts and Presents an Undue Burden For Public Television Stations, Which Rely Entirely on Locally Produced, Independently Produced and Issues-Responsive Programming.

Though the instructions for Form 355: Standardized Television Disclosure Form make clear that it is to be filed by both commercial and noncommercial educational television stations, one look at the form demonstrates that it was not created with the unique status of Public Television Stations in mind. The most blatant indicator is the framing of the category "Independently Produced Programming." The Commission defines "independently produced programming" as programming aired during prime-time that is produced by an entity not owned or controlled by an owner of a national television network. However, Public Television Stations operate entirely outside the network/affiliate system. For example, PBS operates not as 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

[20] *See* sample program schedule from WMPT, attached hereto as Exhibit F.

outside production companies, not PBS.[21] 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 likely to be required to log *all* of their prime-time programming on Form 355.

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,[22] 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. For 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, Public Service

[21] *See, e.g.*, GAO Report at 15-16.

[22] The instructions for Form 355 state that licensees may not incorporate any other documents or exhibits.

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. On average, licensees estimated that Form 355 would require *four to eight times* the resources that the current issues/programs list demands. 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, like many Public Television Stations, maintains a record-keeping software platform, "ProTrack", that as configured does not support the non-standard program genre categories specified by Form 355. IdahoPTV has determined 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,[23] 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:

Licensee	Time/quarter Current I/P list	Time/quarter New Form 355	New hire necessary?	Source of additional resources
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

[23] 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"[24] and that the "benefits of a standardized form that requires broadcasters to list all relevant programming

[24] *Report and Order* at ¶ 34.

outweighs the burdens placed upon broadcasters."[25] Public Television respectfully submits that, vis-à-vis Public Television Stations, the *Report and Order* has grossly underestimated the burden imposed by this new requirement and its power to undermine rather than advance stations' fulfillment of their public service mission.

II. AN EXEMPTION FROM THE FORM 355 REQUIREMENT FOR PUBLIC TELEVISION STATIONS IS WARRANTED AND WOULD SERVE THE PUBLIC INTEREST.

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.[26] 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, Public Television urges the Commission to reconsider and revise its *Report and Order* to exempt Public Television Stations from the obligation to complete Form 355. Any

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[25] *Id.* at ¶ 44.

[26] *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).

incremental 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.

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."[27]

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*.[28] 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

[27] 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).

[28] *See supra* note 6.

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.

III. IN THE ALTERNATIVE, THE COMMISSION SHOULD REVISE THE STANDARDIZED DISCLOSURE REQUIREMENT FOR PUBLIC TELEVISION STATIONS.

While Public Television believes an exemption from the Form 355 requirement for Public Television Stations is warranted, 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 satisfy the needs of the Commission and the public while capitalizing on stations' existing reporting systems to minimize the additional, unnecessary burden.

IV. THE COMMISSION SHOULD CLARIFY THE ACCESSIBILITY COMPONENT OF THE REQUIREMENT THAT STATIONS POST PUBLIC INSPECTION FILE ON WEBSITES.

Public Television does not generally oppose the Commission's new mandate that stations place their public inspection files on their websites. Furthermore, we wholly support the measures taken by the Commission to lessen the burden on licensees, including allowing licensees to provide links to material that is available on the Commission's website or other websites.[29] And as an outgrowth of its universal service mission,[30] 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.

[29] *Report and Order* at ¶ 24.

[30] *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").

However, Public Television requests that the Commission clarify the 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.[31] 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-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.

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. 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.

[31] *Report and Order* at ¶¶ 26-28.

CONCLUSION

Based on the foregoing, the Association of Public Television Stations and the Public Broadcasting Service respectfully request that the Commission reconsider, revise, and clarify its *Report and Order*, consistent with the positions set forth in this Petition.

Respectfully submitted,

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

/s/
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

April 14, 2008