

REPORT TO CONGRESS
on the Public Interest Obligations
of Television Broadcasters
as They Transition to Digital Television

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TABLE OF CONTENTS

PREFACE.....	1
THE POWER OF TELEVISION	1
THE PUBLIC INTEREST STANDARD.....	2

PRINCIPLES OF BROADCASTING IN THE PUBLIC INTEREST	5
Local Issue-Oriented Programming	5
Public Service Announcements	9
Communication with Communities	10
Enriching Children	14
Protecting Children.....	20
Enhancing Democracy.....	24
Disaster and Emergency Information	27
Consumer Privacy	29
Diversity	30
Disabilities Access	33
Technology and the Public Interest.....	36
CONCLUSION	36

PREFACE

On May 25, 2000, Senators John McCain, Joe Lieberman, Robert Byrd, and Sam Brownback wrote to the Federal Communications Commission (“Commission” or “FCC”), expressing their concern about the declining standards of broadcast television, in particular the increasing amount of sexually-oriented and violent content. The Senators stated:

The denials and excuses we routinely hear today from the industry raise serious questions about the commitment of many broadcasters to serving the public interest, as they are obligated to do by law. We must remember that broadcasters are trustees of a public resource worth billions of dollars, which they get access to for free, in return for a pledge to act as responsible stewards of the airwaves. The license they receive is a legally-binding contract, an especially important one given television’s immense influence on our children and our culture. And much to our dismay, the evidence presented in this letter strongly suggests that many licensees, along with their network parents, are breaching this public trust, and harming rather than serving the public interest.

Consequently, the Senators stated that “the time has come for the Commission to engage in a broad reexamination of the public interest standard, and the license renewal process, to determine if in fact the broadcasters are serving ‘the public interest, convenience, and necessity,’ and whether the standard of service we expect of broadcasters should be clarified.” The Senators noted the Commission’s pending *Notice of Inquiry* on the public interest obligations of television broadcasters, and asked the Commission to use its inquiry to study the issues raised in their letter. The Senators specifically asked the Commission “to comment on the advisability of resurrecting an industry-adopted code of conduct to protect against further erosion of the broadcasting standards and to provide a broader platform for self-regulation,” and “to review and rearticulate the Commission’s indecency standard.”

This report is designed to provide a broad examination of television broadcasters’ public interest obligations. This report is especially timely because television broadcasters are in the process of transitioning to digital television, which offers them new opportunities and ways to serve the public. Many of the principles described below, however, apply in the analog context as well.

Guided by the record in the Commission's pending proceeding on the public interest obligations of television broadcasters, including an all-day hearing held this past October, this report attempts to distill a number of broad principles for broadcasters that, if followed, would go a long way toward serving the public interest. In doing so, the report tries to minimize burdens on broadcasters and maximize service to the public, all the while mindful of First Amendment freedoms and limitations. The report is intended to be a useful tool for the public to continue a dialogue with broadcasters over how they serve the public interest.

THE POWER OF TELEVISION

Television is the most dominant and powerful medium of our time. More than 100 million American households - over 98 per cent - have television sets, and more than 75% of television households have more than one television set. Broadcast television is available at no charge in these households. Indeed, on average nearly 85% of American TV households watch the top three major broadcast networks each week, and over 75% watch the fourth. Television reaches more Americans than any other medium, and Americans spend more time with TV than any other medium.

Given its widespread distribution and popular appeal, the impact of television on culture and public opinion is unmatched. Families spend more of their time together watching television than doing almost anything else. The average household watches over seven hours of television per day, and children spend an average of three hours a day watching television. Television programs are of course a source of entertainment - watching television is the primary source of entertainment in American households. But TV programs also are a source of news and information - more Americans find out about world events from television than from all other sources combined. These statistics hold even in the age of the Internet. In short, television, more than any other medium, has the power to educate, enrich, entertain, and inform Americans. It also has the power to harm, especially children.

For over seventy years, broadcasters have had a legal obligation to use this powerful medium in a manner that serves "the public interest, convenience, and necessity." Broadcasters make an in-kind exchange with the public - broadcasters use the public spectrum in exchange for serving the public interest. The Commission is charged with ensuring that broadcasters fulfill their end of the bargain. Reliance on marketplace forces is not always adequate to ensure that broadcasters serve the public interest because the television marketplace is unusual. Broadcasters do not function as producers to sell programming to viewers as consumers. Rather, as a business model, it is more accurate to characterize broadcasters as producers that sell viewers to advertisers as consumers. In sum, marketplace forces may ensure that commercial broadcasters serve advertisers, but they do not in and of themselves ensure that they serve the viewing public.

Broadcast television is in transition from analog to digital transmission technology. Digital technology supports up to six times more data than conventional television signals, offers the possibility of providing at least twice the picture resolution, and provides for spectrum efficiencies. Digital television (DTV) thus offers broadcasters new opportunities to serve the public. 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 channels of standard definition TV (SDTV) programming; and to provide other services, such as data transmission, interactive TV, pay-per-view TV, and paging services. For example, a broadcaster could transmit a news program consisting of four separate SDTV

programs for local news, national news, weather, and sports, while interrupting that programming with a single HDTV commercial with embedded data about the product; or it could transmit a motion picture in HDTV, while simultaneously using excess capacity for data unrelated to the movie. The spectrum that broadcasters will use to take advantage of such opportunities has been valued at as much as \$70 billion. DTV broadcasters should use the flexibility of DTV to serve the public in exchange for, and in ways that are commensurate with, the value of the spectrum they use. Given DTV's unknown potential, and unprecedented flexibility, the Commission needs to find ways to ensure that broadcasters harness their new opportunities to serve the public interest, and enrich children's lives.

THE PUBLIC INTEREST STANDARD

Communications law has required for over seventy years that broadcasters serve the public interest. The Commission has taken a variety of actions over time to ensure that broadcasters comply with that obligation, and the broadcast industry has taken a variety of actions to serve the public and regulate itself.

Actions of the Commission. The Commission has adopted a variety of policies and rules over the years to define the public interest standard. These have evolved from the statements of the Commission's predecessor, the Federal Radio Commission, to the Commission's 1946 "Blue Book," to its 1960 *en banc* programming inquiry report, to the adoption of various ascertainment and reporting requirements, and processing guidelines. These guidelines examined, at the time of renewal, whether the broadcaster had aired a certain percentage of non-entertainment programming.

Currently, the Commission's rules require broadcasters to air programming responsive to "issues of concern" to their communities, and to maintain and make available to the public records on such programming. Consistent with explicit statutory mandates, the Commission's rules also require broadcasters to provide "equal opportunities" to candidates for public office and "reasonable access" to candidates for federal elective office, and to charge no more than certain rates for candidate access. In addition, to implement the Children's Television Act of 1990, the Commission's rules also require broadcasters to air programming to serve children's educational and informational needs, and to limit advertising during children's programming. To implement still other laws, the Commission's rules prohibit broadcasters from airing obscene programming, and restrict them from airing indecent programming during certain times of the day. Commission rules also prohibit discrimination in employment, and require broadcasters to provide some programming with closed captions and, beginning in 2002, video description, to enhance the accessibility of video programming to persons with disabilities.

Congress in drafting the Telecommunications Act, and the Commission in establishing service rules for DTV licensees, reaffirmed the longstanding principle that broadcasters must operate in the public interest. But exactly how they must do so in the digital age has not been resolved. The Commission began to consider that issue in December 1999 when it issued a *Notice of Inquiry*. The *NOI* was guided by several proposals and recommendations made in recent years. Among the most significant of these were the recommendations of President Clinton's Advisory Committee on the Public Interest Obligations of Digital Broadcasters ("Advisory Committee") and the petition for rulemaking and notice of inquiry filed by People for Better TV ("PBTV"). The Advisory Committee consisted of twenty-two members from "the commercial and noncommercial broadcasting industry, computer industries, producers, academic institutions, public interest

organizations, and the advertising community.” PBTV also includes a number of diverse groups. In December 1998, the Advisory Committee released a report, which contains ten separate recommendations on the public interest obligations DTV broadcasters should assume. In June 1999, PBTV filed a petition for rulemaking and petition for notice of inquiry, which also contained a variety of proposals. In the fall of 1999, Vice President Gore formally asked the Commission to focus on several of the Advisory Committee’s recommendations, and PBTV renewed its request for the Commission to begin a proceeding to determine the public interest obligations of DTV broadcasters.

Since release of the *NOI*, the Commission has received hundreds of formal and informal comments from a wide variety of sources. These include members of Congress, broadcasters and their trade associations, public interest groups, and members of the public, such as parents, students, and teachers. These comments have formed, in many ways, the basis of two proceedings the Commission recently initiated. The first of these explores ways to ensure that broadcasters fulfill the mandate of the Children’s Television Act in the digital age. For example, the Commission’s current policies on children’s programming include a processing guideline pursuant to which a broadcaster can receive staff level approval of the CTA portion of its renewal application if it airs three hours of children’s educational and informational programming weekly. In the *DTV Children’s Notice*, the Commission asks such questions as, how does the processing guideline apply to DTV broadcasters that multicast? The other recent proceeding that grew out of the *NOI* comments explores ways to enhance and standardize how broadcasters disclose their public interest activities to their communities, in order to make sure that they fulfill their fundamental obligation to air programming responsive to their communities.

In order to continue a dialogue with the public on the obligations that broadcasters should assume as they transition to DTV, the Commission also conducted an *en banc* hearing on October 16, 2000. The hearing comprised panels on three different subjects: how DTV broadcasters should serve children in a digital world, how they should protect children from the effects of sexually explicit or violent programming, and how they can use the new medium to better serve local communities. Each of the panels included six or seven participants who offered different views through prepared remarks and responses to questions from the Commissioners.

Actions of the Broadcast Industry. Over the years, the broadcast industry itself has also undertaken a number of initiatives to define the public interest standard. One of the most significant of these was adopting a voluntary code. The NAB created a code for television in the 1950s, which included various advertising and program standards. In the late 1970s, the U.S. Department of Justice challenged, on antitrust grounds, a number of the advertising standards, and the case was ultimately settled. Although the Department of Justice’s lawsuit challenged only three of the code’s many advertising standards, and did not challenge any of the code’s program standards, the NAB abandoned the entire code in 1982. The program standards had encouraged broadcasters to demonstrate responsibility and responsiveness to all segments of their community, especially children, and to handle sex and violence in programming in appropriate ways. The program standards also encouraged broadcasters to use good journalistic techniques in the treatment of news and public events.

In 1990, in response to “public concern about certain serious societal problems, notably violence and drug abuse,” the NAB adopted a statement of principles that it believed reflected “generally-accepted standards of America’s radio and television broadcasters.” The principles addressed program content and children’s programming, and encouraged broadcasters to exercise their

artistic freedom responsibly. The principles also addressed drug and substance abuse, sexually-oriented material, and violence. Some of the concepts for these programs echoed those in the earlier NAB code.

Members of Congress have encouraged broadcasters to adopt an updated code. In their letter of May 25, 2000, Senators McCain, Lieberman, Byrd, and Brownback propose “resurrecting an industry-adopted code of conduct to protect against the further erosion of broadcasting standards and to provide a broader platform for self-regulation.” They note that “[t]his idea, beyond having a longstanding and practical precedent, enjoys broad bipartisan support,” and that both the House and the Senate have approved legislation encouraging the industry to adopt a code. Senator Brownback has added that “[t]he articulation of such a code would be especially useful as the digital spectrum is apportioned. It would certainly be in the public’s interest to know what a licensee’s standards are, how high they will aim and how low they will not go, and what criteria are used for programming choices. Such information will make it easier for parents and consumers to make wise decisions for their families.” Other Congressmen have also suggested model principles for the broadcast industry, and encouraged the Commission to consider them.

The Senators favoring a renewed code noted that the Advisory Committee also called for an updated code. The Advisory Committee encouraged the NAB to adopt a code “to highlight and reinforce the public interest commitments of broadcasters.” The Advisory Committee believed that “[a] new set of standards can help counteract short-term pressures that have been exacerbated by the incredibly competitive landscape broadcasters now face. . . . Those competitive pressures can lead to less attention to public issues and community concerns. A renewed statement of principles can make salient and keep fresh general aspirations that can easily be lost in the hectic atmosphere and pressures of day-to-day operations.” The Advisory Committee proposed a code, which includes ideas on broadcasters’ responsibility toward children; covering elections; treatment of news, public events, and emergencies; community responsibility; controversial public issues; special program standards on drugs and substance abuse, sexually-oriented programming, and violence, among other things; and responsibility toward disabled persons.

The broadcast industry, however, has not yet adopted the proposed code, or any other code. Although some broadcasters appear to support resurrecting a code of conduct, others - and the NAB itself - disagree strongly. These broadcasters appear to believe that marketplace incentives obviate the need for a code.

PRINCIPLES OF BROADCASTING IN THE PUBLIC INTEREST

Congress has charged the Commission with responsibility for ensuring that broadcasters serve the public interest. The *NOI* in this proceeding served as a catalyst for a debate about how the Commission can best meet its responsibility. A wide variety of parties - including, for example, parents, children's advocates, members of Congress, religious organizations, and broadcasters - have shared with the Commission their views as to how broadcasters can best serve the public interest. Based on those comments, and the views expressed at the public interest hearing, this report identifies eleven major principles on how broadcasters could fulfill their statutory duty to serve the public interest. Under each of these broad principles, the report also identifies various ways that broadcasters could satisfy the public interest goal behind the principle. Some of these principles reiterate existing Commission requirements. Others are recommendations, gleaned from the record, as to additional standards broadcasters should consider. Still others are the subjects of

ongoing rulemaking proceedings. Although some of the principles relate to digital broadcasting, many of them do not depend upon digital technology and can be fully implemented on broadcasters' analog channels. This set of principles is not an exhaustive list of ways that broadcasters can serve the public interest, and licensees are urged to consider innovative approaches to serving the needs of their communities. Identification of this set of principles is intended to promote thoughtful discussion among broadcasters and between broadcasters and their communities.

Local Issue-Oriented Programming

Broadcasters must air programming that covers issues that are important to their local communities.

“Broadcast television does next to nothing to serve local communities. Local news, some public service announcements, and occasional promotion of a fundraising effort. Local production just does not exist, except for news You learn very little about a community through your television. . . . A television station is little better than a car dealership in service to its community. It is mainly a conduit for products coming in from outside the community.” - Mark Nordstrom

“Providing news and information to their communities is what local broadcasters do best. Like the town hall of old, the local radio or television station often is the place where the community comes together to talk about important issues and concerns.” - National Association of Broadcasters

Our broadcasting system is licensed on a local basis, and only a limited number of licenses exist, which in most cases are assigned to private entities and individuals. In order to ensure that the several television broadcasters in each community use their stations to cover the wide variety of issues that are important to their viewers, the Commission requires broadcasters, as their most fundamental public interest obligation, to air programming that addresses their communities' interests and needs. Although the Commission has abandoned its former ascertainment guidelines, which contained detailed methodologies on how broadcasters should determine community interests and needs, the Commission has never modified the underlying obligation of broadcasters to air programming responsive to the issues of concern to their communities. Set forth below are a variety of ways that broadcasters could fulfill this fundamental obligation as they transition to DTV.

- **Air local public affairs programming daily in addition to news coverage.**

One way broadcasters could fulfill their obligation to air programming that addresses community concerns is to air public affairs programming daily. The Commission has previously defined public affairs programming as that “dealing with local, state, regional or international issues or problems, documentaries, mini-documentaries, panels, roundtables and vignettes, and extended coverage (whether live or recorded) or public events or proceedings, such as council meetings, congressional hearings, and the like.” This is contrasted with news, which the Commission has defined as programming “dealing with current local, national and international events, including weather and stock reports, and commentary, analysis, or sports news when they are an integral part of a news program.”

The Advisory Committee recommended that the Commission adopt minimum requirements in the area of public affairs programming. It suggested that “[a] minimum commitment to public affairs programming should be required of digital television broadcasters, . . . with some emphasis on local issues and needs. Such programming should air in visible time periods during the day and evening. Public affairs programming can occur within or outside regularly scheduled newscasts, but is not defined as coverage of news itself.” Although the Advisory Committee could not agree on what the specific standards should be, half of its members recommended that the Commission adopt a processing guideline, pursuant to which a broadcaster could receive automatic approval of the part of its renewal application that addresses local programming, if it airs three hours per week of local news, and three hours per week of locally originated or locally oriented educational and public affairs programming outside of local news. In the *NOI*, the Commission noted that this issue of minimum public interest standards has been controversial, and invited comment on the debate.

In response to the *NOI*, the Benton Foundation commissioned a study to examine the level of public affairs programming during a two-week period by more than 100 television broadcast stations in approximately 25 randomly selected markets. The study revealed that the commercial television broadcast stations in these markets devoted an average of 1.1 hours per week (or less than one half of 1% of their total time) to local public affairs programming, and that competitive conditions, market demographics, and stations characteristics did not significantly affect how much local public affairs programming was aired. Thus, the Benton Foundation concluded that the Commission should require broadcasters to air a minimum level of public affairs programming if the public wants to have more of such programming than its study revealed.

The NAB argues that the Commission need not adopt minimum standards for public interest programming because the marketplace ensures that broadcasters provide sufficient non-entertainment programming, and because any such standards will encroach on their editorial discretion. A number of commenters, however, do want broadcasters to provide more public affairs programming than they currently provide. PBTv’s comments include viewers’ complaints about their broadcasters’ lack of local public affairs programming, and PBTv says that “we have heard this complaint hundreds of times over the past year from citizens from all walks of life from across the country.” PBTv states that local broadcasters are failing to address local needs, that the Commission should adopt minimum standards to correct the problem, and that these standards should require broadcasters to address the needs of all groups within their communities and should prohibit them from substituting news for public affairs programming. In terms of specific solutions, PBTv, along with Congressman Brady of Pennsylvania, recommend that DTV broadcasters air one hour of public affairs programming per day on each channel. UCC recommends that the Commission adopt the three-hour-per-week processing guideline suggested by a majority of the Advisory Committee.

One way broadcasters could fulfill their requirement to air programming that addresses community needs is to air a minimum amount of local public affairs programming on a daily basis (*i.e.*, one hour per day). The one-hour-per-day recommendation amounts to approximately four per cent of a twenty-four hour broadcast day - making this the functional equivalent of the DBS four per cent set-aside for noncommercial educational or informational programming.

- **Use good journalistic practices in covering local issues of public concern so as to present conflicting viewpoints and give persons attacked a reasonable right of reply.**

In carrying out their obligation to air programming that addresses issues of concern to their communities, broadcasters should also follow sound journalistic practices, including presenting conflicting views on issues of public concern and giving those who are accused of wrongdoing a reasonable opportunity to respond. These principles are enshrined in journalists' own codes of conduct. That does not mean, however, that each news story or each program must present differing viewpoints on a particular issue, only that the licensee's overall programming needs to make some provision for the discussion of opposing viewpoints. A licensee should not be allowed to use a public resource (*i.e.*, the airwaves) to advance a purely private or one-sided agenda.

It has now been thirteen years since the Commission stopped enforcing the fairness doctrine. Far from seeing a rebirth of public affairs programming, the past thirteen years have witnessed a continuing slide in the amount of time licensees devote to public discourse. For instance, a study submitted in this proceeding by the Benton Foundation and PBTv found that only 0.3% of total programming qualified as local public affairs programming, and that adding local news to the equation only raised the total to 1.06% of total broadcast hours. This compares with the period from 1973 to 1979, when rules requiring the presentation of differing viewpoints were in effect, when local public affairs programming made up on average 4.6% of total programming. Similarly, a study by the Center for Media and Public Affairs found that the coverage of political campaigns by TV network news continues to decline - down 44% from 1995 to 1999.

On October 26, 2000, in response to the D.C. Circuit Court of Appeals' order in *Radio-Television News Directors Association v. FCC (RTNDA)*, the Commission repealed the political editorial and personal attack rules. These rules provided a right of reply in certain circumstances involving political editorials and personal attacks. In the repeal order, the Commission emphasized the court's statement that "[o]f course, the Commission may institute a new rule-making proceeding to determine whether, consistent with constitutional constraints, the public interest requires the personal attack and political editorial rules." In a separate statement appended to the repeal order, the Mass Media Bureau was directed "to prepare a Notice of Proposed Rulemaking to explore these issues in the larger context of broadcasters' obligation to serve the public interest." As a result of this NPRM, the Commission might choose to reinstate these two rules, or otherwise to require broadcasters to provide balanced treatment of issues. Regardless of whether or not the Commission imposes such a requirement, however, it is simply good journalistic practice for broadcasters to present conflicting viewpoints and to give persons attacked a reasonable right of reply.

- **Set aside airtime for expression for local community groups.**

As a way to air programming that addresses issues of concern in their communities, broadcasters could also provide airtime to local civic groups and organizations. Sister Mary Parks, a former television broadcaster and a panelist at the Commission's *en banc* hearing, explained how a former employer, a broadcast station, used to air public service programming, which included daily non-news programming targeted to particular community interests, as well as public service announcements. She also explained, however, that the station is no longer accessible to its community in the same way. The United States Catholic Conference similarly explains, with much anecdotal support, that today it is much more difficult for religious organizations to persuade the broadcasters in their communities to air their programming, either with or without payment, and those that do air such programming do so at times when few people are watching.

The United States Catholic Conference asks the Commission to require broadcasters to set aside a minimum amount of time for groups and organizations free of charge.

In terms of DTV, the Advisory Committee suggested that multicasting broadcasters “could dedicate one of their multicasted channels to noncommercial public interest purposes, which would have to include a commitment to provide robust programming and access for local voices, or lease one such channel at below market rates to an unaffiliated programmer who is local and has no financial or other interest in a broadcast station.” A commenter in the *NOI* proceeding similarly suggests that broadcasters set aside bandwidth for a “public space.”

As a way to air programming that addresses issues of concern to their communities, broadcasters, both before and after they transition to digital technology, could provide airtime to local groups and organizations. Digital broadcasters, in particular, will have multichannel capacity, and therefore it should be easier for them to offer airtime to local groups. Such a use of the airwaves would be analogous to the requirement that cable operators set aside some of their multichannel capacity for public, educational, or governmental use.

- **Use the flexibility of digital technology to improve service to communities, such as multicasting to provide localized programming.**

DTV broadcasters could also use their multichannel capacity to serve more niche audiences within their communities, in a manner somewhat analogous to their multichannel video programming distributor counterparts. For example, DTV broadcasters could produce programming that is targeted to particular groups or localities within their communities. By way of illustration, the television market for broadcasters in the national capital area includes the District of Columbia and counties in three states - Maryland, Virginia, and West Virginia. In producing programming that addresses issues of concern to their community, broadcasters in this market have a greater incentive to cover issues of concern to viewers in Washington, DC and its suburbs than to cover issues of concern to viewers in outlying areas, such as West Virginia. With their multichannel capacity, DTV broadcasters could produce more programming targeted to particular areas within their service areas.

Public Service Announcements

Broadcasters should exercise their best efforts to attract and air local public service announcements during peak viewing hours.

“We collaborate with our local stations to air public service announcements that promote prevention messages about alcohol, tobacco and other drug abuse. Over the past five years, we have seen a dramatic decrease in the actual amount of airtime that is devoted to PSAs. Previously, we were able to consecutively air :60 [second] spots. . . . The seriousness of these community health issues has not decreased. Unfortunately, the available airtime has decreased by up to 50%..” - Susan Hilts Grover

“Out of the 169 PSAs, 143 announcements (85%) were generated by NBC, WMAQ, or the National Academy of Television Arts and Sciences. While these messages may have a public service component, it appears that the station is using them as a vehicle for self-promotion. Any public service message would be more credible coming from a reputable local nonprofit organization...” - Mary Ellen Guest

Public service announcements (PSAs) are another way in which broadcasters can provide programming responsive to their communities. Just as the Advisory Committee recommended that the Commission adopt minimum public affairs programming requirements, it also suggested that “[a] minimum commitment to public service announcements should be required of digital television broadcasters, with at least equal emphasis placed on locally produced PSAs addressing a community’s local needs. PSAs should run in all day parts including in primetime and at other times of peak viewing.”

Panelists at the Commission’s *en banc* hearing indicate that the amount of time available for PSAs has been decreasing, and that PSAs are often aired after peak viewing hours. Sister Mary Parks explains that, when she first began working in broadcasting in the 1970s, her employer provided a tremendous number of PSAs, and that she read many of them on air. By contrast, she explains that stations now use many unsold time slots to promote their own news coverage, and that she witnessed this change at her own station in the 1980s. Since leaving the station in 1990, and notwithstanding her “home field advantage” in a smaller television market, she says that her local broadcast stations will not air any PSAs for her religious organization without charge (except in the middle of the night), and she has not seen PSAs for any other organizations. Vicky Rideout, a vice president at the Kaiser Family Foundation and another panelist at the Commission’s *en banc* hearing, also indicates that the amount of time available for PSAs has been decreasing, and that any PSAs that do appear occur well after midnight.

The NAB contends that broadcasters have donated billions of dollars in airtime for PSAs, including locally produced PSAs, and that therefore “marketplace incentives are clearly sufficient to insure the provision of very substantial amounts of . . . PSAs.” A number of commenters, however, echo the *en banc* panelists’ concerns, and believe that broadcasters should air more PSAs, particularly during peak viewing hours. PBTv’s comments include several letters indicating that broadcasters have drastically reduced the number of PSAs they air, and that they

show the few that they do provide at non-peak times. Thus, Congressman Brady and PBTv propose that the Commission require broadcasters to provide a certain amount of PSAs, such as one public service announcement (PSA) for every four commercials, with at least equal emphasis placed on independent and locally produced PSAs addressing a community's local needs. They also believe that broadcasters should air PSAs during all day parts, including prime time and other times of peak viewing.

Given the importance of PSAs to their communities, broadcasters should exercise their best efforts to attract and then air locally produced PSAs. Airing these announcements during peak viewing hours will ensure that such PSAs have maximum exposure for maximum service to the community.

Communication with Communities

Broadcasters should gather information from their communities about their interests and needs and engage in an ongoing dialogue with all segments of their communities about those interests and needs.

On March 7, 2000, I visited one of my local broadcasting stations in Columbia, South Carolina to inspect the public files and was not allowed to see the files. These are some of the reasons why I was told I could not inspect the public files: I needed to file a Freedom of Information Act request; I needed to explain exactly what I was looking for in the files; I needed to go to different areas in the building to inspect the files; staff was very busy and needed to know exactly how much time I would need to inspect the files; a staff member had a death in his family; and I needed to make an appointment to see the files. - Dorothy Garrick

In order for a broadcaster to fulfill its fundamental public interest obligation to air programming responsive to the needs and interests of its community of license, broadcasters must first identify those needs and interests. In previous years, the Commission established formal ascertainment guidelines for gathering information about what types of programming would meet a community's needs and interests. The guidelines set forth methods for gathering demographic information on a station's community of license, consulting with community leaders and members of the general public, identifying and responding to community needs and problems through programming, and making various records available on their information-gathering procedures. The Commission later repealed the guidelines based on its belief that market forces would require broadcast stations to remain familiar with their communities. The Commission affirmatively retained, however, the underlying obligation to air programming responsive to the needs and interest of their communities of license.

In the *NOI*, the Commission sought comment on certain recommendations to enhance the ways in which broadcasters inform the public about any efforts made to provide community-responsive programming. For example, PBTv suggested that DTV broadcasters should match their public interest programming "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." The Commission specifically sought comment on the extent to which the proposals paralleled its formal ascertainment guidelines, and on the extent to which its reasons for eliminating those guidelines applied to consideration of the enhanced disclosure recommendations.

The United States Catholic Conference argued that the Commission should impose clear enforceable requirements that DTV broadcasters ascertain the needs and interest of their communities of license, and Benton contended that the needs of the communities must be ascertained and addressed by fair, balanced and ample programming. In its Report, the Advisory Committee recommended requiring licensees to provide information on efforts taken to identify the programming needs of various segments of their communities. NAB and the State Broadcasters Associations opposed any proposal to require broadcasters to assess community needs because, in their view, the costs outweigh the benefits and market incentives ensure that licensees remain familiar with their communities. Contending that new information sharing technologies would make ascertainment requirements less burdensome, however, PBTv argued that the Commission should require broadcasters to seek out the needs and interests of a community because the market alone does not guarantee that all segments of the community will be served.

On September 14, 2000, in response to comments filed in this *NOI* proceeding, the Commission adopted a *Notice of Proposed Rulemaking (Disclosure Notice)* proposing to standardize and enhance the ways in which television broadcasters make information available to the public on how those broadcasters are meeting their obligation to provide community-responsive programming. The Commission specifically invited comment on requiring broadcasters to provide information regarding how they gather information from their communities. Regardless of what the Commission ultimately decides in that proceeding, broadcasters should provide as much information as possible on those efforts, including how community needs are identified. In particular, licensees should provide the public with a narrative description of the actions they have taken, in the normal course of business, to assess a community's programming needs and interests. Making information available regarding how a television broadcast station identifies a community's needs and interests will further promote discussion between the licensee and its community about those needs and affirm or possibly improve the level of local programming aired in that community.

- **Use web-based forums such as “chat rooms” to have ongoing and regular contact with communities.**

While broadcasters may already interact with the public through telephone calls and visits in person to assess a community's programming needs and interests, the Commission sought comment in the *NOI* on whether DTV broadcasters should use Internet websites to ensure that they are responsive to the needs of the public. NAB opposed any mandatory requirement asserting that the proposal raised practical and legal issues and found the suggestion to interact with the public via websites “puzzling ... given the Commission's apparent belief about the inaccessibility of the Internet to certain communities.” PBTv suggested using the Benton Foundation's Debate America project as an example of how local television stations might consult with community leaders over the Internet. PBTv described the Benton project as “map[ping] community issues, provid[ing] context, and facilitat[ing] discussion through an Internet Web-based program” where discussion leaders could “select participants or allow for a wide field of discussants, and allow for a wide range of discussion styles.” TDI explained that allowing disabled persons to interact through chat rooms, for example, also provides management with a reliable mechanism for determining whether their station's policies and practices are responsive to the disabled community as a whole.

As the Commission stated in the *Disclosure Notice*, licensees could make effective use of the Internet to maintain a continuous dialogue with their communities. Citing research conducted by NAB in 1998, PBTv stated in comments filed in response to the *NOI* that approximately two-thirds of television stations in the top 100 markets had websites. DTV broadcasters should continue to interact with the public through telephone calls and personal visits to the stations and also to use their websites to conduct on-line discussions with, for example, community leaders and minority or disabled communities to discuss and disseminate information on community opinions

and needs. On-line discussions would be a relatively inexpensive supplement to current methods of communication with the public and a web-based forum would allow the public to access a broadcaster's website to provide immediate feedback about programming.

- **Provide information back to communities about how the broadcaster has attempted to serve local needs.**

Broadcasters also should provide as much information as possible to the public on what types of programming it has aired in response to identified community needs. Currently, to make information available to the public on how broadcasters are meeting the obligation to provide community-responsive programming, broadcasters maintain certain documents in each station's public inspection file. For example, television broadcasters create lists of the programs aired each quarter that they believe significantly addressed issues facing their communities (issues/programs lists). The issues/programs list then is placed in the station's public inspection file. Based upon the comments in response to the *NOI*, however, it appears that members of the public are not easily accessing information under these existing procedures. For example, individuals wanting to review information from a station's public file might be denied access or required to go to different areas in a building to inspect the public files. Even when members of the public are permitted to review documents in a station's file, they have found a "lack of consistency and uniformity about what is in the files, even within the same community."

In the *NOI*, the Commission sought comment on the Advisory Committee's recommendation that broadcasters use a standardized form to provide public interest programming and activities information to the public. The Commission also sought comment on whether public files should contain information on programming aired with closed captioning and video description. Broadcasters generally opposed the proposals in the *NOI*, contending, for example, that existing disclosure obligations are neither inadequate nor ineffective. NMTV stated that existing public inspection file requirements already cover information on children's programming and lists of programs aired to meet community needs and interests. The Media Institute asserted that the entity selecting the programming categories for any standardized form "exerts subtle but real pressure on broadcasters' editorial choices." With respect to closed captioning, NAB stated that the Commission "previously rejected requests to adopt recordkeeping or reporting requirements."

The majority of commenters, however, generally supported requiring licensees to use a standardized form to provide public interest programming information that is more specific than is required under current rules. As the Commission noted in the *Disclosure Notice*, the current issues/programs lists provide such an assortment of information that the public may have difficulty determining the extent to which the station is serving the public interest. As noted above, PBTv has described problems with the "lack of consistency and uniformity" of information contained in public inspection files. Concerned about these problems, the Commission tentatively concluded in the *Disclosure Notice* that broadcasters should complete a standardized form that would allow them to describe their efforts to provide programming responsive to the community. Regardless of what the Commission decides in that proceeding, broadcasters should replace the issues/programs list with a form that includes more detailed information than provided in those lists today.

In the *NOI*, the Commission also sought comment on whether broadcasters should be required to make their public inspection files available on the Internet. NAB opposed mandatory use of websites, stating that converting a station's public file into an electronic format would constitute a "not insubstantial burden, especially for small broadcasters" and providing public files on the Internet would offer "little additional public benefit." NAB supported voluntary use, finding no reason to alter the Commission's decision to encourage licensees to maintain public files on a computer database.

The majority of commenters, however, supported requiring DTV broadcasters to make public interest information available on their websites. UCC argued that it is “relatively simple and inexpensive” to require licensees to post public files on their websites, and, as already noted, according to PBTv, approximately two-thirds of television stations in the top 100 markets already have websites. Commenters also asserted that the public is much more likely to monitor a station’s public interest obligations if that information can be accessed over the Internet. Finally, TDI and WGBH urged the Commission to ensure that broadcasters design and maintain their websites in a manner that is accessible to persons with disabilities.

In the *Disclosure Notice*, the Commission tentatively concluded that broadcasters should provide information regarding their efforts to provide programming responsive to the community on their station’s websites, or in the alternative, the licensee’s state broadcasters association’s website. Again, regardless of what the Commission ultimately decides in that proceeding, broadcasters should make public interest information available on the Internet. Licensees should also make the websites accessible to persons with disabilities. As the Commission stated in the *Disclosure Notice*, making the information available on the Internet would provide 24-hour access to it and, therefore, greatly increase public access to information on actions a station has taken to meet its public interest obligation. To the extent individuals do not have access to the Internet or do not want to access the information over the Internet, however, they would still have the option of contacting the station’s main studio.

- **Ensure that the station’s public file is accessible to the community and that personnel are trained to respond to the public’s request for access.**

Members of the public must contact a station’s main studio to review information maintained in that station’s public inspection file. As already noted, it appears from comments received in response to the *NOI* that members of the public are unable to access information easily from public files. For example, individuals wanting to review information from a station’s public file might be required to go to different areas in a building to inspect different parts of a public file, while others have been refused access to information because they had not made an appointment. These types of problems are inconsistent with the Commission’s existing procedures, which require station personnel to make the file available to the public at any time during regular business hours and to allow members of the public to make copies of documents from the file.

Whether to comply with Commission rules or simply to maintain a good relationship with its community, station personnel should be properly trained to respond to the public’s request for information kept in a station’s public inspection file. Making public inspection files available on a station’s website would not only increase public access to information in those files, but could decrease the amount of time station personnel spend helping members of the public research information from the file.

- **Use on-air announcements to encourage the public to provide feedback.**

Certain parties that commented on the proposals set forth in the *NOI* also suggested that DTV broadcasters might make public interest information available to the public through on-air notifications, or in newspapers and local-programming guides. In addition to making information accessible in as many ways as possible, DTV broadcasters should let a community know through on-air announcements how to access that information. DTV broadcasters could use on-air announcements to explain how to access public inspection files, as well as any chat rooms or standardized reports that the broadcaster provides. These on-air announcements would improve the potential for feedback from the station’s community.

Enriching Children

Broadcasters should air and take reasonable steps to promote programming that enriches children.

“I think that local broadcasters should be required to set aside an hour a day of educational programs for children on all the channels they broadcast . . . and parents should get the information they need to make decisions about the programs their children are watching.” - Doshia Harris

Serving the needs of children is an essential part of broadcasters’ public interest obligations. Recent data show that American children spend, on average, almost three hours a day watching television. Because of the significant role that television plays in the lives of children, this medium has great potential to benefit society by contributing to children’s development. As Congress has stated, “[i]t is difficult to think of an interest more substantial than the promotion of the welfare of children who watch so much television and rely upon it for so much of the information they receive.”

Data confirms that children can benefit substantially from viewing educational television. In enacting the Children’s Television Act of 1990 (“CTA”), Congress cited research demonstrating that television programs designed to teach children specific skills are effective. In the Commission’s 1996 *Report and Order* strengthening its rules implementing the CTA, the Commission cited a number of studies that show that children can learn from high-quality educational programming. More recently, Pat Nugent, who represented PBS at the Commission’s *en banc* hearing on public interest obligations, noted that early research demonstrates that exposure to just four weeks of one of the network’s new series has helped kindergarten students improve their reading skills significantly.

For over 30 years, the Commission has recognized that, as part of their obligation as trustees of the public’s airwaves, broadcasters must provide programming that serves the special needs of children. As early as 1974, the Commission called on broadcasters to increase the number of programs aimed at children in specific age groups. Later in the 1970s, finding that the industry had failed to respond to its earlier call for improvements, the Commission considered formal regulation. In 1984, however, the Commission decided not to establish quantitative program requirements for broadcasters, relying instead on market forces to ensure a sufficient supply of educational programming for children. Following this decision, the amount of children’s educational programming aired by commercial television stations decreased markedly.

In 1990, citing the need to increase the amount of educational and informational programming for children on television, Congress enacted the Children’s Television Act of 1990 (“CTA”). While recognizing that commercial television did provide some “meritorious” programming, Congress stated that “when viewed as a whole, there is disturbingly little educational or informational programming on commercial television.” Congress also noted that market forces alone had not worked to increase the educational and informational programming available to children on commercial television. To accomplish this objective, Congress placed on each licensee an obligation to provide such programming, including programming specifically designed to educate and inform children, and required the FCC to enforce that obligation.

The CTA requires the Commission, in its review of each television broadcast license renewal application, to “consider the extent to which the licensee . . . has served the educational and informational needs of children through the licensee’s overall programming, including programming specifically designed to serve such needs. In August 1996, the Commission adopted its current educational programming rules enforcing the CTA. The Commission’s rules include several measures to improve public access to information about the availability of programming “specifically designed” to serve children’s educational and informational needs (otherwise known as “core” programming). These measures include a requirement that licensees identify core programming at the time it is aired and in information provided to publishers of television

programming guides. Licensees are required to designate a children's liaison at the station responsible for collecting comments on the station's compliance with the CTA. Licensees must also prepare and place in their public inspection files a quarterly Children's Television Programming Report identifying their core programming and other efforts to comply with their educational programming obligations.

In addition, the Commission's rules establish a definition of "core" programming. "Core" programming is defined as regularly scheduled, weekly programming of at least 30 minutes, aired between 7:00 a.m. and 10:00 p.m., that has serving the educational and informational needs of children ages 16 and under as a significant purpose. The program must be identified as core programming when it is aired and in information provided to program guide publishers.

Finally, to provide certainty to broadcasters about how to comply with the CTA and to facilitate fair and efficient processing of the CTA portion of broadcasters' renewal applications, the Commission also adopted a processing guideline. Under this guideline, a broadcaster can receive staff-level approval of the CTA portion of its renewal application by airing at least three hours per week of programming that meets the definition of "core" educational programming. Alternatively, a broadcaster can receive staff-level renewal by showing that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of core programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming. Licensees not meeting these criteria will have their license renewal applications referred to the Commission.

Some studies suggest that, since the Commission's revised rules implementing the CTA became effective in 1997, there has been improvement in the quality and quantity of educational programming for children. The Annenberg Public Policy Center at the University of Pennsylvania, which issues an annual report on broadcaster compliance with the CTA, recently found that approximately 80% of the "core" programs evaluated complied with the requirements of the core programming definition, and that one-third of these programs could be considered "highly educational." However, the report also found that more than one-fifth of the programs claimed to be "specifically designed" to educate children had "little or no educational value" and failed to meet other FCC requirements. According to another recent assessment conducted by PBTv of programming offered by local stations, some stations are claiming programs with little or no obvious educational value as "core" programs.

Thus, while there have been improvements since implementation of the Commission's revised educational programming rules, concerns remain regarding the educational value of a significant amount of the programming relied upon by broadcasters to meet their obligation under the CTA. Concerns also remain about the failure of many stations to adequately promote their core programming, and the lack of awareness on the part of parents of the availability of educational programming. Finally, commenters have raised concerns about the lack of sufficient core programming directed to very young children and have called on broadcasters to provide a range of educational programming directed to different age groups. Set forth below are specific ways that broadcasters can improve their efforts to enrich children through educational and informational programming.

- **Air programming that serves the educational and informational needs of children of different ages and in different stages of cognitive and psycho-social development.**

The CTA, and the Commission's implementing regulations, apply to DTV broadcasters. Thus, all digital television broadcasters must serve the educational and informational needs of children. However, it is not clear how the existing requirements apply to digital broadcasters who, for example, choose to multicast or to provide ancillary or supplementary services, such as fee-based subscription television. Does the three-hour processing guideline apply to only one digital

broadcasting program stream, to more than one program stream, or to all program streams the broadcaster chooses to provide? In addition, does the guideline apply only to free broadcast services, or also to services offered for a fee? The Commission posed these questions among others in the *NOI* and, more recently, in the *DTV Children's Notice*. This latter proceeding seeks comment on a wide range of issues associated with the application of the existing children's programming rules to DTV broadcasters. It focuses both on the obligation of commercial television licensees to provide educational and informational programming for children and on the requirement that commercial television licensees limit the amount of advertising in children's programs.

Most commenters that specifically addressed the issue of application of the children's programming guideline to the digital environment suggested that the amount of programming required of DTV broadcasters should increase, beyond the current three-hours-per-week guideline, in light of the additional program capacity made possible by digital technology. For example, one approach for adapting the guideline to a multicast environment, suggested by Children Now and PBTv, is that each digital broadcaster be required to provide an amount of weekly core programming that is proportional to the three-hour-per-week quantitative guideline. Specifically, these commenters propose that DTV broadcasters devote three percent of their programmable broadcast hours per week to core educational programming. As a corollary, these commenters also suggest that the Commission could adopt a "Pay or Play" model allowing broadcasters a choice of meeting their children's programming obligation either through their own programming or by paying other networks or channels to air these hours for them, or a combination of both.

Other commenters, including the Center for Media Education, Peggy Charren, the National Education Association, the National PTA, the American Academy of Child and Adolescent Psychiatry, and the American Psychological Association (collectively referred to as "CME"), suggest that digital broadcasters meet their children's programming obligation by providing, at their option, some combination of the following: (1) additional "core" educational and informational programming; (2) broadband or datacasting services to local schools, libraries, or community centers that serve children; or (3) support for the production of children's educational programming by local public stations or other noncommercial program producers. CME would not require that DTV broadcasters air core programs on each of their program streams, but instead would permit the creation of specialized channels where core programming could be more easily located by children and parents. Finally, another approach, described by the Advisory Committee Report, would be to require digital broadcasters to air no less than 1 hour of children's educational programming each day on the broadcasters' main channel.

The issue of exactly how the existing three-hour-per-week processing guideline should be adapted to reflect the digital environment will be decided in the *DTV Children's proceeding*. Nonetheless, it is clear that DTV broadcasters, like analog broadcasters, are required by the CTA and the Commission's rules to air programming that serves children's educational and informational needs, including programming "specifically designed" to serve such needs. Broadcasters, whether analog or digital, should comply with both the letter and the spirit of the existing rules, by ensuring that they identify core programming at the time it is aired, identify the target age group of the program, and ensure that their core programming is of significant educational value. Broadcasters should also air a variety of programming directed not only to children's social and emotional needs, but also to their intellectual and cognitive development. Finally, broadcasters should target core programs to different age groups, and offer some programming that serves the educational and informational needs of very young children.

- **Air children's educational and informational programming at appropriate and consistent times.**

In the *DTV Children's Notice*, the Commission also seeks comment on how to treat preemptions of core programs by digital broadcasters. As noted above, the Commission required that programming must be "regularly scheduled" to qualify as "core" for purposes of the three-hour-per-week core programming guideline. This requirement was based on the fact that programming that is aired on a regular basis is more easily anticipated and located by viewers, and therefore more likely to be seen by its intended audience. Although acknowledging that preemption of core programs might occur, in its 1996 ruling strengthening its children's programming rules the Commission expected that preemption of core programs would be rare. The Mass Media Bureau staff has determined, however, that the average preemption rate by stations affiliated with the largest networks during the past two years is nearly 10%, and has been as high as 25%. Given this level of preemption, the Commission asked in the *DTV Children's Notice* whether it should adopt another approach to preemptions to ensure that its preemption policy does not thwart the goals of the CTA. DTV broadcasters will have the option of airing multiple streams of programming simultaneously, thus increasing their flexibility either to avoid preempting core programs or to reschedule such programs to a regular "second home." Given this capability, the Commission asked whether there are ways in which it could revise its preemption policies to simplify or eliminate the need for networks to seek approval of their planned preemption and rescheduling practices for each television season. Commenters were also asked to address the kind of rescheduling practices and promotion of rescheduled programs that the Commission could require from digital broadcasters consistent with the goal of ensuring that viewers can anticipate and locate the rescheduled program. While the Commission will review its preemption policies more fully in the *DTV Children's Notice* proceeding, broadcasters, whether analog or digital, in the meantime should air their children's educational and informational programming at appropriate and consistent times to ensure that the purpose of the CTA, and the Commission's implementing rules, is fulfilled.

- **Limit the amount of commercial advertising in children's programming and the use of direct links to commercial websites.**

In addition to directing broadcasters to air educational and informational programming for children, the CTA also imposed limits on the amount of time that can be devoted to commercial matter in children's programming. Specifically, commercial television broadcast licensees and cable operators must limit the amount of commercial matter that may be aired during children's programs to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays. The Commission has determined that the statutory children's programming commercial limits apply to programs originally produced and broadcast for an audience of children 12 years old and under. Apart from the limits on the amount of time devoted to commercial matter in children's programming, the Commission also requires broadcasters to comply with its longstanding policies on program length commercials, host selling, and separation between programs and commercials in children's programs. As with the educational and informational programming requirements, the children's television advertising limits and policies also apply to both digital and analog television broadcasters.

The *DTV Children's Notice* seeks comment on several issues related to application of the advertising limits and policies to DTV broadcasters. By converging Internet capabilities with broadcasting, digital television permits a new level of interactivity among broadcasters, advertisers, and viewers. This capability offers great potential for enhancing the educational value of children's programs by, for example, permitting children to click on icons that appear on the screen during the program which take them to websites with more in-depth information about the topics covered in the program. However, the interactive capabilities of DTV also allow for the direct sale of goods and services over the television. This capability presents marketers with new opportunities to reach children, which raises concerns in light of the difficulty young children have

in distinguishing commercials from programming and the particular vulnerability of children to advertising.

CME urged the Commission to adopt safeguards to protect children from the dangers of excessive and unfair advertising in digital programming. CME expressed the view that the existing advertising restrictions, including the separations, host-selling, and program-length commercial policies, should apply to all digital programming directed to children ages 12 and under, regardless of the program stream on which they are offered. Thus, CME would apply these policies when children are watching video programs, regardless of whether the channel is free or pay. CME also expressed concern that the difficulty children have in distinguishing content from commercials is even more pronounced in the digital environment where a child could be transported to a commercial Internet site by a simple click of the computer mouse. To address this issue, CME also proposes that the Commission prohibit all direct links to commercial websites during children's programming.

The Commission also sought comment in the *DTV Children's Notice* on a broader question related to the children's advertising limits. This is an issue that arises with respect to both analog and digital broadcasting. Under current policy, the limitation of 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays applies to "commercial matter." "Commercial matter" is defined to exclude certain types of program interruptions from counting toward the commercial limits, including promotions of upcoming programs that do not contain sponsor-related mentions, public service messages promoting not-for-profit activities, and air-time sold for purposes of presenting educational and informational material. The Commission has observed that there is a significant amount of time devoted to these types of announcements in children's programming. As a result, the amount of time devoted to actual program material is often far less than the limitation on the duration of commercial matter alone might suggest. The Commission sought comment in the *DTV Children's Notice* on whether it should revise its definition of "commercial matter" to include some or all of these types of program interruptions that do not currently contribute toward the commercial limits.

Although the *DTV Children's proceeding* will resolve specific questions about application of the current children's advertising limits and policies to the digital environment, broadcasters, both analog and digital, have an obligation to comply with these limits and policies. Broadcasters must limit the amount of commercial advertising in children's programming as set forth in the CTA and the Commission's rules, and, as they develop new applications, such as creating direct links in their programming to websites, broadcasters' activities should be consistent with the underlying purposes of the CTA and the Commission's implementing rules.

- **Work with local community organizations and newspapers to inform parents about the availability and nature of children's educational and informational programming by, for example, ensuring that the station's educational programming line-up is identified in newspaper program guides and distributing information about the station's educational programs at locations and functions throughout the community where parents can be reached.**

The Commission's children's programming rules include several measures to improve public access to information about "core" programming. These measures require TV broadcasters to: (1) identify core programming at the time it is aired and in information provided to publishers of television program guides; (2) designate a children's liaison at their stations to collect comments on the station's compliance with the CTA; and (3) complete and place in the station's public inspection file quarterly a report that identifies, among other things, the educational and informational programs aired by the licensee over the previous quarter, the days and times these programs were regularly scheduled, the age of the target child audience for each program, and the average number of hours per week of core programming broadcast over the past quarter. Stations

are required to publicize the existence and location of the reports and must also file the reports electronically with the Commission, which posts the reports on the FCC's Internet home page where the public can readily access them. The Commission also encourages broadcasters to make these reports available on their own websites.

These public information initiatives are an integral part of the children's programming rules. They are intended to ensure that the public, and especially parents, have access to information on educational programming in order to select programming for their children to watch. As noted above, however, studies show that most parents still are not aware of the availability of educational programming and do not know which programs carry educational labels. To address this problem, broadcasters should work with local community organizations and newspapers to educate parents better about the availability of educational programming and how to locate it.

Despite the fact that broadcasters are required to provide information about their educational programming to program guide publishers, most newspapers do not include the symbols identifying core programs in their television listings. Broadcasters and newspaper publishers should work together to ensure that this information is made available in local newspapers as, for example, either part of the program listings or as a separate section identifying educational programs and the date and times they are aired.

Broadcasters should also work with others in the local community to spread the word about the core programs they air. Broadcasters could, for example, help develop pamphlets showing their educational programming line-up, and have them distributed at grocery stores, back-to-school nights, and elsewhere in the community. The children's television liaison or other station employees could also get involved by speaking to schools, parent organizations, and others about the educational programs the station airs. Finally, stations should also make a greater commitment to promoting their educational programs during times of high viewership, such as during prime time or other popular programs. These efforts would benefit broadcasters as well as the public by helping to increase the audience for, and commercial success of, educational programs.

- **Use the flexibility of digital technology to serve children in dynamic, innovative ways, such as datacasting and interactive video.**

As noted above, DTV offers broadcasters the flexibility to multicast more than one programming stream, and to provide other new, including even nonbroadcast, services. Commenters and panelists at the Commission's *en banc* hearing offered a number of ideas about how DTV broadcasters could use the technology to serve children in new ways.

CME expresses concern with ensuring that children benefit from DTV. As noted above, they urge the Commission to adopt children's guidelines that impose additional obligations on broadcasters, but provide them with flexibility to use digital technology in different ways to serve children. CME explains that "[d]igital capacity could be used in a variety of ways, including high quality streaming video to schools, high-speed Internet access for local libraries and community centers, as well as new interactive programming for children that demonstrates the power of digital media to educate, engage, and inform." Children Now notes that the enhanced video and audio quality of digital technology can be used to provide higher quality programming that engages children and encourages further learning. The datacasting and interactivity made possible by DTV can also improve children's programming by, for example, permitting viewers to download additional information on topics covered in the program or by permitting viewers to interact with educational programs to reinforce the lessons and skills they convey. PBTv proposes that DTV

broadcasters set aside a minimum number of hours each day to provide educational programs or services, which might include data transmission.

At the *en banc* hearing, Disney, owner of ABC, expressed the view that DTV has enormous potential for service to children and families. Disney states that it intends to develop not only quality children's programming with a substantive educational base, but also web extensions for the programming that involve children and their parents in deeper communication and learning. PBS last year launched a twenty-four hour noncommercial DTV channel called PBS Kids on which it airs only educational programming for children, and also tested interactive DTV programming for children with an enhanced version of a wildlife series. PBS also offers at its website additional content for each of its major children's series to enable children to dig deeper into their favorite programs. In short, assuming adequate funding, PBS intends its children's programming to include a full complement of interactive learning experiences.

These are just some of the ways that digital technology could be used to enhance the quality of educational and other programming for children. Broadcasters should use the flexibility inherent in digital technology to help educate and inform children in these and other innovative ways.

Protecting Children

Broadcasters should do more to protect children from potentially harmful program content.

"[F]rustration and anger about falling standards have been voiced for some time by millions of American parents, who are fed up with the rising tide of glorified violence and increasingly explicit content flooding into their homes through their television." - Senators John McCain, Joseph Lieberman, Robert Byrd, and Sam Brownback

Just as television can enrich children, it can also harm them. Parents, academics, child professionals, and others have expressed increasing concern about the prevalence of violent, vulgar, and explicit sexual content in television programming and its effects on children and American culture in general. It is incumbent upon broadcasters to respond to this growing concern by exercising greater discretion in selecting the content of the programming and advertisements they choose to air to audiences that include a significant number of child viewers, and by making greater efforts to inform parents about tools available to them to help protect their children from harmful program content.

Studies confirm that violence is widespread in television programming. The American Psychological Association estimates that the average twelve-year-old has seen 8,000 murders and 100,000 acts of violence on network television. The National Television Violence Study, a comprehensive three-year study conducted by a dozen of the nation's leading media effects researchers, shows that 60% of all television programs sampled contained some form of violence. More than half of these shows contained lethal acts, and one in four depicted the use of a gun. The study also demonstrates that most violence is presented in a fashion that increases its risk of harmful effects on young audiences. Specifically, most portrayals of violence fail to show realistic harm to victims and many violent acts are performed by attractive role models who suffer no remorse, criticism, or penalty for their violent behavior.

The general consensus among researchers is that media violence is harmful to children. The body of research shows that media violence not only increases aggression among young viewers, it breeds a callousness toward violence directed at others. In a joint statement released in July 2000, the American Medical Association, the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatrists, and the American Academy of Family Physicians concludes that "[w]ell over 1000 studies ... point overwhelmingly to a causal connection between

media violence and aggressive behavior in some children. The conclusion of the public health community, based on over 30 years of research, is that viewing entertainment violence can lead to increases in aggressive attitudes, values and behavior, particularly in children.” This view was confirmed by Joanne Cantor, a professor and researcher on media effects, in her presentation at the Commission’s *en banc* hearing. Dr. Cantor explained that exposure to violence on television is cause for concern because children often imitate what they see on television, such exposure increases hostility levels, and such exposure often induces intense fears in children such as nightmares.

Although discussion and debate about the impact of television programming on children has focused mainly on violent content, studies also show television includes a substantial amount of sexual content and that TV’s sexual messages play an important role in the information adolescents receive about sex and can influence their behavior. A recent study conducted by Dale Kunkel and other researchers at the University of California for the Kaiser Family Foundation indicates that 56% of programs in a one-week sample and 67% of network primetime shows contained some sexual material consisting of either talk about sex, sexually-related behavior, or both. The study also revealed that 8% of all programs contained some sexual content - either talk or behavior - involving teenagers. Of these shows, only 18 percent made reference to possible risks or responsibilities related to sexual activity. Another recent study, conducted by the Parent’s Television Council, comparing primetime network programming from 1989 to such programming in 1999, shows that the amount of sexual material increased by more than 300%, and the use of vulgar language increased by more than 500%, to nearly five instances for every hour of programming. This study also shows that the dialogue and sexual depictions in television programming became more explicit over this decade. The PTC also demonstrates that television networks are broadcasting increasingly explicit and frequent depictions of sexuality, profanity, and violence between 8 and 9 p.m., during the so-called “family hour,” when many children are still in the television audience.

Evidence indicates that the sexual messages on television are an important part of adolescent sexual socialization. Vicky Rideout, vice president of the Kaiser Family Foundation and a panelist at the Commission’s *en banc* hearing, states that many surveys conducted by her foundation demonstrate that television is an important source of ideas and information about sex for teens. For example, studies show that one in four teens say they have learned “a lot” about pregnancy and birth control from TV shows and movies, and 40% say they have gotten ideas for how to talk to their boyfriend or girlfriend about sexual issues from these sources. Although more direct evidence of the effects of media portrayals of sex is somewhat limited, the evidence available is highly consistent with the hypotheses that such content generates effects on young audiences. For example, studies show correlations between watching television programs high in sexual content and the early initiation of sexual intercourse by adolescents as well as less negative judgements by teens of casual sexual encounters.

Existing federal law restricts the broadcast of sexually-oriented programming. Specifically, broadcasters may not air “obscene” programming at any time, or “indecent” programming between 6:00 a.m. and 10:00 p.m., the period during which children are presumed to be in the viewing audience. In addition, “V-chip” technology now exists to help parents block television programming that contains certain kinds of content. In 1997, the broadcast, cable television, and motion picture industries adopted a voluntary ratings system to identify the age group for which a particular program is appropriate and to indicate whether the program contains certain subject matter. In 1998, the Commission found this ratings system acceptable, and required TV set manufacturers to include in certain new sets the “V-Chip” technology that will screen programming based on these ratings. The V-chip and the ratings system are designed to be powerful tools to help parents control the exposure of their children to media violence.

Thus, there are laws and mechanisms currently in place that permit parents and others to control to some extent the type of program content to which children are exposed. However, in light of the evidence of the impact that violent and sexual program content can have on children, broadcasters must do more to ensure that the programming aired for child audiences is not harmful. In addition, broadcasters should address certain shortcomings in the way the current TV ratings system is being applied and promoted in order to ensure that the V-chip and ratings system serve their intended purpose of allowing parents to screen for inappropriate program content.

- **Strive to ensure that violent or sexual content is limited or is presented responsibly in programming directed to children or with a significant child audience.**

Broadcasters should make a positive effort to ensure that the content of programming directed to children, or with a significant child audience, does not contain inappropriate violence, language, or sexual content. It is broadcasters in the first instance who choose to include violent and sexual content in their programming. Broadcasters also choose to present much of this violence and sexual content in glamorized formats and without conveying the real-life consequences of actions. As noted above, studies confirm that this pattern increases the risk that inappropriate material will harm child viewers. Broadcasters should accept their responsibility to exercise care in the selection of program subjects and themes to ensure that the treatment and presentation of sexual or violent situations are made not merely for purposes of sensationalism.

In this regard, many programs that contain violent or sexual content portray these themes in responsible ways that are intended to enlighten and inform. The focus is not on these types of programs, but rather on programs containing gratuitous sex and violence with no redeeming purpose aired when a significant number of children are watching. Broadcasters should reconsider the content of such programming, and strive to air programming more consistent with their duty to serve the public interest.

- **Refrain from airing programming that is inappropriate for children when a significant number of children are reasonably expected to be in the audience.**

The restrictions on obscene and indecent programming, and the industry ratings system, apply to both analog and digital programming. Thus, DTV broadcasters may not air “obscene” programming, and may air “indecent” programming only between the 10:00 p.m. and 6:00 a.m. “safe harbor.” Robert Peters, a panelist at the Commission’s *en banc* hearing representing Morality in Media called for strict enforcement of the indecency standard. DTV broadcasters should expect the Commission to consider carefully complaints received from the public about objectionable broadcast material.

The indecency standard restricts the broadcast of sexually-oriented program content, but does not apply to violent program content. Nonetheless, broadcasters (and other distributors of TV programming) should refrain from airing all types of programming that is unsuitable for children when a significant number of them are reasonably expected to be in the audience. While V-chip technology may be used to screen programming based on the industry ratings system, not all households have TV sets with V-chips. Thus, the television industry should not air programming that is not rated as suitable for children during times that a significant number of them are reasonably expected to be in the audience.

- **Improve application of the existing program ratings system and air public service announcements or other on-air announcements to educate parents about the ratings system and the V-chip.**

Digital broadcasters should strive to ensure that the voluntary ratings system works as well as possible. In this regard, it should be noted that a recent study conducted on behalf of the Kaiser Family Foundation shows that, although the entertainment industry appears to apply the age-based ratings in an accurate fashion, the industry is not applying the content-descriptor “V” for violence

appropriately. Specifically, the study shows that the “V” descriptor was not applied to 79% of programs that contain violence. Since a separate study reveals that a majority of parents believe that blocking “V” programs will block all programs containing violence, the omission of the content descriptor means that the V-chip may not be fulfilling its intended purpose. Given the effects of such programming on children, the television distribution and production industries should work to apply the “V” content descriptor to all programs that contain violence to ensure that the ratings system works as effectively as possible to empower parents to control what their children view on television.

In addition, the success or failure of the V-chip and ratings system is ultimately tied in large part to parents’ awareness of their existence. During the Commission’s *en banc* hearing, Dr. Joanne Cantor stated that a recent study indicated that only about half of parents are aware that there is a TV ratings system, and a much smaller percentage know how to interpret the ratings. To combat this problem, broadcasters should air public service announcements (PSAs) during times a significant number of parents are expected to be watching to help educate parents about the TV ratings system and the V-chip.

- **Refrain from airing ads for motion pictures, programming, and products that are not appropriate for children when a significant number of children would reasonably be expected to be in the audience.**

The obscenity and indecency standards apply to advertising, but the ratings systems does not. In the *NOI*, the Commission asked whether the ratings of programs promoted by broadcasters should be consistent with the ratings of a program during which the promotions are aired.

The Federal Trade Commission released a report indicating that the motion picture, recording, and computer and video game entertainment industries routinely market to children under the age of 17 products that their own labeling and rating systems state are inappropriate for children or warrant parental caution due to their violent content. Television is an important, if not the most important, medium for these marketing strategies. For example, the FTC Report indicates that motion picture studios advertised films rated R for violence on television that were the highest rated among teens or where teens comprised the largest percentage of the audience. In addition, the studios advertised films rated PG-13 during the afternoon and Saturday morning cartoon programs. The recording and video game industries also promoted their products that their ratings claim are inappropriate for children during programs that are most popular with teens. Comments and complaints the Commission has received from the general public provide further evidence that programs viewed by children contain promotions that parents think are not suitable for their children.

In the *DTV Children’s Notice*, the Commission asked whether it could take steps to ensure that programs designed for children and families do not contain promotions for broadcast, cable, or theater movies or other product promotions that are not appropriate for children to watch. The Commission noted that one option would be to require that promotions be rated and encoded so they could be screened by V-chip technology. The Commission also stated that another option would be to require that promotions be rated and that programs with a significant child audience contain only promotions consistent with the rating of the program in which they appear. Notwithstanding the pendency of the *DTV Children’s Notice*, and any actions the Commission might take, broadcasters - and other distributors of TV programming - should not air advertisements for motion pictures, programming, and products that are not appropriate for children when a significant number of children can reasonably be expected to be in the audience.

- **Exercise good judgment on the use of new applications, such as interactive television, during children’s programming.**

DTV offers broadcasters a platform not just to air programming one way to the viewer, but also to interact with the viewer. This capability raises the issue of the inappropriate collection

of personal information from children without their parents' knowledge or consent. As suggested by CME, in developing uses for digital technology, broadcasters must ensure that the privacy of children is protected, and that information is not solicited from children without the consent of their parents. Broadcasters' public interest obligation to protect children's privacy is discussed more fully below. As discussed above, broadcasters should also follow long-standing policies that protect children from the consequences of blurring commercial and entertainment content. As indicated above, the Commission is exploring in the *DTV Children's Notice* how its commercial policies and rules will apply in the DTV environment. Finally, broadcasters should take care in designing their digital services to ensure that children are not inadvertently exposed to age-inappropriate material through, for example, Internet links.

Enhancing Democracy

Broadcasters should air programming that covers political candidates and events of significance to their communities.

Stations that earn massive and rapidly escalating revenue from political advertising, yet devote only minimal time to substantive political coverage are doing the public, and indeed, our democracy a great disservice. We urge the FCC to establish firm guidelines requiring broadcasters using the digital spectrum to meet at least the minimum recommendation of broadcasting five minutes a night of candidate-centered discourse in the 30 days preceding a primary or general election. - Cynthia Carey

As noted above, television is a powerful tool not only for entertainment, but also for education and information. Indeed, television is the American public's most popular source of news and information. As public trustees of the airwaves, broadcasters have a special obligation to use the power of their medium to promote an informed electorate. For that reason, the Commission has long interpreted the public interest standard to impose an obligation on broadcast licensees to air programming regarding political campaigns. Broadcasters must continue to uphold their industry's historic obligation, and do so in dynamic, innovative ways.

Some broadcasters devote many hours of program time to political coverage. In the *NOI*, the Commission noted that, according to an NAB report, broadcasters valued the time they devoted to campaigns at \$148.4 million in the 1996 election. The Commission also observed that, during that time, ABC, Fox, and PBS also offered free airtime to major presidential candidates. Most recently, ABC, CBS, PBS, and many NBC affiliates carried the 2000 Presidential and Vice Presidential debates.

However, other data indicate that such coverage is not extended to non-Presidential races. For example, according to a University of Southern California Annenberg School of Communications report, only 0.31% of local news focused on the California governor's race in 1998. In addition, the Fox network chose to carry entertainment programming instead of the three Presidential and one Vice Presidential debates in 2000, marking the first time ever that a major broadcast network opted to air entertainment programming instead of the debates. Moreover, NBC originally intended to carry sports programming instead of the first and last of the 2000 Presidential debates, and then ultimately offered its affiliates the alternative of carrying that programming or the debates. Approximately one-third of NBC's 222 affiliates chose to air the first debate live.

- **Cover political conventions, and local and national debates.**

The public relies heavily on watching and listening to candidate debates in making decisions about who will govern on both the local and national level. The Supreme Court recently noted the critical role that television coverage of campaigns - particularly debates - plays in our democratic process: “[d]eliberation 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.’” It is therefore in the public interest for broadcasters, as public trustees of the airwaves, to cover political events. Broadcasting is the one medium that reaches virtually everyone free of charge, which makes its role in elections even more important.

Broadcast television coverage of conventions and debates, however, has been declining, on both a local and national level. Of the twenty-two televised debates that were held during primary season this year, only two aired on a broadcast network, and none aired at prime time. In addition, as noted above, two of four networks chose, for the first time in history, not to air a general election Presidential debate. Additionally, the three largest broadcast networks are reported to have reduced by two-thirds the hours they devoted to this year’s conventions than they devoted in 1988, the last time an open-seat Presidential election was held. The decrease in coverage of these events is particularly frustrating, given that when they are broadcast, the public watches in large numbers. For example, more than forty-six million viewers watched the Presidential debate on October 3, 2000, more than thirty-seven million watched the October 11 and 17 debates, and more than twenty-eight million viewers watched the Vice Presidential debate. Broadcasters that take seriously their responsibility to provide election coverage should be applauded; for example, Hearst-Argyle has begun a “Commitment 2000” project which has as its goal the enhancement of public participation in the voting process.

All broadcasters should cover political conventions and local and national debates. There are few public interest obligations as important as the obligation to inform and enhance the democratic process. Broadcasters’ unique position to provide widespread nonpartisan information is a privilege to broadcasters, and with that comes the obligation to serve its viewers with the most informative messages about national and local candidates: words from the candidates themselves.

- **Devote at least five minutes each night for thirty days before an election to candidate-centered discourse.**

Broadcasters should also follow the proposal of the Advisory Committee to devote at least five minutes each night for thirty days before an election to candidate-centered discourse. CBS and NBC stated that all of their owned-and-operated stations agreed to follow the Advisory Committee’s recommendation for the 2000 general election. Starting October 2, and continuing through November 7, CBS’ seventeen stations committed to air a unique five minute segment per day produced by the local stations and broadcast between 5:00 PM and 11:35 PM within existing local news broadcasts, including a wide range of information of importance to voters in federal, state, and local elections and candidate-centered discourse and issue-related features and forums. NBC’s thirteen stations committed to air at least five minutes of candidate discourse, including interviews, debates, and issues discussions, from 4pm newscasts to the end of late local newscasts.

In addition, other stations, including those owned by Capitol Broadcasting and the twenty-four owned by the Hearst-Argyle Television Group - for a total of approximately eighty-three stations nationwide - committed to follow the Advisory Committee's recommendation. Alliance for Better Campaigns, a leading advocate of requiring broadcasters to improve their performance in the area of political programming, supports the Advisory Committee's initiative, as do its honorary co-chairs, who include former Presidents Carter and Ford, and Walter Cronkite. But the Alliance also asks, if some networks and station groups can support the initiative, why can't others? Indeed, according to Paul Taylor, the executive director of the Alliance and a panelist at the Commission's recent hearing, most stations have cut back on the amount of time they are devoting to candidate-centered discourse this year. The Commission has licensed more than 1600 broadcast television stations, and the Alliance for Better Campaigns believes that other stations should follow the Advisory Committee's recommendation.

Belo believes that broadcasters should be encouraged to consider, on a voluntary basis, a broad range of programming and other options to elevate political discourse. Broadcasters should provide coverage by station news staff and/or political commenters with respect to candidates for national and local office, their positions, record of service, and campaign issues. Broadcasters would enjoy maximum flexibility to structure such discourse, choosing the candidates to cover and the formats to use, as suggested by former FCC General Counsel Henry Geller *et al.* Moreover, given the interactive possibilities of DTV, stations could invite their viewers to participate in the discourse, and incorporate citizen feedback in shaping the discussion over the thirty days before election. A vigorous discussion of the issues vital to viewers would no doubt increase the station's audience for such broadcasting.

- **Do not impose "blanket bans" on the sale of airtime available to state and local candidates.**

The Advisory Committee recommended that "the FCC should prohibit broadcasters from adopting blanket bans on the sale of time to State and local political candidates." The Advisory Committee does not expect that television stations would necessarily give non-federal candidates the same reasonable right of access as federal candidate, which is required by statute. Rather, it simply suggests that broadcasters not refuse categorically to sell airtime to all non-federal candidates. Broadcasters that adopted the Advisory Committee's recommendation would enhance democracy, because they would provide non-federal candidates access to the powerful mass medium of television to communicate with and inform the electorate. Voters may be especially interested in educating themselves about the positions of state and local candidates because these political races may have the greatest impact on voters' lives.

- **Use digital technology to enhance democracy in innovative ways.**

Digital broadcasting will offer broadcasters new opportunities to cover political conventions and local and national debates, and reverse recent trends toward less coverage. Particularly with respect to local political events, broadcasters will be able to tailor their coverage to events of specific interest to the various political subdivisions encompassed in their community of license. Several public TV stations are planning to take advantage of DTV's multicasting possibility by providing gavel-to-gavel coverage of state legislatures, and the ability to download the texts of proposed bills, while other public TV stations plan to devote one of four DTV channels to cover local, city and county government meetings. Such plans illustrate the possibilities of using DTV

capacity to reach out to and educate station viewers so that they may truly participate in the election process and the legislative proceedings of their government.

Disaster and Emergency Information

Broadcasters should make use of DTV's enhanced capabilities to provide the best disaster and emergency information possible.

Providing emergency information is one of the fundamental public interest obligations of a broadcast station. Broadcasters have always been vital sources of emergency and disaster-related information in their communities. Indeed, one of Congress' stated purposes in enacting the Communications Act and establishing the Commission was "for the purpose of promoting safety of life and property through the use of wire and radio communication."

In 1995, the Commission adopted rules to replace the Emergency Broadcast System (EBS) with the Emergency Alert System (EAS). The Commission adopted a standard EAS protocol and new digital codes to facilitate use of the new system. It also streamlined procedures so that more participants can work together effectively during emergencies. The EAS rules require all broadcast stations and cable systems to install and operate new equipment for national alerts. Broadcasters have indicated that they take seriously their fundamental public interest responsibility to warn viewers about impending natural disasters and to keep them informed about disaster-related events.

Digital technology offers many new and innovative ways for broadcasters to transmit warnings to members of their community who might be at risk. For example, digital transmission could enable broadcasters to pinpoint specific households or neighborhoods at risk. The Advisory Committee suggested that DTV broadcasters should take full advantage of these technological advances to serve their communities in times of crisis. The Advisory Committee also recommended that broadcasters work with appropriate emergency communications specialists and manufacturers to determine the most effective means to transmit disaster warning information without unnecessarily intruding on bandwidth or resulting in additional burdens or costs on broadcasters.

One of broadcasters' fundamental public interest obligations is to warn viewers about impending disasters and keep them informed about related events. In the *NOI*, the Commission requested comment on what unique capabilities digital technology gives broadcasters to deliver disaster-related information, and what role it should play to encourage broadcasters to deploy such technology to deliver enhanced disaster information and help realize the Advisory Committee's goals. The Commission noted that it recently adopted the EAS requirements and asked whether it should adopt any different requirements specific to DTV broadcasters.

- **Develop new ways to provide disaster and emergency information needs, such as pinpointing specific households or neighborhoods that are at risk.**

The Advisory Committee and a number of commenters believe that digital technology will provide innovative and new ways to transmit disaster warnings and emergency information, and that DTV broadcasters should take full advantage of these technological advances. The Advisory Committee noted that even such detailed emergency information, such as to pinpointing specific households or neighborhoods at risk, will require only minimal use of the 6 MHz bandwidth allocated to digital broadcasters and should not result in undue additional burdens or costs. Some commenters disagree, however, arguing that there are no capabilities unique to digital transmission that can be used to enhance the delivery of disaster-related information. They note that EAS currently is capable of being targeted to specific geographic areas, and that other communications technologies are as well, or even better, suited to this task. Given that providing emergency information is one of the fundamental public interest obligations of a broadcast station, and that improving disaster

and emergency warnings will become easier and more efficient with digital technology, DTV broadcasters should develop and deliver such enhanced warnings to their communities of license. Broadcasters, whether transmitting in analog or digital, should use their capabilities to enhance the delivery of disaster-related information. DTV broadcasters, in particular, should use digital technology in new and innovative ways to transmit disaster-related warnings and emergency information.

- **Implement disaster warnings and emergency information in a way that accounts for the needs of persons with disabilities.**

Some commenters argue that the full range of DTV capabilities should be used to transmit disaster warnings and emergency information in a way that considers the needs of persons with disabilities. For example, some argue that DTV broadcasters should be prohibited from impinging on the 9600 baud bandwidth currently set aside for closed captioning in order to prevent emergency and disaster information from covering the captions. As discussed elsewhere in this report, the transition to digital broadcasting will foster rather than impede services developed to allow persons with disabilities to have access to television programming, such as captioning and video description. Broadcasters should ensure that the implementation of enhanced disaster and emergency warnings be fully accessible to persons with disabilities but also take care not to undermine other services that allow them access to television programming.

- **Make disaster and emergency information available in a variety of languages.**

Disaster and emergency information is usually communicated only in English even in areas where significant portions of the population speak either limited or no English. Some commenters suggest that broadcasters should be required to make emergency and disaster related information available in a variety of languages appropriate to the increasingly diverse communities they are licensed to serve. All broadcasters should determine how best to serve their communities' disaster information needs. Digital broadcasters should fully utilize their digital capacity to transmit disaster warnings in the languages most commonly used in their communities of license. The increased digital capacity will enable broadcasters to pinpoint specific portions of a community in need of warnings in languages other than English and to transmit those additional warnings.

- **Work with appropriate emergency communications specialists and manufacturers to determine the most effective means to transmit disaster warnings and emergency information.**

The Advisory Committee and a few commenters maintain that the Commission should work with appropriate emergency communications specialists and manufacturers to determine the most effective means to transmit such disaster warnings and emergency information. In addition, these methods should be minimally intrusive on bandwidth and not result in undue or additional burdens for broadcasters. Although television receivers should be able to handle effectively such EAS warnings, it is not the Commission's role to determine the technical requirements for such transmissions. Broadcasters should therefore work together with equipment manufacturers to develop and employ the technology necessary to implement enhanced emergency information and disaster warnings.

Consumer Privacy

Broadcasters should protect the privacy of their viewers, especially children, if and when they collect personally identifiable information.

The drive to fill more advertising space and sell more products over the digital communications network and the ability of that network to gather information in an interactive context raises concerns about the use of private information for marketing. . . . The result will be an electronic “direct mail on steroids” pumped up by the ability of viewers to click through digitally inserted advertising for purchases. - Consumer Federation of America

While digital television will enhance consumers’ viewing experiences, the potential for interactivity and convergence of media could threaten their legitimate privacy interests. Interactive applications that use the DTV spectrum enable companies to collect information about consumers, and has raised new questions about protecting consumer privacy across all media. Consumers should be able to protect themselves from the collection and use of personally identifiable information without their consent or knowledge. As broadcasters develop dynamic and innovative uses of the DTV spectrum, they should be sensitive to these privacy issues.

While the Commission did not raise the issue of privacy in the *NOI*, several commenters pointed out that with newly available technology, broadcasters and advertisers will be able to gather data on consumers’ viewing habits, purchase patterns, and information requests. Broadcasters and advertisers might then distribute this personal or sensitive information to third parties, or use it for targeted advertising.

Given the real financial incentives in the digital age for collecting personal information, broadcasters should create privacy protections for their viewers. Initially, broadcasters should widely distribute information on their policies for protecting consumer privacy. One suggestion would be to provide notice that a company is collecting personal information before or at the time the information is collected, describing, at a minimum: (1) what information will be collected, (2) who is collecting the information; (3) how the information will be used; (4) who will have access to the information; and (5) the consumers’ choices regarding the collection and use of the information. This notice should be provided in a conspicuous manner.

Second, broadcasters should provide viewers with meaningful choices if those viewers do not want their personal information used for any other purpose beyond that for which the information is being collected. For example, viewers should be able to prevent anyone from using their personal information in subsequent direct marketing activities.

Third, broadcasters should provide viewers with reasonable access to any personal information collected and an opportunity to correct any errors. For example, consumers should be able to link, with a secure password, to information about their shopping habits, income, or any other information that has been collected. They can then correct or remove the information with a phone call or an electronic message to the broadcaster or advertiser. Broadcasters should provide consumers with an “800” number to check and correct collected information.

Fourth, broadcasters should maintain adequate security to protect viewers’ personal information. The industry should, as others have, adopt an encryption standard for securing information.

Information that a consumer sends to a broadcaster or an advertiser should be inaccessible to third parties while it is in transit.

Fifth, broadcasters should take additional steps to protect the privacy of children by complying, to the extent possible, with the Children's Online Privacy Protection Act of 1998 (COPPA). COPPA prohibits operators of online services that are directed to children from collecting personal information from a child without: (1) providing notice on the website of what information is collected from that child, how the information will be used, and the operator's disclosure practices; and (2) obtaining verifiable parental consent for the collection, use or disclosure of personal information from the child. Under COPPA, on request from a parent, the operator must provide: (1) a description of the types of personal information collected from the child; (2) the opportunity to refuse to permit the operator's further use or maintenance of the child's personal information; and (3) a means by which the parent can obtain any personal information collected from the child. An operator is also prohibited from conditioning a child's participation in a game on the child's providing more personal information than is reasonably necessary for the game.

As digital television evolves, privacy issues will unfold and the Commission should continue to monitor and suggest remedies where it finds potential threats to consumer privacy.

Diversity

Broadcasters' activities should reflect the diversity of their communities.

"The freedom gained with the technological advance from analog to digital broadcasting is accompanied by a corresponding responsibility to reach out to the entire community served by broadcasters. The expanded capabilities in digital broadcasting should result in ways to address the wider variety of people within the broadcaster's community of license." - Human Rights Campaign

"LULAC is concerned that there are not enough Latinos in decision-making positions within the broadcast industry and that local broadcasters are not sufficiently responsive to Latino concerns, issues and interests." - League of United Latin American Citizens

Given the power of television, and the fact that broadcasters must serve their local communities of license, it is important that broadcasters' activities reflect the diversity in their communities. As the nation's population becomes increasingly diverse, this policy goal becomes more and more significant. In 1960, just over 5% of the nation's population was foreign born, and 75% of those came from Europe. By contrast, in 1990, nearly 8% of the nation's population was foreign born, and over 70% came from Latin America and Asia. This trend is expected to continue. One consequence is that more and more households speak a language other than English. Broadcasters' activities must reflect the increasingly diverse populations in their communities. Digital technology in particular will enhance opportunities for broadcasters to fulfill this goal.

- **Assess programming to determine whether it reflects the changing society of the 21st century and meets the needs of all communities.**

The Advisory Committee stated that “[d]iversity is an important value in broadcasting, whether it is in programming, political discourse, hiring, promotion, or business opportunities within the industry.” It recommended that “broadcasters seize the opportunity inherent in the digital television technology to substantially enhance the diversity available in the television marketplace.” PBTV also asked DTV broadcasters to exploit digital technology to reflect the diversity of their communities through a variety of practices, and stated that network programming cannot respond to the diverse needs of each community. In the *NOI*, the Commission sought comment on ways unique to DTV that the Commission could encourage diversity in the digital era, consistent with relevant constitutional standards.

Commenters and panelists stated that some broadcasters do not serve specific groups within their communities. In 1999, Children Now conducted a survey entitled *Fall Colors*, which examined diversity of all primetime television shows across six broadcast networks. The study revealed that certain groups are almost invisible, and those that are visible are depicted in stereotypical ways. According to Children Now, broadcasters should air more diverse, inclusive programming, because it sends strong messages to children, by telling children that their group is important, by making them feel included, and by providing role models. Consistent with Children Now, the Human Relations Foundation of Chicago believes that broadcasters should improve representation of minorities in commercials and television shows, both in terms of the numbers of minorities in these roles and also the manner in which they are portrayed. A number of NOW members also assert that their local broadcasters do not fairly represent women. LULAC expresses the same concern with respect to Latinos. Based on these concerns, broadcasters should assess their programming to ensure that it serves their diverse constituencies.

Some commenters explain how broadcasters could use digital technology to realize that goal. For example, the Communications Technology Policy Council and LULAC suggest that DTV broadcasters could multicast to serve the needs of underserved communities. AAPTS notes that some public television stations are planning to do just that: several stations plan to broadcast a channel devoted to serving non-English speakers and other minorities, and another plans to create a separate multicast international channel designed to enrich its mix of ethnic language programming. PBTV also promotes a “flexibility model,” whereby multicasting broadcasters could devote channel space to underserved audiences. Broadcasters should use the flexibility and opportunities in DTV in manners such as these to ensure that they serve all segments of their communities.

- **Reach out to all segments of communities when filling job openings.**

The Commission adopted a new equal employment opportunity (EEO) rule that reaffirmed the Commission's long-standing anti-discrimination rule and emphasized broad outreach to all qualified job candidates for positions at broadcast stations. The new rule responded to a D.C. Circuit Court of Appeals' decision that held certain aspects of the Commission's previous broadcast EEO program requirements unconstitutional. That rule prohibited discrimination on the basis of race, religion, color, national origin or gender, and required broadcasters to disseminate information widely about job openings to all segments of the community to ensure that all qualified applicants, including minorities and women, have sufficient opportunities to compete. The rule gave broadcasters flexibility in choosing their EEO program by providing two recruitment options. Under both options, broadcasters were to use recruitment sources sufficient to ensure wide dissemination of information concerning each vacancy filled at the station. Under the first option, broadcasters also were to: (1) send job vacancy announcements to recruitment organizations that

request them; and (2) implement a specified number of non-vacancy specific outreach initiatives, such as job fairs, internships programs, and interaction with educational and community groups. Under the second option, a broadcaster could design its own outreach program but was to monitor the effectiveness of its program in achieving broad outreach by maintaining records concerning the recruitment sources, and race, ethnicity and gender of its applicants. The rule also required broadcasters to place annually an EEO report in their public file providing specified information concerning their outreach efforts.

Several parties challenged the new rule, even though many television broadcasters support the Commission's EEO efforts. For example, after the court struck down the former rule, more than fifteen major media companies announced their intention to abide by EEO principles in their job recruitment efforts on a voluntary basis. Many public interest groups, including the Minority Media Telecommunications Council and the National Urban League, also applauded the new rules. However, on January 16, 2001, the D.C. Circuit vacated the Commission's new EEO rule, holding that the rule "put[s] official pressure upon broadcasters to recruit minority candidates, thus creating a race-based classification that is not narrowly tailored to support a compelling government interest and is therefore unconstitutional."

In the *NOI*, the Commission sought comment on ways unique to DTV that it could encourage diversity in the digital era, consistent with relevant constitutional standards. The Commission noted that the Advisory Committee recommended 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."

Some commenters encouraged the Commission to strengthen its EEO policies for DTV broadcasters. For example, UCC *et al.* argues that, in light of DTV's new opportunities, the FCC and the industry should explore new ways to increase the participation of minorities in the broadcast industry. Likewise, the Human Relations Foundation of Chicago believes that the FCC should require broadcasters to employ a diverse workforce. DTV broadcasters should use the opportunities they have been given with the DTV spectrum to create opportunities to diversify their workforce.

The NAB, however, argues that, given constitutional difficulties with respect to FCC's previous diversity efforts, the most effective methods may include voluntary industry efforts or incentive programs requiring congressional action, such as tax credits for sale of broadcast properties to minorities or women. Belo likewise supports voluntary industry initiatives to increase opportunities for participation in the media by minorities, women, and small businesses. It notes that broadcasters, including itself, have created an investment fund with \$175 million current initial cash commitment and ultimate purchasing power of possibly \$1 billion to spur broadcast ownership by minorities and women. DTV broadcasters should pursue these and other methods to increase diversity in the broadcast industry, and should continue to follow EEO principles in their job recruitment efforts.

Disabilities Access

Broadcasters must make their services accessible to persons with disabilities.

"Media is the language of our time, and those who are not fluent risk isolation, even virtual exclusion from their own culture. . . ." - American Foundation for the Blind

As an audio/visual medium at present, television is not fully accessible to persons with hearing and/or visual disabilities. There are as many as 22 million American with hearing disabilities, and as many as 10 million Americans with visual disabilities. These numbers will increase as the population ages. Measures must be taken to enable individuals to benefit from the medium of television. DTV offers broadcasters new capabilities to serve disabled segments of their communities. DTV broadcasters should take advantage of these capabilities to provide enhanced closed captioning, video description, and accessible ancillary and supplementary services.

- **Take advantage of DTV's capabilities to expand and enhance closed captioning.**

Closed captioning refers to the textual display of the audio portion of a program. It is designed to make TV programs more accessible to persons with hearing disabilities. In 1997 the Commission adopted closed captioning rules. These rules require broadcasters (among other video programming distributors and providers), by January 1, 2006 and continuing thereafter, to caption 100% of "new" programming (defined as programming first published or exhibited on or after January 1, 1998), and to meet certain interim benchmarks in the meantime. The rules also require broadcasters (and others), by January 1, 2008 and continuing thereafter, to caption 75% of "pre-rule" programming by 2008.

Certain types of programming are exempt from the captioning requirements, such as, among other things, promotional or public service announcements (PSAs) of ten minutes or less duration, and locally produced educational programming or non-news programming with no repeat value. As a result, this programming is not accessible to persons with hearing disabilities. Thus, the Advisory Committee, as well as commenters in the *NOI* proceeding, encourage broadcast stations to caption PSAs, public affairs programming, and political programming. PBTv suggested that they should do so over the first four years of a station's DTV operation, completed no later than 2006. Some commenters point out, however, that the Commission did not exempt from its captioning rules political and public affairs programming as a class. As a result, such programming already must be captioned in accordance with the general rules and schedules, unless it falls into another category that is exempt, such as promotional announcements of less than ten minutes, or locally produced educational or non-news programming. Given the importance of political programming, however, broadcasters should caption such programming, even if it is otherwise exempt.

One problem with current captioning technology is that it sometimes covers other printed material, such as speaker's names, on a viewer's television screen. As a result, this information is not necessarily accessible to persons with visual disabilities. Digital technology, however, enables programmers to provide more advanced and flexible captioning that resolves these problems. For example, the technology can be used to permit viewers to change the size of captions to see both the caption and the text behind the caption. The Advisory Committee encouraged DTV broadcasters to take full advantage of digital technology, as did a number of commenters in the *NOI* proceeding.

The Commission has recently adopted rules to require certain DTV receivers to be equipped with the capability for consumers to change the color, font, and size of captions, and to choose between multiple streams of captioning (such as alternative language or "easy reader"). The Commission also required programmers and distributors to provide captions in a format that is compatible with DTV receivers, but did not require them to provide all of the advanced capabilities that it required

the receivers to decode. DTV broadcasters should provide these capabilities, however, in order to ensure that closed captioning will be accessible to the greatest number of people.

- **Take advantage of DTV's enhanced audio capacity to provide programming with video description.**

Video description refers to the description of key visual elements of a program, inserted during natural pauses in the dialogue of the program. It is designed to enhance the accessibility of video programming for persons with visual disabilities. The Commission adopted initial, limited video description rules. These rules require the largest television broadcasters and multichannel video programming distributors to provide fifty hours per calendar quarter of children's or prime time programming with video description. Because of a variety of differences between closed captioning and video description, the Commission adopted rules to phase video description into the commercial marketplace. However, the Commission excluded DTV broadcasters from the rules, because it wished to gain greater experience with both DTV and video description before applying the rules to DTV. The Commission indicated, however, that it intended ultimately to extend its rules to DTV.

Digital technology enables programmers to provide video description more easily because of enhanced audio capabilities. For example, in the analog environment, a distributor typically can provide only two audio tracks, the main audio and a second audio program, such as an alternate language or video description. But digital technology enables programmers to provide multiple audio programs at the same time, and therefore make their programming accessible to persons with visual disabilities.

The Advisory Committee asked DTV broadcasters to allocate sufficient bandwidth among their multiple audio channels to expand the use of video description. PBTv suggested that DTV broadcasters should provide video description of PSAs, public affairs programming, and political programming, and that they should do so over the first four years of their DTV operation, but complete this process no later than 2006. Several commenters argued that the Commission should amend the DTV standard to designate bandwidth for video description, and fashion rules to require video programming distributors to provide programming with video description.

In order to ensure that any video description that DTV broadcasters provide is capable of being received by viewers' TV sets, commenters also encouraged the Commission to address DTV receiver specifications. The American Foundation for the Blind stated that the Commission should require manufacturers of DTV receivers to design equipment to support simultaneous multi-channel audio-decoding capability so that video description can be delivered separately from the main audio of a program. WGBH stated that the Commission should require equipment and services to be designed and offered in a manner that is accessible to persons with disabilities (*e.g.*, remote controls and on-screen menus should be designed to be accessible to persons with disabilities). Some commenters generally opposed the Commission mandating that DTV broadcasters provide any more service to persons with disabilities than is presently required. Even without such a mandate, broadcasters should take advantage of digital technology's enhanced audio capacity to ensure that video description will be available to the greatest number of people.

- **Make ancillary or supplementary services, and web-based services, accessible to persons with hearing and visual disabilities.**

The Advisory Committee recommended that DTV broadcasters that provide ancillary or supplementary services not impinge on the 9600 baud bandwidth currently set aside for closed captioning, and encouraged DTV broadcasters to explore new digital technologies to expand access to such services to persons with disabilities, such as offering text options for material presented aurally and an audio portion for material presented visually. The Commission sought comment on the type of ancillary or supplementary services DTV broadcasters intend to provide, and how they could be made accessible to persons with disabilities.

Broadcasters did not provide much information on the types of ancillary or supplementary services that DTV broadcasters provide or intend to provide. PBTv, however, suggested that DTV broadcasters' public interest obligations should attach to all such services. Telecommunications for the Deaf states that the Commission should require DTV broadcasters to explore new digital technologies to expand access to persons with disabilities, such as offering text options for material presented orally, and audio options for material presented visually. UCC states that the Commission should explore ways of ensuring disability access to any new service that DTV broadcasters provide. UCC and WGBH state that the Commission should ensure that ancillary or supplementary services do not interfere with the bandwidth currently set aside for closed captioning, including requiring that broadcasters do not use the bandwidth even when it is temporarily available. Although NAB argues that the Commission should not consider any rules at this time, since DTV broadcasters do not currently offer ancillary and supplementary services, DTV broadcasters that offer such services should make them available to persons with disabilities.

As noted in the *Enhanced Disclosure Notice*, TDI and WGBH ask the Commission to ensure that broadcasters design and maintain their websites in a manner that meets the World Wide Web Consortium's Web Accessibility Initiative guidelines. These guidelines explain how to make websites accessible to persons with a variety of disabilities in a cost-effective manner. Given that broadcasters are encouraged to use their websites to interact with members of their communities - which include persons with disabilities - they are also encouraged to make the content of their websites accessible to persons with disabilities so that they can contribute to the process.

- **Assess the needs of persons with disabilities in deploying new services.**

Perhaps an overarching principle for broadcasters in terms of enhancing the accessibility of their services to persons with disabilities is to consider the needs of such persons as broadcasters develop new services. Television broadcasters should be mindful of the power and ubiquity of their medium, and periodically re-evaluate business strategies and technological development to ensure that they are serving the needs of the segment of their communities that includes persons with disabilities.

Technology and the Public Interest

Broadcasters should periodically reassess how new technologies can be used to enhance service to their local communities.

The current reexamination of the public interest standard has been occasioned by the transition from analog to digital transmission technology. As explained above, digital technology offers broadcasters new and improved ways to serve their communities, and they should take advantage of these opportunities in order to best serve the public interest. In the same vein, broadcasters should take advantage of technologies that will be developed in the future that will enable them to improve their level of service to their communities still more. Such a broad, fluid approach to the “supple instrument” of the public interest standard is most consistent with the purposes it was designed to serve - to ensure that the relative few who are licensed to use the technology of the broadcast medium do so in a manner that best serves the public interest.

CONCLUSION

It is important for broadcasters to provide a level of service to their communities that is consistent with the value of the spectrum they use. The above principles attempt to identify ways that broadcasters can serve their communities, and in turn serve the public interest, as the Communications Act requires them to do.

NOTES