CONCURRING STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

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

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

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

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

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

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

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

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

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

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

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

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