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

In the Matter of	)	
Public Interest Obligations	)	MM Docket No. 99-360
of TV Broadcast Licensees	)	
	)	

NOTICE OF INQUIRY

Adopted: December 15, 1999 Released: December 20, 1999

Comment Date: March 27, 2000
Reply Comment Date: April 25, 2000

By the Commission: Commissioner Furchtgott-Ruth concurring in part, dissenting in part and issuing a statement; Commissioner Powell concurring and issuing a statement; Commissioner Tristani issuing a statement.

I. INTRODUCTION

1. Television is the primary source of news and information to Americans, and provides hours of entertainment every week.[1] In particular, children spend far more time watching television that they spend with any other type of media.[2] Those who broadcast television programming thus have a significant impact on society. Given the impact of their programming and their use of the public airwaves, broadcasters have a special role in serving the public. For over seventy years, broadcasters have been required by statute to serve the "public interest, convenience, and necessity."[3] Congress has charged the Federal Communications Commission with the responsibility of implementing and enforcing this public interest requirement. Indeed, this is the "touchstone" of the Commission's statutory duty in licensing the public airwaves.[4] Under the

[1] *See, e.g.,* Roper Starch Worldwide, *America's Watching: Public Attitudes Toward Television* at 1-2 (1997) (stating that "television remain[s] Americans' primary and most credible source of news and information, as well as a source of information on important social issues" and that "[n]etwork television is still overwhelmingly the way that Americans choose to entertain themselves at home").

[2] *See, e.g.,* Henry J. Kaiser Family Foundation, *Kids and Media at the New Millenium* at 20 (Nov. 1999) (finding that children, on average, spend almost three hours a day watching television, compared to, for instances, twenty-one minutes using the computer, twenty minutes playing video games, or eight minutes on the Internet).

[3] 47 U.S.C. § 309(k). This public interest requirement goes back to the Radio Act of 1927, 44 Stat.1162, and was carried over by Congress in the Communications Act of 1934, 48 Stat. 1064.

[4] *National Broadcasting Co. v. United States*, 319 U.S. 190, 216 (1943).

Communications Act of 1934, the Commission may issue, renew, or approve the transfer of a broadcast license only upon first finding that doing so will serve the public interest.[5]

2. There has been considerable debate over the years about how the Commission should carry out this statutory mandate. Currently, broadcasters must comply with a number of affirmative public interest programming and service obligations. For example, broadcast licensees must provide coverage of issues facing their communities and place lists of programming used in providing significant treatment of such issues in their public inspection files.[6] Broadcasters must also comply with statutory political broadcasting requirements regarding equal opportunities, charges for political advertising, and reasonable access for federal candidates.[7] In addition, television broadcasters must provide children's educational and informational programming under the Children's Television Act of 1990.[8] The Commission enacted new rules implementing this statute in 1996.[9] In terms of programming obligations, broadcasters are also prohibited from airing programming that is obscene, and restricted from airing programming that is "indecent" during certain times of the day.[10] Similarly, broadcasters also have obligations regarding closed captioning,[11] equal employment opportunity,[12] sponsorship identification,[13] and advertisements during children's programming.[14]

3. The discussion of television broadcasters' public interest obligations has been renewed by their transition from analog to digital television (DTV) technology. This is due in part to the new opportunities DTV provides. DTV holds the promise of reinventing free, over-the-air television by offering broadcasters new and valuable business opportunities and providing consumers new and valuable services. DTV broadcasters will have the technical capability and regulatory flexibility to air high definition TV (HDTV) programming with state-of-the-art picture clarity; to "multicast" by simultaneously providing multiple

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[5] 47 U.S.C. §§ 307(a), 309(a), 309(k), 310(d).

[6] 47 C.F.R. §§ 73.3526(a)(8) and (9) and 73.3527(a)(7). *See also* Deregulation of Radio, BC Docket No. 79-219, *Report and Order*, 84 FCC 2d 968, 982 (1981).

[7] *See* 47 U.S.C. §§ 312(a)(7), 315; 47 C.F.R. § 73.1941 (equal opportunities); 47 C.F.R. § 73.1942 (candidate rates); 47 C.F.R. § 73.1944 (reasonable access).

[8] Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b, 394.

[9] Policies and Rules Concerning Children's Television Programming, Revision, Revision of Programming Policies for Television Broadcast Stations, MM Docket No. 93-48, *Report and Order*, 11 FCC Rcd 10660 (1996).

[10] 18 U.S.C. §1464; 47 C.F.R. § 73.3999.

[11] 47 C.F.R. Part 79.

[12] 47 C.F.R. § 73.2080. The United States Court of Appeals for the District of Columbia Circuit has declared the some of the Commission's EEO policies and rules unconstitutional, and remanded certain aspects of these policies and rules to the Commission for further consideration. *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344, 393 (1998). As indicated below, the Commission's EEO policies and rules are the subject of an ongoing proceeding.

[13] 47 C.F.R. § 73.1212.

[14] 47 C.F.R. § 73.670.

channels of standard digital programming and/or HDTV programming; and to "datacast" by providing data such as stock quotes, or interactive TV via the DTV bitstream.[15]

4. In establishing the statutory framework for the transition to DTV, Congress directed the Commission to grant any new DTV licenses to all existing television broadcasters.[16] Congress stated in section 336 of the Communications Act that "[n]othing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity."[17] Likewise, in implementing section 336, the Commission reaffirmed that "digital broadcasters remain public trustees with a responsibility to serve the public interest,"[18] and stated that "existing public interest requirements continue to apply to all broadcast licensees."[19]

5. The Commission also indicated, however, that "[b]roadcasters and the public are also on notice that the Commission may adopt new public interest rules for digital television."[20] Commenters in the DTV proceeding adopted different views on this issue, with some arguing that broadcasters' public interest obligations in the digital world "should be clearly defined and commensurate with the new opportunities provided by the digital channels broadcasters are receiving," while others contended that "current public interest rules need not change simply because broadcasters will be using digital technology to provide the same broadcast service to the public."[21] The Commission declined to resolve this issue in the DTV proceeding, instead choosing to issue a "Notice to collect and consider all views" on this subject at a later date.[22]

6. We undertake that task with this *Notice of Inquiry*. In doing so, we are guided by several proposals and recommendations made in recent years. Among the most significant of these are the recommendations of the President's' Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters ("Advisory Committee"). The Advisory Committee was comprised of a broad cross-section of interests, consisting of twenty-two members chosen by the President from "the commercial and noncommercial broadcasting industry, computer industries, producers, academic institutions, public interest organizations, and the advertising community."[23] On December 18, 1998, the Advisory Committee submitted a report,

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[15] *Fifth Report and Order*, 12 FCC Rcd at 18826, ¶ 42.

[16] 47 U.S.C. § 336(a). ("If the Commission determines to issue additional licenses for advanced television services, the Commission (1) should limit the initial eligibility for such licenses to persons that, as of the date of such issuance, are licensed to operate a television station or hold a permit to construction such a station (or both). . .").

[17] 47 U.S.C. § 336(d).

[18] Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, MM Docket No. 87-268, *Fifth Report and Order*, 12 FCC Rcd 12809, 12810-21811 (1997) (*Fifth Report and Order*).

[19] *Fifth Report and Order*, 12 FCC Rcd at 12830.

[20] *Fifth Report and Order*, 12 FCC Rcd at 12830.

[21] *Fifth Report and Order*, 12 FCC Rcd at 12830.

[22] *Fifth Report and Order*, 12 FCC Rcd at 12830.

[23] Exec. Order No. 13,038, 62 Fed. Reg. 12.065 (1997). The original executive order stated that the Committee would consist of not more than fifteen members, but subsequent executive orders ultimately amended that number up to

which contains ten separate recommendations on the public interest obligations digital television broadcasters should assume.[24] These range from enhanced disclosures of existing public interest activities to wholly new approaches and theoretical frameworks toward the public interest obligations of TV broadcasters. Implementation proposals range from asking the broadcast industry to make voluntary commitments in some areas, to suggesting that the Commission regulate in other areas, and that Congress legislate in still others. On October 20, 1999, Vice President Gore submitted a letter to Chairman Kennard asking that the Commission focus on several of the Advisory Committee's recommendations in particular.[25] We discuss below some of the Advisory Committee's ten recommendations that envision a role for the Commission.[26]

7. In addition to the Advisory Committee's recommendations, on June 3, 1999, People for Better TV filed a petition for rulemaking and a petition for notice of inquiry.[27] People for Better TV also includes a number of diverse groups.[28] People for Better TV argues that the Telecommunications Act of 1996 requires the Commission to determine the public interest obligations of DTV broadcasters,[29] that the advent of DTV requires the Commission to consider public interest obligations anew, and to clarify whether existing guidelines apply,[30] and that both broadcasters and the public need a basic set of public interest standards.[31] The group contends that the Commission should initiate a rulemaking proceeding to determine the public interest obligations of digital broadcasters.[32] People for Better TV also urged the Commission to issue a

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twenty-five. *See* Exec. Order No. 13,062, 62 Fed. Reg. 51,755 (1997); Exec. Order No. 13065, 62 Fed. Reg. 55,329 (1997).

[24] *See* Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, *Charting the Digital Broadcasting Future: Final Report of the Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters* (1998) (Advisory Committee Report). The report is available at www.ntia.doc.gov/pubintadvcom/pubint.htm.

[25] Letter from Vice President Al Gore to William E. Kennard, Chairman, FCC, Oct. 20, 1999 (Vice President's Letter). A copy of this letter will be placed in the record of this proceeding.

[26] We do not seek comment on the Advisory Committee's recommendations that do not envision a role for the Commission. Thus, for example, we do not seek comment on the Advisory Committee's recommendations that the NAB prepare an updated Code of Conduct (recommendation #2), and that the Congress create enhanced and permanent funding for noncommercial broadcasting, and create a new 6 MHz channel for public broadcasting when the analog spectrum is returned to the government (subpart of recommendation #4).

[27] People for Better TV, Petition for Rulemaking and Petition for Notice of Inquiry (filed June 3, 1999) (PBTV Petition). A copy of this petition will be placed in the record of this proceeding.

[28] For example, the steering committee includes American Academy of Pediatrics, the Civil Rights Forum on Communications Policy, Communications Workers of America, Consumer Federation of America, League of United Latin American Citizens, NAACP, National Council of Churches, National Organization for Women and Project on Media Ownership.

[29] PBTV Petition at 3-7.

[30] PBTV Petition at 7-12.

[31] PBTV Petition at 12-15.

[32] PBTV Petition at 17-20.

notice of inquiry and hold hearings on the public interest obligations of digital television licensees, focusing on a variety of categories.[33] On November 16, 1999 People for Better TV submitted a letter to Chairman Kennard reiterating its request that the Commission initiate a proceeding to determine the public interest obligations of DTV broadcasters.[34]

8. We are also guided by the thoughts and work of other advocates regarding broadcasters' public interest obligations, including those proposals that are not as closely tied to the new opportunities inherent in digital technology. The conversion from analog to digital is a long transition, and both analog and digital broadcasters must operate consistently in the public interest during the transition. At the same time, we acknowledge that many broadcasters have served the public interest in numerous ways over the years. According to a report of the National Association of Broadcasters published in 1998, the nation's broadcasters provided $6.85 billion in community service in 1996.[35] Therefore, by this *NOI*, we are asking broadcasters and members of the public to present their views or ideas on how best to implement the public interest standard during the transition. As the courts have acknowledged, and the transition to DTV reinforces, the public interest standard is "a supple instrument" designed to be flexible enough to accommodate the "dynamic aspects of radio transmission,"[36] and we believe that it is an appropriate time to create a forum for public debate.

II. AREAS OF INQUIRY AND REQUEST FOR COMMENTS

9. At this the advent of the digital age, we seek comment on how broadcasters can best serve the public interest during and after the transition to digital technology. We seek comment on challenges unique to the digital era, how broadcasters can meet their public interest obligations on both their analog and digital channels during the transition period, and on various proposals and recommendations that have been made on how broadcasters could better serve their communities of license. We welcome other proposals, and request parties to articulate legal bases for their proposals, and explain how they would serve the public interest.

A. Challenges Unique to the Digital Era

10. More than 100 DTV stations are currently on the air.[37] As indicated above, these broadcasters, as well as all television licensees upon the conversion to DTV, have the flexibility either to "multicast," to provide HDTV, or to "multiplex" DTV programming and "ancillary and supplementary services" at the same time.[38] Both the Act and the Commission's implementing actions make it clear that DTV broadcasters

[33] PBTV Petition at 20-21.

[34] Letter from People for Better TV to William E. Kennard, Chairman, FCC, Nov. 16, 1999 (PBTV Letter). A copy of this letter will be placed in the record of this proceeding.

[35] NAB, *Broadcasters Bringing Community Service Home: A National Report on the Broadcast Industry's Community Service* at 2 (April 1998) (*NAB Report*). A copy of this report will be placed in the record of this proceeding.

[36] *FCC v. Pottsville Broadcasting Co*., 309 U.S. 134, 138 (1940).

[37] Summary of DTV Applications Filed, Nov. 10, 1999, available at www.fcc.gov/mmb/vsd/files/dtvsum.html (noting that 83 DTV stations are on air with full facilities, and that another 25 are on air with special or experimental authority).

[38] *Fifth Report and Order*, 12 FCC Rcd at 12826, ¶ 42.

must continue to serve the public interest. However, how this obligation may be fulfilled in the digital era has become a subject of discussion, given the new capabilities of digital technology. We seek comment on how to define these obligations. We are especially interested in specific proposals addressing whether and how existing public interest obligations should translate to the digital medium.

11. In implementing section 336, the Commission required that broadcasters air "free digital video programming service the resolution of which is comparable to or better than that of today's services, and aired during the same time period that their analog channel is broadcasting."[39] In doing so, the Commission stated that "broadcast licensees and the public are on notice that existing public interest requirements continue to apply to all broadcast licensees."[40] It is thus clear that DTV broadcasters must air programming responsive to their communities of license, comply with the statutory requirements concerning political advertising and candidate access, and provide children's educational and informational programming, among other things. But as People for Better TV ask, how do these obligations apply to a DTV broadcaster that chooses to multicast?[41] Do a licensee's public interest obligations attach to the DTV channel as a whole, such that a licensee has discretion to fulfill them on one of its program streams, or to air some of its public interest programming on more than one of its program streams? Should, instead, the obligations attach to each program stream offered by the licensee, such that, for example, a licensee would need to air children's programming on each of its DTV program streams? The Advisory Committee Report contemplates that, under certain circumstances, a digital broadcaster should not have nonstatutory public interest obligations imposed on channels other than its "primary" channel.[42] A majority of the members of the Advisory Committee believe that the FCC should prohibit broadcasters from segregating candidate-centered programming to separate program streams, because they believe that would violate candidates' reasonable access and equal opportunities.[43] We seek comment on these approaches. In addition, how should we take into account the fact that DTV broadcasters can choose either to multicast multiple standard definition DTV program streams or broadcast one or two HDTV program streams during different parts of the day? In addressing these issues, commenters should discuss the requirements of section 336(d) of the Act, which states that a "television licensee shall establish that *all* of its program services on the existing or advanced spectrum are in the public interest."[44]

12. People for Better TV propose several other ways that digital broadcasters might better serve the nation's children, such as setting aside a minimum number of hours each week to provide educational programs or services, which might include data transmission for schools.[45] In addition, PBTV suggests that the increased information capability of digital technology could improve the current voluntary ratings

[39] *Fifth Report and Order*, 12 FCC Rcd at 12820, ¶ 28.

[40] *Fifth Report and Order*, 12 FCC Rcd at 12830, ¶ 50.

[41] PBTV Petition at 11.

[42] Advisory Committee Report at § III.5.

[43] Advisory Committee Report at § IV, Statement of Charles Benton, Part I (joined by 12 other members of Advisory Committee).

[44] 47 U.S.C. 336(d) (emphasis added).

[45] PBTV Letter at 2.

system.[46] We seek comment on these ideas. In addition, should the ratings of programs promoted by broadcasters be consistent with the rating of the program during which the promotions run? We also ask commenters to address how the policies set forth in the Children's Television Policy Statement[47] should be applied in the digital environment.

13. By definition, ancillary and supplementary services, such as datacasting or paging, are services other than free, over-the-air services.[48] Do a licensee's public interest obligations apply to its ancillary and supplementary services? In addressing these issues, commenters should discuss the relevance of several sections of section 336. People for Better TV contends that "the public interest standard attends to all DTV uses of the spectrum,"[49] and points out that section 336(a)(2) states that the Commission "shall adopt regulations that allow the holders of [DTV] licenses to offer such ancillary and supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity." We note that section 336(e) requires the Commission to collect fees from DTV broadcasters that offer ancillary and supplementary services, which fees must "recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to the provision of section 309(j) of this Act and the Commission's regulations thereunder."[50] In addition, section 336(b)(3) simply requires the Commission to "apply to any other ancillary and supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person."[51] The Advisory Committee Report recommends that "[b]roadcasters that choose to implement datacasting should transmit information on behalf of local schools, libraries, community-based organizations, governmental bodies, and public safety institutions."[52] The Advisory Committee Report suggests that "[t]his activity should count toward fulfillment of a digital broadcaster's public interest obligations,"[53] without indicating which regulations are applicable to ancillary and supplementary services. We seek comment on this proposal. How would datacasting count toward the

[46] PBTV Letter at 2. In 1997, pursuant to section 551 of the 1996 Act, the broadcast and cable television and motion picture industries adopted a voluntary ratings system. The ratings, which identify the age group for which a particular program is appropriate and when the program contains violence, sexual content, suggestive or coarse language, are intended to provide parents with the information necessary to guide their children's television viewing. In 1998, the Commission found this ratings system acceptable and required television set manufacturers to include in certain new sets "V-Chip" technology that will screen programming based upon these ratings. *See* Section 551 of the Telecommunications Act of 1996, Video Programming Ratings, CS Docket No. 97-55, *Report and Order*, 11 FCC Rcd 8232 (1998).

[47] Petition of Action for Children's Television (ACT) for Rulemaking Looking Toward Elimination of Sponsorship and Commercial Content in Children's Programming and the Establishment of a Weekly 14-Hour Quota of Children's Television Programs, Docket No. 19142, *Children's Television Report and Policy Statement*, 50 FCC 2d 1 (1974).

[48] *Fifth Report and Order*, 12 FCC Rcd at 12821, ¶ 30.

[49] PBTV Petition at 5.

[50] 47 U.S.C. § 336(e).

[51] 47 U.S.C. § 336(b)(3).

[52] Advisory Committee Report at § III.4.

[53] Advisory Committee Report at § III.4.

DTV broadcasters' public interest obligations? We also seek comment more generally on whether the public interest obligations should apply to ancillary and supplementary services, and if so, how.

B. Responding to the Community

14. One of a broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license.[54] Another of its most basic obligations in responding to the public's informational needs is to air emergency information.[55] Technological advances, including digital technology, may allow broadcasters to fulfill these obligations better. For example, digital technology enables broadcasters to track storms house by house.[56] In addition, broadcasters might make information about their programming more accessible, and therefore more responsive, to their communities of license through posting such information on websites on the Internet. As broadcasters move forward with their transition to digital technology, we seek to find ways to help them serve their communities better and more fully.

1. Disclosure Obligations

15. People for Better TV states that DTV broadcasters should "disclose their public interest programming and activities on a quarterly basis, matched against ascertained community needs," gathered by reaching out to "ordinary citizens and local leaders" and sought through "postal and electronic mail services as well as broadcast announcements."[57] The Advisory Committee Report recommends that DTV broadcasters "should be required to make enhanced disclosures of their public interest programming and activities on a quarterly basis, using standardized check-off forms that reduce administrative burdens and can be easily understood by the public."[58] The Advisory Committee Report explains that effective self-regulation requires broadcasters to make available to the public adequate information about what they are doing. The Committee notes that the Commission already requires all TV broadcasters to place in their public files separate quarterly reports on their non-entertainment programming responsive to community needs and on their children's programming,[59] and recommends that the Commission require broadcasters to augment these reports. The enhanced disclosures "should include but not be limited to contributions to political discourse, public service announcements, children's and educational programming, local programming, programming that meets the needs of underserved communities, and community-specific activities."[60] The Committee also

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[54] Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, MM Docket No. 83-670, *Report and Order*, 98 FCC 2d 1076, 1091 (1984).

[55] Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, FO Docket Nos. 91-301, 91-171, *Report and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 1786 (1994).

[56] Advisory Committee Report at § III.7.

[57] PBTV Letter at 4.

[58] Advisory Committee Report at § III.1.

[59] 47 C.F.R. §§ 73.3526, 73.3527.

[60] Advisory Committee Report at § III.1.

recommends that digital TV broadcasters take steps to distribute public interest information more widely, through newspapers and websites.[61]

16. We seek comment on the above recommendations. Our rules currently require commercial TV broadcasters to include in their public file, among other things, citizen agreements, records concerning broadcasts by candidates for public office, annual employment reports, letters and e-mail from the public, issues/programming lists, records concerning children's programming commercial limits, and children's television programming reports.[62] Should broadcasters provide the additional types of public service information proposed by the Advisory Committee Report and People for Better TV? Should they provide information in addition to, or in lieu of, that proposed by the Committee and People for Better TV? Should the public file contain information on what programming has closed captioning and video description? We seek comment on the extent to which the Advisory Committee's and People for Better TV's proposals parallel the Commission's previous ascertainment requirements, which the Commission repealed in the 1980s,[63] and we ask parties to address whether the Commission's reasons for eliminating those requirements apply to our consideration of these proposals. These ascertainment guidelines set forth specific standards for broadcasters on consulting with community leaders, identifying and responding to community needs and problems through programming, and maintaining and making available various records on their ascertainment procedures.

17. We currently allow licensees to maintain their public inspection file in computer databases, and encourage licensees that elect this option to post their public file on any websites they maintain.[64] We seek comment on how many broadcasters provide their public file in this format, and the costs and benefits of doing so. In particular, we seek comment on how broadcasters could use the Internet to ensure that they are responsive to the needs of the public. We seek comment on whether broadcasters should be required to make their public files available on the Internet, and whether those broadcasters that maintain a station website on the Internet could or should use the Internet to interact directly with the public, perhaps by establishing forums in which the public could post comments and engage in an ongoing dialogue about the broadcaster's programming. How could these websites and forums be made accessible to persons with disabilities? In addition, we seek comment on whether it would promote responsiveness to the community to require the disclosure of certain information (e.g., the individual ultimately responsible for a program's airing or content) that would enable public input more easily and meaningfully.

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[61] Advisory Committee Report at § III.1.

[62] 47 C.F.R. § 73.3526(e). We note that we streamlined our public file rules in 1998 . *See* In the Matter of Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations, MM Docket No. 97-138, *Report and Order*, 13 FCC Rcd 15691 (1998) (*Public File Report and Order*).

[63] Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial TV Stations, MM Docket No. 83-670, *Report and Order*, 98 FCC 2d 1076 (1984) (*TV Deregulation Order*), *recon. denied*, 104 FCC 2d 358 (1986), *rev'd in part, ACT v. FCC*, 821 F.2d 741 (D.C. Cir. 1987). The ascertainment requirements contained detailed methodologies for ascertaining the problems, needs, and interests of a broadcaster's community, some of which were to be addressed by programming.

[64] *Public File Report and Order*, 13 FCC Rcd at 15714-15715, ¶ 53.

2. Disaster Warnings

18. The Advisory Committee Report recommends that "[b]roadcasters should work with appropriate emergency communications specialists and manufacturers to determine the most effective means to transmit disaster warning information. The means chosen should be minimally intrusive on bandwidth and not result in undue additional burdens or costs on broadcasters. Appropriate regulatory authorities should also work with manufacturers of digital television sets to make sure that they are modified to handle these kinds of transmissions."[65] The Advisory Committee Report explains that digital technology will provide innovative and new ways to transmit warnings, such as pinpointing specific households or neighborhoods at risk, and suggests that DTV broadcasters take advantage of these technological advances. The Advisory Committee Report also states that most of these innovations will require only minimal use of the 6 MHz bandwidth allocated to digital broadcasters.

19. We seek comment on the Advisory Committee Report's recommendation. One of broadcasters' fundamental public interest obligations is to warn viewers about impending disasters and keep them informed about related events. What unique capabilities does digital technology give broadcasters to deliver disaster-related information? What role should the Commission play to encourage broadcasters to deploy such technology to deliver enhanced disaster information? How can we facilitate the realization of the Advisory Committee's goals? We note that the Commission recently adopted its "Emergency Alert System" requirements, set forth in Part 11 of the Commission's rules. Should the Commission adopt any different requirements for DTV broadcasters?

3. Minimum Public Interest Obligations

20. The Advisory Committee Report recommends that "[t]he FCC should adopt a set of mandatory minimum public interest requirements for digital broadcasters . . . that would not impose an undue burden on digital broadcast stations, . . . should apply to areas generally accepted as important universal responsibilities for broadcasters," and should be phased in over several years.[66]

21. We seek comment on the Advisory Committee Report's recommendations regarding minimum public interest requirements. Many members of the Advisory Committee were concerned that not all television broadcasters would adopt voluntary measures, while other members strongly opposed Commission-imposed minimum public interest requirements as unnecessary, preferring to give television broadcasters maximum flexibility and discretion in meeting their public interest obligations. This issue has previously generated strong debate. Some television broadcasters have previously opposed increasing or making more specific their public interest obligations, reasoning that the marketplace is sufficient to produce adequate local programming and meet community needs. Indeed, many television broadcasters have demonstrated a strong record of community service.[67] Other parties have argued in our DTV proceeding that the Commission should adopt more specific public interest programming requirements given the new opportunities broadcasters will have in converting to DTV.[68] They also express the concern that television

[65] Advisory Committee Report at § III.7.

[66] Advisory Committee Report at § III.3.

[67] *NAB Report*.

[68] *See* Comments of Media Access Project at 20-32 (filed Nov. 20, 1995 in MM Docket No. 87-268); Reply Comments of the Benton Foundation at 6-10 (filed Feb. 1, 1996 in MM Docket No. 87-268).

broadcasters are not airing a sufficient amount of public interest programming, including local public affairs programming.[69]

22. We invite comment on this debate. Should the Commission establish more specific minimum requirements or guidelines regarding television broadcasters' public interest obligations? Would this make the license renewal process more certain and meaningful by spelling out the public interest standard in more detail? How would such minimum requirements be defined? What additional costs, if any, would those requirements impose? Are there sufficient marketplace incentives to ensure the provision of programming responsive to community needs, obviating the need for additional requirements?

C. Enhancing Access to the Media

23. One of the Commission's long-standing goals in the area of broadcast regulation is to enhance the access to the media by all people, including people of all races, ethnicities, and gender, and, most recently, disabled persons. Congress emphasized this goal when it amended section 1 of the Communications Act in 1996 to refine this agency's mission as making available "to all people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service. . . ." It further highlighted this goal when it added provisions to the Act concerning people with disabilities, such as section 713 relating to closed captioning and video description.[70] Given the efficiencies of digital technology, DTV broadcasters will be able to "multicast" and air several programs at the same time, as well as provide more information within the signal of each programming stream. We seek comment on the ways broadcasters can use this technology to provide greater access to the media.

1. Disabilities

24. Digital technology offers great possibilities for broadcasters to make their programming more accessible to persons with disabilities. For example, digital technology could enable viewers to change the size of captions in order to see both captions and the text appearing on a TV screen. In addition, digital technology permits broadcasters to provide several different audio programs, which could make video description more widely available.

25. In urging that the Commission issue this *NOI*, People for Better TV ask that the Commission emphasize, among other things, the "expansion of services to person with disabilities."[71] The group specifically suggests that a "digital broadcast station should provide closed captioning and description services for the blind of PSAs, public affairs programming, and political programming."[72] It urges that "[c]aptioning and descriptions in these areas should be phased in over the first 4 years of a station's digital

[69] In April 1998, the Media Access Project and the Benton Foundation issued a report titled, "What's Local about Local Broadcasting?" that surveyed stations in selected markets regarding the amount of local public affairs programming aired weekly. We will place a copy of this report in the record of this proceeding.

[70] 47 U.S.C. § 613.

[71] PBTV Petition at 20.

[72] PBTV Letter at 3. PSAs funded by the federal government already must be close captioned pursuant to the Americans with Disabilities Act. 47 U.S.C. § 611.

broadcasts, but should be completed no later than 2006."[73] Similarly, the Advisory Committee Report recommends that digital TV broadcasters "take full advantage" of new digital technologies to provide "maximum choice and quality for Americans with disabilities, where doing so would not impose an undue burden on the broadcasters."[74] The Committee specifically enumerates closed captioning, video description, and disability access to ancillary and supplementary services. The Committee asks broadcasters to take full advantage of digital closed captioning technology that will enable viewers to change the size of captions to see both the caption and text otherwise behind the caption, and also calls on broadcasters to expand gradually captioning on PSAs, public affairs programming, and political programming. The Committee also requests digital broadcasters to allocate sufficient bandwidth among their multiple audio channels to make expanded use of video description technology feasible. The Committee further suggests that any digital broadcaster that provides ancillary and supplementary services not impinge on the 9600 baud bandwidth currently set aside for closed captioning, and encourages broadcasters to explore new digital technologies to expand access to such services to persons with disabilities, such as offering text options for material presented orally and an audio option for material presented visually. The Committee finally recommends that the Commission and other regulatory authorities work with set manufacturers to ensure that modifications in audio channels, decoders, and other technical areas are designed to ensure the most efficient, inexpensive, and innovative capabilities for disability access.

26. We seek comment on these proposals. We note that the Commission has adopted closed captioning rules to implement section 305 of the 1996 Act.[75] These closed captioning rules require broadcasters (both analog and digital TV broadcasters, among other video programming distributors and providers) to caption new programming gradually, according to a phase-in schedule,[76] and to caption 75% of "pre-rule" programming by 2008.[77] Our rules also require broadcasters to pass through the captioning provided by program suppliers, unless it requires reformatting.[78] Certain types of programming and providers, however, are exempt from these requirements.[79] Should the Commission impose different requirements on DTV broadcasters? We note that we have recently proposed to adopt technical standards for the display of closed captioning on DTV receivers, and to require the inclusion of closed captioning decoder circuitry in DTV receivers.[80]

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[73] PBTV Letter at 3.

[74] Advisory Committee Report at § III.8.

[75] Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, MM Docket No. 95-176, *Report and Order*, 13 FCC Rcd 3272 (1997), *recon. granted in part and denied in part*, 13 FCC Rcd 19973 (1998).

[76] 47 C.F.R. § 79.1(b)(1).

[77] 47 C.F.R. § 79.1(b)(2). Broadcasters that captioned more than 75% of "pre-rule" programming during the first six months of 1997 must at least maintain the percentage they captioned during that period. 47 C.F.R. § 79.1(b)(3).

[78] 47 C.F.R. § 79.1(c).

[79] 47 C.F.R. § 79.1(d).

[80] Closed Captioning Requirements for Digital Television Receivers, ET Docket No. 99-254, *Notice of Proposed Rulemaking*, FCC 99-180 (released July 15, 1999).

27. With respect to video description, we note that the Commission has submitted two reports to Congress, pursuant to section 305(f) of the 1996 Act (codified as section 713(f) of the 1934 Act), [81] and recently proposed limited rules to phase video description into the marketplace.[82] In both of its reports to Congress, the Commission noted that, since digital technology does not have the capacity limitations of analog, its more widespread deployment will, in turn, make more widespread video description available. The Commission therefore suggested that any phase-in schedules should take into account the transition to DTV. In the *Video Description Notice*, we thus proposed limited rules for analog broadcasters, but made clear our intention to extend video description to digital broadcasters. We seek comment on how the Commission could encourage DTV broadcasters to take advantage of the enhanced capabilities of the technology to provide more video description.

28. The Advisory Committee Report also recommends that DTV broadcasters make ancillary and supplementary services available to persons with disabilities. We seek comment on what types of ancillary and services broadcasters might provide, and on how they could be made accessible to persons with disabilities.

2. Diversity

29. Diversity of viewpoint, ownership, and employment have long been and continues to be a fundamental public policy goal in broadcasting. In section 309(j) of the Act, Congress directed the Commission to prescribe competitive bidding rules to promote "economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."[83] In part, to fulfill that mandate, we offered a bidding credit to new entrants in our recent auction of broadcast licenses.[84] Prior to the adoption of section 309(j), and throughout its history, the Commission has also pursued a number of initiatives to diversify broadcast station ownership and employment. For example, the Commission identified "diversification of control of the media of mass communications" as "a factor of primary significance" in its comparative licensing processes,[85] and adopted diversity and minority "preferences" in certain of its random selection processes.[86] In addition, we are

[81] Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, MM Docket No. 95-176, *Report*, 11 FCC Rcd 19214 (1996). *See also* Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming, CS Docket No. 97-141, *Fourth Annual Report*, 13 FCC Rcd 1034, 1163-1170 at ¶¶ 258-271 (1998).

[82] Implementation of Video Description of Video Programming, MM Docket No. 99-339, *Notice of Proposed Rulemaking*, FCC 99-353 (released Nov. 18, 1999) (*Video Description Notice*).

[83] 47 U.S.C. § 309(j)(4)(C).

[84] Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, Reexamination of the Policy Statement on Comparative Broadcast Hearings, GC Docket No. 92-52, Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, GEN Docket No. 90-264, *First Report and Order*, 13 FCC Rcd 15920, 15994-15995 at ¶ 189 (1998) (*Competitive Bidding First Report and Order*), *recon*., 14 FCC Rcd 8724 (1999)

[85] Public Notice, *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 394 (1965).

[86] Amendment of the Commission's Rules to Allow the Selection from Among Certain Competing Applications for Using Random Selection or Lotteries Instead of Comparative Hearings, Gen. Docket No. 81-768, *Second Report and Order*, 93 FCC 2d 952, 973-977 at ¶¶ 59-70 (1983).

currently conducting a number of studies to evaluate the barriers to acquisition of broadcast licenses, and barriers to entry or growth, that small, minority-, and women-owned businesses face, as well as to examine the impact of our multiple ownership rules on broadcast station ownership, and the impact of small, minority, and women ownership of broadcast stations on service.[87] The Commission has also adopted equal opportunity rules that are designed to foster opportunity in the broadcast industry for minorities and women. The outreach portion of these rules was struck down on constitutional grounds by the D.C. Circuit.[88] However, last November, we issued a *Notice of Proposed Rulemaking* proposing new EEO rules,[89] and expect to issue an order in the near future.

30. Broadcasters have voluntarily pursued a number of initiatives to foster diversity. Most recently, broadcasters created an investment fund, with current initial cash commitments of $175 million and ultimate purchasing power of possibly $1 billion, to spur ownership of television and radio by minorities and women.[90] In addition, many broadcasters have made voluntary commitments to abide by equal opportunity principles, whether required by law to do so or not.[91]

31. People for Better TV ask that DTV broadcasters exploit digital technology to reflect the diversity of their communities, through any number of practices. The group explains that network programming cannot respond to diverse needs of each community, and so local stations must come to know and provide service to diverse communities. It asks that broadcasters support the goal of diversity and report quarterly on their efforts.[92]

32. The Advisory Committee Report states that "[d]iversity is an important value in broadcasting, whether it is in programming, political discourse, hiring, promotion, or business opportunities within the industry."[93] As such, it recommends that "broadcasters seize the opportunity inherent in the digital television technology to substantially enhance the diversity available in the television marketplace."[94] Many of the Advisory Committee's other recommendations bear on its goal of diversity in broadcasting. For example, the Advisory Committee Report advocates flexibility in multiplexing so that broadcasters can create new opportunities for minority entrepreneurship through channel-leasing arrangements, partnerships and other creative business arrangements. In addition, the Advisory Committee Report recommends that, out of the returned analog spectrum one new 6 MHz channel for each viewing community be reserved for

[87] *See Competitive Bidding Report and Order*, 13 FCC Rcd at 15994, ¶ 188 and n.224.

[88] *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344 (1998).

[89] Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, MM Docket No. 98-204, Termination of the EEO Streamlining Proceeding, MM Docket No. 96-16, *Notice of Proposed Rulemaking*, 13 FCC Rcd 23004 (1998).

[90] Broadcasting Industry Announces Minority Investment Fund, NAB Press Release, Nov. 3, 1999, available at www.nab.org.

[91] FCC New Release, FCC Chairman Applauds Media Companies' Commitment to EEO Principles (July 30, 1998).

[92] PBTV Letter at 4.

[93] Advisory Committee Report at § III.9.

[94] Advisory Committee Report at § III.9.

noncommercial purposes, including educational programming directed at minority groups and other underserved segments of the community. The Committee also recommends that "broadcasters voluntarily redouble their individual and collective efforts during the digital transition to encourage effective participation by minorities and women at all levels of the industry," including hiring and promotion policies that result in significant representation of minorities and women in the decision-making positions in the broadcast industry. The Committee hopes that all of the recommendations will help independent producers provide new programming. We note that several major civil rights organizations, including NAACP and La Raza, have raised similar concerns about the lack of cultural diversity on network programming.

33. The Advisory Committee Report generally does not contain separate, stand-alone recommendations on how to achieve diversity in broadcasting; its recommendations are largely contained within other portions of the report on which we have sought comment above. In addition, as indicated above, the Commission currently has a number of initiatives underway designed to diversify broadcast ownership and employment. What other ways could and should the Commission encourage diversity in broadcasting, consistent with relevant constitutional standards? We seek comment on innovative ways unique to DTV that the Commission could use to encourage diversity in the digital era, and encourage commenters to submit specific proposals.

D. Enhancing Political Discourse

34. The Commission has long interpreted the statutory public interest standard as imposing an obligation on broadcast licensees to air programming regarding political campaigns.[95] The Supreme Court likewise has recognized the impact television broadcasting has on our political system: "Deliberation on the positions and qualifications of candidates is integral to our system of government, and electoral speech may have its most profound and widespread impact when it is disseminated through televised debates. A majority of the population cites television as its primary source of election information, and debates are regarded as the 'only occasion during a campaign when the attention of a large portion of the American public is focused on the election, as well as the only campaign information format which potentially offers sufficient time to explore issues and policies in depth in a neutral forum.'"[96] We seek comment on ways that candidate access to television and thus the quality of political discourse might be improved. We propose no rules or policies in this *NOI*. Rather our goal in this *NOI* is to initiate a public debate on the question of whether, and how, broadcasters' public interest obligations can be refined to promote democracy and better educate the voting public. This debate will greatly assist the Commission and Congress in determining what, if any, further steps should be taken on these important issues.

35. We note that some broadcasters have devoted many hours of program time to political coverage. According to a report recently issued by the National Association of Broadcasters ("NAB Report"),[97] in the 1996 election cycle broadcasters valued the time they voluntarily devoted to political campaigns at $148.4 million.[98] This programming took the form of coverage of debates, conventions and issue fora. Many more hours of news programming not accounted for in these figures have been dedicated to covering local and

[95] *See, e,g.,* Licensee Responsibility as to Political Broadcasts, 15 FCC 2d 94 (1968).

[96] *Arkansas Educational Television Commission v. Forbes*, 118 S.Ct. 1633, 1640 (1998).

[97] *See supra* note 35.

[98] *NAB Report* at 3.

national campaigns. In addition, during the 1996 elections, the Fox, PBS, and ABC networks voluntarily provided free airtime to the major presidential candidates using a variety of formats. For example, during the last six weeks of the 1996 presidential campaign the Fox television network offered each major presidential candidate free airtime, including the opportunity to make ten one-minute position statements that were broadcast in prime time. The PBS and ABC television networks also set aside free airtime for presentations by the major presidential candidates, and the A.H. Belo Corporation provided free airtime in selected federal congressional elections and gubernatorial races.[99] The Commission exempted these efforts from the equal opportunity requirements, finding that the proposals qualified as on-the-spot coverage of a bona fide news event. We seek comment on what the Commission can do to encourage these kinds of voluntary efforts by television broadcasters.

36. On the other hand, we note that there are indications that many television broadcasters are providing scant coverage of local public affairs, and what coverage there is may be shrinking. For instance, a 1998 study by the University of Southern California Annenberg School for Communication found that only 0.31% of local news focused on the California governor's race, compared to a figure of 1.8% in 1974. Similarly, an April 1998 Join Report by the Media Access Project and the Benton Foundation found that, in the markets examined, 35% of the stations provide no local news, and 25% offer neither local public affairs programming nor local news.[100]

37. The Advisory Committee Report recommends that television broadcasters provide five minutes each night between 5:00 p.m. and 11:35 p.m. (or the appropriate equivalent in Central and Mountain time zones) for "candidate-centered discourse" thirty days before an election.[101] The Committee envisions maximum flexibility for broadcasters, allowing them to choose the candidates and races – federal, state, and local – that deserve more attention. The Committee envisions that stations could choose formats, which might include giving candidates one minute of airtime, conducting mini-debates, or doing brief interviews, or including the "discourse" in newcasts. We seek comment on this idea. More generally, are there steps the Commission can take to promote voluntary efforts to enhance political debate and the information the public receives concerning candidates?

38. Others have proposed that the Commission adopt rules requiring broadcast licensees to provide time to candidates.[102] Although the Advisory Committee Report proposed voluntary efforts, thirteen members of

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[99] *See* Requests of Fox Broadcasting Company, Public Broadcasting Service, and Capital Cities/ABC, Inc. for Declaratory Rulings, *Declaratory Ruling*, 11 FCC Rcd 11101 (1996); A.H. Belo Corp. for Declaratory Ruling, *Staff Ruling*, 11 FCC Rcd 12306 (MMB 1996).

[100] Joint Report of the Media Access Project and Benton Foundation, *What's Local About Local Broadcasting?* at 1 (Apr. 1998).

[101] Advisory Committee Report at § III.6(b).

[102] President Clinton has called upon the Commission "to develop policies, as soon as possible, which ensure that broadcasters provide free and discounted airtime for candidates to educate voters." Letter from President Clinton to Chairman William E. Kennard, Feb. 5, 1998. Seventy-two members of the United States House of Representatives and eleven United States Senators have urged us to propose regulations providing for free or reduced rate air time for candidates. Forty-two Members of the United States House of Representatives signed Rep. Tierney's February 19, 1998 letter to President Clinton, supporting the President's request that the Commission propose regulations providing for free or reduced rate time for candidates. In addition, thirty Members of the House of Representatives signed Rep. Slaughter's and Rep. Bonior's June 4, 1997 letter to the Commission and four more supplemental signatures were added subsequently. The June 4 letter asks the Commission to conduct an inquiry into what "additional public interest

the Committee - a majority – contend that the Committee's recommendations do not go far enough, and that the Commission should, among other things, require television broadcasters to provide some airtime for national and local candidates.[103] In addition, former FCC General Counsel Henry Geller, on behalf of himself and others, ask the Commission to require television broadcasters to provide political candidates a reasonable amount of time each day in advance of a general election.[104] More specifically, Geller et al. propose that the Commission require television broadcasters to provide twenty minutes of airtime each day thirty days before a general election in even-numbered years, and fifteen days before in odd-numbered years, when there are fewer elections. Geller et al. suggest that the Commission give television broadcasters the flexibility to decide how to provide the total of twenty minutes, except that the time should be provided between 6:00 a.m. to midnight, with at least five minutes in prime time. Geller et al. further suggest that the Communications Act requires the Commission to leave the selection of the races to be covered to the licensees.[105] Geller et al. contend that the Commission's public interest authority extends to requiring broadcasters to provide time.[106] We seek comment on these approaches, and on the Commission's authority to require broadcasters to provide airtime to political candidates. We also seek comment on the Advisory Committee's recommendation that the Commission should prohibit television broadcasters from adopting blanket bans on the sale of airtime to state and local candidates.[107]

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responsibilities" should accompany the expanded rights of broadcasters "in a digital age;" they also specifically urged the Commission to focus on "the proposals for licensees to provide free broadcast air time to candidates, as advocated by Members of Congress, broadcast executives like Rupert Murdoch and Barry Diller, and respected journalists such as Walter Cronkite and David Broder." Id. On June 13, 1997, eleven Senators, led by Senator Dick Durbin, sent a similar letter requesting that the Commission solicit and examine free time proposals as a method of facilitating campaign finance reform.

[103] Advisory Committee Report at § IV, Statement of Charles Benton (joined by 12 other members). In addition, the majority recommends that the Commission consider whether political parties should administer any of the airtime and whether it should specify a scheme to administer the free time. The majority also recommends that the Commission give broadcasters discretion over the format of candidate appearances, with a few exceptions.

[104] Petition for Rule Making filed by Henry Geller, Common Cause, Benton Foundation, American Association of Retired Persons, Center for Responsive Politics, Honorable Dick Clark, Democratic Leadership Council, Public Citizen, and Honorable Lionel Van Deerlin (filed Oct. 21, 1993) (Geller Petition).

[105] Geller et al. also asked the Commission to require radio stations to provide political candidates six minutes per day of free airtime, with one of these minutes required to be in "drive time."

[106] Various members of Congress disagree. On February 27, 1998, seventeen members of Congress, including Rep. Billy Tauzin, Chairman of the U.S. House of Representatives Subcommittee on Telecommunications, sent a letter to Chairman Kennard to "express our concern with a possible attempt by the Federal Communications Commission to proceed beyond its mandated authority provided by Congress by attempting to issue an order granting political candidates free commercial time for televised broadcasts." See also Letter from Sen. Don Nickles, Assistant Majority Leader, U.S. Senate, to William Kennard, Chairman, FCC, Feb. 5, 1998; Letter from Rep. John D. Dingell, Ranking Member, U.S. House of Representatives Committee on Commerce, to William E. Kennard, Chairman, FCC, Feb. 4, 1998.

[107] Advisory Committee Report at § III.6(c); Vice President's Letter at 2.

IV. ADMINISTRATIVE MATTERS

39. Comments and Reply Comments. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties must file comments on or before March 27, 2000, and reply comments on or before April 25, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

40. Comments filed through ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment via e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to edfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

41. Parties who choose to file by paper must file must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554.

42. Parties who choose to file paper should also submit their comments on diskette. These diskettes should be addressed to: Wanda Hardy, Paralegal Specialist, Mass Media Bureau, Policy and Rules Division, Federal Communications Commission, 445 Twelfth Street, S.W., 2-C221, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case (MM Docket No. 99-360), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy – Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must sent diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, S.W., CY-B402, Washington, D.C. 20554.

43. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, S.W., CY-A257, Washington, D.C. 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0270, (202) 418-2555 TTY, or bcline@fcc.gov. Comments and reply comments also will be available electronically at the Commission's Disabilities Issues Task Force web site: www.fcc.gov/dtf. Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

44. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Armetta Henry at (202) 4810-0260, TTY (202) 418-2555, or ahenry@fcc.gov.

45. *Ex Parte* Rules. Pursuant to the provisions of 47 C.F.R. § 1.1204(b)(1) this is an exempt proceeding. *Ex parte* presentations to or from Commission decision-making personnel are permissible and need not be disclosed.

46. Additional Information. For additional information on this proceeding, please contact Eric Bash in the Mass Media Bureau, Policy & Rules Division, (202) 418-2130, TTY (202) 418-1169.

IV. ORDERING CLAUSE

47. Accordingly, IT IS ORDERED that pursuant to the authority contained in sections 4(i), 303(g), 303(r), 336 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(g), 303(r), 336, and 403, this *Notice of Inquiry* IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

SEPARATE STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH, CONCURRING IN PART AND DISSENTING IN PART

Re Public Interest Obligations of TV Broadcast Licensees, Notice of Inquiry

I believe today's Notice of Inquiry is a significant step in implementing Section 336's directives regarding the transition from analog to digital broadcast services. The birth of digital television raises discrete issues regarding application of our existing public interest requirements during the transition period and beyond. I concur in the Commission's decision to utilize the flexibility afforded by a Notice of Inquiry to develop a record on these narrow issues.

However, I am both surprised and disturbed by many aspects of the Notice. First, the majority has crafted a document of vast breadth, often musing about public interest mandates that have no discernible nexus to the transition to digital technology. Rather, it appears that special interests have seized on this opportunity to wring as many concessions as possible out of broadcasters. For example, the NOI considers proposals that broadcasters fund solutions to such diverse problems as minority access to capital and the quality of our political discourse. I believe even suggesting such broad policies in this deregulatory and competitive age is pure folly.

Second, this NOI is remarkably out-of-step with today's communications marketplace. The Notice seems to reflect a vintage 1960s' big-government pro-regulation philosophy based on the fundamental factual premise that broadcast television is the sole, dominant media outlet. Yet the new millennium is a vastly different time. The Commission's rules should be moving towards deregulation, not further burdening the emergence of one nascent mass media competitor: digital television (DTV).

Third, I am uncomfortable with this <u>independent</u> agency taking its "guidance" and "focus" from an executive branch Committee and the Vice President on issues that are exclusively within our jurisdiction.[1] Moreover, the timing of today's Inquiry – only weeks after the arrival of a letter request for such action by the Vice President – casts unfortunate doubt on our independence as an agency.

Based on these three factors, I respectfully dissent in part from this Notice of Inquiry.

I. A Limited Inquiry

As noted above, I do believe that this proceeding will assist the Commission in applying our current public interest obligations to DTV. As acknowledged by the Notice, Section 336 (d) of the Act states "[n]othing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience and necessity."[2] That section also

1 See NOI ¶ 6.

2 See NOI ¶ 4.

requires that "[i]n the Commission's review of any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, the television licensee shall establish that all of its program services on the existing or advanced television spectrum are in the public interest." Thus, the statute supports the Commission's application of its current public interest obligations to DTV and an assessment of the role of these obligations, if any, to ancillary or supplementary services.

Therefore I believe this NOI rightly addresses such issues as how the public interest obligations apply in a multicast environment (¶ 11), the public interest obligations (if any) that should apply to ancillary and supplementary services provided by DTV broadcasters (¶ 13), and the closed captioning obligations of DTV under Section 305 (f) (¶ 23). Unfortunately, the NOI does not stop there. Instead it goes on (and on) with a laundry list of potential opportunities for "freebies" to be extracted from broadcasters for various "public" purposes – most of questionable utility and legality.

II. The Great DTV Society?

The NOI transforms this proceeding into a roving mandate to seek out "good" things that we can make broadcasters do. The item does not appear to require any particular linkage between the proposals and the transition to DTV. In some cases, there is little connection to broadcasting at all. Moreover, there seems to be little regard for the nature of our statutory authority in this area or the limits imposed by the Constitution.

The proposals are breathtaking in scope. The NOI postulates that broadcasters may: be forced to provide subsidized datacasting to schools and libraries (¶ 13), face new minimum standards for satisfying their public interest obligation (¶ 19), and be required to set up Internet chat rooms to discuss their public interest obligations (¶ 17). The NOI also details a proposal to carve out a channel in cleared analog spectrum for minority educational broadcasting (¶29) and searches for ways broadcasters can be used so that "the quality of political discourse might be improved" (¶ 31). Apparently the Notice dreams of creating a new Great DTV Society.

Even if the proposals contained in this Notice had merit – which I believe most of them do not – it eludes me as to why this NOI has become the vehicle for so many big government causes designed to cure virtually every social ill through the mandated largesse of broadcasters. To be sure, there was an argument to be made that broadcasters should pay for their DTV spectrum. Indeed that argument was made in the proper time and place: during the legislative process in Congress. That debate has now been settled through passage of Section 336. It is not for us to backdoor that process by now extracting our pound of flesh for this spectrum.

The vast number of ideas set forth in the Notice makes it difficult to address them all in any detail. However, I discuss below two prominent examples that illustrate these misguided applications of our "public interest" authority.

A. Improving Political Discourse?

In paragraphs 31-34, the Notice sets forth various proposals to grant candidates "free" air time. Congress has repeatedly debated and refused to adopt such a requirement. This legislative activity makes it all the more difficult to assert the legal argument that we have had "public interest" authority to adopt such a requirement all along. [3] Indeed, I have trouble imagining how we could explain, as the Supreme Court has consistently required, that "free" time is "'reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting.'" [4]

Free air time is also just bad policy – a bad policy that has no relationship to the stated purpose of the NOI. First, just who would pay for all of this "free" air time? Broadcasters would, through lost advertising revenue. What this proposal thus amounts to is a painful and targeted tax on their industry in order to fund a general public benefit. This proposal would merely shift the costs of political air time from those who willingly donate to political candidates to the broadcast industry and American consumers, whose resultant funding of this speech could hardly be considered voluntary. In addition, it is not at all clear that free airtime would advance the majority's apparent goals of "promot[ing] democracy" and "better educating the voting public." [5]

B. New Minimum Obligations?

I am also troubled by the portion of the item that asks whether we should specify and quantify broadcasters' public interest obligations. Of course, the closer the Commission gets to outright mandates of type and time for broadcast programming, the more perilously near protected First Amendment ground one gets. As the D.C. Circuit put it:

"[I]n applying the public interest standard to programming, the Commission walks a tightrope

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3 Putting aside the scope of our statutory authority, it is also not clear that such a requirement would be constitutional. *See, e.g,* Lillian R. BeVier, *Is Free Time for TV Candidates Constitutional?* (AEI 1998); Rodney A. Smolla, *Free Air Time for Candidates and the First Amendment* (The Media Institute 1998).

4 *FCC v. Midwest Video*, 440 U.S. 689, 708 (1979)(quoting *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968)). It seems to me that the essential aim of the current proposal is not necessarily to promote goals directly related to broadcasting but rather to redress the perceived problem of escalating campaign costs and the public's attendant opinion of the influence of money on politics. The proposal's relation to broadcasters is really an incidental one: broadcasters provide a convenient means to achieving the posited governmental end -- decreasing the influence of money in politics -- but they are not in themselves part of the problem at which the proposal is aimed. Mandating "free" television -- when section 312(a)(7) expressly provides broadcasters with a choice between the provision of free and paid time and when section 315 guarantees political candidates "equal opportunities" but "no more," *Kennedy v. FCC*, 636 F.2d 172 176 (D.C. Cir. 1980), as well as air time at the "lowest unit charge" not free of charge –simply disregards the overall statutory scheme. Such an approach would violate the well-established maxim that statutes should not be read so as to render other parts superfluous. *See United States v. Menasche*, 348 U.S. 528, 538-539 (1955)).

5 NOI ¶ 31.

between saying too much and saying too little. In most areas it has resolved this dilemma by imposing only *general* affirmative duties-e. g., to strike a balance between the various interests of the community, or to provide a reasonable amount of time for the presentation of programs devoted to the discussion of public issues. . . . Given . . . [the Commission's] long-established authority to consider program content, this general approach probably minimizes the dangers of censorship or pervasive supervision."[6]

This is reason enough for caution.

I also believe that it is simply better policy to leave broadcasters with discretion to define and implement their public interest programming, especially local programming. Broadcasters have every reason to serve their local communities and, if they do not meet that challenge, they will go out of business. Ultimately, it is the broadcaster who seeks and finds the local public interest. To my mind, that is a "public interest" standard that has worked well. Indeed I am quite skeptical of government's ability to substitute its judgment for the broadcasters in order to "help [broadcasters] serve their communities better and more fully."[7]

III. The Wrong Direction

Fundamentally, the NOI is out-of-step with today's market and regulatory landscape. In an age where Americans receive information from an increasing diversity of sources, including cable television and the Internet, it seems increasingly anachronistic to saddle broadcasters with additional unique regulatory burdens. Even without such diversity, in a purportedly deregulatory era at the Commission, vast new obligations on broadcast licensees untethered to any technological change seems bizarre. Although I am heartened that this is only an NOI, the mere presence of these notions troubles me greatly.

The primary rationale for broadcasters' public interest obligations has been the theory that broadcast spectrum is a peculiarly scarce resource.[8] Absent spectrum scarcity, however, the justification for affording broadcasters less First Amendment protection than persons engaged in other modes of communication becomes difficult to discern. As I explained in the Biennial Review of Mass Media Ownership Rules, I believe that the Commission must review the empirical basis of "spectrum scarcity" in that proceeding. Should we conclude in that docket that spectrum scarcity is no longer viable as a factual matter, then the instant effort to engage in additional regulation will be highly problematic in constitutional terms.[9]

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6 *Banzhaf v. FCC*, 405 F.2d 1082, 1095 (D.C. Cir. 1968) (emphasis added).

7 NOI ¶ 14.

8 Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

9 Even prior to the pervasive availability of the Internet, there was no scarcity of criticism of the lessened First Amendment protections afforded broadcasters based on the discrete amount of spectrum available. *See* Separate Statement of Commissioner Harold Furchtgott-Roth, *In the Matter of Review of the Commission's Regulations*

Even beyond the questionable legitimacy of the scarcity rationale, the NOI seems to signal a willingness by the Commission to return to the highly regulatory policies of the past to achieve tangential policy goals. For example, in the 1980s we eliminated our ascertainment requirements as an unnecessary burden on broadcasters.[10] Yet this NOI describes enhanced disclosure requirements including that "digital TV broadcasters take steps to distribute public interest information more widely, through newspapers and websites."[11] Now broadcasters would apparently not only be forced to use their own mediums to advance general public policy goals, but also required to spend funds on other media. Apparently intoxicated by the opportunity presented by the NOI, the majority seems to have imposed no limits on "goodies" to be extracted from broadcasters for their DTV spectrum.

The NOI also fails to acknowledge the current critical stage of the broadcast industry. The industry faces many difficult and expensive challenges in moving into the digital age. The Commission should focus its attention on maximizing the public benefits from the promises of digital broadcasting, not creating new regulatory burdens that may slow down that process.[12]

IV. Dancing to the Executive Branch's Tune?

Finally I would like to voice my discomfort with the unfortunate timing of this item and the prominent role given in the NOI to the President's Advisory Committee on the Public Obligations of Digital Television Broadcasters (Advisory Committee). I know that some of my fellow Commissioners have supported many of the proposals in the Notice for a very long time and have supported Commission action to further those policies. I fear the Executive Branch's actions may undermine my fellow Commissioners' policy goals.

The Advisory Committee, chosen by the President, produced a thorough and interesting report on DTV. Yet regardless of its merit, I see no basis for the FCC to be "guided by" this

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Governing Television Broadcasting, MM Docket No. 91-221; and in the Matter of Television Satellite Stations Review of Policy and Rules, MM Docket No. 87-8 (Aug. 5, 1999); Michael K. Powell, "Willful Denial and First Amendment Jurisprudence," Speech delivered to the Media Institute, Washington, D.C. (April 22, 1998); *Action for Children's Television v. FCC*, 58 F.3d 654, 670-683 (1995)(Chief Judge Edwards Dissenting)("And with the development of cable, spectrum-based communications media now have an abundance of alternatives, essentially rendering the economic scarcity argument superfluous."); *Telecommunications Research & Action Ctr. v. FCC*, 801 F.2d 501, 508-09)(D.C. Cir. 1986), *cert. denied*, 482 U.S. 919 (1987); Lucas Powe, American Broadcasting and the First Amendment 197-209 (1987); Matthew Spitzer, Seven Dirty Words and Six Other Stories 1013-1020 (1986)

10 *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial TV Stations*, MM Docket No. 83-670, Report and Order, 98 FCC 2d 1076 (1984), *recon. denied*, 104 FCC 2d 358 (1986), *rev'd in part, ACT v. FCC*, 821 F.2d 741 (D.C. Cir. 1987).

11 NOI ¶ 15.

12 For example, any delay in digital deployment could correspondingly hold up efforts to use the spectrum for Channels 60-69 for other public interest purposes.

Report.[13] As an agency we are not designed to be beholden to the Administration. To the contrary, we are designed to be independent. As such, the Administration's policy wish list is entitled to no greater attention than that of any other party to our proceedings. Indeed, where Congress wishes us to give executive branch views special weight, it says so directly.[14] By ceding guidance of this NOI to the Administration, we undermine the very core of our mission as an agency.

Our independent status is also undermined by the appearance that this NOI is being issued at the behest of the Executive Branch. Many of these public interest proposals for DTV have been floating around the agency for years. Indeed, the Fifth Report and Order calling for the initiation of this inquiry was released on April 21, 1997.[15] Even the foundational documents cited by the Notice are over sixth months old. The Advisory Committee Report itself was filed on December 18, 1998. The People for Better TV petition was filed on June 3.

However, a few weeks ago we received a letter from the Vice President urging the Commission "to begin . . . addressing the following four issues in public proceedings: the need for higher quality political discourse, disaster warnings in the digital age, disability access to digital programming, and diversity in broadcasting."[16] Today's NOI addresses each of those four areas. The timing of this Notice creates the unfortunate appearance that we are acting at the direction of the Administration.

* * * * *

I look forward to reviewing the materials filed in this NOI. It is my hope that, once the record is complete, we will pull away from the more questionable proposals and focus on our mission: to translate our existing public interest mandates into the DTV age. Due to the scope of the Notice, I

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13 The NOI has even put forth ideas that did not garner the full support of the Advisory Committee. NOI ¶ 34.

14 See 47 U.S.C. § 271 (d)(2)(a)(requiring the FCC to give "substantial weight" to comments filed by the Attorney General).

15 *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Fifth Report and Order, 12 FCC Rcd 12809 (April 21, 1997).

16 Letter from Vice President Al Gore to William E. Kennard, Chairman, FCC Oct. 20, 1999).

nonetheless dissent in part from this item.

CONCURRING STATEMENT OF COMMISSIONER MICHAEL K. POWELL

Re: Notice Of Inquiry, In the Matter of Public Interest Obligations of TV Broadcast Licensees

Although I join with my fellow Commissioners today in adopting this Notice of Inquiry, I do so with the concerns and reservations outlined in this statement.

As an initial matter, I am unpersuaded that the time is ripe for this Notice of Inquiry (NOI). Undoubtedly, there are important questions concerning the application of existing public interest obligations to the new digital medium. Digital transmission affords the opportunity and flexibility to offer HDTV, several standard DTV channels, ancillary services and any combination of them all. These new possibilities raise questions as to what facet of a multidimensional offering the public interest duty runs. Yet, we are at the very preliminary stages of the digital transition, and it is far from clear what form new services will take in the digital era. While I applaud the uncustomary effort to get far in front of the curve, it seems to me premature to attempt to fix public interest obligations to a service that has yet to blossom. The wiser course would have been to initiate this inquiry at a time when we understand more about the proposed or likely applications of digital television so our proposal would bear some plausible nexus to the service itself, rather than its potential.

I am reminded of the designers of the Empire State Building in New York City, who designed a building that, at the time, was the tallest man-made structure on the planet. In designing the building, the designers took into account features that might be needed for such a world-class structure. One of the most visionary features was a mast for mooring dirigibles atop the Empire State Building that would be used by dirigibles carrying passengers visiting the City. Needless to say, mass transit by dirigible never came to pass, but its prospects were well anticipated by the designers of the building. I have some reservation that some of the proposals floated in the Notice of Inquiry may one day suffer the same fate as the Empire State Building's dirigible mast.

Further, as a fundamental matter, I question why the mere use of a digital medium rather than an analog one justifies *new* public interest obligations, particularly ones of the breadth and scope envisioned in this NOI. Underlying many of these proposals seems to be the supposition that we gave broadcasters valuable spectrum for free, and thus we want payment in the form of new obligations. Yet, the government had the option to make broadcasters pay for their spectrum, and chose not to I assume because it believed the "public interest" was served by advancing free over-air-television. Thus, I recoil somewhat from the view that the transition to digital (and its putative commercial value to broadcasters) justifies consideration of new and expansive public interest duties.

Moreover, I believe that as we undertake this inquiry we have a solemn obligation to evaluate honestly the extent to which scarcity can still justify greater intrusion on broadcasters' First Amendment rights. It is ironic to me that as we enter the digital age of abundance and tout its myriad opportunities for more information through more outlets, we simultaneously propose greater public interest obligations that infringe upon speech, justified on the crumbling foundation of scarcity. Something must give.

Finally, this item seeks comment on a vast menu of proposals loosely aggregated under the heading of "political discourse." In their various iterations, these proposals contemplate the Commission requiring broadcasters to provide time for "candidate-centered discourse" or other types of air time under the mantle of the public interest standard. I have made no secret of my views concerning the appropriateness of the Commission initiating an inquiry into free air time for political candidates, without specific direction from Congress.[1] The Commission here avowedly promises not to propose such rules or polices, however, but only to initiate public debate on "whether, and how, broadcasters' public interest obligations can be refined to promote democracy and better educate the voting public." In light of this promise, and because I do not make a habit of dissenting on the initiation of inquiries generally, I have not dissented on this portion of the item.

I fully recognize that the expense of political campaigns, particularly broadcast air time, has a direct impact on democracy by affecting those who can run for and win political office. It may very well be the case that digital transmission technology holds promise to greatly reduce these expenses in a way that does not unduly interfere with the reasoned editorial and business judgments of broadcasters. Yet, putting aside the question of our authority, I feel strongly that a federal agency of un-elected officials should not on its own initiative tread in an area that may fundamentally affect the electoral process. Such modification or reform should come from the people through their duly elected representatives in Congress. It is even more troubling that an agency would pursue such questions, when the issue has been raised and debated by the Congress, but has to date been rejected, as is the case with this bevy of issues. Such action risks opening a back door to the legislative and electoral process. That said, to the extent the inquiry will develop useful information that proves useful to the legislature's consideration, I am unopposed.

For the foregoing reasons, I concur in the Notice of Inquiry.

[1] Remarks of Commissioner Michael K. Powell before The Freedom Forum, April 27, 1998. The full text of these remarks is available on the Commission's website <www.fcc.gov/Speeches/Powell/spmkp809.html>. Press Statement of Commissioner Michael K. Powell Regarding Free Time for Candidates, January 28, 1999. The full text of this press statement is available on the Commission's website <www.fcc.gov/Speeches/Powell/Statements/stmkp802.html>.

SEPARATE STATEMENT OF COMMISSIONER GLORIA TRISTANI

In the Matter of Public Interest Obligations of TV Broadcast Licensees, Notice of Inquiry

. . . I will think of the public interest standard as a sort of once-handsome thoroughbred, so abused and neglected that it has finally broken down in the middle of the track. Perhaps we can take it back to the paddock in the hope that, with care and love, it can recover – or at least produce offspring that recall the beauty of the original. If not, let us simply put the poor beast out of its misery once and for all.

Commissioner Ervin S. Duggan, 8 FCC Rcd at 5340 (1993)

This proceeding is long overdue. The public interest standard -- the bedrock obligation of those who broadcast over the public airwaves -- has fallen into an unfortunate state of disrepair over the years. It's time to put up scaffolding and get the restoration underway.

The most important aspect of the public interest standard is this: it's the law. Congress imposed the public interest standard seventy years ago and has never wavered in its insistence that it apply to every broadcast licensee. Indeed, in the Telecommunications Act of 1996, Congress expressly provided that the public interest standard will continue to apply in the digital world. Those who believe that broadcast television should be treated just like any other commodity ("a toaster with pictures") should complain to Congress, not the FCC.

The difficulty, of course, is in defining the public interest. On its face, the standard is broad and requires the Commission to exercise a great deal of discretion. But simply because the task is difficult is no excuse for shirking it. At this point, there are more questions than answers, but there are principles that should guide our deliberations:

1. The public interest standard must have *some* substantive meaning. It cannot not simply be "whatever interests the public." That is simply an attempt to deprive the term of any real meaning. It also assumes that Congress puts meaningless requirements in statutes. After all, if a broadcaster's private interests always served the public interest, Congress didn't have to say a word. Congress does not enact meaningless or unnecessary language – much less language that has been as scrutinized and debated over the years as much as the public interest standard.

2. The public interest requirements should be specific. While Congress gave the Commission broad and flexible authority to define the public interest as technology and the needs of the public change, the actual requirements should be as specific as possible. While some may claim that the standard's vagueness gives too much power to the Commission to impose wide-ranging requirements on licensees, just the opposite is true. The standard's vagueness has not led to a standard that means virtually anything, but to a standard that means virtually nothing.

3. The public interest standard should be a "safety net" to protect the public against those broadcasters who might be tempted to avoid their obligations in the absence of a rule. The fact that many broadcasters may be fulfilling their public interest obligations does not make the standard unnecessary. It's like laws against speeding. While most people drive at a safe speed regardless of whether there is a speed limit or not, many others drive at unsafe speeds. Once a speed limit is in effect, however, more people drive at a safe speed. And if drivers know that there's a police car in the area ticketing speeders, the incidence of speeding may fall to almost zero. The public interest standard is the speed limit on the public airwaves. Most broadcasters may voluntarily comply with these limits, even though they know that the Commission hasn't been handing out many speeding tickets lately. It's the lead-footed broadcasters who don't take their public interest obligations seriously that we should be concerned about.

4. The public interest standard should apply to *every* broadcast station, not to the industry as a whole. If it's the bad actors that we're concerned about, those broadcasters should not be able to piggy-back on the efforts of others.

5. The public interest standard should protect and enrich our children. Children spend far more time with television than any other medium, and the vast majority of that time is unsupervised.[1] There is no doubt that television exerts a great influence on their development and well-being. We must do what we can to protect our children from material that may harm them and to ensure that they have access to programming that meets their particular needs.

6. The public interest standard should promote diversity over the public airwaves. That includes giving all segments of the community the opportunity to participate in broadcasting, both as owners and as employees responsible for the day-to-day decision-making.

7. The public interest standard should promote an open and robust debate on issues of public concern. As the Supreme Court has said on more than one occasion, "speech concerning public affairs . . . is the essence of self-government."[2] The importance of television to the democratic process cannot be overstated. A majority of Americans still rely on television as their primary source of electoral information.[3]

8. The public interest standard does not countenance censorship. The government should not decide which views we can and cannot hear. But it is fully consistent with the First Amendment -- indeed, it promotes First Amendment values -- for the public to be exposed to a wide range of views on issues of public concern. The public is always better served when it hears

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[1] *Kaiser Family Foundation Report* (1999) (finding that: (1) on average, children watch two hours and forty-six minutes of television a day, compared to 48 minutes spent listening to CD's or tapes, the second most popular media activity; and (2) 8-18 year-olds watch television without their parents 95% of the time, while 2-7 year-olds watch without their parents 81% of the time).

[2] *CBS v. FCC*, 453 U.S. 367, 395 (1981), quoting *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964).

[3] *Arkansas Ed. Television Commission v. Forbes*, 523 U.S. 666 (1998).

different viewpoints than when it hears only one side of the story, whether that one side is the government's or the broadcaster's.

9. The public interest must be considered in the context of our other proceedings considering the relationship of broadcasting to the public. For instance, some will assert that the explosion in media outlets over the past thirty years (e.g., cable, satellite, the Internet) means that we should impose minimal, if any, public interest requirements on broadcasters. The argument is that consumers are so awash in substitutable media that it no longer makes sense to single out broadcasters for special treatment. But in other proceedings, like digital must-carry, we hear a completely different story. In digital must-carry, the argument is that broadcasting still provides a unique service, especially to the 30% of Americans who do not subscribe to cable, and that because of this special role, broadcasting is entitled to special treatment by the government. Both of these cannot be true. Either broadcasting is special and worthy of special concern or it is not.

In sum, today's proceeding is a welcome first step in reinvigorating the public interest standard. Most broadcasters do a good job of serving the public interest. But it would be nothing short of miraculous if they *all* did. We owe it to the public, and we owe it to those broadcasters who are carrying the full load, to better define and enforce the public interest standard.