

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

In the Matter of)
)
Standardized and Enhanced Disclosure) MM Docket No. 00-168
Requirements for Television Broadcast)
Licensee Public Interest Obligations)
)

**REPLY TO OPPOSITIONS TO
PETITIONS FOR RECONSIDERATION**

The National Association of Broadcasters (“NAB”)¹ submits this reply to oppositions² to certain petitions from broadcasters requesting reconsideration of the Commission’s order adopting extensive new disclosure requirements for television licensees.³ These oppositions oppose broadcasters’ requests to reduce the burdens and to address specific problems with the online public file requirement (particularly privacy-related concerns) and with the new enhanced disclosure form. Those opposing broadcasters’ reconsideration petitions argue that the *Report and Order* should

¹ NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts.

² Opposition to Petitions for Reconsideration of Campaign Legal Center, *et al.* (May 30 2008) (“CLC Opposition”); Opposition of Telecommunications for the Deaf and Hard of Hearing, Inc., *et al.* (May 30, 2008) (“Telecommunications Opposition”).

³ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 23 FCC Rcd 1274 (2008) (“*Report and Order*”). This *Report and Order* (1) requires television stations with websites to place their public files online (with certain exemptions, including the political file and paper letters from the public), and (2) replaces the quarterly issues/programs list with a new Form 355 that requires detailed quarterly reporting about numerous types of programming aired by stations (including local/national news, local civic affairs, local electoral affairs, other local, PSAs, religious, independently produced, closed captioned, video described, *etc.*).

essentially remain unchanged but do not present sufficient reasons for the Commission to disregard broadcasters' reasonable proposals.

I. The Commission Should Consider Broadcast Petitioners' Sensible Proposals To Address Unnecessary Burdens And Specific Privacy And Other Problems With The Online Public File Requirement

Several petitioners asked the Commission to address privacy concerns (including children's privacy) stemming from the online posting of e-mails from the public, and specific technical challenges in complying with W3C/WAI guidelines for accessibility to persons with disabilities, including difficulties with using common electronic formats such as Portable Document Format ("PDF").⁴ The CLC Opposition (at 22) does not address these specific issues at all, but merely generally asserts that requiring broadcasters to make their public files available via the Internet "does not place an unreasonable burden on broadcasters."⁵ Such generalized comment cannot overcome the need to address broadcasters' significant concerns on reconsideration.

⁴ See Block Communications, Inc., *et al.*, Joint Petition for Reconsideration (Apr. 14, 2008) at 7-11; Broadcasting Licenses Limited Partnership, *et al.*, Petition for Reconsideration (Apr. 14, 2008) at 21-22; Association of Public Television Stations and Public Broadcasting Service, Joint Petition for Partial Reconsideration and Clarification (Apr. 14, 2008) at 21-22; Ball State University, *et al.*, Petition for Reconsideration (Apr. 14, 2008) at 16-17; Alabama Educational Television Commission, *et al.*, Joint Petition for Reconsideration (Apr. 14, 2008) at 7.

⁵ The CLC Opposition (at 23) also claims that this requirement "remove[s] a significant hurdle to accessing the public file." NAB points out that there is no such "significant hurdle" for members of the public to access stations' public files, even without the extra requirement of online posting. Stations are already required to make their public files available for inspection "at any time during regular business hours." 47 C.F.R. § 73.3526(c). Also, a station that maintains its main studio outside of its community of license must make its public file available by mail and must be "prepared to assist members of the public in identifying the documents they may ask to be sent to them by mail." *Id.* § 73.3526(c)(2)(iii). Moreover, a number of documents in stations' public files are available online via the FCC's website. Making public file materials available through each station's website is therefore a redundancy, merely giving members of the

There are very reasonable ways to address the issues raised in broadcasters' petitions. For example, treating e-mails from the public in the same manner as letters from the public by exempting them from the online posting requirement would permit members of the public to access these e-mails in the same way that they currently do – by viewing them in stations' public files at their main studios without the serious privacy concerns raised by online posting. The Commission should also permit stations to utilize PDF documents in making their online postings, and clarify that linked materials on the FCC's website presumptively meet stations' online public file requirements.⁶ To reduce the burdens associated with the online requirement, especially for smaller stations, the Commission could also consider revising the requirement to apply on a going-forward basis so that every station in the country is not forced to convert large numbers of existing documents that may be several years old to electronic format for online posting.

II. Petitioners Also Made Reasonable Proposals To Address Burden And Other Serious Problems With The New Standardized Disclosure Form

The CLC Opposition (at 22) similarly generally states that “it is not unreasonably burdensome to require broadcasters” to complete the new standardized programming disclosure form. But CLC's unsupported assertion about the lack of burden is not

public another method to access already accessible material.

⁶ The Telecommunications Opposition (at 8) generally states without support that implementation of the W3C/WAI guidelines “can be accomplished without using significant resources.” This opposition does not address the specific issues raised by several broadcast petitioners about electronic formatting problems, both for text material and for non-text material such as maps and graphics, nor the difficulties raised by linking to documents on the FCC's website, which is apparently not currently compliant with W3C/WAI guidelines.

reflective of reality and not supported by actual experience.⁷ Numerous broadcasters demonstrated in filings to the Commission on May 12, 2008 the tremendous burden, including very significant time and personnel costs, associated with the Form 355.⁸ NAB, for example, demonstrated that the total annual burden of responding to Form 355 for all television stations will be approximately 4,092,920 hours, more than double the burden associated with the former television program logging requirement, which, before the Commission eliminated it in 1984, had been deemed by the General Accounting Office to be the single largest paperwork burden imposed on business by the government.⁹

⁷ The Telecommunications Opposition (at 5) similarly claims that the broadcast petitioners have overstated the burdens associated with the new Form 355, but only address the small portion of the form addressing closed captioning requirements. That is a very small part of a lengthy and excessively burdensome form implicating virtually all the programming that stations air.

⁸ See Joint Comments of Television Broadcasters in MM Docket No. 00-168 (May 12, 2008); Joint Comments of Named State Broadcasters Associations in MM Docket No. 00-168 (May 12, 2008); Broadcasting Licenses Limited Partnership, *et al.*, Comments on Proposed Information Collection Requirements in MM Docket No. 00-168 (May 12, 2008); Comments of the ABC Television Affiliates Association in MM Docket No. 00-168 (May 12, 2008); Comments of The Walt Disney Company in MM Docket No. 00-168 (May 12, 20-08); Comments of the Broadcast Industry Coalition on Proposed Information Collection Requirements in MM Docket No. 00-168 (May 12, 2008); Paperwork Reduction Act Comments of Alabama Broadcasters Association, *et al.* (May 12, 2008).

⁹ See Comments of the National Association of Broadcasters on Proposed Information Collection Requirements in MM Docket No. 00-168 (May 12, 2008), at 13-14 (“NAB Comments”).

CLC's implication that the Form 355 is not greatly more burdensome than the current issues/programs list is also clearly erroneous.¹⁰ As shown by NAB, the net increase in the total annual burden hours (even taking into account the burden saved by eliminating the issues/program lists) is approximately 2,595,115. Applying the average salary reported by the stations in this test of \$33 per hour for the employees doing the work associated with the new form, this burden represents a gross cost of approximately \$135 million and a net cost of approximately \$86 million. NAB Comments at 14.

In light of these very substantial time, cost and personnel burdens imposed by the Form 355, several broadcasters made reasonable proposals to reduce these burdens, which CLC has not shown would in any way harm the public interest. For example, local stations could be required to report and complete the Form 355 only for a representative week each quarter. See Block Communications Petition at 14-15. This proposal would provide sufficient information to satisfy any public interest in information about licensees' programming service to their communities, while substantially reducing unnecessary burdens on stations.¹¹

¹⁰ See CLC Opposition at 22 (stating that completing the Form 355 will not be unduly burdensome for licensees because television stations already need to keep record of their programming to complete their issues/programs lists).

¹¹ Other steps to reduce needless burdens on local stations would include removing redundant questions on the form (such as questions about ownership in Section I) and eliminating questions requiring substantial additional due diligence and research by stations, such as the question about independently produced programming. Despite CLC's claims of relevance, this question about networks' financial and/or copyright interests in prime time programming serves no clear purpose on a form supposedly intended to provide information to local viewers about local stations' service to their communities of license. See CLC Opposition at 10 (contending that FCC has legitimate interest in ascertaining whether stations are airing independently produced

NAB has already noted that the asserted public benefits of “uniformity” and “consistency” to be gained from the Form 355 are modest at best when compared with the enormity of the burden, and, given the lack of clarity in many parts of the new form, even these benefits may be illusory. See NAB Comments at 17. Additional claims that the new form is needed because members of the public lack access to information about the programming provided by broadcast stations defy reality. See CLC Opposition at 6. Broadcast programming is not hidden from members of the public, but is offered free, over-the-air for all to view. There are innumerable printed and online programming guides to assist viewers. In addition, any member of the public can access stations’ public files and obtain information about programming contained in those files, including the children’s television reporting forms and the issues/programs lists. And the fact that “outside researchers” may find the information contained in the Form 355 interesting should not be of overriding concern to the Commission. CLC Opposition at 12. The Communications Act obligates broadcast licensees to serve the interests of their local viewers and listeners, not the interests of researchers and scholars, especially those from outside their communities of license. In light of the above, CLC has not shown that the new form provides information needed to assess whether television stations are serving their communities for purposes of license renewal. CLC Opposition at 6-8.

Finally, CLC claims that the new Form 355 is entirely consistent with the First Amendment. See CLC Opposition at 14-19. In making these arguments, CLC fails to

programming, despite fact that FCC does not require stations to afford access to independent programmers).

acknowledge that standardized forms setting forth government-preferred categories of programming inherently produce significant pressure on stations (1) to offer programming with content fitting the FCC's favored categories, and (2) to reduce, by necessity, the amount of broadcast time available for other, less favored programming content. Indeed, as NAB pointed out in its initial comments in this proceeding,¹² a standardized programming form almost inevitably produces *de facto* programming quotas. Broadcasters feel compelled to air at least some amounts of programming in each category selected by the Commission for inclusion on the form, if only to avoid the risk of petitions to deny, informal objections and serious delays to their license renewal and transfer/assignment applications. Many broadcasters have thus recognized the clear First Amendment difficulties presented by this coercive effect of government-selected program categories. See Broadcasting Licenses Petition at 8-13.¹³

III. Conclusion

For all the reasons set forth above, oppositions to broadcasters' requests to reduce the burdens and to address specific problems with the online public file and the new enhanced disclosure requirements present no sufficient reasons for the

¹² See NAB Comments in MM Docket No. 00-168 (Dec. 18, 2000) at 6-9; NAB Reply Comments in MM Docket No. 00-168 (Feb. 16, 2001) at 7-10.

¹³ See also *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344, 354 (D.C. Cir. 1998) (any "content-based definition" of "diverse programming" gives "rise to enormous tensions with the First Amendment"); *Office of Communication of United Church of Christ v. FCC*, 707 F.2d 1413, 1430 (D.C. Cir. 1983) (Congress "has explicitly rejected proposals to require compliance by licensees with subject-matter programming priorities," and any "Commission requirement mandating particular program categories would raise very serious First Amendment questions"); *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 650 (1994) (quoting FCC, *Network Programming Inquiry*, Report and Statement of Policy, 44 FCC 2303, 2308 (1960)) (the FCC may not, consistent with the First Amendment, "impose" upon licensees "its private notions of what the public ought to hear").

Commission to disregard broadcasters' reasonable proposals. The Commission should therefore grant broadcasters' petitions for reconsideration of the enhanced disclosure

Report and Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jerianne Timmerman, Deputy General Counsel for the National Association of Broadcasters, hereby certify that a true and correct copy of the foregoing Reply to Oppositions to Petitions for Reconsideration was sent this 9th day of June, 2008, by first class mail, postage prepaid, to the following:

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