

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

IN THE MATTER OF)
) **MB DOCKET NO. 11-189**
STANDARDIZING PROGRAM)
REPORTING REQUIREMENTS)
FOR BROADCAST LICENSEES

TO: THE OFFICE OF THE SECRETARY

**COMMENTS OF TRINITY CHRISTIAN CENTER OF SANTA ANA, INC.,
TRI-STATE CHRISTIAN TELEVISION, INC., AND
THEIR AFFILIATED LICENSEE MINISTRIES**

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EXECUTIVE SUMMARY

The Commission's Notice of Inquiry: In The Matter of Standardizing Program Reporting Requirements for Broadcast Licensees, FCC 11-169, ("Notice") published in the Federal Register on December 15, 2011, 76 Fed. Reg. 77999, seeks to determine whether it should initiate a formal rulemaking proceeding "to replace the issues/programs list that television stations have been required to place in their public files for decades with a streamlined, standardized disclosure form that will be available to the public online." Notice, ¶ 1. In these comments, Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network ("Trinity"), Tri-State Christian Television, Inc. ("TCT"), and their affiliated licensee ministries, urge the Commission not to move forward with the contemplated rulemaking. First, imposition of the standardized program reporting requirement, particularly with the inclusion of a limited list of programmatic categories, risks injury to the constitutional rights of televisions broadcasters. Second, the responsibility to prepare and file the proposed form is unnecessary to the completion of broadcaster responsibilities and to the fulfillment of the Commission's duties. Third, the program reporting requirement risks imposition of undue burdens on broadcasters, both generally and particularly when combined with proposals regarding the use of a sample or composite week where announcement of relevant dates for sample and composite week reporting are withheld until conclusion of the relevant reporting period.

All these reasons counsel strongly against a move toward a rulemaking to adopt another program reporting obligation based on a standardized form with limited programmatic categories.

**Before the
Federal Communications Commission
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Requirements for Broadcast Licensees)
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TO: The Office of the Secretary

**COMMENTS OF TRINITY CHRISTIAN CENTER OF SANTA ANA, INC.
AND TRI-STATE CHRISTIAN TELEVISION, INC.**

I. INTRODUCTION

Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network (“Trinity”), Tri-State Christian Television, Inc. (“TCT”), and their affiliated licensee ministries,¹ pursuant to the Commission’s November 10, 2011 Notice of Inquiry re: Standardizing Program Reporting Requirements for Broadcast Licensees, FCC 11-169 (“Notice”) published in the Federal Register on December 15, 2011, 76 Fed. Reg. 77999, respectfully provides the following comments.² The Notice seeks comments on the Commission’s “proposal to replace the issues/programs list that television stations have been required to place in their public files for decades with a streamlined, standardized disclosure form that will be available to the public online.” Notice, ¶ 1; 76 Fed. Reg. at 77999. The proposal, Notice ¶¶ 3-8; 76 Fed. Reg. at 78000-01, for a standardized form carries forward from the Commission’s earlier actions (1) adopting

¹A list of these licensees and stations is attached as Appendix 1.

²On January 6, 2012 the Commission issued an Order (DA 12-23) extending the comment filing date in this matter until January 27, 2012.

the “issues/programs list” requirement, *see* Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, Report and Order, 98 F.C.C.2d 1075, 1107-11 (1984) ("TV Deregulation"), (2) adopting the 2007 Form 355 reporting form requirement, *see* Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, 23 FCC Rcd 1274, 73 Fed. Reg. 13452 and (3) vacating the adoption of the 2007 Form 355 reporting form requirement, *see* In the Matter of Standardizing Program Reporting Requirements for Broadcast Licensees, 2011 FCC Lexis 4629 (FCC 2011), 76 Fed. Reg. 71267.

As discussed herein, in the view of Trinity and TCT, the Commission should not move forward with a proposed rule making adopting a standardized reporting form obligation.

Several sound reasons counsel against such agency action.

First, imposition of the standardized program reporting requirement, particularly with the inclusion of a limited list of programmatic categories, risks injury to the constitutional rights of televisions broadcasters. Second, the responsibility to prepare and file the proposed form is unnecessary to the completion of broadcaster responsibilities and to the fulfillment of the Commission’s duties. Third, the program reporting requirement risks imposition of undue burdens on broadcasters, both generally and particularly when combined with proposals regarding the use of sample or composite weeks where announcement of relevant dates for sample and composite week reporting are withheld until conclusion of the relevant reporting period. All these reasons counsel strongly against a move toward a rulemaking to adopt another program reporting obligation based on a standardized form with limited programmatic categories.

II. PROGRAMS/ISSUES REPORTING AND THE COMMISSION

A. BACKGROUND

Since 1984, broadcast licensees have been required to place in their public inspection file “every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period.” *See* TV Deregulation, 98 F.C.C.2d 1107-11. Pursuant to the procedures specified in TV Deregulation, licensees must include with their issues/programs list a brief description of the issues given significant treatment and the programming providing this treatment along with air date and time, duration, and title of each program treating the issue. Notice ¶ 3. In the Commission’s view at the time the issues/programs list would be “[t]he most significant source of issue-responsive information under the new regulatory scheme[,]” both generally and for license renewal considerations. 98 F.C.C.2d at 1107-11.

The Commission, in 2000, proposed requiring its television broadcast licensees to report their service of the public interest using a standardized form. *See* Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Notice of Proposed Rulemaking, 15 FCC Rcd 19816 (2000). The Commission’s proposal of a standardized reporting form reflected its conclusion that some members of the public experienced difficulty accessing programming information under the issues/programs list requirement, as a result of the absence of any standardized reporting mechanism. Notice ¶ 4. In its view, use of a standardized form would ease access to licensees’ issues/program information, likely resulting in greater accountability to the public for broadcasters. At the same time, the Commission suggested that such standardized reporting would have the added benefit of

reducing time spent in locating covered information, and of improving the means by which the public could review broadcasters' issues/programs activities. *Id.*

Ultimately, the Commission did adopt a requirement of a standardized form reporting of issues/programs. Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Report and Order, ¶ 1, 23 FCC Rcd 1274 (2007). With the standardized form reporting, the Commission also required licensees with web sites to post completed forms on their web sites. *Id.* In the Commission's view, standardization of reporting and online access thereto would equip the public to assess the varying efforts of licensees, and to evaluate how programming responded to identified issues. The 2007 standardized disclosure form, Form 355, required each station to submit a comprehensive list of any programs or program segments it aired every quarter that fell into stated categories, including: national news, local news, local civic affairs, local electoral affairs, independently produced programming, local programming, public service announcements, paid public service announcements, programming that meets the needs of underserved communities, religious programming, efforts undertaken to determine the programming needs of the community, service for persons with disabilities, and current emergency information.

The Commission's adoption of Form 355 reporting obligations was not free from difficulty or opposition. Notice ¶ 6. Both licensees and public interest advocacy groups petitioned the Commission regarding its Report and Order. *Id.* Licensees and related petitioners complained that Form 355 was vague, overly complex, and burdensome. Public interest groups complained that the Commission's action failed to facilitate the research utility of licensees' Form 355, and asked for audits to determine accuracy of reports to correct errors and an ongoing

dialogue between the Commission and researchers to insure that the Form 355 approach was effected in a useful and user-friendly manner. *Id.*

Due to challenges within the Commission, additional ones in court, and before the Office of Management and Budget, Notice ¶ 6, the rules imposing Form 355 and the form's adoption never took effect. In November 2011, the Commission vacated the form adopted in the Report and Order. In the Matter of Standardizing Program Reporting Requirements for Broadcast Licensees, 2011 FCC Lexis 4629 (FCC 2011), 76 Fed. Reg. 71267. Because the use of Form 355 was never implemented, and the prior obligation to report on issues/programming continued, Trinity and TCT have continued to regularly ascertain and assess the issues facing their communities of license, to provide programming that in their best judgment responds to those issues, and to report on those issues/programs as required under the Commission's 1984 TV Deregulation regime.

B. THE NOTICE AND PROPOSED REPORTING FORM

The Commission has not adopted its own form for the purpose of reporting by licensees of their efforts to ascertain or serve the needs of their communities of license in the area of issues and programs. *See generally* Notice. Instead, the Commission invites the public and those submitting comments in response to the Notice to review a form proposed to the Commission by the Public Interest/Public Affairs Coalition ("PIPAC"). *See* Notice ¶ 25. *See also* "Sample Form," <http://www.savethenews.org/sample-form> (last visited Jan. 11, 2012).

Together with the reference by the Commission to the PIPAC Sample Form, the Notice invites comment on a series of questions related to the use of such a standardized form, and to the methods for implementation of the form. *See* Notice ¶¶ 9-42.

First, the Commission, carrying forward with the conclusions it drew in its 2007 proceeding, “continue[s] to believe that the use of a standardized disclosure form will facilitate access to information on how licensees are serving the public interest and will allow the public to play a more active role in helping a station meet its obligation to provide programming that addresses the community’s needs and interests” Notice ¶ 10. In addition, the Commission tentatively concludes,

The issues/programs list required under the current rules, while providing some information to the public and establishing a record of some of a station's community-oriented programming, suffers from several drawbacks, including a lack of uniformity and consistency in the way broadcasters maintain the lists. This makes effective access to the program information and assessment of a broadcaster's program performance extremely difficult. A standardized disclosure form could address these concerns, and in view of advances in technology and the revisions to the form we discuss here, should not impose unwarranted burdens on broadcasters. A standardized disclosure form will make broadcasters more accountable to the public, and improving broadcaster accountability to the public will minimize the need for government involvement in monitoring how broadcasters comply with their public interest obligations. A standardized disclosure will significantly reduce the time needed to locate information sought by the public and will provide the public with a better mechanism for reviewing a broadcaster's public interest programming and activities. Placing the new standardized form online, instead of merely on paper in the broadcasters' offices, will make it far easier for the public to review the information. We seek comment on these tentative findings.

Notice ¶ 10.

Second, the Commission invites comment on how it should construct the relevant periods for reporting. Notice ¶¶ 14-21. The Commission contemplates using a sampling approach for each quarter’s reporting:³

³The Commission concluded that the previous proposal it adopted but that never took effect, namely requiring the reporting of *every* relevant program and program segment would be unduly burdensome. Notice ¶ 14.

We believe that a sample approach to reporting would provide sufficient information to the public, without unduly burdening broadcasters, and seek comment on this approach. How could a composite week or weeks be structured for reportable programming? For example, how many days of programming should be included in the reporting requirement for each quarter? We seek comment on how to implement a random selection. Are there certain distortions to the average programming day, such as sweeps week, that should be excluded? Alternatively, would it be less burdensome for broadcasters to compile information for one or more full weeks during the quarter? What would be the advantages and disadvantages of each approach?

Notice, ¶ 16. In addition to the Commission's own proposal to employ a sampling approach, it asks for comment on the proposal by PIPAC "that broadcasters be required to submit data for two constructed or composite weeks per quarter that are selected by the Commission." Notice, ¶ 17. The Commission also seeks comment on when it should announce dates to be included in sampled periods. Notice ¶¶ 18-19. For itself, the Commission appears ready to consider announcing included dates as late as the end of the relevant reporting period, Notice ¶ 18 ("If we adopt a composite week or weeks approach, should the Commission inform the broadcasters that a date has been selected to be part of a composite week on the following day? Alternatively, should the Commission release the reporting dates at the end of the quarter, or would this needlessly require broadcasters to retain programming information for every day in the quarter?"). The Commission seeks comment on two alternatives as well. Broadcasters "proposed that the Commission notify stations a few days before the selected reporting dates in order to provide sufficient notice about when broadcasters should start logging the information needed to complete the form." Notice, ¶ 19. Opposed to advance notice, PIPAC proposed to the Commission "that broadcasters not be given advance notice of the reporting dates" but that "the

Commission select the relevant reporting dates at the beginning of the quarter and then announce each reporting date the morning after the selected day.” Notice, ¶ 19.

Third, with respect to the use of a standardized form and identified categories for program cataloging, the Notice states:

We are beginning anew our attempt to create a standardized form, including which programming categories to consider. However, in order to guide the discussion in this proceeding, we address below the categories now proposed by PIPAC and seek comment on their proposed previous form. Are there any categories identified on the newly proposed previous form that are unnecessary or could otherwise be deleted? What, if any, additional categories should be included? ... We urge commenters to provide specific suggestions about the newly proposed reporting categories so that we can include those most relevant and useful for broadcasters and the public alike.

Notice ¶ 25. The programming categories proposed by PIPAC and for which the Commission seeks comment are “Local News,” “Local Civic/Governmental Affairs,” and “Local Electoral Affairs.” Notice ¶¶ 27-29.

III. THE COMMISSION’S PROPOSAL WILL CHILL CONSTITUTIONALLY PROTECTED BROADCASTER EDITORIAL DISCRETION AND DISTORT THE PROGRAMMING CHOICES OF BROADCASTERS

A. BROADCASTERS ENJOY THE SAME CONSTITUTIONAL RIGHTS OF EXPRESSION AS SPEAKERS IN OTHER MEDIA, OUTMODED ARGUMENTS REGARDING SCARCITY AND PERVASIVENESS NOTWITHSTANDING

Broadcasters exercise supremely precious, and delicate, rights of expression in the preparation, selection and airing of programming. While some may conclude that it is only in the preparation of programming related to delivery of local news and public affairs programming that such rights of expression are in significant play, that conclusion is wrong and of no merit whatever. When a broadcaster makes choices in preparing, selecting and airing any program, the

choices made are at the heart of the interests protected by the First Amendment. Message selection by a speaker is the *sine qua non* of free expression. See, e.g., *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 574-75 (1995) (selection criteria for floats in parade a form of message selection by parade organizers). Nor is it of consequence that sometimes those choices relate to the airing of dramatic, business, religious, news, informational, instructional, historical, public affairs, entertainment, and sports programming, or the like. It was the performance of the musical “Hair” that resulted in the Supreme Court’s decision in *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975). Importantly, for Trinity and TCT, religious speakers and religious messages enjoy protection of the First Amendment right to freedom of speech. *Westside Community Schools v. Mergens*, 496 U.S. 226, 250 (1990) (noting “crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect”).

Broadcasting – both television and radio – however, have always occupied a unique, though not favorable, position when it comes to First Amendment protection. Two principal justifications have been the premises for that closer regulation of broadcast speech: the scarcity of the medium and its pervasiveness.

Dating back to *NBC v. United States*, 319 U.S. 190 (1943), the Commission and the Supreme Court have invoked “scarcity” of the medium as a justification for closer regulation of broadcast speech. “Unlike other modes of expression, radio inherently is not available to all. That is its unique characteristic, and that is why, unlike other modes of expression, it is subject to governmental regulation.” 319 U.S. at 226. Later, in *Red Lion Broad. Co. v. FCC*, 395 U.S. 367

(1969), the Court continued its reliance on the “scarcity” rationale as a justification for closer regulation of broadcasters’ expression: “there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unbridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish.” 395 U.S. at 367. *Red Lion Broad. Co.* represents, possibly, the nadir of protection for broadcast speech constitutional protection: “Although broadcasting is clearly a medium affected by a First Amendment interest, differences in the characteristics of new media justify differences in the First Amendment standards applied to them.” 395 U.S. at 386 (internal citation omitted).

In *Pacifica Foundation v. FCC*, 438 U.S. 726 (1978), the Supreme Court expressly relied on pervasiveness of the medium and its accessibility to children as a justification for closer regulation of broadcasters’ expression. 438 U.S. at 748-49. The Supreme Court has stood that ground, and affirmed the distinction drawn for it by the Commission between broadcasting and other forms of media in subsequent cases. See *Reno v. ACLU*, 521 U.S. 844, 866-67 (1997); *Sable Communications of California v. FCC*, 492 U.S. 115, 127 (1989). Although *Pacifica Foundation* omitted the specific level of scrutiny applicable to restrictions on broadcast speech, later cases appear to adopt some form of intermediate scrutiny. See *FCC v. League of Women Voters*, 468 U.S. 364, 380 (1984).

Today, however, the twin rationales for lowered protection for broadcast speech are so undermined by technological and other developments that, even if they were ever justified, their basis has been swept away. See A. Thierer, “Why Regulate Broadcasting? Toward a Consistent First Amendment Standard for the Information Age,” 15 *CommLaw Conspectus* 431, 435-40 (2006-2007) (regarding the disputed scarcity rationale). Even the Commission staff has

concluded that scarcity is a rationale whose time, if it ever existed, is long passed. See John W. Berresford, “The Scarcity Rationale for Regulating Traditional Broadcasting: An Idea Whose Time Has Passed,” at 8-12 (FCC Media Bureau Staff Research Paper No. 2005-2, Mar. 2005), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-257534A1.pdf. “[T]he Scarcity Rationale ignores basic principles of resource allocation, recent field measurements, history, the progress of technology, and economics.” Berresford, at 12.

When the Supreme Court decided *Pacifica Foundation*, broadcasting stood alone as the only electronic mass medium. Today, it is but one medium stream in an ocean of media. A typical viewer of television programming would not, perhaps could not, distinguish the broadcast channels from other programming provided on cable (satellite and Internet) television. “Indeed, we face a media landscape that would have been almost unrecognizable in 1978.” *Fox TV Stations v. FCC*, 613 F.3d 317, 326 (2nd Cir. 2010). Consequently, the “uniquely pervasive” presence of broadcasting that the *Pacifica Foundation* Court identified as the principal rationale for subjecting broadcasting to closer FCC regulation no longer exists. As the Second Circuit explained, “it is increasingly difficult to describe the broadcast media as uniquely pervasive and uniquely accessible to children.” *Fox TV Stations v. FCC*, 489 F.3d 444, 465 (2nd Cir. 2007), *rev’d and rem’d on other grounds*, *FCC v. Fox TV Stations*, 129 S. Ct. 1800 (2009). Justice Thomas, concurring in *FCC v. Fox TV Stations*, expressed the view that “the justifications relied on by the Court ... --‘spectrum scarcity, intrusiveness, and accessibility to children--neither distinguish broadcast from cable, nor explain the relaxed application of the principles of the First Amendment to broadcast’ . . . technological advances have eviscerated the factual assumptions”

underlying *Pacifica Foundation*. 129 S. Ct. at 1821 (Thomas, J., concurring) (internal citations omitted).

Before *Pacifica Foundation*, there was already developed a history of lesser First Amendment protection for broadcasting, based on the scarcity rationale. Regulation was deemed justified because of the perceived limited capacity of the broadcast spectrum, and consequent scarcity of licenses. Present thinking of the Commission about scarcity as a continuing justification for closer regulation of licensee speech aside, there is a difference of substance between rules designed to promote more speech, *see NBC v. United States*, 319 U.S. 190 (1943) (approving FCC rules that curbed national networks' market power by prohibiting them from dictating the programming of affiliated stations), and content based considerations for restricting broadcasters' expression.

Technological developments since *Pacifica* make government control unnecessary in those instances in which parents wish to shield their children from programming they consider inappropriate. *Fox TV Stations v. FCC*, 489 F.3d at 466; *see also Brown v. Entertainment Merch. Ass'n*, 131 S. Ct. 2729, 2741-42 (2011) (challenged statute supported "what the state thinks parents ought to want" even though parental views vary widely). The Commission recognizes the ready availability of v-chip and lockbox technologies for programmatic blocking. *See Saving Private Ryan*, 20 FCC Red at 4508, nn.8-9. Moreover, as directed by Congress, every television 13 inches or larger sold in the United States after January 2000 contains a v-chip. *Fox TV v. FCC*, 613 F.3d at 326; *see also* 47 U.S.C. § 303(x) (granting Commission the power to "[r]equire, in the case of an apparatus designed to receive television signals that are shipped in interstate commerce or manufactured in the United States and that have a picture screen 13

inches or greater in size (measured diagonally), that such apparatus be equipped with a feature designed to enable viewers to block display of all programs with a common rating, except as otherwise permitted by regulations pursuant to section 330 (c)(4) of this title”). On top of those developments, the 2009 transition to digital television resulted in providing v-chip access to anyone that had a digital converter box. *See* 613 F.3d at 326. The Supreme Court relied on the availability and effectiveness of lockboxes and similar technologies as less burdensome means of serving parental concerns when it struck down the cable indecency regulation at issue in *United States v. Playboy Entm’t Grp.*, 529 U.S. 803, 809-15 (2000).

Thus, both the scarcity rationale and the risks associated with the pervasiveness of the broadcast medium have evanesced, leaving no substantive justification for this Commission to continue to treat broadcasters as enjoying a lower level of First Amendment protection for their expression. For these reasons, the Commission should take a step back, adopt a candid recognition of this reality, and reconsider its proposals because of the very real risk they pose of harm to the constitutional rights of broadcasters.

B. IN LIGHT OF BROADCASTERS’ CONSTITUTIONAL RIGHTS OF EXPRESSION, THE SELECTION OF PARTICULAR TOPICS AND SUBJECTS FOR FORM 355 REPORTING RISKS CHILLING AND BURDENING BROADCASTERS’ CONSTITUTIONAL RIGHTS

1. Categorizations – Whether the Commission’s Own or as Proposed by PIPAC – Impose Confusion and Excessive Burdens on Broadcast Licensees

In the Notice, the Commission “urge[d] commenters to provide specific suggestions about the newly proposed categories so that we can include those most relevant and useful for broadcasters and the public alike.” Notice, ¶ 25.

Language being imprecise, some difficulty in communicating across the lines from broadcasters to communities of license to the Commission to special interest groups such as PIPAC is to be expected. One approach is that offered by the Commission, namely to specify a set of categories into which programming might be catalogued for reporting purposes. For those purposes, the Commission asks commenters to address the categorization proposed by PIPAC. Notice, ¶¶ 27-29.

The problem for broadcasters, however, is that the Commission and special interest groups such as PIPAC wait like a springing trap for an honest misstep and then describe serious efforts to ascertain and program for community issues as insignificant, confused in its recordation, etc. Suppose a broadcaster – having ascertained that unmanageable personal debt is a significant problem in its community of license – broadcasts a live, call-in, television program featuring trained, experienced financial management experts that respond to caller questions and provide generalized guidance on debt management and relief. On the issues/programs list approach, ascertainment shows the problem of intractable personal indebtedness as an issue in the community, and “Money 911” is listed as a program responsive to the issue. Under the PIPAC/Commission regime, is a broadcaster abusing its editorial discretion or failing in its reporting obligations when it reports “Money 911” as “local news” or “local civic/governmental affairs.”

Deciding into what categories electronic information transmitted by broadcasters should be placed compels just the sort of linguistic exercises in futility that the foregoing example suggest. While it is possible to describe the three item proposal of PIPAC as simplified, by comparison with the regime adopted in the Commission’s 2007 proceeding, the risks of its

simplicity are real and significant. All that is in service of the needs and issues of a broadcaster's community of license will not fall neatly, or honestly, into "Local News," "Local Civic/Governmental Affairs" and "Local Electoral Affairs."

Trinity and TCT, for example, are religious broadcasters. Having ascertained that the single most pressing issue in any community is the state of individuals with respect to the existence of a Divine Being and the imperative to follow an ethical and moral code, and the relations amongst that Divine Being, the ethical and moral imperative, and the members of the community, Trinity and TCT program literally hundreds and thousands of hours of programming that speaks to what they have ascertained to be *the* dominant issue. In its broadest approach, perhaps such programming could be counted within "Local News" or "Local Civic/Governmental Affairs" categories. More sensibly, a category like religion, or faith, might be included for these obvious reasons.

What about the dearth of science and math knowledge in American school children? Take the case of a licensee ascertaining the needs of its community of license in this regard, and choosing to address that issue through programming selections. The licensee might, for example, select a program like "Bill Nye: Science Guy" or "Beakman's World" to encourage early interest in the sciences or mathematics. Where does such a selection appear in the PIPAC reporting schema? The licensee's laudable efforts to identify and address an important community issue goes without reflection in the PIPAC reporting schema (while the current quarterly issues/programs reporting system accommodates it). That result obtains even despite honest and best efforts of the licensee.

2. The Adoption of a Reporting Obligation Employing Limited, Stated Categories Inevitably Coerces the Editorial Discretion of Broadcast Licensees

The Commission hews its own line, concluding that the listing of certain topics and subjects for the proposed standardized reporting program does not coerce broadcasters to program along those lines in response. Notice, ¶ 23 (“We disagree with the Enhanced Disclosure reconsideration petitioners who argue that the standardized reporting categories impose de facto quantitative programming requirements or pressure stations to ensure carriage of some amount of programming that falls within government-preferred categories. We stress that, as the Commission noted in the Report and Order, the standardized form does not require broadcasters to air any particular category of programming or mix of programming types”). Trinity and TCT respectfully disagree with this assertion, and see no reason for the inclusion of *only* PIPAC’s golden three topics, Notice ¶¶ 27-29. Indeed, if “the standardized form does not require broadcasters to air any particular category of programming or mix of programming types,” then one may legitimately ask why those categorizes of programs are singled out? The field of human knowledge is far too vast to allow for a simplified classification system such as PIPAC proposes. Administrative conveniences aside, there is no reason, other than PIPAC’s preference, to use the three proposed categories for reporting. In fact, an appropriate list of categories would likely be extensive.⁴

⁴No one can honestly say just how extensive a categorization of topics there might have to be to avoid any danger resulting from inclusion or exclusion of a topic or category. Certainly with respect to Trinity’s and TCT’s interests, the category listing would need to be expanded to include religious programming of all types, instructional programming, and all children’s programming. Some notion of just how inadequate the PIPAC classification scheme is may be garnered by comparing it with the Library of Congress classification system used by libraries for accessioning, shelving, and deaccessioning books and periodicals. *See*

The assertion that the express inclusion of certain categories would not distort broadcasters' expression ignores reality. When a teacher announces that her grading scheme for a test takes account of both spelling and penmanship, the sensible student takes greater care in both writing and word choice. When this Commission tell its licensees, "report on what you've done to serve the needs of your community of license" and then follows that with "make sure you tell us about the news, public affairs and electoral programming you have broadcast," the sensible broadcaster adjusts her messages. Respectfully, the Commission may whistle its way past this reality out of fear for its constitutional implications, but human experience disagrees with the Commission.

Nor is a catch all comments section sufficient to secure the delicate and supremely precious First Amendment rights of the broadcasters. Past experience teaches that the "other" category is capable of raw manipulations derogative of First Amendment rights.

The experience of churches and religious groups in New York State under New York Education Law § 414 is illustrative. That statute governs the use of school buildings after school hours by civic, social and community groups. NY Educ. Law § 414. The statute provides a laundry list of permissible after hours uses of school buildings, and the restrictions pertaining thereto. Included amongst permitted uses is "For holding social, civic and recreational meetings and entertainments, and other uses pertaining to the welfare of the community." In *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993), the Supreme Court reversed the Second Circuit's affirmance of the denial of injunctive relief sought by a church and its pastor for equal access. Center Moriches had denied Lamb's Chapel's application to use a

<http://camellia.shc.edu/literacy/tablesversion/lessons/lclass.pdf> (last visited Jan. 11, 2012).

school facility to host a video conference related to family life because of its religious viewpoint. In that instance, it would have seemed that § 414's catch all provision "other uses pertaining to the welfare of the community" would have extended sufficiently broadly to allow a religious use of the facility. The school district, the district court and the court of appeals all disputed and rejected Lamb's Chapel's claim that its use fell within the "other uses pertaining to the welfare of the community." In fact, at the Supreme Court, the State of New York expressly argued that the seemingly unlimited "other uses" category did not include religious uses since they did not pertain to the welfare of the community. *See* Brief for Respondent Attorney General, at 24 ("Religious advocacy ... serves the community only in the eyes of its adherents and yield a benefit only to those who already believe"). Any category of constitutional dimensions must be expressly included *if categories are prescribed by the Commission* to insure that such sharply unconstitutional thinking as displayed by New York's Attorney General in *Lamb's Chapel* does not hold sway over evaluations of the public service performance of the Commission's licensees.

3. Standardized Reporting Forms, Beyond Providing a Uniform System of Identification of the Reporting Licensee, Risk Unnecessarily Burdening Broadcasters

The Commission is, apparently, committed to the use of a standardized form for the reporting of programming that currently likely appears on licensees' quarterly issues/programs list. Notice ¶ 10. The bare requirement of standardization may seem no burden, or only a slight one. That would be the case if the standardization served only to insure that relevant identifying information were included with a licensee's reports. The inclusion of a set of identifying informational units (call sign, station identification, community of license) would work small hardship alone. An examination of PIPAC's proposed form, however, reveals that just a bit of

identifying information ultimately expands to quite a broad request for information, Notice ¶ 36 (“PIPAC proposes to streamline the form to require the following information: call sign, channel number, facility ID, community of license, city, state, zip code, legal name of licensee, link to online public file, network affiliation, Nielsen DMA, commercial/NCE status, contact name and phone, and links to the most recent ownership reports and quarterly children's programming reports”).

All the standardization that is needed would seem to be bound up in the Commission’s current requirement that a licensee maintain an issues/programs list. If the entire effect of standardized form reporting were, essentially, to provide a cover sheet for the transmission of the licensee’s issues/programs list, perhaps the standardized reporting form and program would not be significantly burdensome. The Notice indicates, however, that the Commission, at PIPAC’s suggestion, intends to go considerably further. *See* Notice, ¶¶ 30-32 (closed captioning and video description reporting requirements; emergency program accessibility); ¶ 37 (in addition to programming/segment title or topic and the date/time aired, “whether it aired on a primary or multicast channel; whether the material is first-run programming or previously aired on this or another station; the approximate length of the segment excluding interstitial commercials; whether the material reported, or any portion of it, is subject to the disclosure requirements of the Commission's sponsorship identification rules, and if so, the sponsoring entity; and whether the material reported, or any portion of it, is the product of a local marketing agreement, local news service, or shared service agreement, or any other contractual arrangement or agreement between the licensee and another broadcast station or daily newspaper located within the licensee's designated market area, and if so the relevant agreement in the licensee's online public file”).

Time is the licensee's straw. The duty to serve the public interest equates with the licensee's obligation to meet a daily tally of bricks to be made. The incremental addition of reporting categories and details equates with taking time, the licensee's straw, from the licensee while still demanding that the daily quota of bricks be met. The Commission should eschew an approach that ignores Ben Franklin's counsel to "Remember that time is money." B. Franklin, *Advice to a Young Tradesman, Written by an Old One* (1748). And it should eschew the invitation of PIPAC to impose on the valuable time of its licensees.

4. The Commission's Own Prior Practice Demonstrates that the Public Interest is Adequately Served by the Use of a Single Week of Reporting, as Opposed to the Two Weeks Proposed by PIPAC.

The Commission invited comments regarding the appropriate period of time to be covered by the reporting requirement, for each quarterly period. PIPAC proposed to the Commission that two composite weeks be employed. Notice, ¶ 17 ("Under PIPAC's proposal, broadcasters would be obligated to report on programming categories aired during the randomly selected days comprising the two constructed weeks per quarter"). These commenters disagree with PIPAC's proposal, and with the need for the use of a sampling method at all. The current issues/programs requirement more than adequately harnesses the licensee in service of the public interest, and apprises the public in its community of license of its ascertainment and service of the needs/issues of the community.

Still, the Commission appears committed to the standardized reporting obligation and all that it entails, including the use of a sample or composite time period for required reporting. In that case, while these commenters maintain such an approach is unnecessary and burdensome, they remind the Commission of its own conclusion in this regard. "The Commission has used a

composite week reporting approach in the past. In the 1970s, the Commission authorized the staff to act, through delegated authority, on applications for renewal of radio and television stations that aired specified amounts of certain programming. Failure to satisfy the guidelines, based on a *composite broadcast week* analysis, resulted in the referral of a licensee's renewal application to the full Commission for its consideration.” Notice ¶ 15. Thus, where a composite week demonstrated that a licensee fulfilled its public service obligations, the Commission authorized its staff to approve renewal applications. So it is clear that the Commission has found that the information provided by a composite week analysis, rather than two or more, sufficed to insure that licensees served the public interest adequately. For this reason, PIPAC’s call for a larger time period overreaches based on the Commission’s own experience.

The fact that researchers and professors would find it convenient or useful to their studies to have a larger period of time reported does *not* justify imposition of such an obligation. A licensee’s obligation is not to serve the professorial or research interests of others. It is to serve the public interest of its community of license. That a licensee is viewed as a beast of burden, on whom the research tasks that would otherwise fall to researchers and professors may be laden, reflects a gross misunderstanding of our constitutional order.⁵

⁵The Thirteenth Amendment prohibits involuntary servitude. U.S. Const. Amend XIII (“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction”). If researchers and professors want information of this quantity and sort, then they are free to pursue it by watching over air broadcasts and cataloging the results, or they may pay others to do so. Compelling licensees to be the servants of researchers and professors will not insure that the needs and interests of a licensee’s community of license are served. It will only insure that haggard licensees are further squeezed for purposes not authorized or directed by law.

5. Advance Notice of Days to Be Included in the Composite Week for Reporting Purposes Minimizes Burdensomeness of Sampling

The Commission has three approaches in mind regarding notice of the days to be included in construction of a composite week for purpose of reporting: end of the quarter notification; day after notification; and, advance notification. Notice ¶¶ 18-19. The proposal of end of the quarter notification provides the crassest and most severe incident of burdensomeness, essentially requiring licensees to maintain tapes and logs of programming that may be suitable for reporting purposes through to the end of the quarter. Such an approach is financially burdensome for the cost of maintaining such a broadcast library. Such an approach is also burdensome in time and space required to maintain such a collection, and then to retrieve therefrom seven days from amongst 120 days.

It may be that such a proposal exists for no reason other than to cause any PIPAC proposal to seem modest by comparison. Yet PIPAC's proposal assumes the worst in dishonesty and sharp dealing on the part of licensees. For post hoc notification is only necessary where broadcasters distort their normal broadcasting plans to create an appearance of serving the public interest by "loading" apt programming into known time frames. The Commission should reject the view that licensees are not to be trusted, and instead recognize that having gone through licensing and renewals thereof, their general character and license qualification have been properly demonstrated. For this reason, and because it imposes the least burden on licensees, Trinity and TCT agree with the view expressed by "industry petitioners" "that the Commission notify stations a few days before the selected reporting dates in order to provide sufficient notice" to licensees so that they may undertake logging for the purpose of reporting obligations.

CONCLUSION

For the reasons set forth herein, Trinity and TCT respectfully suggest to the Commission that it terminate the present proceeding because the imposition of a standardized program reporting requirement, particularly with the inclusion of only a very limited list of programmatic categories, risks injury to the constitutional rights of television broadcasters, and is unnecessary to the completion of broadcaster responsibilities and to the fulfillment of the Commission's duties. Moreover, a standardized program reporting requirement would impose unnecessary and undue burdens on broadcasters, both generally and particularly when combined with the use of a sample or composite week where announcement of the relevant dates for such a sample or composite week are withheld until conclusion of the relevant reporting period.

Respectfully Submitted,



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APPENDIX 1

**LIST OF TRINITY AND TCT STATIONS
AND THEIR AFFILIATED LICENSEE MINISTRIES**

APPENDIX 1

LIST OF TRINITY AND TCT STATIONS AND AFFILIATED LICENSEES

I TRINITY CHRISTIAN CENTER OF SANTA ANA, INC.

<u>Call Sign</u>	<u>Community of License</u>
WTJP-TV	Gadsden, Alabama
WMPV-TV	Mobile, Alabama
WMCF-TV	Montgomery, Alabama
KTBN-TV	Santa Ana, California
KPJR-TV	Greeley, Colorado
WHLV-TV	Cocoa, Florida
WELF-TV	Dalton, Georgia
WHSB-TV	Monroe, Georgia
KAHH-TV	Honolulu, Hawaii
WWTO-TV	Lasalle, Illinois
WBUY-TV	Holly Springs, Mississippi
KTAJ-TV	St. Joseph, Missouri
WGTW-TV	Burlington, New Jersey
KNAT-TV	Albuquerque, New Mexico
WDLI-TV	Canton, Ohio
WFSJ-TV	Newark, Ohio
KDOR-TV	Bartlesville, Oklahoma
KNMT-TV	Portland, Oregon
WPGD-TV	Hendersonville, Tennessee
WTPC-TV	Virginia Beach, Virginia
WWRS-TV	Mayville, Wisconsin

II. TRINITY BROADCASTING OF ARIZONA, INC.

KPAZ-TV Phoenix, Arizona

III. TRINITY BROADCASTING OF FLORIDA, INC.

WHFT-TV Miami, Florida

IV. TRINITY BROADCASTING OF INDIANA, INC.

WKOI-TV Richmond, Indiana
WCLJ-TV Bloomington, Indiana

V. TRINITY BROADCASTING OF NEW YORK, INC.

WTBY-TV Poughkeepsie, New York

VI. TRINITY BROADCASTING OF OKLAHOMA CITY, INC.

KTBO-TV Oklahoma City, Oklahoma

VII. TRINITY BROADCASTING OF TEXAS, INC.

KDTX-TV Dallas, Texas

VIII. TRINITY BROADCASTING OF WASHINGTON

KTBW-TV Tacoma, Washington

IX. RADIANT LIFE MINISTRIES, INC.

WLXI Greensboro, North Carolina

WRLM Canton, Ohio

WRAY-TV Wilson, North Carolina

X. TCT OF MICHIGAN, INC.

WAQP Saginaw, Michigan

WTLJ Muskegon, Michigan

WDWO-CA Detroit, Michigan

XI. TRI-STATE CHRISTIAN TV, INC.

WTCT Marion, Illinois

WINM Angola, Indiana

WDYR-CA Dyersburg, Tennessee

XII. FAITH BROADCASTING NETWORK, INC.

WBNF-CA Buffalo, NY

WNYB Jamestown, NY