

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

In the Matter of:)
)
)
Broadcast Localism) MB Docket No. 04-233
)

TO: The Commission

**REPLY COMMENTS OF
COLLEGIATE BROADCASTERS, INCORPORATED**

Collegiate Broadcasters, Inc. ("CBI")¹ submits this reply to certain comments on the Commission's *Notice of Inquiry* ("Notice") in this proceeding.² In the *Notice*, the Commission raised many questions concerning localism in broadcasting.

In this reply, CBI agrees with the overwhelming majority of comments from those in the industry (both owners and representative organizations) who opposed any proposal that would require stations to incur new burdens. Many of the topics raised by the Commission have caused many to note that arbitrary quotas for the types and amounts of "local" content would likely not withstand a court challenge based on first amendment issues and in other cases the cited lack of need or even authority to implement new content regulations.

CBI also agrees with the general tone of the comments filed by REC Networks concerning translators and LPFM priorities and joins REC Networks in calling for freeze

¹ CBI is a nonprofit, incorporated association of educational television and radio stations from across the country which serves and represents its membership.

² *Broadcast Localism, Notice of Inquiry* in MB Docket No. 04-233, 19 FCC Rcd 12425 (2004) ("Notice").

on all translator applications so that the issues raised by CBI and REC Networks can be examined fully by all interested parties.

I. For Both Legal And Policy Reasons, The Vast Majority of Industry Commenters Opposed New Regulations Concerning Content

CBI, after reviewing the initial comments filed in this proceeding finds that it concurs, in many instances with the numerous broadcasters and broadcast organizations that have filed comments. CBI agrees that the Commission, would need an extraordinary record to adopt new regulations that would implement programming quotas, lacks the authority to reinstitute ascertainment like practices and that dictating the content, even in broad strokes, is unwise, unwarranted, and contrary to the first amendment.

II. LPFM Stations Should Be Given Preference to Non-Local Translators

CBI agrees with the recommendation of REC Networks (p. 14) that a temporary freeze should be implemented on all new construction permits (and licenses) for translators until new rules concerning the allocation priorities between translators and LPFM stations are implemented. Specifically, CBI requests that all comments concerning this topic be considered by the Commission and subsequently it should issue an NPRM to address the issues raised by CBI and REC Networks. This request is warranted by the continued and immediate threat that some translators pose to potential new, locally operated, LPFM stations that are precluded from filing for frequencies due to distant/non-local translators. This request is consistent with the public interest as it would allow stations that are compelled to serve the local public interest to come into existence at the sole expense of certain translators that would not produce any local programming in the absence of emergencies and the solicitation of "financial support". Further it would allow the commission to investigate the allegations filed by REC Network with respect to the trafficking of licenses and CP's.

Thousands of "comments" were filed by the listeners of stations and translators that carry the programming of Educational Media Foundation ("EMF"). As CBI noted in our original comments³, there are instances where those filing with the Commission were fearful of losing their station due to this NOI, yet it was apparent from their comments that they were in fact listening to a full powered station. In preparing our reply comments, CBI examined a large number of these submissions by the public. This closer look revealed that a majority of the comments that we examined, were from those listening to full power stations and not translators. CBI does acknowledge that many of the comments did not provide sufficient information to make a determination concerning the facilities listener used to hear the K-Love or Air-1 programming. We would suggest that the FCC not consider any comments from those who can be determined to be listening to full power stations and further that if it can not be reasonably deduced that the listener is actually listening to a distant translator (as opposed to an in market translator of a full service facility) that those comments also be discarded because they can not be determined relevant to this proceeding.

The actual filing by EMF is shallow and holds little water when subjected to scrutiny. EMF's primary contention against giving LPFM stations preference to translators is the "potential deprivation of [service to] millions of listeners" (p. 3). EMF supplies no information or facts to substantiate the claim that "millions of listeners" will lose service.

Next, EMF tries to use the fact that LPFM's are not compelled to originate local programming to its advantage, when their distant translators are prohibited from originating any local programming other than emergency information or donor solicitations and acknowledgements. The simple fact that an LPFM *might not* produce local content is not ample justification to prevent all LPFM's from the opportunity to offer local content, even if it is an "over-the-air" jukebox. Such stations are likely to offer programming that is distinctly different from the corporate stations and likely to air local music, which would answer some of the concerns of the many musicians that filed

³ CBI at 45

comments in this proceeding. (The Commission should note that in a majority of the comments from musicians where "college" radio is mentioned, it is mentioned as the sole shining star with respect to access by local artists.)

In an interesting twist, EMF tries to use the ability, but not the requirement to do something, as a reason to change the rules and to give their position some weight. EMF proposes (p. 4) to increase localism with a rule change that would allow translators to air local public service announcements and other local announcements of particular interest to the communities. While such a rule change could allow a limited amount of "localism", EMF does not propose that the rule change be accompanied with a requirement to make use of the proposed rule. Further, this smoke screen would not allow the translator to develop a true local presence in the manner possible by LPFM stations.

EMF also takes a quote from the *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, (1990), out of context. The issue here is of broadcasters' service to a community, not the changing of a community of license for an existing station. Further, there is an expectation that sufficient public interest factors will be present to offset, mainly in the form of the proposed LPFM station.

EMF then tries to muddy the waters by talking about potential interference, somehow implying that the Commission's rules concerning LPFM are flawed. The Commission's rules concerning LPFM allocations allow for more access to the airwaves and a more efficient use of the available spectrum. As the Commission is fully cognizant, the rules could be relaxed even further to allow for more LPFM stations as per the Mitre Report. This argument by EMF is simply a non-issue.

EMF also fails to mention that many of those who *might* be affected could still access programming from EMF through their presence on the Internet. Even at dial-up speed, the EMF can listeners can access the EMF programming via the Internet.

Finally, the CBI comments and those of REC networks, if adopted would protect most of EMF's local translators. Further, given the power limitations of LPFM stations, many of the translators that could be affected by the CBI and REC proposals could reduce power, change frequencies or relocate to a new physical location in order to prevent from being silenced. If the Commission does issue an NPRM concerning this topic, as CBI suggests, the LPFM community will rise to show that their stations do in fact, offer local programming and are appreciated by their communities and are thus not an unproven new service.

The EMF arguments hold no water and the hysteria they have generated and instilled in their listeners is unwarranted and a thinly veiled attempt to persuade the commission via "public pressure", when the pressure is being applied by mis/uninformed people in a manner that is a potential abuse of the Commission's procedures.

III. Local Public Inspection Files

Almost without exception, commenters failed to offer any input concerning the requirements for stations to maintain and make available to the station a Public Inspection File ("PIF"). CBI opposes any additional regulations that would require broadcasters to incur additional burdens concerning the PIF. The lack of comments from the public and 'watch dog' organizations would seem to indicate that the location, availability and contents of the public file are not an issue worthy of further consideration by the Commission.

While we agree that there is no basis for adding burdens with respect to the PIF, we restate our request that stations be afforded latitude with respect to the location of the PIF and specifically request this latitude at stations that do not meet the threshold requirements of filing regular EEO requirements. To be precise we ask that stations with 5 or fewer full time employees be allowed to place the PIF file in a location other than the main studio in order to *increase* its availability to the public. This suggestion combined with our suggestion in our initial comments (and later in these reply comments)

concerning main studio staffing would allow these small stations with flexibility concerning their making their studios, management and PIF available to the public, while affording needed relief from regulations that do not take into account the unique circumstances surrounding such entities.

IV. Studio Staffing And Management Presence

Jones Eastern effectively created a standard that requires a management presence AND a staff presence at stations during "normal business hours". These "rules" are well intended, but they do not take into account the ability of small stations to reasonably meet the requirements. For some CBI member stations, management truly consists of a handful of volunteers. At other stations, this handful of volunteers is supplemented by a single paid person who is assigned to other responsibilities in addition to management of the station. Other scenarios exist that often preclude stations for the minimum staffing requirements resulting from Jones Eastern and subsequent interpretations of Jones Eastern by the Commission.

CBI does not intend to suggest that stations personnel be unavailable to the public rather than the requirement for personnel to always be available during regular business hours is an undue burden for many stations. Our recommendations⁴ would allow a station to be in compliance with the intent of the current "rules" by specifically adopting rules that would allow stations to provide a meaningful presence outside of normal business hours in addition to normal business hours. This added flexibility would allow the stations flexibility in complying with the rules and provide some members of the public access to the file when they otherwise would be precluded from access.

V. Broaden The Scope Of What Is Considered Local Content

CBI opposes any new regulations that would place additional burdens on stations to carry specific programming or perform formal ascertainment of local needs. In our

⁴ CBI at 18-25

initial comments, we provided examples of what the Commission could consider if it opted to make new regulations concerning these issues. For clarification, these were only examples of what we felt might be implemented if the Commission opted to act against our comments.

Along these lines, if the Commission were to adopt some sort of criteria to measure a stations compliance to meet its obligations to operating in the public interest convenience and necessity (which we would oppose as we think that the local licensee's judgment is the most proper tool and not that of some generic regulations developed by those far removed for the many individual communities), the criteria must be very broad and include many areas which might not historically been considered to be of significance.

VI. Conclusion

CBI opposes any new regulations that would burden its members and requests the changes above. These changes would permit stations to comply with the rules proposed in a manner that is much less burdensome. Further, CBI urges the Commission to immediately freeze translator actions while it examines the issues raised by CBI, REC Networks and others.

Respectfully submitted,
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