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Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Broadcast Localism)

MB Docket No. 04-233)

**REPORT ON BROADCAST LOCALISM
AND NOTICE OF PROPOSED RULEMAKING**

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By the Commission: Chairman Martin and Commissioner Tate issuing separate statements;
Commissioners Copps and Adelstein concurring in part, dissenting in part, and
issuing separate statements; Commissioner McDowell approving in part, concurring
in part, and issuing a statement.

TABLE OF CONTENTS

<u>Heading</u>	<u>Paragraph No.</u>
I. INTRODUCTION.....	1
II. BACKGROUND.....	4
III. DISCUSSION.....	11
A. COMMUNICATION BETWEEN LICENSEES AND THEIR COMMUNITIES.....	11
1. Issues.....	11
2. Public Comments.....	13
3. Issues for Commission Action.....	16
B. NATURE AND AMOUNT OF COMMUNITY-RESPONSIVE PROGRAMMING.....	30
1. Issues.....	30
2. Public Comments.....	31
3. Issues for Commission Action.....	40
C. POLITICAL PROGRAMMING.....	56
1. Issues.....	56
2. Public Comments.....	59
3. Issues for Commission Action.....	67
D. UNDERSERVED AUDIENCES.....	70
1. Issues.....	70
2. Public Comments.....	71
3. Issues for Commission Action.....	73
E. DISASTER WARNINGS.....	82
1. Issues.....	82
2. Public Comments.....	84

3. Issues for Commission Action.....	87
F. NETWORK AFFILIATION RULES	89
1. Issues	89
2. Public Comments.....	92
3. Issues for Commission Action.....	95
G. PAYOLA / SPONSORSHIP IDENTIFICATION.....	98
1. Issues.....	98
2. Public Comments.....	104
3. Issues for Commission Action.....	108
H. LICENSE RENEWAL PROCEDURES	114
1. Issues	114
2. Public Comments.....	116
3. Issues for Commission Action.....	122
I. ADDITIONAL SPECTRUM ALLOCATIONS	126
1. Issues	126
2. Public Comments.....	130
3. Issues for Commission Action.....	132
IV. CONCLUSION	143
V. ADMINISTRATIVE MATTERS	145
A. Initial Regulatory Flexibility Act Analysis	145
B. Initial Paperwork Reduction Act of 1995 Analysis	146
C. Ex Parte Rules.....	150
D. Filing Requirements.....	151
VI. ORDERING CLAUSES.....	157
APPENDIX A- Principal Commenters and Reply Commenters	
APPENDIX B- Initial Regulatory Flexibility Analysis	

I. INTRODUCTION

1. This Report on Broadcast Localism and Notice of Proposed Rulemaking (the "Report") provides an overview of the record in this docket, and our conclusions as the result of our review of that record. It also describes actions that we have taken or intend to take in this and the other ongoing Commission proceedings that we reference to ensure that broadcasters are appropriately addressing the needs of their local communities. Finally, the Report includes a Notice of Proposed Rulemaking which seeks public comment on certain issues related to several of these actions that we propose to take. As described below, the voluminous record here demonstrates that some broadcasters devote significant amounts of time and resources to airing "programming that is responsive to the needs and interests of their communities of license."¹ At the same time, in written comments and testimony received during six related field hearings, many other commenters have raised serious concerns that broadcasters' efforts, as a general matter, fall far short from what they should be. Specifically, the record indicates that many stations do not engage in the necessary public dialogue as to community needs and interests and that members of the public are not fully aware of the local issue-responsive programming that their local stations have aired.² Against this backdrop, the Commission proposes certain changes to its rules and policies that will promote both localism and diversity. We also discuss ways to encourage broadcasters to

¹ *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425 ¶ 1 (2004) (the "NOI").

² See, e.g. Testimony of Martin Kaplan, Associate Dean, Annenberg School for Communication, University of Southern California (delivered by Joseph Salzman, Associate Dean, Annenberg School for Communication) (Monterey Tr. 6B-68).

improve programming targeted to local needs and interests, and to provide more accessible information about those on-air efforts to the people in their communities.

2. The Report focuses in particular on broadcaster efforts to provide community-responsive programming such as news and public affairs, and programming targeted to the particular needs or interests of certain segments of the public.³ Because the centerpiece of localism is the communication between broadcasters and the members of the public that they are licensed to serve, the Report also addresses current efforts undertaken by both broadcasters and the Commission itself to make relevant information concerning broadcasters' efforts to serve their communities readily available to the public. The record here suggests that the dialogue between broadcasters and their audiences concerning stations' localism efforts is not ideal. Similarly, it is apparent that many listeners and viewers know little about Commission processes, such as the agency's review of license renewal applications and its complaint procedures, which allow the public to effectively raise concerns about broadcasters' performance.

3. Given the record, we conclude that modification of certain of our rules, policies and practices may be necessary to address the deficiencies of many broadcasters in meeting their obligation to serve their local communities. These proposed changes are intended to promote localism by providing viewers and listeners greater access to locally responsive programming including, but not limited to, local news and public affairs matter. The proposed modifications are also designed to promote diversity by increasing and expanding broadcast ownership opportunities for minority- and women-owned businesses and small businesses. As a result, the actions discussed herein will allow greater diversity in what is seen and heard over the airwaves, and ensure that communities have access to valuable, locally responsive programming.

³ The *NOI* specifically excluded from consideration in this inquiry the subject of the Commission's structural broadcast ownership rules. *NOI*, 19 FCC Rcd at 12427, ¶ 5. These rules are considered in *2006 Quadrennial Regulatory Review-Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* (MB Docket No. 06-121); *2002 Quadrennial Regulatory Review-Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* (MB Docket No. 02-277); *Cross-Ownership of Broadcast Stations and Newspapers* (MM Docket No. 01-235); *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets* (MM Docket No. 01-317); *Definition of Radio Markets* (MM Docket No. 00-244); *Ways to Further Section 257 Mandate and To Build on Earlier Studies* (MB Docket No. 04-228); *Public Interest Obligations of TV Broadcast Licensees* (MM Docket No. 99-360), Report and Order (adopted Dec. 18, 2007).

II. BACKGROUND

4. In August 2003, the Commission launched a “Localism in Broadcasting” initiative to review, and possibly enhance, localism practices among broadcasters, which are designed to ensure that each station treats the significant needs and issues of the community that it is licensed to serve with the programming that it offers.⁴ In addition to establishing procedures by which the Commission would study the state of broadcast localism and take any steps necessary to strengthen such efforts by licensees, on July 1, 2004, the Commission issued the *NOI* concerning localism. Through the *NOI*, the Commission sought direct input from the public on how broadcasters are serving the interests and needs of their communities; whether the agency needs to adopt new policies, practices, or rules designed directly to promote localism in broadcast television and radio; and, if so, what those policies, practices, or rules should be.⁵

5. The *NOI* observed that the concept of localism has been a cornerstone of broadcast regulation for decades. The concept derives from Title III of the Communications Act of 1934, as amended (the “Communications Act”), and is reflected in and supported by a number of current Commission policies and rules. Title III generally instructs the Commission to regulate broadcasting as the public interest, convenience, and necessity dictate, and Section 307(b) explicitly requires the Commission to “make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”⁶ In carrying out the mandate of Section 307(b), the Commission has long recognized that “every community of appreciable size has a presumptive need for its own transmission service.”⁷ The Supreme Court has stated that “[f]airness to communities [in distributing radio service] is furthered by a recognition of local needs for a community radio mouthpiece.”⁸

6. The Commission has consistently held that, as temporary trustees of the public’s airwaves, broadcasters are obligated to operate their stations to serve the public interest—specifically, to air programming responsive to the needs and issues of the people in their communities of license.⁹ The *NOI* noted that our broadcast regulatory framework is designed to foster a system of local stations that respond to the unique concerns and interests of the audiences within the stations’ respective service areas.¹⁰

7. The *NOI* also took note that, during the Commission’s 2002 review of its structural broadcast ownership rules, the agency received public comments indicating that many broadcasters may be failing to meet the needs of their local communities.¹¹ In response, the Commission opened this separate inquiry proceeding to seek input on a number of issues related to broadcast localism. Among them were questions as to how broadcasters are communicating with the communities that they serve and are serving the needs of those communities, including whether stations are airing a sufficient amount of

⁴ *FCC Chairman Powell Launches “Localism in Broadcasting” Initiative*, News Release (Aug. 20, 2003), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-238057A1.pdf.

⁵ *NOI*, 19 FCC Rcd at 12427 ¶ 7.

⁶ 47 U.S.C. § 307(b).

⁷ *Pacific Broadcasting of Missouri LLC*, 18 FCC Rcd 2291, 2293 (2003) (quoting *Public Service Broadcasting of West Jordan, Inc.*, 97 F.C.C. 2d 960, 962 (Rev. Bd. 1984)).

⁸ *FCC v. Allentown Broadcasting Corp.*, 349 U.S. 358, 362 (1955).

⁹ See, e.g., *NOI*, 19 FCC Rcd 12425 ¶ 1.

¹⁰ *NOI*, 19 FCC Rcd at 12426 ¶ 2.

¹¹ *Id.* at 12427 ¶ 5.

community-responsive programming, such as news, political material and disaster warnings, as well as the state of their service to traditionally underserved audiences. It also sought comment on the relationship between networks and their affiliated stations, payola and sponsorship identification, the license renewal process and possible additional spectrum allocations. The *NOI* also asked whether, based on that analysis, the Commission should take action to ensure that licensees meet their localism obligations or, in the alternative, continue to rely on market forces and the existing issue-responsive programming rules to encourage broadcasters to meet their obligations.¹²

8. In addition to the *NOI*'s call for written comments, the Commission conducted six field hearings: in Charlotte, North Carolina (October 22, 2003); San Antonio, Texas (January 28, 2004); Rapid City, South Dakota (May 26, 2004); Monterey, California (July 21, 2004), Portland, Maine (June 28, 2007), and Washington, D.C. (October 31, 2007). During those hearings, attended by various commissioners and members of the Commission staff, the agency engaged in dialogue with industry and civic leaders, educators and broadcasters, as well as members of the public, to obtain information concerning the issues articulated in the *NOI*. The hearings included 86 formal presentations and remarks from community, interest group, and broadcaster representatives, as well as elected and appointed officials from state and federal governments. The proceedings also included testimony from 421 additional participants during "open microphone" sessions. The written materials and transcripts of the oral testimony gathered at those hearings have been placed into the record of this proceeding.¹³

9. As of December 2007, the Commission has received over 83,000 written submissions from commenters including broadcasters, broadcast industry organizations, public interest groups, and members of the public. Many broadcast entities submitted information with their comments outlining the process that each follows to determine the needs and interests of people within their respective communities of license. Licensee commenters also provided detailed data concerning the amount, nature, and variety of the programming that each airs to meet those needs and interests. A number of public interest organizations and educators submitted with their comments studies of various aspects of the nature and quality of local broadcast programming.

10. In the following section of this Report, we summarize the record of the comments and testimony amassed in this proceeding for each of the nine general localism areas of inquiry specified in the *NOI*: (1) communication between licensees and their stations' communities; (2) nature and amount of community-responsive programming; (3) political programming; (4) underserved audiences; (5) disaster warnings; (6) network affiliation rules; (7) payola/sponsorship identification; (8) license renewal procedures; and (9) additional spectrum allocations. We then provide our analysis of the pertinent record, and note those areas where we conclude that revision of our rules, procedures, and policies is called for to ensure that broadcasters effectively meet the needs and problems of their communities with the programming that they air. With regard to some areas of concern, we conclude that additional information and guidance is necessary before we so act, and pose certain questions for comment by members of the public.¹⁴

¹² *Id.* at 12427-28 ¶ 7.

¹³ References to testimony received at the six localism hearings are made herein by the page(s) of the transcript of the hearing at which the testimony was given (*i.e.*, "Charlotte Tr. __," "San Antonio Tr. __," "Rapid City Tr. __," "Monterey Tr. __," "Portland Tr. __," or "Washington, D.C. Tr. __").

¹⁴ Commenters should confine their submissions to the specific issues for which comment is sought herein. With regard to the issues raised in the other ongoing or contemplated Commission proceedings discussed in this Report, because those matters will be resolved with the record of each such proceeding, they should not be addressed in comments filed in the above-captioned rulemaking proceeding.

III. DISCUSSION

A. COMMUNICATION BETWEEN LICENSEES AND THEIR COMMUNITIES

1. Issues

11. As noted in the *NOI*, in the past, the Commission formally regulated the manner in which broadcasters obtained input from their local communities regarding matters of local interest, in order to ensure that they air programming that responded to those interests. Through its "ascertainment" requirement, the Commission directed broadcasters to comply with detailed procedures for determining the problems, needs, and interests of their communities.¹⁵ In addition, the Commission required licensees to maintain programming logs, which broadcasters used to inform their communities about how they serve the public interest, for purposes of program planning, and to ensure compliance with program oversight by the Commission.¹⁶ In the 1980s, the Commission eliminated these requirements, first for radio (in 1981), and then for television (in 1984), concluding that market forces, in conjunction with the imposition of an issue-responsive programming documentation obligation and the petition to deny process, could be relied upon to ensure that broadcasters aired programming responsive to the needs and interests of their communities.¹⁷ The Commission indicated that it would no longer regulate how a broadcaster determined those needs and interests, and would require only that a station maintain issues/programs lists of its most significant treatment of community issues, updated quarterly, in its public inspection file.¹⁸

12. The Commission has continued to monitor the manner by which broadcasters receive local community input. In the *DTV Public Interest NOI*, the Commission discussed the requests of certain groups that the agency more closely regulate the way in which television broadcasters determine the needs and interests of their communities and report on how they fulfill those needs and interests.¹⁹ Based on the comments received, the Commission released the *Enhanced Disclosure NPRM*, which proposed to replace the issues/programs lists with a standardized form.²⁰ As discussed in more detail below, by Report and Order adopted on November 27, 2007, the Commission adopted a form that requires television licensees to report on their efforts to identify the programming needs of various segments of their communities, and to list their community-responsive programming broadcast, by

¹⁵ See generally, *Primer on Ascertainment of Community Problems by Broadcast Applicants*, Report and Order, 27 F.C.C. 2d 650 (1971); *Ascertainment of Community Problems by Broadcast Applicants*, First Report and Order, 57 F.C.C. 2d 418, 442 (1976) ("*Renewal Primer*").

¹⁶ See, e.g., *Amendment of Section 3.663(a) (Now § 73.670), the Program Logging Rules for Television Broadcast Stations*, Report and Order, 5 F.C.C.2d 185 (1966); *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Notice of Proposed Rule Making, 87 F.C.C.2d 716, 721 ¶ 12 (1981).

¹⁷ See *Deregulation of Radio*, Report and Order, 84 F.C.C.2d 968, 997-98 (1981) ("*Radio Deregulation Order*"); *Revision of Programming and Commercialization Policies, Ascertainment Requirements and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 F.C.C. 2d 1075, 1099 (1984) ("*Commercial Television Deregulation Order*").

¹⁸ See *Radio Deregulation Order*, 84 F.C.C.2d at 1009-10 ¶¶ 103-05; *Commercial Television Deregulation Order*, 98 F.C.C.2d at 1107-08 ¶ 71. See also 47 C.F.R. §§ 73.3526(e)(11)(i) (commercial television issues/program lists); 73.3526(e)(12) (commercial radio issues/programs lists); 73.3527(e)(8) (noncommercial radio and television issues/programs lists).

¹⁹ See *Public Interest Obligations of TV Broadcast Licensees*, Notice of Inquiry, 14 FCC Rcd 21633, 21640-41 ¶ 15 ("*DTV Public Interest NOI*").

²⁰ See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rule Making, 15 FCC Rcd 19816, 19819-22 ¶¶ 7-14 (2000) ("*Enhanced Disclosure NPRM*").

category.²¹ The *Enhanced Disclosure Order* also requires that such licensees make these forms, as well as most of the rest of their station public inspection files, available on the Internet, for access by members of the public at no charge.²² As discussed *supra*, in the *NOI*, the Commission sought comment on other steps, beyond those contemplated in the *Enhanced Disclosure NPRM* and *DTV Public Interest NOI*, that the Commission could take to improve broadcasters' communication with their communities. The *NOI* also asked how effectively market forces have fulfilled the goal of ensuring that broadcasters air programming responsive to the needs and interests of their communities.²³

2. Public Comments

13. The record before us concerning broadcaster efforts to effectively communicate with their audiences about local issues is decidedly mixed. Comments indicate that some broadcasters engage in substantial, inventive, and ongoing efforts to identify the needs and interests of the members of their communities of license as a first step in formulating and airing locally oriented, community-responsive programming that will meet those needs.²⁴ Many licensees feel that current efforts have achieved the goal of ensuring that they air programming responsive to the needs and interests of their communities.²⁵ As reported by the broadcasters themselves, examples of their efforts include the following:

- Fox stations participate in formal ascertainment meetings sponsored by their respective state broadcasters associations at which community leaders, local politicians, executives of non-profit organizations, representatives of minority groups, and public interest advocates share with broadcasters the issues that they believe to be important with them. Many Fox stations also engage in less formal efforts, such as holding meetings at their studios with community leaders, maintaining telephone and e-mail lines of communication, and employing station public affairs directors who serve as community liaisons.²⁶
- CBS' KEYE-TV, Austin, Texas, holds monthly meetings with representatives of industry, non-profit organizations, government, community leaders, and the general public to identify matters that station programming should address.²⁷

²¹ See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Report and Order* (adopted Nov. 27, 2007) ("*Enhanced Disclosure Order*").

²² See *id.*

²³ *NOI*, 19 FCC Rcd at 12429 ¶ 11.

²⁴ At the localism field hearings, many local officials commended their area broadcasters for their interaction with their communities and provision of locally oriented programming. See, e.g., Testimony of Doug Echols, Mayor, Rock Hill, South Carolina (Charlotte Tr. 80-82); Testimony of Daniel Albert, Mayor, Monterey, California (Monterey Tr. 32-36); Testimony of Jim Shaw, Mayor, Rapid City, South Dakota (Rapid City Tr. 28-33); Testimony of Aimee Turner, Maine Center for Disease Control and Prevention, Maine Department of Health and Human Services (Portland Tr. 95-96); Testimony of Dan Paradee, Public Affairs Manager, Maine Turnpike Authority (Portland Tr. 147-49); Letter from Robin Chibroski, Executive Director, Ronald McDonald House of Portland, Maine (June 28, 2007).

²⁵ See, e.g., Comments of Clear Channel Communications, Inc. (Nov. 1, 2004) ("Clear Channel Comments") at 29; Comments of Collegiate Broadcasters Inc. (Nov. 1, 2004) at 8.

²⁶ Comments of Fox Television Stations, Inc. and Fox Television Holdings, Inc. (Nov. 1, 2004) ("Fox Comments") at 9-10.

²⁷ Comments of Viacom, Inc. (Nov. 1, 2004) ("Viacom Comments") at Att. 1. After Viacom submitted its Comments in this proceeding, effective December 31, 2005, it effectuated a corporate reorganization that resulted in

- Station KWEX-TV, San Antonio, Texas, a Univision Spanish-formatted station, engages in ongoing discussions throughout the year with community leaders and members of the public. On average, the station conducts over 80 face-to-face interviews each year to determine the issues most important to the people of San Antonio. It takes into consideration the information gleaned from these interviews, as well as data from other sources, in making programming decisions.²⁸
- Univision's KCOR(AM), San Antonio, Texas, provides an e-mail address and phone number during its public affairs programming that allow listeners to contact the station and communicate with its personnel about issues of importance to the community. Its WGBO-TV, Joliet, Illinois, annually conducts 60-100 formal ascertainment interviews with local leaders, congressmen, business officials, public safety officials, educators, and representatives of non-profit organizations.²⁹
- Station KINY(AM), Juneau, Alaska, licensed to Alaska-Juneau Communications, Inc., uses the Internet to encourage listener feedback on local community needs and interests. The station also regularly interviews business and government leaders as part of a daily public affairs programming block. Listeners are provided time during a daily "Problem Corner" program to discuss issues that affect the community.³⁰
- WTVD Television, LLC's WTVD-TV, Raleigh-Durham, North Carolina, has "an organized minority board that gives the station guidance on issues regarding the minority community."³¹
- KFMB-TV, San Diego, California, licensed to Midwest Television, Inc., asks viewers for story ideas, which has resulted in the airing of a variety of local features, including an investigation of a new skate park that was built along a main road having no safe crossing for children. Viewers also identified dangerous traffic areas in their neighborhoods, which resulted in a series of news stories investigating these areas and work with police and residents to slow traffic and correct those problems.³²

14. In spite of these individual licensee efforts, many commenters see a need for additional efforts by broadcasters to identify the needs and interests of their communities of license. These proposals include the following:

the change of the name of the parent of the licensees of all of its broadcast stations to CBS Corporation. For purposes of simplicity, we will refer to those stations herein as CBS stations.

²⁸ Testimony of Steve Guist, General Manager, KWEX-TV, San Antonio, Texas (San Antonio Tr. 46-50).

²⁹ Comments of Univision Communications, Inc. (Nov. 1, 2004) at 4.

³⁰ Comments of The Alaska Broadcasters Association (Nov. 1; 2004) at 3-4.

³¹ Comments of The Walt Disney Company (Nov. 1, 2004) ("Disney Comments") at 37.

³² Comments of Joint Broadcasters (Nov. 1, 2004) at 17.

- Elimination of the current issues/programs lists in favor of reinstating the formal ascertainment process, as discussed above, which allows stations “to get a real understanding of the needs of those we would be serving.”³³
- Creation of advisory boards whereby stations regularly meet with community leaders and individuals from all sectors of the community.³⁴
- Adoption of measures to increase public awareness of existing localism requirements with Commission-sponsored public service announcements, including an 800 number where consumers can find more information.³⁵
- Providing for improved access to station decision-makers by the leadership of all local community groups.³⁶
- Imposition of the requirement that the current issues/programs lists be placed on a station’s website, and the use of a standardized form for the reporting of such information.³⁷

15. As illustrated above, some licensees strive to actively ascertain the needs and interests of the communities they serve and air programming that reflects those needs and interests. However, in light of the critical testimony received, including that noted above, there is some question as to whether these practices have been widespread. Moreover, many members of the public are unaware of these obligations of broadcasters or of the crucial role that the public can play in the Commission’s regulation of licensees. In sum, commenter recommendations of improving communication with their local stations include changes to the disclosure process, such as those taken in the *Enhanced Disclosure Order*; the formation and utilization of community advisory boards; and the consideration of a repeal of the rule changes that allow for unattended-station operation. We also propose an update of the Commission’s publication “The Public and Broadcasting,” to include additional information of use to the public, as well as links to the

³³ Statement of Maynard Meyer, General Manager, and President, licensee of KLQP-FM, Madison, Minnesota (Oct. 20, 2006) at 2; Testimony of same (Rapid City Tr. 74).

³⁴ Statement of Joe Linson, Vice President of the San Antonio Branch of the NAACP (October 20, 2006); Testimony of same (San Antonio, Tr. 52-53) (“This would allow individuals from all sectors of the community to provide input and to help shape the message for their areas”).

³⁵ Comments of Brian Wallace (Aug. 18, 2004) at 7 (“[t]he FCC needs a much better way of requesting frequent input from the public. . . and [m]ake it easier for the public to communicate with the FCC, especially when it comes to making complaints”).

³⁶ Testimony of Blanca Zarazua, Chair, Hispanic Chamber of Commerce of Monterey County (Monterey Tr. 48); Testimony of Gray Newman, Member, Mecklenburg Soil and Water Conservation Board (Charlotte Tr. 68-69); Testimony of “Davey D” (Monterey Tr. 112-22); Testimony of Charlie O’Douglas, Operations Manager, Rushmore Radio (Rapid City Tr. 160-61).

³⁷ Comments of Annenberg School for Communications, University of Southern California (Sept. 1, 2004) at 2-4 (“Annenberg Comments”); Comments of Arnold Wolf (Sept. 15, 2004) at 2. See also *Enhanced Disclosure Order, Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Broadcast Service*, Second Report and Order First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344, 10390, ¶¶ 116-17 (2007) (“*Digital Audio FNPRM*”), in the proceeding in which the Commission adopted the IBOC standard for digital broadcasting by AM and FM stations, seeking comment on application of the Enhanced Disclosure requirements to radio stations, operating in analog or digital.

Commission website at which members of the public may find more detailed information on particular topics of interest to them.

3. Issues for Commission Action

16. We agree with the commenters about the need to improve the communication between broadcast licensees and their local communities. Accordingly, we propose for comment several additional methods of improving that communication. Many of these proposals are consistent with commenter suggestions, as discussed above. However, we do not agree that all of those suggestions are feasible or necessary, such as reinstating the formal ascertainment process, which, as noted above, imposed specific and detailed formal procedures by which applicants and licensees were required to consult with community leaders to determine local needs and problems and propose programming to meet those issues.³⁸ Instead, we believe that Commission action in the following ways will assist further licensee-community communication and identification of community needs and interests. As detailed below, we will act immediately on others, such as updating "The Public and Broadcasting," our guide designed to assist audiences in scrutinizing local stations' localism performance and adherence to our rules. For proposals for which more input is required, we call for public comment.

17. "The Public and Broadcasting." The record in this proceeding reveals that there is a substantial need for greater public understanding of broadcaster obligations, including serving the needs of the local community, and of the procedures by which the Commission enforces those obligations.³⁹ To provide this understanding, the Commission must better educate citizens about the tools available to them, should they conclude that their local broadcast stations are not fulfilling their service obligations.

18. The Commission's rules require each broadcast station to maintain in its public file, and to make available upon request, a copy of the Commission publication entitled "The Public and Broadcasting."⁴⁰ This document can provide an effective means by which to inform members of the public of the specific obligations of the stations that are licensed to serve them, and the various operating rules with which licensees must comply. It also can make viewers and listeners aware of Commission procedures and the tools at their disposal in the event that they conclude that any of their local stations do not meet these obligations. Moreover, the Commission's website contains substantial information similarly of use to the public, much in the form of easy-to-read guides concerning the broadcast renewal process, applicable deadlines, and complaint procedures, including links to sites at which complaints may be electronically filed. We direct the Media Bureau to update "The Public and Broadcasting" publication

³⁸ As noted in paragraph 9 the *NOI* and at paragraph 11 of this Report, in the 1980s, the Commission eliminated its formal ascertainment requirements, concluding that the benefits from the procedures did not justify the costs. Instead, the Commission indicated that the focus of its inquiry in the future "would be upon the responsiveness of a licensee's programming, not the methodology utilized to arrive at those programming decisions." See *NOI*, 19 FCC Rcd 12428-12429 ¶ 9; see also *Commercial Television Deregulation Order*, 98 F.C.C. 2d at 1100-01.

³⁹ Commenters in the proceeding indicate that many members of the public are unaware of these obligations and of the Commission's processes. For example, in his November 1, 2004, Comments, Sam Brown indicated that the Commission's requirement that licensees maintain a detailed public file for interested members of the public is a meaningless administrative exercise that does not ensure local service because the average person does not know the files exist. Brian Wallace noted in his August 18, 2004, Comments that, until he had read the *NOI*, he was unaware that citizens may petition the Commission to deny a licensee's renewal application. He cited the need to educate the public as to when a particular license is up for renewal so that interested members of the public can become involved in the process.

⁴⁰ See 47 C.F.R. §§ 73.3526(e)(8), 73.3527(e)(7); *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, 15702 ¶ 24 (1998).

to include this information, as well as links to the Commission website at which the public may find more detailed information on particular topics.

19. We will also establish, refer to in "The Public and Broadcasting," and publicize on the Commission website and in other appropriate Commission publications, a contact point at the Commission, accessible over the Internet or via a toll-free telephone number, dedicated to providing information to members of the public regarding how they can become involved in the Commission's processes. We believe that having a point of contact at the Commission who can respond to inquiries and provide necessary information, such as the timing of the filing of license renewal applications for particular stations and details regarding our complaint procedures, will facilitate the public's understanding of broadcaster obligations and the procedures by which the Commission enforces those obligations.

20. *Enhanced Disclosure.* We agree with commenters' concerns regarding the inadequacy of the current limited disclosure by licensees of the locally responsive programming that they offer, and public access to such information. The record in this proceeding—particularly that portion amassed during the series of public hearings conducted across the country—suggests that current disclosure is inadequate and many individuals may be unaware of the breadth of their community licensees' locally oriented programming. This lack of knowledge apparently extends to the adequacy of so-called "issues/programs lists," which broadcasters long have been required to compile and make available to the public, upon request.⁴¹ Until recently, under the Commission's rules, commercial and non-commercial educational television and radio licensees had to create, on a quarterly basis, "a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period."⁴² The rules, however, did not require that licensees list every program that may have contributed to localism during the relevant period, although, for those efforts that broadcasters did document, they were required to provide at least a minimum amount of specific information about each program, including air time and date and some indication of the community issue addressed. These lists were required to be placed in the station public inspection file.⁴³

21. We agree with the commenters that these rules in this area are not sufficient. We therefore initiated the Enhanced Disclosure proceeding with the goal of adopting measures that would help to increase public awareness of licensee localism efforts. In that proceeding, the Commission sought comment on adoption of a standardized disclosure form, including a requirement to report specific information pertaining to local programming. As noted above, the *Enhanced Disclosure Order* made changes in the licensee programming reporting requirement, through the use of such a standardized form, to replace the current issues/programs lists. The form, which will be filed by television licensees on a quarterly basis, requires the disclosure of information with regard to the programming aired by the station during the previous three months. Such information must be provided and broken down for each of the

⁴¹ As noted in paragraph 9 of the *NOI* and at paragraph 11 of this Report, in the 1980s, the Commission eliminated its formal ascertainment requirements, which required broadcasters comply with detailed procedures for determining the problems, needs and interests of their communities. In place of ascertainment, the Commission imposed the requirement that, on a quarterly basis, each broadcaster prepare and maintain, in its station public inspection file, an issues/programs list specifying the what community issues were given significant treatment by programs aired over the station during the past three months, and including specific information about each such program. The Commission concluded that this requirement, combined with market forces, would ensure that broadcasters provide locally oriented programming. See *NOI*, 19 FCC Rcd 12428-12429 ¶ 9, citing *Radio Deregulation Order*, 84 F.C.C. 2d at 997-998; *Commercial Television Deregulation Order*, 98 F.C.C. 2d at 1099.

⁴² 47 C.F.R. § 73.3526(e)(11)(i) (commercial television); 73.3526(e)(12) (commercial radio); 73.3527(e)(8) (non-commercial educational radio and television).

⁴³ *Id.*

following programming categories: national news, local news produced by the station, local news produced elsewhere, identifying the producing entity; local civic affairs, local electoral affairs, independently produced, other local, public service announcements, paid public service announcements, *directed to underserved communities, religious, and closed captioning*.⁴⁴ For each such program noted, the licensee must provide the program title, dates and times of airing and length of the program. It must also indicate whether it has undertaken any efforts to determine the programming needs of its community and has designed any programming based upon those identified needs.⁴⁵

22. In the *Enhanced Disclosure Order*, the Commission also required that television licensees place most of the contents of their public inspection files, including any new enhanced disclosure forms, on the station's website, if one exists, or on the website of their state broadcasters association.⁴⁶ Internet access to such information will only improve the ability of members of the public to become educated as to broadcasters' efforts to serve them, thus prompting more active dialogue between licensees and their audiences concerning issues of public importance to local communities and how broadcasters might go about addressing those issues on the air—which may quickly lead to the airing of more responsive programming. The *Order* also requires that television stations notify viewers of the existence, location, and accessibility of their public files twice daily, during station identification announcements.⁴⁷ As noted *supra*, in our *Digital Audio FNPRM*, we have inquired as to whether radio licensees should also be subject to enhanced disclosure requirements.⁴⁸

23. In addition to enhancing the dialogue between stations and members of the public, these measures will also help licensees document the kind of responsive programming that they have broadcast in a manner that is both understandable to the public and of use in the Commission's review of license renewal applications. The record here and in the *Enhanced Disclosure* proceeding suggests that many in the public do not understand the Commission's license renewal process or, more particularly, that the procedure affords listeners and viewers a meaningful opportunity to provide their input through the filing of a complaint, comment, informal objection, or petition to deny a renewal application.

24. *Renewal Application Pre- and Post-Filing Announcements*. In order to increase the public awareness of, and participation in our license renewal proceedings, we believe that we also should change the existing rules governing the so-called "pre-filing and post-filing announcements" that licensees must air in connection with their renewal applications,⁴⁹ and call for comment on these new measures. In addition to the existing requirement for on-air announcements about soon-to-be-filed and pending license renewal applications, we seek comment on whether we should require that the same information be posted on a licensee's website during the relevant months (*i.e.*, the posting begins on the sixth month before the license is due to expire and remains in place until after the deadline for filing petitions to deny the renewal application). We also seek comment on whether we should broaden the required language for these announcements contained in 47 C.F.R. § 73.3580(d)(4)(i), which currently provides the Commission's mailing address as a source of information concerning the broadcast license

⁴⁴ See *Enhanced Disclosure Order*.

⁴⁵ *Id.*

⁴⁶ Under the new Enhanced Disclosure requirements, a television licensee need not post its political file on the Internet, nor must it post "hard copy" letters received from the public as long as it includes them in its station's "hard copy" public file that it makes available for public inspection. In contrast, e-mailed letters must be posted, and also printed out and placed in the station public file. See *Enhanced Disclosure Order*.

⁴⁷ See *id.*

⁴⁸ See, *supra* note 37.

⁴⁹ 47 C.F.R. § 73.3580(d).

renewal process, to include the agency's website address. Moreover, where technically feasible, we seek comment on whether a licensee's on-line provision of the Commission's web address could be linked directly to these places on the agency's website. We believe that such online posting is likely to be more accessible and understandable to the public than are the relatively few on-air announcements currently required, and we also request comment on these matters.

25. *Community Advisory Boards.* The Commission's former ascertainment requirement directed broadcasters to comply with detailed, formal procedures to determine the needs and interests of their communities, at the time that they initially sought their station authorizations, asked for approval to obtain a station, and sought license renewal. The record before us here shows that new efforts are needed to ensure that licensees regularly gather information from community representatives to help inform the stations' programming decisions, but we are not persuaded that the appropriate measure should be reinstatement of the former ascertainment mandates. As when the Commission eliminated those procedures in the 1980s, we do not believe that their potential benefits justify the costs. We do tentatively conclude, however, that the same fundamental objectives can be achieved through other means, including regular, quarterly licensee meetings with a board of community advisors and improved access by the public to station decision makers.

26. As noted *supra*, a number of licensee commenters have reported the benefits of community advisory boards in determining matters of local interest for broadcasters. We tentatively conclude that each licensee should convene a permanent advisory board made up of officials and other leaders from the service area of its broadcast station. We believe that these boards will promote both localism and diversity and, as such, should be an integral component of the Commission's localism efforts. Accordingly, we seek comment on this proposal. Will such community advisory boards be able to alert each broadcaster to issues that are important to its community of license? How should members of the advisory boards be selected or elected? Should the former ascertainment guidelines be a starting point to identify those various segments in the community with whom the licensees should consult?⁵⁰ How can the advisory boards be composed so as to ensure that all segments of the community, including minority or underserved members of the community, would also have an opportunity to voice their concerns about local issues facing the area? How frequently should licensees be required to meet with these advisory boards? We believe that, generally speaking, if a licensee already has formal groups in place with which it consults to determine the needs of its community, it should be deemed to have satisfied this requirement. We also seek comment on under what circumstances a licensee should be deemed to have satisfied this requirement with its current practices.

27. In addition, we recognize that additional, informal efforts to gather information from members of their communities could prove beneficial to licensees and, ultimately, the audiences that they serve. The record indicates that efforts such as the following have been successful for licensees:

- Some stations conduct formal or *ad hoc* listener or viewer surveys, by telephone, Internet, or other means.⁵¹

⁵⁰ In its ascertainment Primer for broadcast renewal applicants, the Commission directed such applicants to consult, throughout their license terms, "a representative cross-section" of community leaders "who speak for the interests of the [station's] service area." It stated that the requirement may be met by interviews with leaders of the following institutions and elements found in the community: agriculture, business, charities, civic, neighborhood and fraternal organizations, consumer services, culture, education, environment, government (local, county, state and federal), labor, military, minority and ethnic groups, organizations of and for the elderly, organizations of and for women, organizations of and for youth (including children) and students, professions, public safety, health and welfare, recreation, and religion. See *Renewal Primer*, 57 F.C.C.2d at 442.

⁵¹ See, e.g., Comments of the Alaska Broadcasters Association (Nov. 1, 2004) at 3-4.

- Similarly, some broadcasters conduct focus sessions or “town hall” meetings with viewers and listeners to help prioritize issues to be covered through news, public affairs, public service, and special programming.⁵²
- Station managers and other personnel also often sit on various boards, committees, councils and commissions, particularly in sparsely populated areas in which community functions depend on community participation in often voluntary public efforts.⁵³
- Some licensees use dedicated telephone numbers, websites and e-mail addresses, publicized during programming, to facilitate community dialogue.⁵⁴

We also call for comment on whether we should adopt rules or guidelines that encompass these approaches, or other similar efforts, for fostering better communication between licensees and their communities. We note that the standardized disclosure form recently adopted by the Commission will require broadcasters to describe any public outreach efforts undertaken during the reporting period.

28. *Remote Station Operation.* We agree with those commenters who expressed concern about the prevalence of automated broadcast operations, which allow the operation of stations without a local presence, and the perceived negative impact that such remote operation may have on licensees’ ability to determine and serve local needs. In 1987, the Commission eliminated its rule requiring a broadcast station to originate a majority of its non-network programming from its locally situated main studio.⁵⁵ This action was based, in part, on technical advances in the production and distribution of programming during the prior 35 years. In 1995, in response to continuing improvements in the stability of station monitoring and transmission equipment, the Commission authorized unattended technical operation of broadcast stations and expanded the ability of stations to control and monitor station technical operations from remote locations.⁵⁶ Although concerns were expressed that these rule revisions would result in stations operating on “auto-pilot with no one in charge,” the Commission concluded that the new rules would provide licensees with important flexibility, without adversely affecting the public interest.⁵⁷ Licensees have broadly embraced this new technical flexibility, and many stations now operate for extended periods without station personnel present at or near transmission facilities.

29. Recently, the Commission issued a Notice of Proposed Rulemaking regarding this issue, in connection with a public interest review of digital audio broadcasting. The Commission asked whether it should review its rules and determinations that facilitated the development of the automated radio broadcast operations described above. It also asked whether changes in remote radio operation should affect existing rules. Comments are still being received in that proceeding. We are considering requiring that licensees maintain a physical presence at each radio broadcasting facility during all hours of

⁵² See, e.g., Comments of Gannett Broadcasting (Nov. 1, 2004) at 2-5.

⁵³ See, e.g., Reply Comments of the Arizona Broadcasters Association (Jan. 3, 2005) at 3.

⁵⁴ See, e.g., Comments of Univision Communications (Nov. 1, 2004) at 4.

⁵⁵ See Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations, Report and Order, 2 FCC Rcd 3215 (1987) (“Main Studio R&O”).

⁵⁶ See Amendment of Parts 73 and 74 of the Commission’s Rules to Permit Unattended Operation of Broadcast Stations and to Update Broadcast Station Transmitter Control and Monitoring Requirements, Report and Order, 10 FCC Rcd 11479 (1995).

⁵⁷ *Id.* at 11479-80 ¶¶ 5-7.

operation.⁵⁸ Requiring that all radio stations be attended can only increase the ability of the station to provide information of a local nature to the community of license. Particularly in the event of severe weather or a local emergency, such a requirement that all operations be attended may increase the likelihood that each broadcaster will be capable of relaying critical life-saving information to the public. Although parties have commented in that proceeding on this issue in the context of radio, we seek comment here on whether we should extend this requirement to television stations, as well as radio facilities.

B. NATURE AND AMOUNT OF COMMUNITY-RESPONSIVE PROGRAMMING

1. Issues

30. Having recognized that certain groups have long complained that broadcasters do not air enough community-responsive programming, the Commission sought comment on the nature and amount of such programming in the *NOI*. The Commission inquired as to how broadcasters were serving the needs of their communities, whether they were providing enough community-responsive programming, whether the Commission could or should take action to ensure that broadcasters aired programming that served their communities' needs and interests, and whether non-entertainment or non-locally originated programming should constitute local programming. The Commission further sought comment on whether it should continue to rely on market forces to encourage broadcasters to air community responsive programming, such as news, political, and public affairs programming; whether it should distinguish between radio and television broadcasters; whether the profitability of local news production should be considered; and the frequency, length, and availability of broadcast public service announcements.⁵⁹

2. Public Comments

31. The record reveals that notable disparities exist among licensees with respect to the nature and amount of community-responsive programming that they air. Some broadcasters transmit substantial amounts of local news programming relevant to the issues that face their communities of license. In addition to breaking stories, many such broadcasts also include information concerning, crime, investigative features, consumer advocacy issues and segments focused on politics, sports and community events. Stations also provide vital weather information, particularly in emergency situations. Noteworthy examples of community-responsive programming, as self-reported by licensees,⁶⁰ include the following:

- CBS states that its owned stations air the following amounts of local news weekly: WFRV-TV, Green Bay, Wisconsin: 46.5 hours; KDKA-TV, Pittsburgh, Pennsylvania: 40 hours (30 percent of programming schedule); WJZ-TV, Baltimore, Maryland: 35 hours (21 percent of schedule); KUTV(TV), Salt Lake City, Utah: 38 hours; KYW-TV and WSPG-TV, Philadelphia,

⁵⁸ *Digital Audio FNPRM* at 10391 ¶ 119. We note that we do not seek comment on this issue here; these issues will be resolved in the Digital Audio Broadcasting docket (MM Docket No. 99-325).

⁵⁹ *NOI*, 19 FCC Rcd at 12431-32 ¶¶ 14-18.

⁶⁰ We note that several commenters have criticized as inflated the broadcasters' self-reported estimates of the hours devoted to news and public affairs programming. Among other issues, critics call into question the quality of some programming categorized as news or public affairs, and they question whether time devoted to public service announcements or commercials should be included in the totals. See, e.g., Comments of the Donald McGannon Communication Research Center (Oct. 28, 2004) ("McGannon Comments"); Testimony of Martin Kaplan, Associate Dean of the Annenberg School for Communications, University of Southern California (delivered by Joseph Salzman, Associate Dean, Annenberg School for Communication) (Monterey Tr. 62-68) (testifying that "[o]nly 44 percent of [local news] broadcasts contained any campaign coverage at all").

Pennsylvania: 47 hours (combined); and WBZ-TV and WSBK-TV, Boston, Massachusetts: 41 hours (combined).⁶¹

- Media General states that WJTV, Jackson, Mississippi, airs 9.5 hours per weekday of news, over half of which focuses on local stories.⁶² Its WDEF-TV, Chattanooga, Tennessee, weekly airs 24.5 hours of local news, using a staff of almost 50 employees dedicated to local newsgathering and production.⁶³
- Entercom's KNSS(AM), Wichita, Kansas, states that it produces "The Morning Newswatch," a three-hour block of local news each weekday named by the Kansas Broadcasters Association the best newscast in the state. The station also says it produces a six-minute news update that airs five times a day, and updates the weather twice an hour.⁶⁴
- The Arkansas Broadcasters Association states that KHTS and KTHS-FM, Berryville, Arkansas, licensed to Jeri Lyn Broadcasting, Inc., each devotes 30 percent of its broadcast day to news and information programming, including news and community bulletin board features, localized weather, emergency information, and coverage of education and the arts.⁶⁵

32. Some commenters also state that broadcasters' newscasts are not limited to their reporting of ongoing local news stories. They indicate that they include in-depth, locally oriented investigative reports, health advice, crime reports, weather, sports, consumer advocacy, family issues, cultural events, business matters, and topics of importance to minorities. Examples reported by licensees include Belo's WWL-TV preemption of scheduled programming for "wall-to-wall" coverage of Gulf Coast hurricanes;⁶⁶ the efforts of Enchanted Air, Inc., licensee of KRTN and KRTN-FM, Raton, New Mexico, which broke away from local programming several years ago to keep listeners abreast of area forest fires and evacuation plans related to those events⁶⁷; and hurricane-preparedness specials aired by Post-Newsweek's Florida and Texas-based stations and Raycom's WFLX(TV), West Palm Beach, Florida.⁶⁸

33. The record further demonstrates that some broadcasters air a substantial amount of other local public affairs programming, including material involving education, minority issues, health matters, violence, consumer topics, women's issues, and religion. Some of this programming is stand-alone

⁶¹ Viacom Comments at 2-3.

⁶² Comments of WJTV/Media General (Oct. 29, 2004) at 1.

⁶³ Comments of WDEF-TV/Media General (Oct. 29, 2004) at 1.

⁶⁴ Comments of Entercom Wichita License, LLC (Nov. 2, 2004) at Att. A.

⁶⁵ Comments of Arkansas Broadcasters Association (Oct. 29, 2004) at 6.

⁶⁶ Comments of Belo Corp. (Nov. 1, 2004) ("Belo Comments") at 12-13; see other examples of similar programming at Testimony of Dr. William F. Duhamel, President, Duhamel Broadcasting Enterprises (Rapid City Tr. 48-52); NAB Comments at 18, Ex. C; Testimony of James M. Keelor, President and COO, Liberty Corporation (Charlotte Tr. 32-34); Viacom Comments at 3. It should be noted that the comment period in this proceeding predated the 2005 hurricanes that devastated areas of the Gulf Coast and Florida, and the wildfires that recently struck major parts of California, but we also note the substantial broadcaster public service efforts in the wake of those emergencies. See, e.g., Testimony of Marcellus Alexander, Executive Vice President for Television, National Association of Broadcasters (Washington, D.C. Tr. 23-27).

⁶⁷ Comments of New Mexico Broadcasters Association (Nov. 1, 2004) at 5.

⁶⁸ Joint Broadcasters Comments, at 3, Att.

material; at other times, it is presented during segments within regularly scheduled newscasts. Illustrations, as self-reported by the broadcasters, include Clear Channel's Albany, New York, radio stations' airing of "Clear View," a weekly half-hour program that highlights community organizations and their positive impact upon the Albany community;⁶⁹ Gannett's WZZM-TV, Grand Rapids, Michigan, production of "Take Five Grand Rapids," a half-hour, live talk show that covers community news and public affairs issues;⁷⁰ and Sierra Broadcasting's KRVN-TV, Reno, Nevada, which airs three 30-minute public affairs programs: "Nevada Newsmakers," a show featuring local politicians and community figures; "Community Update," a program that airs daily between 10 a.m. and 5 p.m.; and "Lifelong Learning," a weekly program.⁷¹

34. While some commenters cite such examples as evidence that further regulation is unnecessary,⁷² the record also reveals that others feel that broadcasters are not complying with their obligation, as public trustees, to air sufficient programming that is responsive to local needs and interests.⁷³ These commenters question the validity of claims by broadcasters that they are providing substantial locally oriented programming, and maintain that financial considerations, exacerbated by the deregulation of broadcasting that began in the 1980s, have resulted in a critical decrease in the quality and quantity of programs offered by licensees that are responsive to the needs and interests of local communities that they serve. The following are examples from the record of commenters critical of broadcasters' localism efforts.

35. The Consumer Federation of America and Consumers Union conclude that deregulated markets will not provide society with the responsive diverse local broadcast matter that our democracy needs to thrive, and call for an aggressive policy to promote localism and diversity that does not conflict with First Amendment principles.⁷⁴ The American Federation of Television and Radio Artists and the American Federation of Musicians ("AFTRA/AFM") state that broadcasters are failing to serve the interests of local communities in developing and promoting local artists and in fostering musical genres.⁷⁵

36. In separate comments, three groups involved in community production of local television programming—the Alliance for Community Media-Western Region, a nonprofit organization representing public, educational and government ("PEG") access centers that trains individuals in the production of such programming carried over dedicated cable PEG channels;⁷⁶ Chicago Access Corporation "CAN TV," which provides such training in the Chicago, Illinois, area;⁷⁷ and Diablo Video

⁶⁹ Clear Channel Comments at 11.

⁷⁰ Comments of Gannett Broadcasting (Nov. 1, 2004) at 54.

⁷¹ Comments of KRVN/News 4 Television (October 28, 2004) at 1.

⁷² Comments of the Radio-Television News Directors Association (Nov. 1, 2004), at 1-2 ("local broadcasters are overwhelmingly responsible and responsive to their communities [and] voluntarily provide a wealth of news, information, public affairs and other programming reflective of the desires of their listeners and viewers").

⁷³ See, e.g. Reply Comments of National Federation of County Broadcasters (Jan. 3, 2005) ("NFCB Reply Comments") at 10.

⁷⁴ Comments of the Consumer Federation of America and Consumers Union (Nov. 1, 2004) ("CFA/CU Comments") at Att. B 36-42.

⁷⁵ Comments of the American Federation of Television and Radio Artists and the American Federation of Musicians (Nov. 1, 2004) ("AFTRA/AFM Comments") at 15-25. In Section III.G of this Report, we address issues relating to airplay of the music of local artists.

⁷⁶ Comments of the Alliance for Community Media-Western Region (Nov. 1, 2004).

⁷⁷ Comments of Chicago Access Corporation "CAN TV" (Oct. 19, 2004) ("CAN TV Comments").

Arts, Inc., a volunteer-based community group that develops community-based programming in Contra Costa County, California⁷⁸—each maintains in its respective filing that broadcasters are improperly scaling back their news and public affairs programming. The Campaign Legal Center and The Alliance for Better Campaigns (“Campaign Commenters”) also express their concern about what they perceive to be a continual decline in recent years in the amount of local and network broadcast news coverage of substantive campaign and election issues.⁷⁹

37. NY/PA Media Action and Binghamton Independent Media Center submitted a joint study of the state of broadcast localism in the Binghamton, New York, market.⁸⁰ Their Reply Comments contend that area licensees have grossly overstated the amount of locally oriented news programming that they offer by including “time spent on commercials, weather, sports, entertainment, video news releases, and redundancy....”⁸¹ They also maintain that locally produced public affairs programming “is almost entirely absent.”⁸² Their comments similarly criticize local public broadcasters for barring access by independent producers of programming, removing “activists” from community advisory boards and closing their meetings to the public.⁸³ NY/PA/Binghamton praise the programming of two Binghamton area television and two area radio licensees, the local news and public affairs of which they state represent more than 90 percent of that in the market by stations in their respective media. Nevertheless, they claim that, generally, local broadcasters are fixated on ratings and revenues at the expense of locally oriented programming.⁸⁴

38. The Donald McGannon Communication Research Center at Fordham University (“McGannon Center”) submitted two studies on localism.⁸⁵ The first, “Television Station Ownership Characteristics and Local News and Public Affairs Programming: An Expanded Analysis of Commission Data” (the “Expanded Analysis”), is a May 2003 analysis⁸⁶ of an earlier Commission-directed study concerning the provision of news and public affairs programming by affiliates of the four major television networks (the “Spavins Study”).⁸⁷ While the Expanded Analysis agrees with the Spavins Study’s ultimate conclusion that there is a positive correlation between network or newspaper ownership and the provision of local news programming, the Expanded Analysis differs from the Spavins Study in finding no such correlation between such ownership and the provision of local public affairs programming. Instead, the Expanded Analysis concludes that the provision of public affairs programming appears to be

⁷⁸ Comments of Diablo Video Arts, Inc. (Nov. 1, 2004) (“Diablo Comments”).

⁷⁹ Comments of the Campaign Legal Center and The Alliance for Better Campaigns (Nov. 1, 2004) (“Campaign Comments”) at 1-4.

⁸⁰ Reply Comments of NY/PA Media Coalition and Binghamton Independent Media Center (prepared by William Huston) (Dec. 30, 2004). See Section III.C of this Report for a discussion of issues relating to political programming.

⁸¹ *Id.* at 3, 20-21.

⁸² *Id.* at 3.

⁸³ *Id.* at 18.

⁸⁴ *Id.* at 3, 22.

⁸⁵ See McGannon Comments at 4-30 (study one), 31-60 (study two).

⁸⁶ Napoli, Philip M., “Television Station Ownership Characteristics and Local News and Public Affairs Programming: An Expanded Analysis of FCC Data” (2003).

⁸⁷ Spavins, Thomas, Dennison, Loretta, Frenette, Jane and Roberts, Scott, “The Measurement of Local Television News and Public Affairs Programs” (2002), available at <http://www.fcc.gov/ownership/studies.html>.

a function of station revenues.⁸⁸ The second study submitted by the McGannon Center, "Market Structure, Station Ownership and Local Public Affairs Programming on Local Broadcast Television" (the "Public Affairs Programming Study"), provides descriptive information on available local and non-local public affairs programming derived from a two-week random sample in 2003 of 285 commercial and noncommercial television stations. The Public Affairs Programming Study analyzes the relationship between market and station characteristics and the provision of such programming.⁸⁹ It concludes that half of the stations surveyed (and 59 percent of the surveyed commercial stations) provided no local public affairs programming during the two-week sample period.⁹⁰ On average, commercial broadcast stations provided 45 minutes of such programming during the period.⁹¹ In contrast, 90 percent of the public stations surveyed aired some local public affairs programming—3.5 hours per week, on average.⁹² The Public Affairs Programming Study also finds no meaningful relationship between market conditions and the provision of such programming, but it does find a significant correlation between network ownership and the provision of such programming, with network-owned stations less likely to provide it.⁹³

39. Based on the foregoing criticisms, several commenters provided numerous proposals in the record for how the Commission may accomplish the goal of increasing the amount of locally responsive programming. Proposals offered by commenters included the following: exploring the use of the cable public, education, and government ("PEG") model for public access to broadcast stations;⁹⁴ requiring "public interest minimums" for public affairs and political programming, as well as locally produced public service announcements;⁹⁵ requiring standardized reporting on a quarterly basis so that the public and the Commission can see how community needs, interests, and problems are being served through local programming;⁹⁶ developing a system of community access/channel leasing;⁹⁷ promoting

⁸⁸ McGannon Comments at 20-21.

⁸⁹ Yan, Michael and Napoli, Philip M., "Market Structure, Station Ownership, and Local Public Affairs Programming on Local Broadcast Television" (2004).

⁹⁰ McGannon Comments at 46.

⁹¹ *Id.*

⁹² *Id.* at 46-47.

⁹³ *Id.* at 47-48.

⁹⁴ Comments of The Alliance for Community Media-Western Region (Nov. 1, 2004) at 1-2; CAN TV Comments at 1; Comments of Laurie Cirivello (Nov. 1, 2004) at 1-3; Comments of Mt. Hood Cable Regulatory Commission (Oct. 29, 2004); Comments of The Alliance for Community Media (Oct. 27, 2004) at 1; Comments of Newton Communications Access Center, Inc. (Oct. 18, 2004) at 1; Comments of Ronda Orchard (Sept. 20, 2004) at 1-2; Diablo Comments at 2; Comments of Maui Community Television (Oct. 27, 2004) at 1-2; Testimony of Tony Vigue, President, Community Television Network (Portland Tr. 42-43).

⁹⁵ Comments of Capitol Broadcasting Company, Inc. (Nov. 1, 2004) ("Capitol Comments") at 4-5; see also Testimony of Daniel Albert, Mayor, Monterey, California (Monterey Tr. 34-36).

⁹⁶ *Id.* at 4; Testimony of James Goodmon, President and CEO, Capitol Broadcasting Company, Inc. (Charlotte Tr. 130-33) (calling for minimum public interest standards and a standardized reporting form); see also Testimony of Andrew Schwartzman, President and CEO, Media Access Project (Washington, D.C. Tr. 43); Comments of Arnold Wolf (Sept. 15, 2004) at 2 ("define more clearly the minimum public interest obligations that radio and television media owners must meet. . . with unequivocal implications for license renewal").

⁹⁷ Comments of The Brennan Center for Justice, The Consumer Federation of America, *et al.* (Nov. 1, 2004) ("Brennan Center Comments") at 42-47; Testimony of Sally Hebert (Portland Tr. 120-22); Testimony of Donna Frisoli (Portland Tr. 142-43); Testimony of Pat Bonsant, Manager, Saco River Community Television (Portland Tr. 174-75).

cable multicast must-carry;⁹⁸ and requiring that the main broadcast studio be located in the local community "as part of the neighborhood," along with the imposition of minimum programming origination requirements.⁹⁹

3. Issues for Commission Action

40. *Local Programming Renewal Application Processing Guidelines.* Some commenters argued that the Commission should require "public interest minimums" for public affairs and political programming, as well as locally produced public service announcements.¹⁰⁰ We tentatively conclude that we should reintroduce renewal application processing guidelines that will ensure that all broadcasters, not just the ones we heard from in this proceeding, provide some locally-oriented programming. Renewal applications filed by licensees that have met or exceeded the prescribed minimum percentages will be processed by the Media Bureau on delegated authority; those that do not will require consideration by the full Commission. At paragraph 124 of this Report, we pose certain questions for comment by the public regarding this proposal.

41. *Main Studio Rule.* We share the concern underlying proposals that the Commission require that licensees locate their main studios within the local communities so that they are "part of the neighborhood."¹⁰¹ The main studio rule is rooted in Section 307(b) of the Communications Act.¹⁰² Section 307(b) requires the Commission to "make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide for a fair, efficient, and equitable distribution of radio service to each of the same."¹⁰³ In carrying out this mandate, the Commission established a method for distributing broadcast service in which every radio and television station was assigned to a community of license with a primary obligation to serve that community.¹⁰⁴ A central component of this scheme required that a broadcast station's main studio be accessible to its community of license.¹⁰⁵ At one time, all broadcasters were required to maintain their main studios in their communities of license. In 1987, however, the Commission changed its rules to allow a station to locate its main studio at any location within the station's principal community contour.¹⁰⁶ In 1998, the Commission further liberalized the rule to allow the studio to be located within either the principal community contour of any station, of any service, licensed to its community of license or 25 miles from

⁹⁸ NAB Comments at 26-30; Capitol Comments at 3, Comments of The Association of Public Television Stations (Nov. 1, 2004) at 7-9 (Apr. 8, 2005) ("APTS Comments") (providing information concerning the projects that local public television stations are implementing to use the additional programming streams made possible by the digital conversion); Statement of Joseph W. Heston, President and General Manager, KSBW-TV (Monterey Tr. 61); Testimony of Elsie Garner, President and CEO, WTVI(FV) (Charlotte Tr. 102-03); Testimony of Steve Giust, General Manager, Station KWEX-TV (San Antonio Tr. 49); Testimony of Joseph W Heston, President and General Manager, Station KSBW-TV (Monterey Tr. 61-62).

⁹⁹ Testimony of Blanca Zarazua, Chair, Hispanic Chamber of Commerce of Monterey, California (Monterey Tr. 48).

¹⁰⁰ Capitol Comments at 4-5.

¹⁰¹ See, e.g., Testimony of Blanca Zarazua, Chair, Hispanic Chamber of Commerce of Monterey, California (Monterey Tr. 48-49).

¹⁰² 47 U.S.C. § 307(b).

¹⁰³ *Id.*

¹⁰⁴ See *Main Studio R&O*, 2 FCC Rcd 3215.

¹⁰⁵ See *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report & Order, 13 FCC Rcd 15691, 15692 ¶ 2 (1998).

¹⁰⁶ *Id.* at 15693, ¶ 3 (citing *Main Studio R&O*, 2 FCC Rcd at 3217-18).

the reference coordinates of the center of its community of license, whichever location the licensee chooses.¹⁰⁷ We seek comment on whether we should revert to our pre-1987 main studio rule in order to encourage broadcasters to produce locally originated programming, and seek comment on this, and on whether accessibility of the main studio increases interaction between the broadcast station and the community of service.

42. *Enhanced Disclosure.* The record in this proceeding reveals that the public is concerned with the limited disclosure of local programming aired by broadcasters, and public access to such information. As we discussed above, we have enacted Enhanced Disclosure measures for television licensees which would help educate the public about existing their local programming. These include adoption of a standardized quarterly reporting form that requires broadcasters to indicate the community needs and issues they had identified and the programming they aired in response to them, and the posting of that information on the Internet. Although these new disclosure obligations apply only to television licensees, as noted *supra*, in our *Digital Audio FNPRM*, we have inquired as to whether radio licensees should also be subject to these requirements.¹⁰⁸

43. *Community Advisory Boards.* As discussed in the preceding section of this Report, we have tentatively concluded that licensees should convene permanent advisory boards comprised of local officials and other community leaders, to periodically advise them of local needs and issues, and seek comment on the matter. This mechanism will enhance the ability of licensees to determine those issues facing their communities that they should treat in their local programming. We believe that, generally speaking, if a licensee already has formal groups in place with which it consults to determine the needs of its community, it should be deemed to have satisfied this requirement. We also seek comment on under what circumstances a licensee should be deemed to have so satisfied this requirement.¹⁰⁹

44. To ensure that these discussions include representatives of all community elements, these boards would be made up of leaders of various segments of the community, including underserved groups. At paragraphs 26 and 27 of this Report, we have posed a series of questions for public comment as to the appropriate composition and operation of these advisory boards.

45. *"The Public and Broadcasting."* As discussed above, the record in this proceeding reveals that there is a substantial need for greater understanding of specific broadcaster obligations to air community-responsive programming. As indicated in paragraphs 18 and 19 above, we direct the Media Bureau to update the Commission's "The Public and Broadcasting" publication, our guide designed to assist audiences to scrutinize local stations' adherence to our rules. The revised publication will provide links to the Commission website where the public may find more detailed information on particular broadcasting topics. We also will create a point of contact at the Commission for public inquiries about our processes.

46. *Television Market Definitions/Cable Broadcast Carriage.* Another way that we intend to increase access to community-responsive programming is by examining our rules to remedy the infrequent but significant situations in which cable and satellite subscribers often do not receive the local news and information provided by an in-state television station, because our rules effectively require carriage of an out-of-state station.¹¹⁰ Cable or satellite subscribers thus cannot access a station assigned to another "Designated Market Area" ("DMA"), as that concept is employed in our rules, even if the station is located in their state. We intend to begin a proceeding to propose rules to promote access by cable and

¹⁰⁷ *Id.*, 13 FCC Rcd 15694 ¶ 7; see 47 C.F.R. §73.1125.

¹⁰⁸ See *supra* note 37.

¹⁰⁹ See *supra* para. 26.

¹¹⁰ See 47 C.F.R. §§76.55(cable); 76.66 (satellite).

satellite subscribers to the programming of television broadcast stations licensed to communities in the state in which they live.

47. Under the Communications Act, cable systems must carry the signals of local commercial and noncommercial broadcast stations in their local markets.¹¹¹ Since 1996, the Commission generally has looked to Nielsen Media Research Company's DMAs in defining a television broadcast station's local market,¹¹² except that, following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market.¹¹³

48. Satellite carriage of local broadcast stations differs from cable carriage in that there is no statutory "must carry" requirement, except in Alaska and Hawaii;¹¹⁴ rather, satellite carriage obligations generally arise when a carrier relies on the statutory copyright license to offer "local-into-local" service in a market.¹¹⁵ As with cable carriage, a television station's local market generally is the DMA in which it is located.¹¹⁶

49. DMAs describe each television market in terms of a unique geographic area and are

¹¹¹ See 47 U.S.C. § 534 (local commercial television stations); 47 U.S.C. § 535 (noncommercial educational television stations); *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965 (1993) ("Cable Must Carry Order"). See also *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage Issues*, Memorandum Opinion and Order, 9 FCC Rcd 6723 (1994) ("Cable Must Carry Reconsideration Order").

¹¹² See *Definition of Markets for Purposes of The Cable Television Mandatory Television Broadcast Signal Carriage Rules*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 6201 (1996); *Definition of Markets for Purposes of The Cable Television Mandatory Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999). See also 47 C.F.R. § 76.55(e).

¹¹³ 47 U.S.C. § 534(h)(1)(C). These market additions and deletions are called "market modifications" and apply only to commercial stations. Noncommercial educational ("NCE") stations are eligible for mandatory cable carriage based on their geographic relationship to a cable system's headend, not on commercial publications' delineations of local market areas. See 47 U.S.C. § 535(l)(2) (defining "qualified local noncommercial educational television station" as such stations licensed to a community within 50 miles of the principal headend of the cable system or whose Grade B service contour, as defined in 47 C.F.R. § 73.683(a), encompasses the principal headend of the cable system). See also 47 C.F.R. § 76.55(b).

¹¹⁴ See 47 U.S.C. § 338(a)(4). See also *Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act*, Report and Order, 20 FCC Rcd. 14242 (2005); 47 C.F.R. § 76.66(b)(2).

¹¹⁵ A satellite carrier provides "local-into-local" service when it retransmits a local television station's signal back into the local market of the television station for reception by subscribers. 47 C.F.R. § 76.66(a)(6). Local-into-local service is designed to increase the local programming choices available to television households by allowing satellite operators to provide the signal of a television station to subscribers residing in the station's local market.

¹¹⁶ 47 U.S.C. § 338(k)(3) defines the term "local market" by using the definition found in 17 U.S.C. § 122(j)(2): "The term 'local market,' in the case of both commercial and noncommercial television broadcast stations, means the designated market area in which a station is located, and – (i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market; and (ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station."

based on measured viewing patterns.¹¹⁷ In a small group of identifiable cases, however, general reliance on DMAs to define a station's market may not provide viewers with the most local programming. Certain DMAs cross state borders, and in such cases, current Commission rules sometimes require carriage of the broadcast signal of an out-of-state station rather than that of an in-state station.¹¹⁸ Such cases may weaken localism, since viewers are often more likely to receive information of local interest and relevance – particularly local weather and other emergency information and local news and electoral and public affairs – from a station located in the state in which they live.

50. In particular, with respect to cable carriage, Section 614(b)(5) of the Communications Act provides that “a cable operator shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of another local television station which is carried on the cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network”¹¹⁹ A parallel rule applies to the carriage of NCE station signals.¹²⁰ The Commission concluded in implementing this rule that when such duplication occurs, if the cable operator chooses to carry only one of the duplicating stations, it must carry the station whose community of license is closest to the cable system's principal headend.¹²¹ In general, this rule has ensured that cable subscribers have access to the station that is most local for them.¹²² However, in some cases, the station that is geographically closest to the headend is in a different state from the state in which the subscriber lives.¹²³ This situation may occur when a cable system straddles a state line within one DMA or when a cable system straddles two DMAs. The situation is different with respect to satellite carriage, but it is no less problematic. Unlike rules governing cable carriage, current Commission rules governing satellite carriage of local broadcast stations do not provide for market modifications, resulting in a rigid adherence to DMA designations.¹²⁴ We agree with commenters that this situation should be remedied and, accordingly, we will commence a rulemaking proceeding to address the need to ensure that all cable and satellite subscribers have access to television broadcast stations licensed to communities within the viewers' home state. This issue will be addressed in that rulemaking proceeding, rather than in this proceeding.

51. *AM Use of FM Translators.* In order to promote diversity and localism, we have

¹¹⁷ See 17 U.S.C. § 122(j)(2)(A)-(C). There are 210 DMAs that encompass all counties in the 50 United States, except for certain areas in Alaska. See Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates (2006-07 ed.). Congress created a special local market definition for these counties in Alaska. See 17 U.S.C. § 122(j)(2)(D).

¹¹⁸ A review of the 210 Nielsen DMAs shows that more than 400 counties are in DMAs in which all or virtually all the stations deemed “local” are actually located in a different state. More than one-third of these counties are in DMAs that do not have any stations assigned by Nielsen from the home state. See R.R. Bowker, *Broadcasting & Cable Yearbook 2008*, B-146:230 (2007).

¹¹⁹ 47 U.S.C. § 534(b)(5).

¹²⁰ See 47 U.S.C. §§ 535(b)(3)(C) and 535(e).

¹²¹ See *Cable Must Carry Order*, 8 FCC Rcd at 2979-81 ¶¶ 55-56. See also 47 C.F.R. § 76.56(b)(4)(ii).

¹²² We note that there is nothing in the statute that would preclude a cable operator from carrying duplicating stations and considering both stations as local. See, e.g., 47 U.S.C. §§ 533(b)(3)(C), 535(e). The statute merely provides that the cable system is not required to carry both.

¹²³ For example, under our current rule, several cable systems serving subscribers in Indiana are required to carry stations licensed to communities in Illinois, Ohio, and Kentucky, rather than stations located in Indiana because the out-of-state stations are closer to the cable headends than stations licensed to communities in Indiana.

¹²⁴ See *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, Report and Order, 16 FCC Rcd 1918, 1937 ¶ 41 (2000).

commenced a rulemaking proceeding¹²⁵ to examine our rules which prevent AM radio stations from operating FM translator stations as a fill-in service.¹²⁶ In that proceeding, we are considering revising our rules to expand the purpose and permissible service of FM translator stations to allow their use to provide fill-in service for AM radio stations. The Commission has tentatively concluded that, *inter alia*, (1) daytime-only AM licensees should be permitted to originate programming over fill-in FM translators during the nighttime hours when their stations are not authorized to operate; and (2) any AM station should be permitted to operate an available FM translator to retransmit its AM programming as a fill-in service, as long as no portion of the 60 dBu contour of the FM translator exceeds the lesser of: (a) the 2 mV/m daytime contour of the AM station or; (b) the 25-mile radius of the AM transmitter site.¹²⁷

52. We recognize that AM radio stations remain an important component of the mass media landscape and vital providers of local broadcast service, commonly offering unique, community-responsive formats to distinguish themselves in an increasingly competitive media market.¹²⁸ All-news/talk, all-sports, foreign language, and religious programming formats are common on the AM band, as are discussions of local news, politics and public affairs, traffic announcements and coverage of community events such as high school athletic events. Moreover, they frequently provide the only radio service to listeners in a variety of circumstances, particularly those living in and traveling through rural areas.¹²⁹

53. However, the AM band suffers from inherent technical limitations that threaten its viability. For example, the propagation characteristics of the AM band cause substantially increased interference among AM broadcasts at night, requiring many AM stations to reduce their operating power substantially (and/or directionalize their signals), thereby eliminating service to certain swaths of their audience.¹³⁰ Others (daytime-only stations) are prohibited from broadcasting at night at all.¹³¹ Even beyond this significant nighttime service issue, during all hours of operations, increasing electromagnetic interference to AM transmissions emanates from power lines, electronics equipment such as computers and televisions, fluorescent and neon lighting and dimmers used for incandescent lighting, electric motors, traffic signal sensors, RF from cable lines and equipment, and certain kinds of medical equipment.¹³² The result has been a well-documented shift of AM listeners to newer mass media services that offer higher technical quality and superior audio fidelity.¹³³

¹²⁵ *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Notice of Proposed Rule Making, MB Docket No. 07-172, 22 FCC Rcd 15890 (2007) (“*FM Translator NPRM*”). The Commission previously solicited comments and reply comments by public notice on the “Petition for Rulemaking of the National Association of Broadcasters,” RM Docket No. 11338 (July 14, 2006) (“*NAB Petition*”). See Public Notice, Report No. 2782 (rel. July 25, 2006). See Sections 1.4 and 1.405 of the Commission’s rules, 47 C.F.R. §§ 1.4, 1.405.

¹²⁶ FM translator stations are low power facilities currently licensed for the limited purpose of retransmitting the signals of either an FM radio station or another FM translator station. See 47 C.F.R. § 74.1201(a).

¹²⁷ *FM Translator NPRM*, 22 FCC Rcd at 15890-92 ¶¶ 1-6.

¹²⁸ *Id.* at 15891-93 ¶ 5.

¹²⁹ *Id.*; see also *Review of the Technical Assignment Criteria for the AM Broadcast Service*, Report and Order, 6 FCC Rcd 6273, 6275 ¶ 3 (1991) (“*Expanded Band R&O*”).

¹³⁰ See *NAB Petition* at 4 (some stations lose 80-95% of their coverage area to protect clear channel AM stations often located hundreds of miles away).

¹³¹ Some daytime-only stations are permitted to operate during sunrise and sunset hours at extremely low power levels. *Id.* at 4 n.7.

¹³² *FM Translator NPRM*, 22 FCC Rcd at 15891 ¶ 4.

¹³³ *Expanded Band R&O*, 6 FCC Rcd at 6275 ¶ 2.

54. Many commenters in that proceeding, which remains open, favor allowing AM stations to use FM translators to retransmit their signals within each AM station's current coverage area, with many commenters noting the potential of this proposal to expand coverage of local news and events by *mitigating the AM band's technical deficiencies and permitting increased nighttime operations.*¹³⁴ Moreover, associations representing minority broadcasters commented in favor of the proposal, arguing that it would help reverse the sharp downward trend in minority ownership by improving the viability and value of AM stations.¹³⁵ Their comments endorsed the following statement by the Radio Broadcasters Association of Puerto Rico and Independent Spanish Broadcasters Association in support of the NAB Petition:

By allowing use of FM translators with AM stations to improve the integrity of the AM band, the Commission would enhance the ability of AM stations to compete with other media sources. Such competition, in turn, drives creativity, ingenuity and attentiveness to the needs of the public in the marketplace as a whole.¹³⁶

C. POLITICAL PROGRAMMING

1. Issues

55. In the *NOI*, the Commission noted that one area in which broadcasters have concrete, defined programming obligations is that of political programming. In this regard, the Commission specifically cited two provisions of the Communications Act: the reasonable access provision (the Commission is expressly empowered to revoke the license of a broadcast station that does not allow "reasonable access" to or the "purchase of reasonable amounts of time" on its facilities by a "legally qualified candidate for Federal elective office...")¹³⁷ and the equal opportunities provision ("[i]f any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station").¹³⁸

56. The Commission has previously noted that some broadcasters have aired many hours of political programming and that several television networks have provided free airtime to candidates for president in recent elections.¹³⁹ However, the Commission has also referenced testimony at a Congressional hearing on localism and the public interest in which a witness reported research results suggesting a decline in political programming and that larger station group owners air less local campaign news than smaller and mid-sized station group owners.¹⁴⁰ In addition, the Commission has cited studies

¹³⁴ See, e.g., Comments of the AM Daytimers Association (Aug. 24, 2006) at 1-2; Comments of Don Moore, WAWK Radio (Aug. 24, 2006) at 2-3; Comments of Jane Elizabeth Davis Pigg, WCRE(AM) (Aug. 7, 2006) at 1; Comments of Debbie Beal, WRGS(AM) (Aug. 11, 2006) at 1; Comments of Chris McGinnis, WRUS(AM) (Aug. 22, 2006) at 1; Comments of C.R. Communications, Inc. (Aug. 23, 2006) at 1-3; Comments of Richard A. Ford, WERT(AM) (Aug. 22, 2006) at 1; Comments of Mark and Arlene Bohach, WLOH(AM) (Aug. 22, 2006) at 1; Comments of Beverly Broadcasting Company, LLC (Aug. 22, 2006) at 1-2; Comments of WLDS-AM (Jerdon Broadcasting) (Aug. 11, 2006) at 1; Comments of Miller Communications, Inc., *et al.* (Aug. 17, 2006) at 1-2.

¹³⁵ See Reply Comments of the National Association of Black Owned Broadcasters and the Minority Media and Telecommunications Council (Sept. 6, 2006) at 3-4.

¹³⁶ *Id.* at 1.

¹³⁷ 47 U.S.C. § 312(a)(7).

¹³⁸ 47 U.S.C. § 315(a).

¹³⁹ See *DTV Public Interest NOI*, 14 FCC Rcd at 21647-48 ¶ 35.

¹⁴⁰ Testimony of Martin Kaplan, Director, Annenberg Norman Lear Center, Associate Dean USC Annenberg School for Communication, on Local TV News Coverage of Politics and the Public Interest Obligations of Broadcasters,

suggesting that many television broadcasters have provided little or no political programming.¹⁴¹

57. The *NOI* sought comment on questions regarding the Commission's political programming rules and whether there were ways that the Commission's existing rules could be revised or strengthened to facilitate political discourse, including creating a form to standardize the way in which stations disclose certain information to candidates and requiring the posting of certain information on a station's website.¹⁴² The Commission also asked how much program time in recent years has been devoted to local and to national political coverage, and what steps could be taken to encourage voluntary efforts for political and civic discourse. Given that Congress has enacted specific requirements governing political programming, the *NOI* further inquired whether it would be appropriate or permissible for the Commission to take additional steps to enhance broadcasters' coverage of local political candidates and issues.¹⁴³

2. Public Comments

58. The record here reflects sharp disagreement among commenters as to the broadcasters' record in airing programming addressing political issues and the Commission's legal authority in the area. The NAB contends that the imposition of any political programming quota would exceed the Commission's authority and raise serious constitutional problems.¹⁴⁴ Moreover, the NAB asserts that the Commission's discretion in the political programming area "is severely limited because Congress already has occupied the field" through specific statutory provisions, thereby barring any Commission efforts to insert incompatible policies.¹⁴⁵

59. The NAB also avers that new obligations in the area of political programming are wholly unnecessary as a matter of policy. Rather, it contends that broadcasters already deliver a sufficient amount of political coverage and takes issue with the findings of the Lear Center Study of broadcasters' political coverage¹⁴⁶ on which the Commission has relied.¹⁴⁷ In particular, it states that the Study's findings are based on an overly limited sample of time in the broadcast day and ignores other news coverage.¹⁴⁸ The NAB provides examples of broadcasters who are launching or continuing projects that devote five minute or longer segments to discussions of relevant election issues. It also contends that an important factor overlooked by media critics is the substantial amount of free political airtime that goes unused because candidates frequently reject it. The NAB points to the offer by NBC to host debates in 13 Senate races in which at least one candidate declined in 11 of the races, as well as other specific examples of offers of free airtime which were refused.¹⁴⁹ On reply, the NAB contends that parties representing at least 1,472 radio and 255 television stations specifically discussed their coverage of political issues in

Before the United States Senate Commerce Committee, July 23, 2003, available at <http://www.learcenter.org/pdf/SenateTestimony.pdf>.

¹⁴¹ See *DTV Public Interest NOI*, 14 FCC Rcd at 21648 ¶ 36.

¹⁴² *NOI*, 19 FCC Rcd at 12433-34, ¶ 23.

¹⁴³ *Id.* at 12433 ¶ 22.

¹⁴⁴ NAB Comments at 36.

¹⁴⁵ *Id.* at 37.

¹⁴⁶ See *infra*, para. 63.

¹⁴⁷ See *NOI*, 19 FCC Rcd at 12433 ¶ 21.

¹⁴⁸ NAB Comments at 42-43.

¹⁴⁹ *Id.* at 48-50; Reply Comments of the National Association of Broadcasters (Jan. 3, 2005) at 15.