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

In the Matter of	)	
	)	
Standardizing Program Reporting Requirements for Broadcast Licensees	)	MB Docket No. 11-189
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NOTICE OF INQUIRY

Adopted: November 10, 2011 **Released: November 14, 2011**

Comment Date: [30 days after date of publication in the Federal Register]
Reply Comment Date: [45 days after date of publication in the Federal Register]

By the Commission:

I. INTRODUCTION

1. In this *Notice of Inquiry* (*"NOI"*), we seek comment on a 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. Our goal is to make it easier for members of the public to learn about how television stations serve their communities, and to make broadcasters more accountable to the public, by requiring stations to provide easily accessible programming information in a standardized format. This standardized disclosure will also assist the Commission and researchers to study and analyze how broadcasters respond to the needs and interests of their communities of license. We seek to address many of the shortcomings that have been attributed to the form adopted in the 2007 *Enhanced Disclosure Report and Order*,[1] which we have vacated in a separate Order on Reconsideration and Further Notice of Proposed Rulemaking (*"FNPRM"*).[2] While we have vacated the 2007 *Report and Order,* we continue to believe that the creation and implementation of a standardized form is beneficial and worthy of pursuing. In this *NOI*, we propose to require broadcasters to report on their programming using a sample-based methodology and we also seek comment on a more limited number of reporting categories. We propose to limit this disclosure form requirement to television licensees at this time.

2. In the *Enhanced Disclosure FNPRM,* we seek comment on a proposal to make television broadcasters' public inspection files accessible online, in a new database to be hosted by the

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[1] *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,* Report and Order, 23 FCC Rcd 1274 (2007) (*"Report and Order"*).

[2] *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,* Order on Reconsideration and Further Notice of Proposed Rulemaking, MB Docket No. 00-168, FCC 11-162 (rel. Oct. 27, 2011)(*"Order on Recon and FNPRM"*).

Commission.[3] Our objective in this *NOI* is to develop a standardized form that will be included in the new online public file. We note that we are addressing only the standardized form requirement in this *NOI*. Due to the complexity of the issues surrounding the standardized form, we have opened this new docket to address these issues specifically. The existing Enhanced Disclosure docket, MM docket number 00-168, will now be dedicated to addressing the proposed online public file requirement. Given the value of the comments previously filed in that proceeding regarding the standardized form issues, however, we will incorporate that record into this proceeding. We ask commenters to file their comments regarding the online public file requirement in response to the *Enhanced Disclosure FNPRM*, docket 00-168, and comments regarding the standardized form in this docket. We remain committed to the implementation of a standardized form, and seek to do so expeditiously. We seek comments in this proceeding that will assist us in crafting a form that is beneficial and workable for those using and drafting the forms.

II. BACKGROUND

3. One of a television broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license.[4] In 1984, the Commission adopted the current issues/programs list requirement, which requires a station to place in its 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."[5] This issues/programs list must include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment, together with the time, date, duration, and title of each program in which the issue was treated.[6] In adopting the issues/programs list requirement for television stations, the Commission expected the list to be "[t]he most significant source of issue-responsive information under the new regulatory scheme."[7] Moreover, the list was intended to be a significant source of information for any initial investigation by the public or the Commission when renewal of the station's license was at issue.[8] In 1998, the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters issued its *Final Report*.[9] The Advisory Committee Report determined that

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[3] *Order on Recon and FNPRM* at ¶ 14.

[4] *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 FCC 2d 1076, ¶ 32 (1984). Programming that meets this obligation to be responsive to the needs and interest of the community of license is sometimes referred to as "public interest programming."

[5] *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*"); *see also* 47 C.F.R. §§ 73.3526(e)(11), 73.3527(e)(8).

[6] 47 C.F.R. § 73.3526(e)(11).

[7] *TV Deregulation*, 98 F.C.C.2d at 1109.

[8] *Id.* at 1109-10.

[9] *See* Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, Charting the Digital Broadcasting Future: Final Report of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, (Dec. 18, 1998) at 45 ("Advisory Committee Report"). The Advisory Committee Report can be found at: http://benton.org/sites/benton.org/files/recs.pdf. The Advisory Committee was convened to examine the public interest obligations of broadcasters as they transitioned to digital technology, and was directed to develop formal recommendations concerning the public interest obligations of digital broadcasters. *See* Advisory Committee Report at 136. The Committee was composed of 22 leaders in the commercial and noncommercial broadcasting industry, computer industries, film and video production industry, the artistic community, academic institutions, public interest organizations, and the advertising community. *Id.* at 136 and Appendix G. It was chaired by Leslie

"[e]ffective self-regulation by the broadcast industry in the public interest requires the availability to the public of adequate information about what a local broadcaster is doing."[10] The Committee recommended that the currently required lists of issue-responsive programming and children's programming be augmented by including more information about stations' public interest programs and activities, and it put forward a sample standardized form that could be used to that end.[11]

4. In 2000, the Commission issued the *Enhanced Disclosure Notice of Proposed Rulemaking,* which grew out of a prior *Notice of Inquiry* exploring the public interest obligations of broadcast television stations as they transitioned to digital.[12] The Commission tentatively proposed to require television stations to use a standardized form to report on how they serve the public interest.[13] In making this proposal, the Commission noted the difficulties that members of the public had encountered in accessing programming information under the existing issues/programs list requirement, given the lack of a standardized reporting mechanism.[14] The Commission suggested that the use of a standardized disclosure form would facilitate access to the issues/program information and would make broadcasters more accountable to the public.[15] It also observed that a standardized form would benefit the public by reducing the time needed to locate information and by providing the public with a better mechanism for reviewing broadcaster public interest programming and activities.[16]

5. In 2007, the Commission adopted a *Report and Order* in the *Enhanced Disclosure* proceeding requiring television broadcasters to replace their issues/programs lists with Standardized Television Disclosure Form 355 and to post the completed forms online.[17] The Commission found that uniform and consistent programming lists would allow the public more effectively to compare the efforts of various stations,[18] and assess the programming aired.[19] The Commission anticipated that the online posting of such forms would give rise to a more active dialogue between licensees and their audiences, which in turn would lead to more programs that are responsive to issues important to local communities.[20] The Commission

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Moonves, President of CBS Television, and Dr. Norman Ornstein, Resident Scholar at the American Enterprise Institute. *Id.* After 15 months, that effort culminated in the Advisory Committee Report. *Id.* at 136.

[10] *Id.* at 45.

[11] *Id.* at 46 and Appendix A, "Public Interest Programming and Community Service Certification Form."

[12] *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rulemaking, 15 FCC Rcd 19816 (2000) ("*NPRM*"); *In the Matter of Public Interest Obligations of TV Broadcast Licensees*, Notice of Inquiry, 14 FCC Rcd 21633 (1999)("*Enhanced Disclosure NOI*").

[13] *NPRM* at ¶ 10.

[14] *NPRM* at 19819.

[15] *Id.* at 19820.

[16] *Id.*

[17] *Report and Order* at ¶ 1.

[18] *Id.* at ¶ 38. (stating that "[f]or those attempting to make use of the list and to compare the efforts of various stations, uniformity of reporting is desirable and, indeed, may be essential").

[19] *Id.* at ¶ 44.

[20] *See id.* at ¶ 40 (online posting of the standardized form "could prompt more active dialogue between licensees and their audiences concerning issues of public importance to local communities and how broadcasters might go about addressing those issues on the air – which may quickly lead to the airing of more responsive programming. Second, such enhanced dialogue aided by online posting would help licensees develop, air, and document in an understandable way the kind of responsive programming directly relevant to license renewals and assist the Commission in evaluating

determined that standardized disclosure would also provide useful information for assessing the effectiveness of current Commission policies.[21] 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 specific categories.[22] The categories included: 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.[23] The Commission found that the benefits derived from public disclosure of such a comprehensive list of programming outweighed the burden that the requirement placed on broadcasters.[24]

6. Following the release of the *Report and Order*, several industry petitioners raised a number of issues regarding the standardized form, generally contending that it was vague, overly complex, and burdensome.[25] Public interest advocates also filed petitions for reconsideration, arguing that the standardized form should be designed to facilitate the downloading and aggregation of data for researchers.[26] They also asked the Commission to conduct periodic audits of data accuracy to ensure the removal of incorrect data, reassess whether the system is providing information in a useful format, and seek ongoing input from researchers on its staff and outside the Commission to ensure that the system is implemented in a useful and user-friendly manner.[27] In addition, five parties sought court review of the *Report and Order*, and the cases were consolidated in the United States Court of Appeals for the D.C. Circuit.[28] The D.C Circuit granted a petition to hold the court proceeding in abeyance while the Commission reviewed the petitions for reconsideration.[29] Challenging the 2007 rules in a third forum, several parties opposed the information collection contained in the *Report and Order* at the Office of Management and Budget ("OMB") under the Paperwork Reduction Act.[30] Because the Commission determined that it would need to revise the rules on reconsideration, it did not transmit the information

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whether they serve the public interest. Third, the disclosure provides information that will be useful in assessing the effectiveness of current policies").

[21] *Id.*

[22] *Id.* at ¶ 44.

[23] *See Report and Order,* Appendix B.

[24] *Id.*

[25] *See generally* Association of Public Television Stations and PBS Petition for Reconsideration ("APTS & PBS Petition"); Broadcasting Licenses Limited Partnership Petition for Reconsideration ("BLLP Petition"); Joint Broadcasters Petition for Reconsideration ("JB Petition"); Joint Public Television Licensees Petition for Reconsideration ("JPT Petition").

[26] Campaign Legal Center, *et al.* Petition for Reconsideration ("CLC Petition") at 3-7.

[27] *Id.*

[28] *National Association of Broadcasters v. FCC*, No. 08-1135 (D.C. Cir.); *Office of Communication of the United Church of Christ, Inc. v. FCC*, No. 08-1151 (D.C. Cir.); *ABC Television Affiliates Ass'n v. FCC*, No. 08-1185 (D.C. Cir.); *The Walt Disney Company v. FCC*, No. 08-1186 (D.C. Cir.); *CBS Corporation v. FCC*, No. 08-1187 (D.C. Cir.).

[29] Order, *National Association of Broadcasters v. FCC*, Nos. 08-1135 *et al.* (D.C. Cir.) (July 11, 2008).

[30] The Paperwork Reduction Act of 1995, Pub. L. No. 104-13, requires that the Office of Management and Budget ("OMB") approve any information collections. As required, the Commission had published a notice in the Federal Register seeking comment on the projected burdens of the information collections contained in the rules. *See* 73 FR 13462 (Mar. 13, 2008); 73 FR 30316 (May 27, 2008).

collection and form to OMB, and therefore the rules and form have never gone into effect.[31]

7. In June 2011, a working group including Commission staff, scholars and consultants released "The Information Needs of Communities" ("*INC Report*"), a comprehensive report on the current state of the media landscape.[32] The *INC Report* discussed both the need to empower citizens to ensure that broadcasters serve their communities in exchange for the use of public spectrum, and also the need to remove unnecessary burdens on broadcasters who aim to serve their communities. The *INC Report* provided several recommendations relevant to this proceeding, including replacing the enhanced disclosure standardized form adopted in 2007[33] with a streamlined, web-based form through which broadcasters could provide programming information based on a composite or sample period.[34]

8. In a separate Order on Reconsideration and *FNPRM,* we vacated the form adopted in the *Report and Order.*[35] We determined that we should reexamine the determinations made in the *Report and Order* in light of the arguments raised in the petitions for reconsideration and given that the record upon which those rules were adopted does not reflect the rapid technological advances that have occurred since the proceeding was commenced in 2000. We now seek to address many of the criticisms directed at the standardized form adopted in the *Report and Order.*

III. DISCUSSION

A. Standardized Form

9. In the *Report and Order,* the Commission sought to address the systemic problem that the public lacked access to consistent and uniform information about television broadcasters' programming, as identified in the Advisory Committee Report and the record of the proceeding.[36] We remain dedicated to addressing this problem. Nonetheless, the reconsideration petitions we received from broadcasters and public interest advocates and the responses thereto have persuaded us to reexamine the balance the Commission struck in 2007 between public access to programming information and the burden providing such information imposes on broadcasters. Although we have vacated the 2007 *Report and Order* and dismissed the petitions for reconsideration of that order,[37] we believe that some of the proposals developed in the *Enhanced Disclosure* proceeding are worth further consideration. In addition, to the

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[31] *See* 47 C.F.R. §§73.3526, effective date nt. 2; 47 C.F.R. §§73.3526, effective date note; 47 C.F.R. §§73.1201, effective date note 2. The preexisting requirement of an issues/programs list therefore remains in effect. For purposes of clarity, the Order on Reconsideration also requires re-codification of the public file rules in existence prior to adoption of the *Report and Order.*

[32] "The Information Needs of Communities: The Changing Media Landscape in a Broadband Age," by Steven Waldman and the Working Group on Information Needs of Communities (June 2011), available at www.fcc.gov/infoneedsreport. As noted in the INC Report, the report was drafted by an informal working group, and the views of the report "do not necessarily represent the views of the Federal Communications Commission, its Commissioners or any individual Bureaus or Offices." *Id.* at 362.

[33] *Id.* at 29.

[34] *INC Report* at 28.

[35] *Order on Recon and FNPRM* at ¶¶ 8-9, 59.

[36] *See Report and Order* at ¶¶ 37, 40. *See also* Opposition to Petitions for Reconsideration of Campaign Legal Center, et al. ("CLC Opposition") at 2-5 ("Broadcast petitioners ignore the extensive record in both the Enhanced Disclosure and Localism proceedings demonstrating that existing reporting requirements (issues/programs lists) have failed to provide sufficient information about how broadcasters are serving the public interest.")

[37] *Order on Recon and FNPRM* at ¶¶ 8-9, 59-60.

extent that the arguments made in the petitions for reconsideration are relevant and can inform this new *NOI,* we discuss them below. We also seek comment on *INC Report* proposals and other proposals to ensure that the public has standardized information about how broadcasters are serving their communities, while also avoiding placing unnecessary burdens on broadcasters.

10. We continue 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.[38] 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 of 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.[39] 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.[40] 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.

11. We disagree with the reconsideration petitioners in the 2007 *Enhanced Disclosure* proceeding who argue that there is no need for the Commission to adopt a standardized form. The record in the *Enhanced Disclosure* docket, which is incorporated in this proceeding, demonstrates that "[t]he lack of uniformity and consistency of the issues/program lists make it difficult to discern both how much and what types of public interest programming a broadcaster provided," which makes any "overall assessment or comparison between broadcasters virtually impossible."[41] Commenters in the *Enhanced Disclosure* proceeding identified the benefits of a standardized form, including enhanced access to information on the extent to which broadcasters are meeting their public interest obligations,[42] ease of use by the public and broadcasters alike,[43] and the promotion of a dialog between stations and the public they serve.[44] Moreover, the *Report and Order* noted that the record of the Localism proceeding — especially that portion amassed during a series of public hearings conducted across the country — suggested that there may be a communications breakdown between licensees and their communities concerning the breadth of their efforts to air programming that serves their licensed communities' local needs and interests.[45]

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[38] *NPRM* at 19820.

[39] *Id.*

[40] *Id.*

[41] *Id.* at ¶ 35. One commenter noted that its most consistent finding in their inspection of stations' public files was the lack of consistency in the files. Comments of People for Better TV ("PBTV") at 4.

[42] Reply Comments of PBTV at 5.

[43] Comments of CBC at 3.

[44] Comments of PBTV at 18.

[45] In August 2003, the Commission launched a "Localism in Broadcasting" initiative designed to review localism practices among broadcasters (the "Localism Proceeding"). *See FCC Chairman Powell Launches "Localism in*

Written comments submitted in the Localism docket and testimony received during several localism field hearings indicated that many members of the public are not fully aware of the community-responsive programming that their local stations air.[46] The *Report and Order* noted that affording the public improved access to information about a station's programming through the use of a standardized disclosure form would foster a better understanding of stations' localism efforts within their communities.[47] The *Report and Order* also noted that by enhancing a dialogue with viewers as a result of improved public access to such information, the standardized disclosure form could assist the Commission in determining whether the licensees are serving the public interest.[48] Finally, the *Report and Order* further noted that the standardized disclosure form would provide information that will be useful to the Commission and the public in assessing the effectiveness of current Commission policies governing television broadcasting.[49] We agree with the Commission's prior findings regarding the benefits of a standardized form. We note that technological advances have made it possible for the public to review data much more easily via the Internet, but we believe the efficacy of such disclosures is much greater when the information is offered in a standardized format. We seek comment on these findings.

12. We have seen no evidence that broadcasters have attempted to change their issues/programs reporting to become more consistent or uniform since the Commission launched this proceeding in 2000. In fact, the recently released *INC Report* discusses consistency and uniformity problems similar to those

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Broadcasting" Initiative, News Release (Aug. 20, 2003). In addition to conducting a series of field hearings on the subject, the Commission issued a *Notice of Inquiry* seeking written input from the public on how broadcasters are serving the interests and needs of their communities; whether the agency needs to adopt new policies, practices, or rules designed to promote localism in broadcast television and radio; and, if so, what those policies, practices, or rules should be. *Broadcast Localism (MM Docket No. 04-233)*, Notice of Inquiry, 19 FCC Rcd 12425 (2004) (the "Localism Docket"). The Commission conducted field hearings on localism issues in Charlotte, North Carolina (October 22, 2003); San Antonio, Texas (January 28, 2004); Rapid City, South Dakota (May 26, 2004); Monterey, California (July 21, 2004); Portland, Oregon (June 28, 2007); and Washington, DC (October 31, 2007).

[46] *Compare, e.g.*, Testimony of Mary Klenz, Co-President, League of Women Voters of North Carolina at Charlotte, North Carolina, Localism Task Force Hearing (October 22, 2003), Charlotte Tr. 133-135 (lack of local political programming); Testimony of Martin Kaplan, Associate Dean, Annenberg School for Communication, University of Southern California, at Monterey, California, Localism Task Force Field Hearing (July 21, 2004), Monterey Tr. 63-65 (lack of local news, political programming) ("Kaplan Testimony"); Comments of Delia Saldivar, Radio Bilingue, Inc., KHDC-FM, Salinas, California, at Monterey, California Localism Task Force Hearing (July 21, 2004), Monterey Tr. 127 ("a large segment of the population [Latinos] is being excluded from effective radio service") at 2; *with* Testimony of Michael Ward, General Manager of WNCN-TV, Charlotte, North Carolina Localism Task Force Hearing (October 22, 2003), Charlotte Tr. 139 (television stations are successful due to local involvement and local relevance); Chuck Tweedle, Senior Regional Vice President of Bonneville International's San Francisco and St. Louis Divisions; General Manager of KOIT-AM/FM in San Francisco, California, at Monterey, California Localism Task Force Hearing (July 21, 2004), Monterey Tr. 78-79 (Bonneville produces and airs three local public affairs programs each week and its three bay area stations also broadcast more than four hours of locally-produced news). In addition, other individuals expressed their concerns during the "open microphone" portion of each hearing proceeding, while their local broadcasters discussed their responsive programming at length during the same hearing. *See, e.g.*, Testimony of Deborah Lavoy at San Antonio, Texas Localism Task Force Hearing (January 28, 2004), San Antonio Tr. 153-54 (lack of quality news coverage of local issues); Testimony of Robert McGann, President and General Manager of KENS-TV, at San Antonio, Texas Localism Task Force Hearing (January 28, 2004), San Antonio Tr. 62-64 (localism is the business of local television, and KENS-TV programming is responsive to its viewers).

[47] *Report and Order* at ¶ 40.

[48] *Id.*

[49] *Id.*

identified in the Commission's prior proceeding, and supports the continuing need for a standardized form.[50] We continue to believe that a standardized form is necessary and should replace the current issues/programs list. We seek comment on this tentative finding.

13. We are persuaded by petitioners in the *Enhanced Disclosure* proceeding who argued that Form 355 as adopted in the *Report and Order* was overly burdensome. We propose changes to that form, as discussed below, to substantially reduce the burden it imposes on broadcasters. These changes include adopting a sample approach to reporting and streamlining the information that must be included in the form. We welcome any other proposals that will lead to effective disclosure by broadcasters of the ways in which they serve the public.

1. Reporting Period

14. Form 355 as adopted in the *Report and Order* required television broadcasters to report quarterly on every relevant program or program segment aired for each program category listed in the Form.[51] We agree with the reconsideration petitioners who argued that requiring reporting on all programming in those categories would be unduly burdensome.[52]

15. Some petitioners asserted that the Commission could lessen the burden on licensees while providing adequate disclosure of licensees' public interest programming by restricting reporting to one week per quarter.[53] As noted, the *INC Report* similarly recommends that the Commission consider requiring information drawn from only a sample or composite week of programming on a quarterly basis, rather than requiring a comprehensive listing of all relevant programs throughout the year.[54] A constructed or composite week is a sampling method in which individual days are selected at random by the Commission to construct a week that contains different days of the week from different weeks of the quarter.[55] First, a Sunday is randomly selected from all possible Sundays in the quarter. Then, a Monday is selected in the same way, and so on. 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

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[50] *INC Report* at 347, 285.

[51] *Report and Order* at ¶ 44. *See* ¶ 22, *supra* for the list of categories.

[52] *See* APTS & PBS Petition at 14-18; Petition for Reconsideration of the Oklahoma Educational Television Authority ("OETA Petition") at 1; Joint Petition for Reconsideration of PTV Licensees ("PTV Licensees Petition") at 4; JPT Petition at 2, 11-13; Petition for Reconsideration of Northern California Public Broadcasting, Inc., ("NCPB Petition") at 2-3, 12; BLLP Petition at 5, 13-15; Opposition to Petition for Reconsideration of the National Association of Broadcasters ("NAB Opposition") at 9-10; Reply to Oppositions to Petition for Reconsideration of NAB ("NAB Reply") at 3-6; Joint Reply to Oppositions to Petitions for Reconsideration of Alabama Broadcasters Association, *et al.* at 3-5; Brief Comment of Robert H. Pettitt, KRRP-LP at 2; *but cf* CLC Opposition at 21-22 (completing the form will not be unduly burdensome for licensees); Opposition of the Telecommunications for the Deaf and Hard of Hearing, Inc. et al. ("TDI Opposition") at 5-6. Commenters also argued that the sheer volume of data required by the form would not be useful to the public, and would be more than necessary to assess broadcaster performance.

[53] JB Petition at 14; NAB Opposition 9-10.

[54] *INC Report* at 348.

[55] Letter from Angela Campbell and Andrew Schwartzman, counsel for the Public Interest, Public Airwaves Coalition, to Julius Genachowski, Chairman of the FCC at 2-3 (Aug. 4, 2011)("PIPAC *ex parte*").

programming.[56] 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.[57]

16. 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 are 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?

17. In a recent *ex parte* in the *Enhanced Disclosure* proceeding, the Public Interest, Public Airwaves Coalition ("PIPAC") proposes that broadcasters be required to submit data for two constructed or composite weeks per quarter that are selected by the Commission.[58] 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.[59] PIPAC attaches a statement from a coalition of academics with expertise in media sampling that says that a constructed week, if implemented properly, has methodological validity for academic research and would provide a snapshot of programming for the public.[60] We seek comment on this proposal. In particular, is two constructed weeks the appropriate time period over which to collect programming information? Would one week provide the public and research community with a sufficient sampling period, while lessening the burdens placed on broadcasters that have to compile this information? How should we balance the burdens on broadcasters against the need for a methodologically valid approach that will accurately reflect the reportable programming that broadcasters provide to their community of license? If any period less than two weeks is too little time to be valid or accurate, would that undermine the purpose of the reporting requirement?

18. *Notice.* If we decide to take a composite approach or to select a particular week or weeks for reporting purposes, we will need to determine how and when to notify broadcasters which days are included, and whether such notice should be provided before or after the selected date. We seek comment on how and when to provide such notice. 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?[61] 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? How long do licensees retain tapes or other records of their programming in the ordinary course of business? Would it be preferable to announce on a weekly or bi-weekly basis what reporting

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[56] *See Amendment of Part 0 of the Commission's Rules,* Order, 43 F.C.C.2d 638, 640 (1973); *Amendment of Section 0.281 of the Commission's Rules: delegations of authority to the Chief, Broadcast Bureau*, Order, 59 F.C.C.2d 491, 493 (1976); *Radio Deregulation Order*, Report and Order, 84 F.C.C.2d at 968, 975 (1981).

[57] *Formulation of Rules and Policies Relating to the Renewal of Broadcast Licenses*, 43 F.C.C.2d 1, 42-43 ¶¶ 117-19 (1973).

[58] PIPAC *ex parte* at 2.

[59] *Id.* at 3.

[60] *Id.*

[61] We anticipate that the Commission's rules regarding the computation of time, 47 C.F.R. § 1.4, will provide guidance in the implementation of a notice rule. For example, if a Friday is selected, notification of such a selection would be provided on the next business day. *See* 47 C.F.R. § 1.4(j).

dates were selected for those weeks? Alternatively, if the Commission were to select a particular week or weeks for reporting, should it be announced at the end of the quarter or immediately after the selected week or weeks? We seek comment on these and other implementation issues and concerns.

19. In petitions for reconsideration of the *Report and Order,* industry petitioners 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.[62] In contrast, PIPAC recommends that broadcasters not be given advance notice of the reporting dates to prevent broadcasters from changing their programming and thereby "gaming the system."[63] PIPAC recommends 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.[64] They argue that, because most broadcasters maintain a tape of their programming for a short time after broadcast, immediate notification of a reporting date should offer ample notice without giving advance warning that would taint the quality of the sample.[65] We seek comment on these approaches or recommended alternatives.

20. *Exceptions to composite reporting.* We seek comment on whether adopting a composite approach will adequately capture performance for all categories of reportable programming that should be included on the standardized form, or whether there should be certain categories of programming subject to a more comprehensive reporting requirement. For example, in their recent *ex parte* proposing a composite week, PIPAC argues that local electoral affairs programming is important public interest programming and is critical to an informed citizenry.[66] PIPAC suggests that broadcasters be required to disclose all local electoral affairs programming, defined as discussed below, when the lowest unit charge rules are in effect, *i.e.*, 45 days before a primary election and 60 days before a general election.[67] PIPAC argues that the composite week mechanism, while otherwise sufficient, may not adequately capture local electoral issue coverage, as election timing may not coincide with the randomly selected reporting dates. We seek comment on this proposal, including projected burdens on broadcasters. If commenters believe this proposal to be overly burdensome, what alternatives would adequately reflect the extent of broadcasters' local electoral affairs programming? We seek to ensure that broadcasters are credited with their provision of this important public interest programming. For example, would reporting for some shorter period of time preceding an election be sufficient? Should the Commission consider any other exceptions to a composite week reporting schedule? Are there other categories of programming that should be subject to an enhanced reporting requirement?

21. *Program and segment reporting.* We seek comment on whether reporting should be done on a program or program segment basis. Form 355 required reporting on all programs or program segments aired during the quarter for each programming category listed.[68] We seek comment on what level of reporting is most useful, and whether the benefits of the more granular program segment reporting

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[62] Joint Broadcasters Petition at 15.

[63] PIPAC *ex parte* at 3.

[64] *Id.*

[65] *Id.*

[66] *Id.* at 4.

[67] *Id. See* 47 U.S.C. § 315(b)(1)(A); 47 C.F.R. § 73.1942(a)(1) (requiring that charges made for the use of any broadcasting station by any legally qualified candidate for any public office in connection with their campaign shall not exceed the lowest unit charge of the station for the same class and amount of time for 45 days preceding the date of a primary and 60 days preceding the date of a general or special election).

[68] *See Report and Order,* Appendix B.

outweigh the burdens it places on broadcasters. What level of reporting granularity is necessary to provide meaningful information to the public and the research community? Do broadcasters currently retain their programming information in a manner that would enable reporting on a program segment basis, or would new programming retention techniques be required? For example, do broadcasters retain information about the length of each program segment within each news program, *i.e.* the length of each story? How should the term "program segment" be defined for purposes of the reporting requirement? PIPAC asserts that each of the reporting categories should be reportable by program segment. They assert that information will be more useful if it is reported on a more granular level.[69] They assert that this level of specificity is necessary for local news reporting, since some stories reported on the local news are more national in character, and would not fit in the local news reporting category, as it does not pertain to the local community of license.[70] We seek comment on these assertions.

2. Reporting Categories

22. In the 2000 *NPRM*, we tentatively concluded that the standardized form should require reporting on specified categories of programming, noting that specified categories were necessary because the current issues/programs lists permit such an assortment of information that the public may have difficulty determining the extent to which the station is serving the public interest.[71] The Commission specifically noted the categories of programs proposed by the Presidential Advisory Committee on the Public Interest Obligations of Digital Broadcasters, which they recommended to augment and standardize the reporting about stations' public interest programs and activities.[72] The Committee proposed to include the following categories: local and national news programming, local and national public affairs programming, programming that meets the needs of underserved communities, programming that contributes to political discourse, other local programming that is not otherwise addressed in the form, and public service announcements.[73] In response to the *NPRM*, PIPAC submitted a proposed standardized form suggesting use of the following categories: local civic programming, local electoral affairs programming, public service announcements, paid public service announcements, independently produced programming, local programming, underserved communities, and religious

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[69] PIPAC *ex parte* at 3.

[70] PIPAC *ex parte* at fn. 27.

[71] *NPRM*, at 19823.

[72] *NPRM*, at 19824 and n.50.

[73] Advisory Committee Report at 104-05, App. A. As discussed in the *Report and Order*, the Commission has focused historically on different programming categories at different times, but has not adopted any exclusive list of program types that might be responsive to the requirement that licensees serve the needs of their communities. In a 1946 *Report on Public Service Responsibility of Broadcast Licensees*, the Commission identified programming types to be used on station program logs. These programming types included, for example, local live, network, commercial and "sustaining programs," which were defined as programs "neither paid for by a sponsor nor interrupted by a spot announcement." See generally Public Service Responsibility of Broadcast Licensees (March 7, 1946) (the "Blue Book"). In 1949, in its *Report on Editorializing by Broadcast Licen*sees, 13 FCC 1246, 1249 (1949), the Commission focused on "news" as well as other "programs devoted to the consideration and discussion of public issues of interest in the community served." In its 1960 *En Banc Programming Inquiry*, 44 FCC 2303, 2314 (1960), the Commission made reference to the following categories as relevant to a broadcaster's public interest programming: "(1) opportunity for local self-expression, (2) the development and use of local talent, (3) programs for children, (4) religious programs, (5) educational programs, (6) public affairs programs, (7) editorialization by licensees, (8) political broadcasts, (9) agricultural programs, (10) news programs, (11) weather and market reports, (12) sports programs, (13) service to minority groups, (14) entertainment programs," but noted that these categories were not intended to be "all-embracing or constant." *See generally Report and Order* ¶ 42.

programming.[74] Definitions were included with each of these categories.[75] The Commission included the categories and definitions proposed by PIPAC in Form 355.

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.[76] 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. Nor do we contemplate imposing any such requirements. This will be merely be a replacement reporting requirement, which the Commission has authority to impose, and we believe it will have the important benefit of arming consumers with accurate information on which to base their viewing decisions.[77] We seek comment on these tentative findings.

24. Several petitions for reconsideration raised issues about the particular reporting categories adopted in the *Report and Order*, arguing that they were confusing, burdensome, and unworkable.[78] We have vacated Form 355 as adopted, and agree that it would be useful to take a fresh look at the categories and definitions that should be included on the form. We want to ensure that the form collects information that is relevant to the public's and our analysis of stations' service to their communities. In addition, it is essential to our goal of ensuring the availability of uniform and consistent data that broadcasters be able easily to categorize programming for inclusion on the form.[79]

25. PIPAC has recently proposed a new sample form, which is available at http://www.savethenews.org/sample-form. 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 form. Are there any categories identified on the newly proposed form that are unnecessary or could otherwise be deleted? What, if any, additional categories should be included? We note that in response to the *2000 NPRM*, the Commission received very little comment on specific programming categories; rather, most commenters focused on the merits, or lack thereof, of requiring a standardized form. 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.

26. We recognize that some programs or program segments could be included in multiple categories. We propose that a program or segment be includable in only one category. This will both ease the reporting burdens and will ensure that any quantitative analyses accurately reflect the amount of

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[74] *See Notice of Ex Parte Meeting and Attachment,* filed by The Public Interest, Public Airwaves Coalition (May 14, 2004).

[75] *Id.* Full definitions were listed in Appendix B of the *Report and Order.*

[76] NAB Reply at 7; BLLP Petition at 10-12.

[77] *Report and Order* at ¶¶ 36, 38. *See also* 47 U.S.C. § 303(j) ("Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall . . . Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable . . ."); *see also Office of Communications of United Church of Christ v. FCC*, 779 F.2d 702, 707 (D.C. Cir. 1985) (stating that "[t]here is no question but that the Commission has the statutory authority to require whatever recordkeeping requirements it deems appropriate.").

[78] *See, e.g.,* APTS and PBS Petition, BLLP Petition, Joint Broadcasters Petition for Reconsideration.

[79] We note that the *INC Report* recommended that the reporting form include categories of local community programming. *See INC Report* at 348.

time devoted to public interest programming. We seek comment on whether further clarification would be needed among the categories discussed below, and any other proposed categories, to guide broadcasters in categorizing their programming and/or whether other reporting categories should be adopted with additional instructions.

27. *Local News.* We seek comment on reporting requirements for news. PIPAC proposes that we include a local news category.[80] In the *Report and Order*, Questions 2(a), (b) and (c) of Form 355 required reporting with respect to national news, local news produced by the station, and local news produced by an entity other than the station;[81] all categories were described as including national and local programs or segments that include significant treatment of community issues. In a petition for reconsideration, Joint Broadcasters raised concerns that the definition of "news" is vague because newscasts and other programs, such as nationally syndicated talk shows, often include significant treatment of community issues.[82] PIPAC recommends streamlining the news reporting requirement to just local news, and provides the following definition: "Programming that is locally produced and reports on issues about, or pertaining to, a licensee's local community of license."[83] We seek comment on this proposed category and proposed definition. Does this definition resolve the concern expressed by Joint Broadcasters? Is it an otherwise workable definition? What constitutes an "issue" in this definition? Would a program about an issue not specific to a community but of interest to the community be covered by this definition as long as it was locally produced? Are there alternative definitions of local news that we should consider?

28. *Local Civic/Governmental Affairs.* We seek comment on reporting requirements for civic and governmental affairs. PIPAC proposes a local civic/government affairs reporting category. In the *Report and Order,* Question 2(d) of Form 355 required reporting with respect to local civic affairs.[84] PIPAC proposes retaining that category and provides the following definition, which is largely taken from the Form 355 local civic affairs definition: "broadcasts of interviews with or statements by elected or appointed officials and relevant policy experts on issues of importance to the community, government meetings, legislative sessions, conferences featuring elected officials, and substantive discussions of civic issues of interest to local communities or groups."[85] We seek comment on this proposed category and definition. Is this definition, or any portion of it, overly vague? What types of programming would qualify as "substantive discussions of civic issues of interest to local communities or groups"? Are there alternative definitions of local civic/governmental affairs programming that we should consider?

29. *Local Electoral Affairs.* We seek comment on reporting requirements for electoral affairs. PIPAC also proposes a local electoral affairs category. In the *Report and Order,* Question 2(e) of Form

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[80] PIPAC *ex parte* at 3.

[81] *Report and Order* at Appendix B, Standardized Television Disclosure Form at §§ 2(a), (b) and (c).

[82] *See* Joint Broadcasters Petition at 18.

[83] PIPAC *ex parte* at fn.23, *citing* Christopher Ali, The Second Day Story: Re-imagining Public Broadcasting Through Community, (Univ. of Tampere, Finland), 2010, at 15, n.2

[84] Local civic affairs programming was defined as programming "designed to provide the public with information about local issues. Local civic affairs programming includes, but is not limited to, broadcasts of interviews with or statements by elected or appointed officials and relevant policy experts on issues of importance to the community, government meetings, legislative sessions, conferences featuring elected officials, and substantive discussions of civic issues of interest to local communities or groups." *See Report and Order,* Appendix B, Definitions.

[85] PIPAC *ex parte* at fn. 24.

355 required reporting with respect to local electoral affairs.[86] PIPAC proposes retaining that category and provides the following definition, which is largely taken from the Form 355 local electoral affairs definition: "Local electoral affairs programming consists of candidate-centered discourse focusing on the local, state and United States Congressional races for offices to be elected by a constituency within the licensee's broadcast area. Local electoral affairs programming includes broadcasts of candidate debates, interviews, or statements, as well as substantive discussions of ballot measures that will be put before the voters in a forthcoming election." We seek comment on this proposed category and definition. Is this definition, or any portion of it, overly vague? If so, how should the definition be refined? Are there alternative definitions of local electoral affairs programming that we should consider?

30. *Closed Captioning and Video Description.* We seek comment on reporting requirements regarding services provided to the disability community. On Form 355, as adopted in the *Report and Order,* Question 4 required reporting the number of hours of programming provided with closed captioning and video description.[87] Reconsideration petitioners asserted that reporting on closed captioning provides little public benefit, and that any benefit is outweighed by the record-keeping burden imposed on broadcasters. Petitioners also argued that the requirement contravened the Commission's prior stance that such reporting is both unnecessarily burdensome and administratively cumbersome.[88] Petitioners argued that, because the Commission provided no reason for changing its position on closed captioning reporting, the requirement was arbitrary and capricious.[89] They also argued that it was inappropriate to ask about video description, since at the time the Commission did not require that it be provided.[90] Campaign Legal Center *et al.* argued that this reporting is necessary to ensure station compliance with the Commission's closed captioning requirements, and to assist the disability community in finding stations that offer video description service.[91] Telecommunications for the Deaf and Hard of Hearing ("TDI") argued that the closed captioning reporting requirement should be maintained, stressing the importance of reporting to the millions of Americans who rely on closed captioning and have difficulty finding such programming.[92] TDI also noted that the only current enforcement mechanism for ensuring closed-captioning is based on consumer reporting and consumer-derived complaints, and that a lack of benchmark reporting has seriously hampered the effectiveness of the captioning rules and compliance monitoring.[93]

31. PIPAC now proposes streamlining these reporting requirements. As to closed captioning, PIPAC proposes that broadcasters be required to disclose whether the reported programming on the form is closed captioned, and if so, the type of captioning, such as off-line, live, or electronic "newsroom

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[86] Local electoral affairs programming was defined as "candidate-centered discourse focusing on the local, state and United States Congressional races for offices to be elected by a constituency within the licensee's broadcast area. Local electoral affairs programming includes broadcasts of candidate debates, interviews, or statements, as well as substantive discussions of ballot measures that will be put before the voters in a forthcoming election." *See Report and Order,* Appendix B, Definitions.

[87] With respect to closed captioning, Form 355 also asked about the percentage of each category of nonexempt video programming, as well as a list of programs that were not captioned due to an exemption and the basis for the exemption.

[88] Joint Broadcasters Petition at 16-17 (citing *Closed Captioning and Video Description of Video Programming,* Report and Order, 13 FCC Rcd 3272, 3383 ¶ 244 (1997), *recon. Granted in part,* 13 FCC Rcd. 19973 (1998)).

[89] *See id.* at 17.

[90] JPTL Petition at 14; BLLP Petition at 12.

[91] *See* CLC Opposition at 8.

[92] *See id.* at 7.

[93] *See id.* at 9.

technique," which commonly follows teleprompter scripts.[94] It also proposes that broadcasters report on all programming that is exempt from closed captioning, providing the date, time and length of the program (excluding commercials), and the reason for the exemption.[95] We note that Commission regulations require all programming – with few exceptions – to be closed captioned as of January 1, 2010, and therefore expect the latter reporting requirement would presumably not be unduly burdensome.[96] We seek comment on these proposals.

32. PIPAC also recommends implementing reporting requirements regarding video description, once the new rules mandated by the Communications and Video Accessibility Act go into effect.[97] We note that the Commission recently adopted such rules, requiring the provision of 50 hours per calendar quarter of video-described prime time and/or children's programming by full-power affiliates of the top four national networks located in the top 25 television markets, beginning July 2012.[98] We seek comment on whether and to what extent broadcasters should be required to report on their video description offerings and, if so, how such a reporting requirement should be framed and implemented, given the limited nature of this programming requirement and the need for viewers to have access to information about which programs are video described. Should broadcasters be required to report all of their video description offerings?

33. *Emergency Accessibility Complaints.* We seek comment on reporting requirements regarding emergency accessibility. Question 5 of Form 355, as adopted in the *Report and Order*, required reporting with respect to all emergency information and whether that information was available to persons with disabilities. PIPAC now proposes that broadcasters report only the number of complaints that a station receives alleging that its emergency programming was not accessible to people with disabilities.[99] PIPAC claims that such reporting will be less burdensome than the requirements in Form 355 but will assist the public and the Commission in determining the extent to which broadcasters are transmitting emergency information in a way that can be understood by people with disabilities, as required.[100] We recognize that the fact that a consumer has complained to a station does not necessarily mean that a licensee has violated a rule, but, as noted by PIPAC, a large number of reported complaints may indicate a compliance issue.[101] We seek comment on this proposal, as well as other alternatives.

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[94] PIPAC *ex parte* at 3.

[95] PIPAC *ex parte* at 4.

[96] 47 C.F.R. § 79.1(b).

[97] PIPAC *ex parte* at fn. 31.

[98] *See Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 26 FCC Rcd 11847 (Aug. 25, 2011).

[99] PIPAC *ex parte* at 4. 47 C.F.R. § 79.2 requires video programming distributors to make emergency information that is: 1) provided in the audio portion of the programming to be made accessible to persons with hearing disabilities by using a method of closed captioning or by using a method of visual presentation; 2) provided in the video portion of a regularly scheduled newscast, or newscast that interrupts regular programming, to be made accessible to persons with visual disabilities; or (3) provided in the video portion of programming that is not a regularly scheduled newscast, or a newscast that interrupts regular programming, to be accompanied with an aural tone.

[100] 47 C.F.R. § 79.2.

[101] PIPAC *ex* parte at fn.32.

3. NCE Exemption

34. The reporting requirements adopted in the *Report and Order* applied to both commercial and non-commercial broadcasters.[102] In a petition for reconsideration, the Association of Public Television Stations and the Public Broadcasting Service were joined by noncommercial educational ("NCE") licensees (collectively "NCEs") in arguing that they should be exempted from the standardized disclosure requirement, so they would not need to divert scarce resources from their core public service activities.[103] They argued that Form 355 failed to differentiate between the programming and practices of commercial and noncommercial television stations.[104] NCEs asserted that the Commission has previously recognized the special status of these stations' noncommercial programming[105] and exempted them from meeting certain requirements, such as the quarterly children's program reporting requirement.[106] Public television licensees argued that exempting NCEs from reporting requirements is appropriate given their "long history of providing vast amounts of programming that is responsive to issues of importance to their local communities."[107]

35. We appreciate that NCE licensees have limited resources and that their mix of programming may in some instances be more heavily weighted toward the categories of interest in this proceeding than is the programming on some commercial stations. But the goals underlying this proceeding – facilitating access to information on how licensees are serving the public interest and local communities, making broadcasters more accountable to the public, and providing the public with a better mechanism for reviewing a broadcaster's public interest programming and activities – apply equally to commercial and non-commercial licensees. In order to standardize the review of television broadcast public interest programming and activities, we believe it is important to include all television broadcasters. We believe that much of the concern expressed by the NCE community will be allayed by our proposals only to require reporting on a sample basis, and to otherwise streamline the form. We seek comment on whether these measures are sufficient, or whether there are other ways to address NCE licensees' concerns.

4. Other Reporting Issues

36. *General information.* We also seek comment on the general information stations should be required to supply on the form. For instance, PIPAC proposes to streamline the Form 355 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

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[102] *Report and Order* at ¶ 32.

[103] APTS & PBS Petition at 18; APTS and PBS Reply at 1, 2; OETA Petition at 1; PTV Licensees Petition at 6; JPTP Petition at 3; NCPB Petition at 2, 12.

[104] JPTP Petition at 6; APTS & PBS Petition at 13-18. APTS & PBS Reply at 2; OETA Petition at 1; PTV Licensees Petition at 4; JPTP Petition at 12; NCPB Petition at 12.

[105] APTS & PBS Petition at 9 & nn. 10-11 (citing *In the Matter of Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Report and Order, BC Docket No. 81-496 (rel. Aug. 22, 1984), at ¶¶ 12-13).

[106] APTS & PBS Petition at 19 & n.27 (citing *In re Policies and Rules Concerning Children's Television Programming; Revision of Programming Policies for Television Broadcast Stations*, Report and Order, FCC 96-355, 11 FCC Rcd 10660 n.119 (Aug. 8, 1996); *see also* JPTP Petition at 7-8.

[107] APTS & PBS Petition at 3.

programming reports.[108] We seek comment on this proposal and on whether it is over or under inclusive. In addition, if the Commission determines in the *Enhanced Disclosure* proceeding to host the online public file, will it be unnecessary to include links to the most recent ownership and children's television reports, since that information will be centrally available in the same location as the standardized form? Should we also require that stations provide their main studio address on the form? Is there any other general station information that should be included or excluded on the form?

37. *Required information for each program and/or segment reported.* We seek comment on the level of detail that should be required for each program or program segment that is reported. For each entry, PIPAC asserts that broadcasters should disclose: programming/segment title or topic; 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.[109] We seek comment on these proposed reporting elements, including proposed definitions for the agreements and contractual arrangements that are requested for identification. We seek comment in particular on the benefits of providing any specific piece of information per segment, as weighed against the burdens imposed on broadcasters by the requirement. Are any of these requirements overly broad? If so, can they be further defined or described to narrow the scope of the information required? Should any additional information be required, for example, a brief description of the program or programming segment and the issue it addresses?

38. *Additional reporting.* In addition to reporting on the categories discussed above, should broadcasters also have the option of disclosing other types of programming they provide to serve the needs and interests of their communities, if they wish to do so?[110] Would an optional reporting opportunity provide useful information to the public and the Commission? Would an opportunity to include such information allow broadcasters to showcase their programming, or would the option merely increase the reporting burden? If an optional reporting requirement were adopted, would broadcasters find a drop-down menu with optional categories to be a useful reporting format?

39. PIPAC asserts that an optional reporting opportunity would allow broadcasters to showcase community reporting that does not fall into the specified categories.[111] They assert that any voluntary information should be prominently labeled and that the reporting form should include a disclaimer proclaiming that the absence of voluntary information does not mean that a broadcaster is not providing such services.[112] They recommend the following optional categories: national news, international news, public service announcements (both paid and unpaid), religious programming, emergency programming,

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[108] *See* http://www.savethenews.org/sample-form. This proposed streamlined version eliminates categories included in the Form 355, including website address; whether the station is publicly held, and if not, its type of ownership; previous call sign; license expiration date; names of parent companies or affiliates, and whether they are publicly held; whether the station was transferred; list of primary and non-primary programming streams and their programming focus.

[109] PIPAC *ex parte* at fn. 28.

[110] PIPAC *ex parte* at 4.

[111] PIPAC *ex parte* at 4.

[112] PIPAC *ex parte* at 4.

and any other category of programming that a broadcaster believes serves their public interest obligation. We seek comment on this proposal and any others. Are the optional categories useful, or should the list be supplemented or reduced? We also seek comment on definitions of the optional categories listed above as well as any others proposed by commenters.

40. *Comments category.* We seek comment on whether we should include a "comments" category, which would allow a licensee to highlight information that it believes is important, but is not included in the reporting categories. A "comments" category could provide licensees with space to discuss any mitigating factors or other information relevant to the information provided in the form. For example, a station that was off the air due to severe weather or technical issues on a day selected for reporting may wish to note that on its form. This category could also provide licensees with space to discuss any additional efforts they have made to serve their communities. We seek comment on this proposal. Would a comments category preclude the need for the type of optional reporting categories discussed above?

5. Data Format

41. The *INC Report* suggests that ensuring that as much data as possible is in a standardized, machine-readable format could enhance the usefulness and accessibility of such data. It recommends that "online disclosure should be done according to the principles advocated by experts on transparency: in standardized, machine readable and structured formats." The *INC Report* generally notes that information collected by the government should be in formats "that make it easy for programmers to create new applications that can present the data in more useful formats, or combine one agency's information with another," and that "data releases should include an Application Programming Interface (API) that allows the data to be shared easily with other computers and applications."[113] PIPAC supports the *INC Report* suggestions, asserting that "an online reporting mechanism that is part of a searchable, integrated database would not only reduce the burden of submitting this information, it would also provide communities and researchers with better access to it."[114] PIPAC notes that such a database would allow the public and researchers to download the data in raw form in its entirety to compare stations' performances or perform other analyses.[115] It also asserts that such a database should be connected electronically with the ownership data the Commission already collects, thus reducing further the broadcaster filing burden.[116]

42. We agree that the new standardized disclosure form should be submitted as machine-processable in a standardized, machine-readable format that will be searchable so that the material can be easily analyzed.[117] Such a format would help us accomplish the accessibility and accountability goals for which the form will be created. As recommended in the National Broadband Plan, we believe that as a

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[113] *INC Report* at 351.

[114] PIPAC *ex parte* at 2.

[115] *Id.*

[116] *Id.*

[117] Machine-readable formats do not require human input to process and interact with the data. *See* OMB Memo, September 8, 2011, Informing Consumers through Smart Disclosure, Section IV-B, *available at* http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/informing-consumers-through-smart-disclosure.pdf (defining machine readability as "Machine readable data are digital information stored in a format enabling the information to be processed and analyzed by computer. These formats allow electronic data to be as usable as possible. Examples of machine readable data include formats that may be readily imported into spreadsheet and database applications. In contrast, computer files that are simply image reproductions of print disclosures or that contain only unstructured narrative text generally do not represent machine-readable formats.")

government agency we should make information available in a machine-readable or otherwise accessible format where possible.[118] We seek recommendations on how to implement this goal.

B. Radio

43. Given the *Enhanced Disclosure NOI*'s genesis in the DTV transition, the *Report and Order* was limited to reporting by television stations.[119] The Commission later sought comment on implementing a standardized form requirement for analog and digital radio stations in the *Further Notice of Proposed Rulemaking* in the Digital Audio Broadcasting proceeding.[120] We believe that we should eventually require radio licensees to replace their issues/programs lists with a standardized form as well. We also believe, however, that there may be benefits to requiring television licensees to implement enhanced disclosure requirements first. Television stations have been significantly more involved in considering these issues, from the *Enhanced Disclosure NOI* in 1999 through the 2007 *Report and Order*.[121] Further, it may ease the initial implementation of a standardized form if we begin the process with the much smaller number of television licensees. Finally, we foresee that there may be some radio-specific concerns that we will need to address prior to adopting disclosure requirements for radio stations.

IV. COST/BENEFIT ANALYSIS

44. In proposing rules to ensure that the public has adequate access to information about how broadcasters are serving their communities, we intend to look at the many factors involved in an effective disclosure form in order to ensure that the form serves its intended purpose without posing an undue burden on industry. There are two key criteria for the success of such an approach.

45. First, acknowledging the potential difficulty of quantifying benefits and burdens, we need to determine whether a disclosure form will significantly benefit the public and, in fact, clarify important issues for them. Second, we seek to maximize the benefits to the public while limiting as much as possible the burden of compliance on broadcasters. These costs and benefits can have many dimensions, some which may not be easy to quantify, including cost implications for industry, public interest benefits to viewers, and other less tangible benefits.

46. To address the first criterion, we seek comment on the best ways to ensure that the form discussed in this *NOI* will actually benefit the public. We seek comment on the extent to which the Commission and members of the public may be expected to utilize the additional information compiled in the form. Further, we seek comment on any considerations regarding the form that would increase the number of people who will benefit from such rules, and the nature of these benefits. In particular, we seek comment on the best ways to ensure that information is more readily accessible to the public. We seek information on whether, and to what extent, the accessibility of a standardized form is greater than an online issues/programs list. While we believe that a standardized form will increase the accessibility

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[118] *See National Broadband Plan Recommendation 15.3* at pg. 301 ("All data and information that the government treats as public should be available and easy to locate online in a machine-readable and otherwise accessible format in a timely manner. . . .").

[119] *See*¶3 *supra; NPRM* at fn 7.

[120] *See Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service,* Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344, 10391 (2007).

[121] *In the Matter of Public Interest Obligations of TV Broadcast Licensees*, Notice of Inquiry, 14 FCC Rcd 21633 (1999).

of information about how television stations serve their communities, we seek further suggestions for increasing accessibility.

47. To address the second criterion, we seek comment on the nature and magnitude of the costs and benefits of the new proposals on broadcasters. We recognize that these may vary by broadcaster, and seek comment on possible differential impacts, including size and type of broadcaster. We seek specific information about whether, how, and by how much broadcasters may be impacted differently in terms of the costs and benefits of our proposed rules. In response to the *Report and Order* several reconsideration petitioners argued that compliance would be overly burdensome and costly.[122] To what extent will the new proposal to streamline the form and seek sample data impose less or more of a cost than the cost projections related to Form 355? Will the elimination of the issues/programs list and replacement with a streamlined disclosure online system reduce or increase burdens on broadcasters? Are there ways to further decrease costs of a standardized reporting form?

48. To the extent possible, we request comment that will enable us to weigh the costs and benefits associated with these proposed disclosure rules. We request that commenters provide specific data and information, such as actual or estimated dollar figures for each specific cost or benefit addressed, including a description of how the data or information was calculated or obtained and any supporting documentation or other evidentiary support. We understand that it may be difficult to place a dollar figure on the benefits of a standardized form, but seek input on the benefits of such a form. We also seek information regarding the burden of compiling the issues/programs list and to what extent the standardized form would either reduce or increase the burden on broadcasters. All comments will be considered and given appropriate weight. Vague or unsupported assertions regarding costs or benefits generally can be expected to receive less weight and be less persuasive than more specific and supported statements.

V. PROCEDURAL MATTERS

A. Ex Parte Rules

49. Permit-But-Disclose. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[123] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and

[122] *See, e.g.*, APTS and PBS Petition for Reconsideration at 11; Northern California Public Broadcasting Petition at 8.

[123] 47 C.F.R. §§ 1.1200 *et seq.*

memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Filing Requirements

50. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

  Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

51. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

52. Additional Information. For additional information on this proceeding, contact Holly Saurer of the Media Bureau, Policy Division, (202) 418-7283, or via email at holly.saurer@fcc.gov.

VI. ORDERING CLAUSES

53. **IT IS ORDERED** that, pursuant to Sections 1, 4(i), 303, 309, 311 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303, 309, 311, and 403, this *Notice of Inquiry* **IS ADOPTED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

CONCURRING STATEMENT OF COMMISSIONER ROBERT M. McDOWELL

Re: *Standardizing Program Reporting Requirements for Broadcast Licensees*, MB Docket No. 11-189, Notice of Inquiry

Two weeks ago, I enthusiastically voted in support of vacating the order that adopted the so-called "Enhanced Disclosure Form." In 2007, I cast the sole dissent against the adoption of this burdensome, excessively regulatory and "overly complex" form, which required quarterly disclosures on all programming aired in a multitude of categories, such as local and national news, local civic and electoral affairs programming, public service announcements, religious programming, independently produced programming and so forth. Today, we commence a proceeding to create an alternative to the "Enhanced Disclosure Form," which never went into effect, in part, because of challenges under the Paperwork Reduction Act.

On the one hand, the proposed replacement form is somewhat less burdensome than its predecessor. However, the "Enhanced Disclosure Form" set a very low standard. This notice of inquiry generally recommends that broadcasters report on three categories of programming – local news, local civic/governmental affairs, and local electoral affairs[1] – for a shorter period of time – one or two composite or actual weeks – within a quarter. On the other hand, while taking steps that reduce burdens on broadcasters, we propose new reporting requirements regarding sponsorship identifications and shared service agreements or "any other contractual arrangement or agreement between the licensee and another broadcast station or daily newspaper" in the licensee's market area. I have often cautioned that deregulatory actions by the Commission may be quickly followed by new regulatory proposals.

Moreover, I still have significant concerns about the direction in which the Commission is headed. Last week, I asked whether we were once again heading down a path towards unnecessarily burdensome rules, regulatory overreach, Paperwork Reduction Act challenges and unconstitutional intrusions.[2] I fear that we are. In my 2007 dissent to the "Enhanced Disclosure Form," I stated that "[t]oday's highly competitive video market motivates broadcasters to respond to the interests of their local communities. I question the need for government to foist upon local stations its preferences regarding categories of programming. While we stop short of requiring certain content, we risk treading on the First Amendment rights of broadcasters. The First Amendment applies to them too. This form is government's not-so-subtle attempt to exert pressure on stations to air certain types of content."[3] The apprehension I expressed in 2007 is just as relevant, if not more so, in 2011.

Furthermore, it is unfortunate that we do not take this opportunity to comprehensively review the purpose, mechanism and cost and benefits of broadcaster disclosures regarding programming of interest

[1] We also seek comment on whether broadcasters should disclose (1) whether the programming reported on the form is closed captioned, (2) information about programs that are video described, and (3) the number of emergency accessibility complaints that a station has received.

[2] Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MM Docket Nos. 00-168, 00-44, *Order on Reconsideration and Further Notice of Proposed Rulemaking*, FCC 11-162, at 40 (rel. Oct. 27, 2011).

[3] Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MM Docket Nos. 00-168, 00-44, *Report and Order*, 23 FCC Rcd 1274, 1322 (2008).

to their community of license.[4] I am also disappointed that my proposed substantive edits were not incorporated into this notice.[5]

For these reasons, I concur on this notice of inquiry. Despite the serious reservations I may have, it is important to develop a full record and allow public comment prior to forming conclusions and implementing any regulations. As always, I will keep an open mind and look forward to engaging with interested parties, especially in regard to the necessity and constitutionality of this proposed reporting requirement. Many thanks to the Media Bureau for its work on this notice of inquiry.

[4] I would prefer a notice that provokes a broader discussion of such topics as whether the proposed online issues/programs list is sufficient to apprise the public of what local broadcasters are airing; whether a standardized form is, in fact, necessary; whether there are other, less burdensome and costly, means for the community to evaluate whether broadcasters are serving the public interest; and whether the benefits of a report on programming of interest to the community outweigh the costs and burdens to the broadcaster amassing that information.

[5] These edits included requests for comment on: what standard the Commission should use to determine whether a particular disclosure is necessary in the public interest; the constitutionality of this reporting requirement and whether the government is risking promoting some speech while chilling others; the Commission's authority to compel the compilation of certain information on a standardized form and whether the accessibility of information to persons outside the community of license should be a factor in any Commission decision regarding the appropriate reporting requirement of "community-responsive" programming; whether the standardized form implemented to report about children's programming has led to beneficial interaction between the public and local broadcasters; and the costs of this reporting requirement in terms of the estimated number of hours and employees it will take to compile the required information and whether resources may be redistributed away from journalistic pursuits.