

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Complaints Against Various Broadcast )  
Licensees Regarding their Airing of the )  
"Golden Globe Awards" Program )

File No. EB-03-1H-0110

TO: The Commission

**COMMENTS OF PUBLIC BROADCASTERS  
ON PETITIONS FOR RECONSIDERATION**

The Association of Public Television Stations, Community Television of Southern California (KCET), Educational Broadcasting Corporation d/b/a Thirteen/WNET New York, Greater Washington Educational Telecommunications Association (WETA), KCTS Television, KQED, Inc., Oregon Public Broadcasting, the Public Broadcasting Service, Twin Cities Public Television, Inc. (TPT) and WGBH Educational Foundation (collectively, "Public Broadcasters") recognize the complexity of the task before the Commission in this proceeding.<sup>1</sup> There is no more sensitive area for government than reconciling the limited content regulation authorized by Congress<sup>2</sup> with the First Amendment and the Communications Act's prohibition against censorship.<sup>3</sup> We do not take a position on the merits of the *Order*, and we do not file these comments to add to the constitutional and legal arguments set out in the petitions. Rather, we file these comments to illustrate the extremely problematic and unintended effects that a lack of

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<sup>1</sup> In re *Complaints Against Various Broadcast Licensees Regarding Their Airing of the "Golden Globe Awards" Program*, Memorandum Opinion and Order, 19 FCC Rcd. 4975 (2004) (the "*Order*").

<sup>2</sup> See 18 U.S.C. § 1464 (2002).

<sup>3</sup> See 47 U.S.C. § 326 (2002).

measure in a Commission decision in this sensitive area can have on the production and presentation of serious news, documentary, dramatic, science and cultural programming.

The public television system consists of 357 noncommercial television stations serving the public in all 50 states and receiving national programming through PBS and other program distributors. Some of the most highly regarded programming in the United States is broadcast free over the air by public television stations. Last year, for example, PBS led the television industry for the sixth consecutive year with 10 daytime Emmy awards; its producers won seven news and documentary Emmys, leading in this category for the third consecutive year; and it won eight prime-time Emmys for its dramatic programming. It won eight George Foster Peabody awards, more than twice the number won by any commercial network, and three Alfred I. duPont-Columbia University awards for its news programming. Last year, President Bush presented public television Station KLRU(TV), Austin, Texas, with the National Medal for the Arts for the PBS series *Austin City Limits*, the first television program to be so honored in the 20 years since that award's creation. Public television programming is of great importance to the American public. In a recent representative month, for example, 70.9 percent of television-owning families in the United States -- 75.7 million households representing almost 144 million people -- watched public television for an average of more than seven and one-half hours per month. And in the Roper survey released in February 2004, PBS was given the public's top ranking for trustworthiness among public institutions.

Public Broadcasters take our responsibility to the American public seriously. This responsibility, to be sure, requires public television programming to take into account the tastes and sensibilities of our audiences. Yet, our responsibility to the

public requires a parallel faithfulness to the sometimes painful reality of the subjects on which we report in news, science and documentary programming. It also requires a parallel dedication to ensure that our cultural and dramatic programming reflects the true nature of artistic and dramatic endeavor and of life itself. It requires, in short, that our commitment to ensuring that our programming is tasteful and not offensive must not prevent our programming from achieving its core mission of educating and enlightening our audiences. We have struck this balance carefully and, so far, successfully. To date, no public television station has had an adjudicated finding of indecency entered against it. Indeed, historically our audiences have expected us to speak to serious and mature issues and to address artistic matters in uncensored terms when appropriate, and they are sophisticated enough to understand and appreciate our doing so.

The overbreadth of the Commission's decision in this docket has had the unintended consequence of undermining the balance we have struck over years of unwavering attention to careful programming practices. For the first time, producers and broadcasters of public television programming have engaged in significant self-censorship out of fear of government penalty. We have spent inordinate amounts of time scouring news, documentary and dramatic programming for words and visual elements that might be found to be "indecent" in isolation, despite clear support in the context of the work, and for words that might be found to be "profane." We have been forced, at increased expense, to provide multiple nationwide feeds of programs that would have been unthinkable to edit only weeks ago. In some cases, we have had to re-review upcoming programs that have aired in the past -- even as long as a decade ago -- to no complaint or controversy. As a result of these efforts to comply with the Commission's

new policies on indecency and profanity, some of our stations have been criticized by their audiences, not for airing programming that is “edgy” or too mature, but for engaging in “censorship” by editing programs.<sup>4</sup>

These efforts have been required in programming that is of exceptionally high quality and that present issues of overwhelming public importance. For example:

- It was necessary to determine whether to edit for language a *Frontline* documentary produced by WGBH about the workings of the Al Qaeda terrorist network because it included videotape of the second plane crashing into the World Trade Center and an expletive uttered by a horrified onlooker.
- An episode of *NOVA*, an award-winning science series produced by WGBH, contained dramatic footage from the Iraq war showing a bomb exploding near a convoy. An enraged and shocked U.S. soldier yelled to his commanding officer that a nearby Iraqi was “lying” and used the “f-word.” Despite the raw battlefield context and the extraordinary news value of the footage, editing the program in light of the current environment was considered.
- Even a program as innocuous as *Antiques Roadshow* has presented issues that have had to be considered. A segment involving a famous

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<sup>4</sup> As an example, consider this comment received from a viewer of Station WGBH(TV):

“*Prime Suspect* was another HUGE reason NOT to contribute to WGBH. Helen Mirren's salty character, Jane Tennison, had every word deemed 'off color' deleted by WGBH censors. Now I know why I watch BBC America and NOT WGBH. I have given up on PBS and WGBH.”

Consider also this comment received by Station WNET(TV):

“While we very much appreciate you showing *Prime Suspect*, we do not appreciate the censorship of language in the show. My wife and I have been past members of WNET (and WHYY and NJN), but will not renew our membership as long as your censorship policy remains in place.”

Yet another viewer comment on the same topic from KCET(TV):

“I just now finished viewing KCET’s airing of *Prime Suspect* on *Masterpiece Theatre* and was very disappointed to have noted multiple audio deletions occurring in the dialogue of *Prime Suspect*. I presume that since KCET and PBS present *Prime Suspect* on a program that they call *Masterpiece Theatre*, KCET and PBS must consider *Prime Suspect* to be a masterpiece. Are KCET and PBS in the habit of censoring masterpieces? If not, why did they delete portions of the dialogue occurring in *Prime Suspect*?”

50-year-old lithograph depicting a nude celebrity had to be considered for editing, despite the fact that it had run months ago to no complaint.

- KCET recently produced *The Gin Game* by D.L. Coburn for national broadcast as part of the series *PBS Hollywood Presents*. When the play was originally produced in 1978, it garnered four Tony nominations and was awarded the Pulitzer Prize for drama. This version, starring Dick Van Dyke and Mary Tyler Moore, was broadcast before the Commission's new policy was announced without editing in many communities but now must be reconsidered.
- Other issues that have required extensive attention have included whether the written correspondence of an infamous child killer, in a *Frontline* segment exploring his motivations, had to be obscured because the "f-word" was slightly visible on the screen, and whether the "f-word" being silently mouthed and said in a foreign language, in a serious dramatic program, violated the Commission's policies.

In each of these cases, the word or image in controversy was an integral part of a program of exceptional quality and public importance. Yet, serious and intensive consideration had to be given to editing these programs because of the Commission's new policies.

This self-censorship by public television producers and broadcasters, who have a longstanding, demonstrated and consistent track record of offering quality, stimulating and educational programming, has resulted in a loss to the public television system and to the public we serve. We point this out because it is critical to recognize that the Commission's new policies do not affect only commercial entertainment programs and live radio personalities battling for ratings. Serious news and documentary programming has been subjected to significant pressures and amendment as well.<sup>5</sup> It is true, of course, that instances of words such as the "f-word" in news and documentaries

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<sup>5</sup> This appears to have been a result that the *Order* sought to avoid. See *Order* ¶ 11 & n. 30 ("We do not envision that today's action will lead to licensees abandoning program material solely over uncertainty surrounding whether the isolated use of a particular word is indecent").

are rare.<sup>6</sup> But they occur, as they do inevitably in everyday life. The Commission's new questioning of the importance of the context in which language occurs can require the editing of legitimate news and documentary programming and, by extension, the redaction of the historical record.

It also must be recognized that the Commission's questioning of the essential role of context as a significant limiting factor in these determinations affects not only footage that might include the particular word dealt with in the *Order*, but also footage that includes other mature language. This is particularly true given the unbounded nature of the Commission's newly announced "profanity" standard. Public stations simply cannot afford to take the risk of broadcasting any material that could violate this broad new standard, regardless of the program's artistic merit, historical accuracy or newsworthiness, when the decision to broadcast could result in defense costs and fines. This is particularly the case when those fines are issued on a per-utterance basis and could be escalated significantly by Congress.

In dramatic programming, too, public broadcasting has a unique mission. Longstanding dramatic programs such as *Masterpiece Theatre*, as just one example, are

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<sup>6</sup> The impact of the *Order* on news programming is less than clear. In the *Order*, the Commission did not include the *Peter Branton* decision, Letter from Donna R. Searcy, Secretary, FCC, to Peter Branton, 6 FCC Rcd 610 (1991), on the list of decisions from which it was departing, see *Order* ¶ 12 nn. 31 & 32, and implied in another decision released the same day as the *Order* that *Peter Branton* was still good law. See *In re Infinity Radio License, Inc., Licensee of Station WLLD(FM), Holmes Beach, Florida*, File No. 99090433, FCC 04-48, ¶ 9 (Mar. 18, 2004) (holding that Infinity's live broadcast of material describing a sexual activity was indecent but finding that "[b]y comparison, the utterances cited in *Branton* were not presented in a vacuum, but during a news story concerning organized crime. Listeners were warned about the rough language and informed, *inter alia*, that Mr. Gotti's words came from a wiretap recording of material that the government had used as evidence at Mr. Gotti's trial."). The *Order's* discussion of *Branton* was, however, ambiguous. See *Order*, ¶ 9 & n. 25 ("This is not to suggest that the fact that a broadcast had a social or political value would necessarily render use of the 'F-Word' permissible").

among the premiere noncommercial and non-subscription venues for high-quality U.S. and international dramatic programming. Public broadcasting stations around the country regularly broadcast exceptional dramatic programming across their schedules. Again, the Commission's new policies have forced new processes for reviewing highly prized dramatic programming that are both time consuming and invasive into areas of artistic integrity that traditionally rely on the sensitivity and discretion of program producers rather than the judgments of lawyers. Dramatic programs that have been suitable for audiences around the world, and which would have been entirely appropriate for U.S. audiences up through the immediate past, now have been called into question. Award-winning producers have begun expressing serious doubts about whether free, over-the-air television still provides an appropriate venue for the best of the world's dramatic programming.

The "safe harbor" does not provide a ready answer to the struggle of editing serious television programming for our audiences. It is simply impossible for all public television programming that deals with serious themes and issues, or that might contain, in context, mature language, to air after 10:00 p.m. This is particularly true in time zones where "prime time" *ends* at 10:00 p.m.

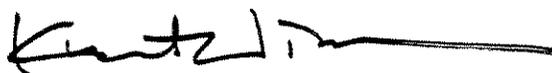
We do not question the Commission's authority to regulate broadcast indecency. But the extraordinary burden that overly broad findings of indecency place on serious producers of news, science, documentary, culture and dramatic programming suggests that the Commission should reconsider its policies so as to tailor narrowly its decisions to the facts at hand. The breadth of the *Order* will lead to a process by which free broadcast television requires scores of lawyers to screen program material with little

assurance that the public will ultimately receive the high-quality programming it expects and to which it is entitled from our nation's public television system. We urge the Commission to bear in mind the unintended consequences that result from overly broad content decisions as it undertakes its sensitive duty in this docket and others like it.

Respectfully submitted,

/s/ Lonna M. Thompson

Lonna M. Thompson  
*Vice President and General Counsel*  
Andrew D. Cotlar  
*Assistant General Counsel*  
ASSOCIATION OF PUBLIC TELEVISION  
STATIONS  
666 Eleventh Street, NW, Suite 1100  
Washington, DC 20001  
(202) 654-4200



Kurt Wimmer  
Amy L. Levine  
COVINGTON & BURLING  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2401  
(202) 662-6000

*Attorneys for the Public Broadcasting  
Service and WGBH Educational  
Foundation*

/s/ Susan Erburu Reardon

Susan Erburu Reardon  
*Executive Vice President and  
General Counsel*  
COMMUNITY TELEVISION OF SOUTHERN  
CALIFORNIA (KCET)  
4401 Sunset Boulevard  
Los Angeles, California 90027  
(323) 666-6500

/s/ Joshua C. Nathan

Joshua C. Nathan  
*Vice President, General Counsel  
and Secretary*  
EDUCATIONAL BROADCASTING  
CORPORATION D/B/A THIRTEEN/WNET  
NEW YORK  
450 West 33rd Street  
New York, New York 10001  
(212) 560-1313

/s/ Lisa Lindstrom Delaney

Lisa Lindstrom Delaney  
*Vice President and General Counsel*  
WETA  
2775 South Quincy Street  
Arlington, VA 22206  
(703) 998-2851

/s/ Monica Reisner

Monica Reisner  
*General Counsel*  
KCTS TELEVISION  
401 Mercer St.  
Seattle, Washington 98109  
(206) 728-6463



/s/ Margaret Berry

Margaret Berry  
*General Counsel & Corporate Secretary*  
KQED, INC.  
2601 Mariposa Street  
San Francisco, CA 94110  
415-553-2205

/s/ Kristin Ingram

Kristin Ingram  
*Attorney*  
OREGON PUBLIC BROADCASTING  
7140 S.W. Macadam Avenue  
Portland, Oregon 97219-3099  
(503) 977-7763

/s/ Katherine Lauderdale

Katherine Lauderdale  
*Senior Vice President and  
General Counsel*  
Kristine DeBry  
*Senior Counsel & Director of  
Legislative and Regulatory Affairs*  
PUBLIC BROADCASTING SERVICE  
1320 Braddock Place  
Alexandria, Virginia 222314-1698  
(703) 739-5000

/s/ Randy Lebedoff

Randy Lebedoff  
*Vice President and General Counsel*  
TWIN CITIES PUBLIC TELEVISION, INC.  
172 East Fourth Street  
Saint Paul, Minnesota 55101  
(651) 222-1717

/s/ Eric Brass

Eric Brass  
*Corporate Counsel*  
WGBH EDUCATIONAL FOUNDATION  
125 Western Avenue  
Boston, Massachusetts 02134  
(617) 300-2000

May 4, 2004

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of the Public Broadcasters on Petitions for Reconsideration was sent via first-class, U.S. mail on this 4th day of May, 2004, to the following:

KALB-TV  
Media General Communications, Inc.  
333 East Franklin Street  
Richmond, VA 23219

KARK-TV  
909 Lake Carolyn Parkway, #1450  
Irving, TX 75039

KBTB-TV  
Nexstar Broadcasting of Beaumont/Port Arthur  
909 Lake Carolyn Parkway, #1450  
Irving, TX 75039

KCEN-TV  
Channel 6, Inc.  
Post Office Box 6103  
17 South Third Street  
Temple, TX 76503

KCRA-TV  
KCRA Hearst-Argyle Television, Inc.  
888 Seventh Avenue  
New York, NY 10106

KFDM-TV  
Freedom Broadcasting of Texas, Inc.  
Post Office Box 7128  
Beaumont, TX 77706

KGW  
King Broadcasting Company  
400 South Record Street  
Dallas, TX 75202

KING-TV  
King Broadcasting Company  
400 South Record Street  
Dallas, TX 75202

KARE  
Multimedia Holdings Corporation  
7950 Jones Branch Drive  
McLean, VA 22107

KATV  
KATV, LLC  
Post Office Box 77  
Little Rock, AR 72203

KCBD  
Libco, Inc.  
639 Isbell Road, #390  
Reno, NV 89509

KCNC-TV  
CBS Television Stations, Inc.  
2000 K Street, NW, #725  
Washington, DC 20006

KETK-TV  
KETK Licensee L.P.  
Shaw Pittman (K.R. Schmeltzer)  
2300 N Street, NW  
Washington, DC 20037

KFOR-TV  
New York Times Management Services  
Corp. Center 1  
2202 NW Shore Boulevard, #370  
Tampa, FL 33607

KHAS-TV  
Greater Nebraska Television, Inc.  
6475 Osborne Drive West  
Hastings, NE 69801

KKCO  
Eagle III Broadcasting, LLC  
2325 Interstate Avenue  
Grand Junction, CO 81505

WNBC, *et al.*  
National Broadcasting Company, Inc.  
1299 Pennsylvania Avenue, NW, 11th Floor  
Washington, DC 20004

KOB-TV  
KOB-TV, LLC  
3415 University Avenue  
Atten: L. Wefring  
St. Paul, MN 55114

KPRC-TV  
Post-Newsweek Stations, Houston, LP  
8181 Southwest Freeway  
Houston, TX 77074

KRIS-TV  
KVOA Communications, Inc.  
409 South Staples Street  
Corpus Christi, TX 78401

KSDK  
Multimedia KSDK, Inc.  
c/o Gannett Co., Inc.  
7950 Jones Branch Drive  
McLean, VA 22107

KSNF  
Nexstar Broadcasting of Joplin, LLC  
909 Lake Carolyn Parkway, #1450  
Irving, TX 75039

KTIV  
KTIV Television, Inc.  
3135 Floyd Boulevard  
Sioux City, IA 51105

KWES-TV  
Midessa Television Company  
Post Office Box 60150  
Midland, TX 79711

KYTV  
KY3, Inc.  
999 West Sunshine Street  
Springfield, MO 65807

KOAA-TV  
Sangre de Cristo Communications, Inc.  
2200 Seventh Avenue  
Pueblo, CO 81003

KPNX  
Multimedia Holdings Corporation  
7950 Jones Branch Drive  
McLean, VA 22107

KRBC-TV  
Mission Broadcasting, Inc.  
544 Red Rock Drive  
Wadsworth, OH 44281

KTGF  
MMM License LLC  
900 Laskin Road  
Virginia Beach, VA 23451

KSHB-TV  
Scripps Howard Broadcasting Company  
312 Walnut Street  
Cincinnati, OH 45202

KTEN  
Channel 49 Acquisition Corporation  
Post Office Box 549  
Hampton, VA 23669

KUSA-TV  
Multimedia Holdings Corporation  
c/o Gannett Co.  
7950 Jones Branch Drive  
McLean, VA 22107

KWWL  
Raycom America, Inc.  
RSA Tower, 20th Floor  
201 Monroe Street  
Montgomery, AL 36104

WANE-TV  
Indiana Broadcasting, LLC  
4 Richmond Square  
Providence, RI 02906

WAVE

Libco, Inc.  
639 Isbell Road, #390  
Reno, NV 89509

WBOY-TV

West Virginia Media Holdings, LLC  
Post Office Box 11848  
Charleston, WV 25339

WCNC-TV

WCNC-TV, Inc.  
400 South Record Street  
Dallas, TX 75202

WCYB-TV

Appalachian Broadcasting Corp.  
101 Lee Street  
Bristol, VA 24201

WDSU

New Orleans Hearst-Argyle Television, Inc.  
888 Seventh Avenue  
New York, NY 10106

WFIE

Libco, Inc.  
639 Isbell Road, #390  
Reno, NV 89509

WFMJ-TV

WFMJ Television, Inc.  
c/o Shaw Pittman, LLP  
2300 N Street, NW  
Washington, DC 20037

WHDH-TV

WHDH-TV Government Center  
7 Bulfinch Place  
Boston, MA 02114

WHO-TV

New York Times Management Services  
Corporate Center 1  
2202 NW Shore Boulevard, #370  
Tampa, FL 33607

WBBH-TV

Waterman Broadcasting Corp. of Florida  
3719 Central Avenue  
Fort Myers, FL 33901

WBRE-TV

Nexstar Broadcasting of NE PA, LLC  
909 Lake Carolyn Parkway, #1450  
Irving, TX 75309

WCSH

Pacific & Southern Co., Inc.  
c/o Gannett Co.  
7950 Jones Branch Drive  
McLean, VA 22107

WDIV-TV

Post-Newsweek Stations, Michigan, Inc.  
550 West Lafayette Boulevard  
Detroit, MI 48226

WESH

Orlando Hearst-Argyle Television, Inc.  
888 Seventh Avenue  
New York, NY 10106

WFLA-TV

Media General Communications, Inc.  
333 East Franklin Street  
Richmond, VA 23219

WGAL

WGAL Hearst-Argyle Television, Inc.  
888 Seventh Avenue  
New York, NY 10106

WHEC-TV

WHEC-TV, LLC  
c/o Hubbard Broadcasting, Inc.  
3415 University Avenue  
St. Paul, MN 55114

WILX-TV

Gray MidAmerica TV Licensee Corp.  
500 American Road  
Lansing, MI 48911

WJFW-TV  
Northland Television, Inc.  
Post Office Box 858  
Rhineland, WI 54501

WLWT  
Ohio/Oklahoma Hearst-Argyle TV, Inc.  
Post Office Box 1800  
Raleigh, NC 27602

WMFE-TV  
Community Communications, Inc.  
11510 East Colonial Drive  
Orlando, FL 32817

WMTV  
Gray MidAmerica TV Licensee Corp.  
615 Forward Drive  
Madison, WI 53711

WNYT  
WNYT-TV, LLC  
c/o Hubbard Broadcasting, Inc.  
3415 University Avenue  
St. Paul, MN 55114

WOWT-TV  
Gray MidAmerican TV Licensee Corp.  
3501 Farnam Street  
Omaha, NE 68131

WPXI  
WPXI-TV Holdings, Inc.  
3993 Howard Hughes Parkway, #250  
Las Vegas, NV 89109

WRIC-TV  
Young Broadcasting of Richmond, Inc.  
301 Arboretum Place  
Richmond, VA 23236

WSAZ-TV  
Emmis Television License Corporation  
3500 West Olive Avenue, #300  
Burbank, CA 91505

WKYC-TV  
WKYC-TV  
c/o Gannett Co., Inc.  
7950 Jones Branch Drive  
McLean, VA 22107

WMC-TV  
Raycom America, Inc.  
RSA Tower, 20th Floor  
201 Monroe Street  
Montgomery, AL 36104

WMGT  
Endurance Broadcasting, LLC  
c/o Dan Smith  
104 North Main Street  
Stillwater, MN 55082

WNDU-TV  
Michiana Telecasting Corp.  
Post Office Box 1616  
South Bend, IN 46634

WOOD-TV  
Wood License Company, LLC  
120 College Avenue, SE  
Grand Rapids, MI 49503

WPMI  
Clear Channel Broadcasting Licenses, Inc.  
2625 South Memorial Drive, #A  
Tulsa, OK 74129

WRCB-TV  
Sarkes Tarzian, Inc.  
205 North College Avenue  
Bloomington, IN 47402

WSAV-TV  
Media General Communications, Inc.  
333 East Franklin Street  
Richmond, VA 23219

WSFA  
Libco, Inc.  
639 Isbell Road, #390  
Reno, NV 89509

WSMV-TV  
Meredith Corp. Television Stations  
1716 Locust Street  
Des Moines, IA 50309

WTMJ-TV  
Journal Broadcast Corporation  
3355 South Valley View Boulevard  
Las Vegas, NV 89102

WVLA  
Knight Broadcasting of Baton Rouge Lic. Corp.  
700 St. John Street, #301  
Lafayette, LA 70501

WWLP  
WWLP Broadcasting, LLC  
4 Richmond Square  
Providence, RI 02906

WYFF  
WYFF Hearst-Argyle Television, Inc.  
888 Seventh Avenue  
New York, NY 10106

Brent Bozell  
Parents Television Council  
707 Wilshire Boulevard, Suite 2075  
Los Angeles, CA 90017

Robert Corn-Revere  
Ronald G. London  
Davis Wright Tremaine, L.L.P.  
1500 K Street, NW, Suite 450  
Washington, DC 20005

F. William LeBeau  
National Broadcasting Company, Inc.  
1299 Pennsylvania Avenue, NW, 11th Floor  
Washington, DC 20004

WTHR  
VideoIndiana, Inc.  
1000 North Meridian Street  
Indianapolis, IN 46204

WTVY  
Gray MidAmerica TV Licensee Corp.  
Post Office Box 1089  
Dothan, AL 36302

WWBT  
Jefferson-Pilot Communications Co. of VA  
Post Office Box 12  
Richmond, VA 23218

WXIA-TV  
Gannett Georgia, LP  
c/o Gannett Co., Inc.  
7950 Jones Branch Drive  
McLean, VA 22107

Robert R. Sparks, Jr., Esq.  
Herge, Sparks & Christopher  
6862 Elm Street, Suite 360  
McLean, VA 22101

Kathleen A. Kirby  
Wiley Rein & Fielding LLP  
1776 K Street, NW  
Washington, DC 20006

Margaret L. Tobey  
Morrison & Foerster, LLP  
2000 Pennsylvania Avenue, NW, Suite 5500  
Washington, DC 20006

  
\_\_\_\_\_  
Amy L. Levine