

SUPPORTING STATEMENT

A. Justification:

1. On February 19, 2008, the Commission adopted a Report and Order, FCC 08-56, *In the Matter DTV Consumer Education Initiative*, MB Docket 07-148. As the Nation transitions from analog broadcast television service to digital broadcast television service, the Commission has been committed to working with representatives from industry, public interest groups, and Congress to make the significant benefits of digital broadcasting available to the public. The digital transition will make valuable spectrum available for both public safety uses and expanded wireless competition and innovation. By compressing television broadcasting into a smaller amount of the available spectrum, the digital transition has allowed the Commission to make valuable 700 MHz spectrum available for sale and use by wireless companies and public safety organizations. The transition will also provide consumers with better quality television picture and sound, and make new services available through multicasting.¹ These innovations, however, are dependent upon widespread consumer understanding of the benefits and mechanics of the transition. The Congressional decision to establish a hard deadline of February 17, 2009, for the end of full-power analog broadcasting has made consumer awareness even more critical.

47 CFR Sections 73.3526(e)(11)(iv) and 73.3527(e)(13)

Specifically, the Report and Order added a new recordkeeping requirement for both full-power commercial (see § 73.3526(e)(11)(iv)) and noncommercial educational ("NCE") (see § 73.3527(e)(13)) TV broadcast stations (both analog and digital) for the contents of their public inspection files. The Report and Order revises the rules to require stations to retain in their public inspection file a copy of their FCC Form 388 – DTV Consumer Education Quarterly Activity Report on a quarterly basis. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. These Reports shall be retained in the public inspection file for one year. Broadcasters must publicize in an appropriate manner the existence and location of these Reports. (**The Commission received OMB emergency approval for the recordkeeping requirements on March 27, 2008 for a period of six months. We now seek the full three year OMB approval/clearance for the recordkeeping requirements.**)

¹ See *DTV Consumer Education Initiative*, MB Docket No. 07-148, Notice of Proposed Rulemaking, 22 FCC Rcd 14091, 14092 (2007) (DTV Consumer Education NPRM).

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OMB Approved Information Collection Requirements Which Have Not Changed Since Last Approved By OMB:

47 CFR Sections 73.3526(a) and 73.3527(a) require that licensees and permittees of commercial and noncommercial educational (NCE) broadcast stations² maintain a local public inspection file. The contents of the file vary according to type of service and status. A separate file shall be maintained for each station for which an application is pending or for which an authorization is outstanding. The public inspection file must be maintained so long as an authorization to operate the station is outstanding.

47 CFR Sections 73.3526(b) and 73.3527(b) require that the public inspection file be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

47 CFR Sections 73.3526(c) and 73.3527(c) require the licensee/permittee to make the file available for public inspection at any time during regular business hours. All or part of this file may be maintained in a computer database as long as a computer terminal is made available to members of the public. Materials in the public file must be made available for review, printing or reproduction upon request.

Licensees that maintain their main studios and public file outside their communities of license³ are required to mail a copy of "The Public and Broadcasting"⁴ to anyone requesting a copy. Licensees shall be prepared to assist members of the public in identifying the documents they may want to be sent to them by mail.

47 CFR Sections 73.3526(d) and 73.3527(d) require an assignor to maintain the public inspection file until such time as the assignment is consummated. At that time, the assignee is required to maintain the file.

Under rule sections **47 CFR Sections 73.3526(e) and 73.3527(e)** the contents of the public inspection files are specified. The documents to be retained in the public inspection files are as follows:

- (a) A copy of the current FCC authorization to construct or operate the station, as well as any other documents necessary to reflect any modifications thereto or any conditions that the FCC has placed on the authorization;

² These stations are licensed to nonprofit educational organizations for use in the advancement of educational programs.

³ Every broadcast station is permitted or licensed to a designated community, the needs and interests of which the station primarily serves. The station is required to place a signal of a certain strength over the entirety of its community of license, and is required to provide programming to serve its community of license. *See, e.g.*, 47 U.S.C. § 307(b); 47 C.F.R. §§ 73.24(i), 73.315(a).

⁴ This manual provides a brief overview of the regulation of broadcast radio and television.

- (b) A copy of any application tendered for filing with the FCC, together with all related material, and copies of Initial Decision and Final Decisions in hearing cases. If petitions to deny are filed against the application, a statement that such a petition has been filed shall be maintained in the file together with the name and address of the party filing the petition;
- (c) For commercial broadcast stations, a copy of every written citizen agreement;⁵
- (d) A copy of any service contour maps, submitted with any application, together with any other information in the application showing service contours and/or main studio and transmitter location;
- (e) A copy of the most recent, complete Ownership Report (FCC Form 323) filed with the FCC for the station, together with any statements filed with the FCC certifying that the current Report is accurate;
- (f) A political file of records required by 47 CFR Section 73.1943 concerning broadcasts by candidates for public office;
- (g) An Equal Employment Opportunity File required by 47 CFR Section 73.2080.
- (h) A copy of the most recent edition of the manual entitled "The Public and Broadcasting;"
- (i) For commercial broadcast stations, all written comments and suggestions (letters and electronic mail) received from the public regarding operation of the station;
- (j) Material having a substantial bearing on a matter which is the subject of an FCC investigation or complaint to the FCC of which the applicant/permittee/licensee has been advised;
- (k) For commercial radio and TV broadcast stations and non-exempt NCE broadcast stations, a list of programs that have provided the station's most significant treatment of community issues. This list is kept on a quarterly basis and contains a brief description of how each issue was treated;

For commercial TV broadcast stations, records sufficient to permit substantiation of the station's certification, in its license renewal application, of compliance with the commercial limits on children's television programming. The records must be placed in the public file quarterly. The FCC Form 398, Children's Television Programming Reports, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children must be placed in the public file quarterly;

⁵ A citizen agreement is an agreement between a licensee and one or more citizens that deal with goals or proposed practices that affect station operations in the public interest in areas such as - but not limited to - programming and employments.

- (l) For Commercial radio stations, a list of community issues addressed by the station's programming. This list is kept on a quarterly basis and contains a brief description of how each issue was treated;
- (m) For NCE stations, a list of donors supporting specific programs. The list is to be retained for two years from the date of the broadcast of the specific program supported, and will be reserved for sponsors/underwriters of specific programming;
- (n) Each applicant for renewal of license shall place in the public file a statement certifying compliance with the pre-filing and post-filing local public notice announcements. These statements shall be placed in the public file within 7 days of the last day of broadcast;
- (o) Commercial radio and TV licensees who provide programming to another licensee's station, pursuant to time brokerage agreements, are required to keep copies of those agreements in their public inspection files, with confidential information blocked out where appropriate; and
- (p) Commercial TV stations must make an election between retransmission consent and must-carry status once every three years. Television stations that fail to make an election will be deemed to have elected must-carry status. This statement must be placed in the station's public inspection file. This rule codifies Section 325(b)(3)(B) of the Communications Act of 1934, as amended.
- (q) NCE television stations requesting mandatory carriage on any cable system pursuant to 47 CFR Section 76.56 shall place in its public file the request and relevant correspondence.
- (r) Commercial radio and TV licensees who have entered into joint sales agreements must place the agreements in the public inspection file, with confidential and propriety information blocked out where appropriate.

47 CFR Sections 76.1701 and 73.1943 require every cable television system and licensees of broadcast stations to keep and permit public inspection of a complete record (political file) of all requests for cablecast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the system of such requests, and the charges made, if any, if the request is granted. The disposition includes the schedule of time purchased, when the spots actually aired, the rates charged, and the classes of time purchased. Also, when free time is provided for use by or on behalf of candidates, a record of the free time provided is to be placed in the political file as soon as possible and maintained for a period of two years. 47 CFR Section 76.1701 also requires that, when an entity sponsors origination cablecasting material that concerns a political matter or a discussion of a controversial issue of public importance, a list must be maintained in the public file of the system that includes the sponsoring entity's chief executive officers, or members of its executive committee or of its board of directors.

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As noted on the OMB Form 83-I, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

2. The data is used by the public and FCC to evaluate information about the broadcast licensee's performance, to ensure that broadcast stations are addressing issues concerning the community to which it is licensed to serve and to ensure that stations entering into time brokerage agreements comply with Commission policies pertaining to licensee control and to the Communications Act and the antitrust laws. Placing joint sales agreements in the public inspection file will facilitate monitoring by the public, competitors and regulatory agencies.

Television broadcasters are required to send each cable operator in the station's market a copy of the election statement applicable to that particular cable operator. Placing these retransmission consent/must-carry elections in the public file provide public access to documentation of station's elections which are used by cable operators in negotiations with television stations and by the public to ascertain why some stations are/are not carried by the cable systems.

Maintenance of political files by broadcast stations and by cable television systems enables the public to assess money expended and time allotted to a political candidate and to ensure that equal access was afforded to other legally qualified candidates for public office.

Retention of the FCC Form 388 – DTV Consumer Education Quarterly Activity Report by broadcast stations in their public inspection files will be used by the public and FCC to evaluate broadcasters' consumer education efforts on the DTV Transition.

3. These are recordkeeping and third party disclosure requirements. Broadcast licensees have the option of maintaining all or part of their public file, including their political file in a computer database rather than in paper files. Cable system operators also have this option for their political files. The FCC is encouraging licensees and cable system operators who choose this option to also post their “electronic” public files on any World Wide Web sites they maintain on the Internet.

4. No other agency imposes a similar information collection on the respondents. There are no similar data available.

5. This information collection does not impose any significant economic impact on a substantial number of small businesses/entities.

6. If the information contained in the public file were not retained on a regular basis, the Commission and the public would not have timely information to evaluate a broadcaster's public service record. The

retransmission consent/must-carry election statements placed in the public file provides information not available elsewhere. As to the political files, if the required documentation was not retained, the public and competing legally qualified candidates running for public office would not have access to records to verify that equal rates and access were made available to all candidates. With respect to the retention of the FCC Form 388 – DTV Consumer Education Quarterly Activity Report, the information is needed to evaluate broadcasters' consumer education efforts on the DTV Transition.

7. A copy of the current FCC authorization to construct or operate the station must be retained in the public file until replaced by a new authorization. Applications tendered for filing shall be retained until final action has been taken on the application, except that applications for a new construction permit granted pursuant to a waiver showing shall be retained for as long as the waiver is in effect. A copy of contour maps shall be retained for as long as they reflect current, accurate information regarding the station. License renewal applications granted on a short-term basis shall be retained until final action has been taken on the license renewal application filed immediately following the shortened license term. Citizen agreements shall be retained for the term of the agreement. A copy of contour maps shall be retained for as long as they reflect current, accurate information regarding the station. Ownership Reports and related materials shall be retained until a new, complete Ownership Report is filed with the FCC. The licensee need not retain a copy of the contracts listed in the Ownership Report so long as the licensee maintains an up-to-date list of such contracts in the file and provides copies of any contracts to requesting parties within 7 days. Political files required by Sections 73.1943 and 76.1701 shall be retained for a period of 2 years. A copy of the 1998 edition of the manual entitled "The Public and Broadcasting" must be retained at all times. Material relating to an FCC investigation or complaint must be retained until notified in writing that the material may be discarded. Donor lists must be retained for two years. The certifications of compliance with the pre-filing and post-filing local public notice announcements of the filing of applications for renewal of license shall be retained for as long as the application to which it refers. Time brokerage agreements⁶ and joint sales agreements⁷ must be retained as long as the contract or agreement is in force.

Letters and electronic mail messages issues/program lists, and records concerning commercial limits and Children's Television Programming Reports must be retained until final action has been taken on the station's next license renewal application. Television station's must-carry/retransmission election statements shall be retained for the duration of the three-year election period to which the statement applies.

These retention periods are necessary to provide the public and the FCC timely information to evaluate the station's performance during its entire license term or over the life of a contract.

⁶ "Time brokerage," also known as "local marketing," is the sale by a broadcast licensee of discrete blocks of time to a "broker" that supplies the station with programming to fill that time and sells the commercial spot announcements in that block. *See also* 47 CFR § 73.3613.

⁷ A Joint Sales Agreement is an agreement authorizing a broker to sell advertising time for the brokered station in return for a fee paid to the licensee.

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8. The Commission published a notice in the *Federal Register* seeking public comment on the information collections contained in this supporting statement, see 73 FR 18273, published April 3, 2008. No comments were received from the public.

9. No payment or gift was provided to the respondent.

10. There is no need for confidentiality for this information collection.

11. This information collection does not address any private matters of a sensitive nature.

12. The public burden is estimated as follows:

Respondents	Number of Respondents/ Responses	Respondent's Hourly Burden	Total Annual Burden	Hourly In- House Cost	Annual In- House Cost
Local Public Inspection Files:					
<i>(1) General Maintenance</i>					
Commercial Radio Stations	10,972	52 hours	570,554 hrs.	\$15.54/hr.	\$8,866,409
Noncommercial Education Radio Stations	2,585	104 hours	268,840 hrs.	\$15.54/hr.	\$4,177,774
Commercial TV Stations	1,415	57 hours	80,655 hrs.	\$15.54/hr.	\$1,253,379
Noncommercial Educational TV Stations	400	109 hours	43,600 hrs.	\$15.54/hr.	\$677,544
<i>(2) Community Issue List</i>					
Commercial Radio Stations	10,972	52 hours	570,522 hrs.	\$26.00/hr.	\$14,833,572
Commercial TV Stations	1,368	52 hours	71,136 hrs.	\$26.00/hr.	\$1,849,536
<i>(3) Commercial Limits</i>					
Commercial TV Stations	1,368	26 hours	35,568 hrs.	\$26.00/hr.	\$924,768
<i>(4) Must Carry/Retransmission Consent</i>					
Noncommercial					

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Respondents	Number of Respondents/ Responses	Respondent's Hourly Burden	Total Annual Burden	Hourly In- House Cost	Annual In- House Cost
Educational TV stations	15	50 hours	750 hrs.	\$26.00/hr.	\$19,500
Commercial TV Stations	1,368	50 hours	68,400 hrs.	\$26.00/hr.	\$1,778,400
<i>Political Files:</i>					
Commercial Radio	10,972	6.25 hours	68,575 hrs.	\$26/hour	\$1,782,950
Noncommercial Educational Radio Stations	2,585	6.25 hours	16,156 hrs.	\$26/hour	\$420,056
Commercial TV Stations	1,368	6.25 hours	8,550 hrs.	\$26/hour	\$222,300
Noncommercial Educational TV Stations	379	6.25 hours	2,369 hrs.	\$26/hour	\$61,594
Low Power TV Stations	2,098	6.25 hours	13,113 hrs.	\$26/hour	\$340,938
Low Power FM Stations	498	6.25 hours	3,113 hrs.	\$26/hour	\$80,938
Cable Systems	3,922	2.5 hours	9,805 hrs.	\$18/hour	\$176,490
TOTALS:	52,285		1,831,706 hours		\$37,469,148

Total Number of Annual Respondents: 52,285 Licensees/Permittees/Cable Operators

Total Number of Annual Responses: 52,285 (responses)

Total Annual Burden Hours: 1,831,706 Hours

Total Annual "In-house" Cost: \$37,469,148

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13. Annual Cost Burden:

- (a) Total annualized capital/startup costs: None
- (b) Total annual costs (O&M): None
- (c) Total annualized cost requested: None

14. There is no cost to the Federal Government.

15. There are no program changes or adjustments to this information collection.

16. The data will not be published.

17. OMB approval of the expiration date of the information collection will be displayed at 47 C.F.R. Section 0.408.

18. There are no exceptions to Item 19 of the Certification Statement.

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.