

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

In the Matter of )  
 )  
Modernization of Media ) MB Docket No. 17-105  
Regulation Initiative )

**COMMENTS OF AMERICA’S PUBLIC TELEVISION STATIONS,  
CORPORATION FOR PUBLIC BROADCASTING,  
NATIONAL PUBLIC RADIO, INC., AND  
PUBLIC BROADCASTING SERVICE**

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## **SUMMARY**

America's Public Television Stations, Corporation for Public Broadcasting, National Public Radio, Inc., and Public Broadcasting Service (collectively, "Public Broadcasting") file these comments in response to the Federal Communications Commission's Public Notice on modernizing media regulations. The Commission's objective in this proceeding is to eliminate or modify regulations that are outdated, unnecessary, or unduly burdensome and that stand in the way of competition and innovation in media.

Public Broadcasting and local public television and radio stations work tirelessly to ensure that they serve the public interest and satisfy their regulatory obligations. Their commitment to do so is a fundamental part of public broadcasting's public service mission. And yet, given their limited financial resources, evolving community needs, and changing technology, Public Broadcasting believes that a number of regulatory obligations reflected in FCC rules are no longer serving their intended purposes and have become unnecessarily burdensome.

Public Broadcasting therefore urges the Commission to review certain of the Commission's rules in two areas – those relating to broadcast content and those that are not content-related – and to modify or eliminate those provisions that are outdated or unnecessarily burdensome as described herein.

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America’s Public Television Stations (“APTS”)<sup>1</sup>, Corporation for Public Broadcasting (“CPB”)<sup>2</sup>, National Public Radio, Inc. (“NPR”)<sup>3</sup>, and Public Broadcasting Service (“PBS”)<sup>4</sup> (collectively, “Public Broadcasting”) submit these comments in response to the Federal Communications Commission’s (“Commission”) Public Notice on modernizing media regulations (“Public Notice”).<sup>5</sup> The Commission’s objective is to

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<sup>1</sup> APTS is a non-profit organization whose membership comprises the licensees of nearly all of the nation’s CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American people.

<sup>2</sup> CPB is a private, non-profit corporation created and authorized by the Public Broadcasting Act of 1967 to facilitate and promote a national system of public telecommunications. Pursuant to its authority, CPB has provided millions of dollars in grant monies for support and development of public broadcasting stations and programming.

<sup>3</sup> NPR is a non-profit membership corporation that produces and distributes noncommercial educational radio programs, including *All Things Considered*® and *Morning Edition*®, through more than 1000 radio stations nationwide. Each week, some 42 million Americans listen to public radio stations with millions more consuming programming on digital platforms and via podcasts. NPR’s member stations are themselves significant producers of local, regional and national news, information and cultural programming. NPR also operates the Public Radio Satellite Interconnection System and provides representation and other services to its member station licensees.

<sup>4</sup> PBS, with its 350 member stations across the country, offers all Americans the opportunity to explore new ideas and new worlds through television and online content. Each month, PBS reaches nearly 100 million people through television and nearly 30 million people online, inviting them to experience the worlds of science, history, nature and public affairs; to hear diverse viewpoints; and to take front row seats to world-class drama and performances.

<sup>5</sup> Public Notice, *Commission Launches Modernization of Media Regulation Initiative*, MB Docket No. 17-105, FCC 17-58 (rel. May 18, 2017) [hereinafter “Public Notice”].

“eliminate or modify regulations that are outdated, unnecessary or unduly burdensome,” and thereby “advance the public interest by reducing unnecessary regulations and undue regulatory burdens that can stand in the way of competition and innovation in media markets.”<sup>6</sup> Public Broadcasting welcomes this opportunity to suggest a variety of rules that apply to noncommercial educational (“NCE”) television and radio stations and that merit Commission review for possible modification or elimination. Public Broadcasting and local public broadcasting stations across the country have worked closely with the Commission for decades to ensure that the public interest is served and that regulatory obligations are fulfilled. Public Broadcasting and local stations will of course continue to pursue these goals as a fundamental part of our public service mission. With limited financial resources, it is in the interests of Public Broadcasting and the Commission (as well as the public that both serve) to revisit a variety of regulatory obligations to ensure that they continue to serve their intended purposes and are not unnecessarily burdensome given evolving community needs and technology. These comments address rules in two general categories – rules relating to broadcast content and other non-content rules.

**I. Public Broadcasting Recommends That The Commission Scale Back The Requirements Of Certain Content Rules**

➤ **Section 73.671 – Educational and Informational Programming for Children**

This rule implements the Children’s Television Act of 1990, but the regulatory burdens exceed the statutory requirements.<sup>7</sup> The rule obligates NCE stations to serve the educational and informational needs of children, including the broadcast of certain

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<sup>6</sup> *Id.* at 1.

<sup>7</sup> Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b and 394.

quantities of educational programming at particular times directed to children 16 years of age and younger, and requiring on-screen display of an “E/I” bug during such programming. NCE stations must certify compliance with these requirements on their license renewal applications. It is important to note that various other children’s television requirements in this rule and in Sections 73.670 and 73.3526 apply only to commercial television stations. The E/I bug fundamentally exists to facilitate the children’s television requirements that only apply to commercial stations, so it is not rational to continue applying this mandate to noncommercial stations.

Public television does not waver in its commitment to serving the educational and informational needs of children, and its children’s television programming is universally recognized as exemplary.<sup>8</sup> However, the E/I bug requirement, which was first applied to NCE stations in 2004,<sup>9</sup> creates technical and viewability challenges for PBS as it works to innovate by streaming across a wide range of platforms. Viewership of PBS educational children’s content on mobile devices has increased dramatically in recent years and the E/I bug is particularly disruptive on smaller screens.

Public Broadcasting urges the Commission to determine that the E/I bug requirement need not apply to NCE television stations. PBS member stations (which make up 89 percent of all NCE television stations) are already required by the terms of their membership to broadcast at least 7 hours of educational children’s programming per

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<sup>8</sup> See, e.g., PBS Programs Win Seven Daytime Emmy Awards, *available at* [www.pbs.org/about/blogs/news/pbs-programs-win-seven-daytime-emmy-awards](http://www.pbs.org/about/blogs/news/pbs-programs-win-seven-daytime-emmy-awards); PBS KIDS and PBS KIDS Producers Win 5 Kidscreen Awards, *available at* [www.pbs.org/about/blogs/news/pbs-kids-and-pbs-kids-producers-win-5-kidscreen-awards](http://www.pbs.org/about/blogs/news/pbs-kids-and-pbs-kids-producers-win-5-kidscreen-awards); PBS Is Creating a Channel Exclusively for Children, *available at* [www.nytimes.com/2016/02/23/business/media/pbs-is-creating-a-channel-exclusively-for-children.html](http://www.nytimes.com/2016/02/23/business/media/pbs-is-creating-a-channel-exclusively-for-children.html).

<sup>9</sup> See *Children’s Television Obligations of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 00-167, at ¶ 47 (2004).

weekday, far in excess of the requirements of the Children’s Television Act, and such stations are already understandably exempted from various children’s program reporting requirements by the Commission. Moreover, PBS launched a 24/7 educational children’s multicast channel in January 2017 that is re-doubling the efforts of local stations to serve all children with curriculum-driven educational programming. Furthermore, *all* producers of children’s programming for PBS are required to include early childhood education advisors as ongoing members of the production team to ensure that the program is designed to meet educational goals, makes use of the latest child development research, and employs best practices in setting age-appropriate educational goals.

From time to time NCE television stations have inadvertently triggered compliance issues with the inflexible and complex renewal processing guidelines of the rule despite broadcasting vast amounts of high quality children’s programming to the community. Given public television’s clear and successful record of service to children and families, Public Broadcasting notes that there is no reason to continue to apply the rule to NCE stations, other than the general obligation in Section 73.671(a) to serve, over the term of their licenses, the educational and informational needs of children.

➤ **73.1201 – Station Identification**

This rule prescribes detailed requirements for the broadcast of daily and hourly station IDs, including IDs for individual television and radio transmitters being operated as part of state and regional networks, as well as television and radio multicast channels.

Public Broadcasting believes that there is no rationale to retain a formal station identification rule. Viewers and listeners know what stations they are watching or to which they are listening due to the station’s programming and channel position. More

importantly, even if the rule is eliminated, stations will continue to identify themselves on-air in some clear manner to build and maintain brand identity. Electronic monitoring for regulatory enforcement purposes can also determine the broadcast frequency on which any station is operating.

The formal ID rules are particularly awkward or difficult for stations operating as part of a state or regional network that has many stations and translators, all of which need to be identified together under the current rule. Public Broadcasting also believes that the rule provisions relating to IDs for DTV multicast channels can result in audience confusion. Public Broadcasting recommends that the formal station ID rule be eliminated.<sup>10</sup> Stations should be permitted to identify themselves on-air in a manner that makes the most sense to the local station.

➤ **73.1211 – Broadcast of Lottery Information**

This rule prohibits the broadcast of information about certain games of chance. Public Broadcasting believes that, given the existence of a plethora of now legal gambling and other lotteries, and the ability of stations to broadcast information about such activities, there is no reason the FCC needs to regulate information broadcast about lotteries. Public Broadcasting notes that this rule was adopted to support enforcement of 18 U.S.C. § 1304, enacted in 1948, which makes the broadcast of any advertisement or information concerning any lottery or similar scheme a crime. However, that law was declared unconstitutional as applied to lawful gambling operations by the U.S. Supreme

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<sup>10</sup> The station ID rules that also currently apply to TV translators (74.783) and FM translators (74.1283) should similarly be eliminated.

Court in 1999,<sup>11</sup> and in any event the law does not require a Commission rule on the subject.

➤ **73.1207 – Rebroadcasts**

This rule prohibits a broadcast station from retransmitting “the program, or any part thereof, of another U.S. broadcast station without the express authority of the originating station.” The rule implements 47 U.S.C. §325(a), which dates to the Radio Act of 1927.

Without doubt, prohibiting wholesale piracy of broadcast programming by another broadcast station is unobjectionable. However, there is no reason why this is a matter that needs to be regulated by the Commission given remedies available under the Copyright Act. But unlike copyright law, the rule as interpreted and enforced by the Commission does not allow any “fair use” or other exception permitting the broadcast use of brief excerpts of broadcast programming for newsgathering, noncommercial, or other transformative purposes.<sup>12</sup> As a result, media organizations may make “fair use” of published content from any source *other than* another broadcast station, which raises serious concerns under the First Amendment. The Commission should modify its rule to explicitly permit “fair use” of station broadcast programs.

➤ **73.3999 – Obscene and Indecent Material**

This rule prohibits broadcast of any obscene material at any time and any indecent material between 6 a.m. and 10 p.m. local time. Public Broadcasting does not object to the rule *per se*. However, the Commission should revisit what constitutes actionable

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<sup>11</sup> See *Greater New Orleans Broadcasting Ass’n v. United States*, 119 S. Ct. 1923 (1999).

<sup>12</sup> See *In the Matter of KVI, Inc., Licensee, Radio Station KVI, Seattle, WA*, 10 FCC Rcd 12586 (1995).

indecenty, what process should be implemented for reviewing and acting on complaints (given that these matters can take many years), and what sanctions are appropriate for violations, particularly in context-related circumstances such as typically arise on an NCE station.

Over four years ago, the Commission commenced a review of its broadcast indecency policies and enforcement in GN Docket No. 13-86.<sup>13</sup> NPR, APTS, and PBS filed comments urging the Commission to return to its long-standing pre-2004 policy of generally deferring to broadcasters' reasonable good faith editorial judgment in these matters, and to update its complaint process to: (i) provide greater transparency and predictability for stations, program producers, and distributors; and (ii) empower FCC staff to more quickly address complaints, including by disposing of meritless complaints that can negatively impact stations by remaining unresolved for extended periods of time.<sup>14</sup> Public Broadcasting strongly stands behind its 2013 filings on this issue and urges the Commission to resolve the proceeding it initiated four years ago by clarifying its enforcement priorities and practices in a manner that accords appropriate deference to the essential First Amendment values and interests at stake.

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<sup>13</sup> See Public Notice, *FCC Reduces Backlog of Broadcast Indecency Complaints by 70% (More Than One Million Complaints); Seeks Comment on Adopting Egregious Cases Policy*, DA 13-581 (April 1, 2013).

<sup>14</sup> Comments of National Public Radio, Inc., GN Docket No. 13-86 (filed June 19, 2013); Comments of the Association of Public Television Stations and Public Broadcasting Service, GN Docket No. 13-86 (filed June 19, 2013).

## II. Public Broadcasting Urges The Commission To Reduce The Regulatory Burden Of Various Non-Content Rules

### ➤ 73.525 – TV Channel 6 Protection

This rule restricts the effective radiated power of transmitters operating in the reserved noncommercial educational FM band to protect adjacent television Channel 6 stations from interference. Promulgated in 1985, the rule is based on testing of analog television receivers manufactured in the 1960s and 1970s.<sup>15</sup> More recent testing by NPR demonstrated that modern digital television receivers are capable of rejecting the signals of adjacent NCE FM stations, and that the rule no longer serves its intended purpose in a rational manner.<sup>16</sup> The rule is not merely arbitrary, however. Numerous NCE FM stations have been forced to limit their service coverage areas so as to avoid interfering with non-existent analog television receivers. The Commission should therefore initiate a proceeding to resolve what, if any, interference protection is required in lieu of Section 73.525.

### ➤ 73.624(g) – Digital Television Broadcast Stations

Subsection 73.624(g) currently requires *all* television stations to file annual reports reflecting their ancillary and supplementary services and remit a five percent fee. A large portion of television stations file these reports annually without any such services

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<sup>15</sup> See *Second Further Notice of Proposed Rule Making in the Matter of Changes in the Rules Relating to Noncommercial, Educational FM Broadcast Stations*, 47 Fed. Reg. 24, 144, at ¶ 9 (June 3, 1982) (citing FCC/OST Lab Report No. 79-01 (Tests of TV Receivers for “Just Perceptible” Interference to TV Channel 6 from Educational FM Signals), September, 1979).

<sup>16</sup> See NPR Labs, COMPARISON OF FM BROADCAST SIGNAL INTERFERENCE AREAS WITH CURRENT DIGITAL TELEVISION RECEIVERS ON CHANNEL 6 TO ANALOG TV RECEIVERS ASSUMED IN 47 C.F.R. 73.525 at 1 (Sept. 5, 2008); NPR Labs, INTERFERENCE REJECTION THRESHOLDS OF CONSUMER DIGITAL TELEVISION RECEIVERS ON CHANNEL 6 WITH FM BROADCAST SIGNALS at 1 (Dec. 17, 2007). These test reports were submitted to the Commission as appendices to a still-pending petition for rulemaking. Petition for Rulemaking of National Public Radio, Inc., RM No. 11579 (Oct. 20, 2009).

to report. There is no reason why stations should have to file forms every year if they have nothing to report and are not required to remit any fee. Public Broadcasting urges the Commission to adopt a default presumption that stations have no ancillary or supplementary services to report and owe no fee if stations do not file this report, so that only stations with something to report and pay are required to bear this regulatory burden.

➤ **73.1226 – Availability to FCC of Station Logs and Records**

This rule is one of a number of rules that mandate station logging and recordkeeping that are no longer necessary. The other related rules include:

- 73.1800 – General Requirements Related to the Station Log
- 73.1820 – Station Log
- 73.1835 – Special Temporary Records
- 73.1840 – Retention of Logs
- Similar rules also apply to TV translators (74.781) and FM translators (74.1265)

These requirements are unnecessary and burdensome. The logs and records are neither accessed nor used by the public or the Commission. The only pieces of information that are generally still required to be logged are tower light extinguishments, EAS tests, and EAS activations. Given the fact that these rules are long out of date, Public Broadcasting urges the Commission to revisit these formal paperwork requirements through a rulemaking process that aims to simplify and streamline all such recordkeeping and logging mandates.

➤ **73.1230 – Posting of Station License**

This rule requires physical posting of a station license at the principal control point of the transmitter. Given that station licenses are available online for viewing and

downloading, the physical posting of licenses no longer serves any purpose. There is a similar rule for TV translators (74.785(a)) and FM translators (74.1265(a)). These rules should be eliminated given technological advancements that render them redundant and unnecessary.

➤ **73.1870 – Chief Operators**

This rule requires each station to designate (in writing and posted) a chief operator and an acting chief operator when the chief operator is unavailable, and specifies certain duties, including inspecting and calibrating transmission systems, periodic measurements (for certain AM stations), and weekly review and verification of “station records.” Obviously, skilled technical personnel are required for the proper operation and maintenance of broadcast stations, and the Commission may also reasonably seek to have stations identify a technical contact person for each station. But in view of the fact that the FCC has not required stations to have licensed “operators” for decades, and in light of automation of stations and advancements in the reliability of computer-controlled transmission systems, the formal position of “chief operator” and the associated duties have become an unnecessary regulatory burden.

➤ **73.1943 – Political Files**

This rule requires all stations to maintain a public file of candidate requests for broadcast time and the disposition of such requests, including charges for time. This file appears to be useful only in the context of commercial stations’ sale of political advertising, by facilitating the planning of media buys by candidates. The rule makes virtually no sense for NCE stations, whose political files typically contain no documents or information because of Congress’ amendment of 47 U.S.C. § 312(a)(7) in 2000,

exempting public television and radio stations from the “reasonable access” requirements.<sup>17</sup> As a result, NCE stations rarely if ever are subject to candidate requests, and they are not included in candidates’ media buys. The rule should be eliminated for NCE stations.

➤ **73.2080 – Equal Employment Opportunities**

This rule prohibits employment discrimination and sets forth detailed procedures for recruitment and related record-keeping. Public Broadcasting urges that the rule is over-regulatory and unnecessarily burdensome, requiring stations to comply with recruitment procedures, employment initiatives, and excessively detailed record-keeping requirements; to prepare and file renewal-related, mid-term, and annual submissions; and to respond to random EEO audits.<sup>18</sup> While Public Broadcasting fully endorses the concept and reality of equal employment opportunity, it points out that employment practices are subject to oversight and enforcement elsewhere at the Federal level, by all 50 states and the District of Columbia, and at the local level in many cases. In addition, any history of adverse discrimination findings against a broadcast licensee (whether resulting from private litigation in court or by agency enforcement action) needs to be reported to the Commission and can be held against an entity’s suitability to continue as an FCC licensee at renewal time. Furthermore, CPB requires the collection and submission of employment information for all CPB-qualified NCE stations.

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<sup>17</sup> See Consolidated Appropriations Act of 2001, 106 P. L. 554, 114 Stat. 2763 (Dec. 21, 2000).

<sup>18</sup> Public broadcasting stations selected for random EEO audits have been required to hire additional staff solely to upload the audit response report to each individual public file for every television and radio license, which can require many hundreds of uploads. The online public file system limits the number and size of documents such that stations have also been forced to develop custom API software to upload the required documents.

While an argument could reasonably be made that the Commission simply does not need to regulate employment practices, and therefore the rule should be eliminated altogether, Public Broadcasting recommends that the rule could be retained, but its burdens at least minimized by reducing it to a non-discrimination prohibition and a general obligation to recruit for full time job vacancies, and by reducing required EEO filings to only those that would accompany license renewal applications.

➤ **73.3527 – Local Public Inspection File of NCE Stations**

Public Broadcasting urges the FCC to take a wholesale fresh look at the specific content requirements of the public inspection file that are applicable to NCE stations, and Public Broadcasting suggests that valid questions exist as to why any information still needs to be uploaded by a station to the FCC's online public file (as opposed to the FCC itself simply making documents and information about a station available for public view). For instance, the authorization and contour maps are already available in LMS, and the applications and ownership reports are already available in CDBS.

The most burdensome part of the public inspection file for NCE stations is the issues/programs list. Taking into consideration all NCE television and radio stations, literally thousands of hours of effort is required each quarter to generate and upload these lists. And yet, for decades, these lists do not appear to be actually used by the Commission or the public for any discernible purpose. Public Broadcasting is not aware of any circumstance in which the Commission determined that a station did or did not serve the public interest in its programming during a license term based on the information in these exhaustively compiled lists. This raises the reasonable question of whether this requirement serves any useful purpose, even though the failure of a station

to upload a quarterly report on time has occasionally resulted in fines or other sanctions. Once the requirement to produce these costly and unused lists is eliminated, then there would appear to be no reason to maintain any of the remainder of the public file for NCE stations.

➤ **73.3580 – Local Public Notice of Filing of Broadcast Applications**

This rule prescribes requirements for broadcast stations to give local public notice, by broadcast and/or publication, of the filing of virtually all broadcast facility and renewal applications other than those for minor changes and pro forma ownership changes. The requirements are extraordinarily complex and burdensome. For example, in the case of ownership changes, stations are required, among other things, to include endless lists of the officers and directors for both the buyer and the seller. Except perhaps for license renewal applications, Public Broadcasting does not perceive any reason why local public notice of applications should be required. In the case of license renewal applications, viewers or listeners of a station could be informed over the air that the station has filed a renewal application, which is available for viewing at a link on the station's website (which link would be to the renewal application in the FCC-maintained database).

➤ **73.3613 – Filing of Contracts**

This rule requires certain documents to be filed with the FCC (and maintained in a station's public inspection file). These documents include network contracts, articles, by-laws, documents affecting ownership and control (such as stock acquisition agreements), and local marketing agreements. This rule, as well as Section 73.1226(c), also requires certain other documents to be kept and made available on request, such as SCA

agreements and certain time sales/brokerage agreements. Public Broadcasting understands that the FCC rarely if ever examines any of the documents that are filed, particularly for NCE stations, and therefore it serves no purpose to routinely collect them. At most, the rule should only require the filing of such documents when specifically required for FCC determination on a particular matter.

➤ **73.3615 – Ownership Reports**

Following the Commission’s recent decisions on ownership reports,<sup>19</sup> this rule requires NCE stations to file ownership reports every two years on December 1 of odd-numbered years. However, other than in connection with a license transfer, there is no reason why these reports need to be filed every two years, instead of at four year intervals, or even only at license renewal time for each station. Reducing the frequency of this reporting requirement would perfectly serve the Commission’s goal in this Public Notice of advancing the public interest by “reducing unnecessary regulations and undue regulatory burdens.”<sup>20</sup>

➤ **76.66 – Satellite Broadcast Signal Carriage.**

This rule requires an election cycle every three years for television stations to elect retransmission consent or must-carry status for the two satellite carriers, DISH Network and DirecTV. The rule prescribes a detailed written process for making such elections, and in a handful of cases each election cycle these requirements turn out to be a trap for the unwary NCE-TV station, resulting in the loss of DBS carriage in the station’s

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<sup>19</sup> See *Promoting Diversification of Ownership in the Broadcasting Service et al.*, Report and Order, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 398 (2016); Order on Reconsideration, FCC 17-42 (rel. Apr. 21, 2017).

<sup>20</sup> Public Notice at 1.

market for the next three years. Given that NCE-TV stations have only one carriage option (must-carry), and the “election” is therefore simply a rote process, Public Broadcasting does not believe it is necessary for NCE-TV stations to go through this process every three years. In the context of cable television, NCE stations are not required to re-elect must-carry status and such status continues indefinitely unless and until something transpires that modifies the must-carry arrangement. The DBS rules should be aligned with the cable rules to permit a one-time election that continues for as long as the station remains qualified for carriage. In addition, the FCC should modernize the election process to permit digital communications between stations and carriers (rather than the existing outdated certified mail requirements that are unnecessarily cumbersome).

## Conclusion

Public Broadcasting appreciates the Commission's willingness to review and reconsider outdated and unnecessarily burdensome rules applicable to NCE stations, and Public Broadcasting urges the FCC to review the rules specified in these comments.

Respectfully submitted,

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