

comments in this proceeding.¹⁵⁰ The NAB sets forth specific examples from the record concerning broadcaster coverage of political debates, candidate interviews, and other political issues.¹⁵¹

60. The NAB also addresses two controversies concerning political programming that arose during the months leading up to the 2004 election. The first concerned a decision by Sinclair Broadcast Group, Inc. to air a documentary critical of presidential candidate John Kerry. The NAB notes that, following an outpouring of complaints about the situation, most of which argued that Sinclair's action was an example of improper bias, the broadcaster decided not to air the documentary in its entirety. Instead, it aired a news program that focused on allegations of media bias and included only portions of the Kerry documentary.¹⁵² The second situation concerned a significant donation of airtime by Pappas Telecasting Companies to Republican county committees in California for use on behalf of Republican state and local candidates.¹⁵³ The NAB notes that the Commission's Media Bureau issued a decision concluding that Pappas' donation had triggered the equal opportunities requirements, meaning that opponents of those candidates using the donated airtime were entitled to their own free equal time.¹⁵⁴ The NAB believes that the resolution of these controversies "underscore[s] the wisdom of the Commission's long-standing reliance on marketplace incentives to govern broadcasters' programming, rather than justify further government regulation."¹⁵⁵

61. Several commenters describe their efforts as station licensees to provide coverage of local and national elections.¹⁵⁶ For example, during the 14 weeks leading up to the November 2004 general election, Belo Corp., licensee of 19 television stations, states that its stations broadcast 338 hours of candidate debates, news stories, interviews, candidate forums, and other political programming. To increase voter awareness and education, Belo stations rebroadcast their political coverage on sister stations and on the Company's cable news channels, where available, and eight Belo stations posted video of local debates on their websites.¹⁵⁷ In addition, Belo reports that its stations gave more than 20 hours of free airtime to Congressional and gubernatorial candidates during the 2004 election season as part of its continued airing of "It's Your Time," a program originated by Belo in 1996 to provide free airtime to local candidates to address viewers on issues facing their communities.¹⁵⁸ Belo argues that market forces and journalistic imperatives provide ample incentive for broadcasters to air local news, public affairs, and other community responsive programming. It therefore urges the Commission to resist adopting new political programming rules.¹⁵⁹

62. Several public interest organizations, on the other hand, contend that broadcasters' current efforts to air politically oriented programming are insufficient. The Consumer Federation of America and Consumers Union ("CFA/CU") are each nonprofit organizations, the former an association

¹⁵⁰ *Id.* at 14.

¹⁵¹ *Id.* at 14-15.

¹⁵² *Id.* at 25-26.

¹⁵³ *Id.* at 25.

¹⁵⁴ *Id.* at 26-27.

¹⁵⁵ *Id.* at 28.

¹⁵⁶ See, e.g., Further Comments of Belo Corp. (Jan. 3, 2005); Testimony of Jim Keelor, President and COO, Liberty Corporation (licensee of 15 television stations) (Charlotte Tr. 32-34); Testimony of Jeff Wade, Saga Communications (Portland Tr. 74-76); Clear Channel Comments at 22-24.

¹⁵⁷ Further Comments of Belo Corp. (Jan. 3, 2005) at 1.

¹⁵⁸ *Id.* at 2, and at appended November 16, 2004 News Release.

¹⁵⁹ *Id.* at 3.

of pro-consumer groups, the latter a membership organization that provides consumers with information, education and counsel about goods, services, and personal finance.¹⁶⁰ CFA/CU characterizes as “severe” the gap between what society needs from media to ensure a vibrant democratic discourse and what society gets from commercial mass media.”¹⁶¹ CFA/CU submit two studies in support of their Comments, entitled “Television and Political Discourse: Usage Patterns, Social Processes and Public Support for Broadcaster Responsibilities to Promote Localism and Diversity” (“Political Discourse Study”) and Market Failures of Commercial Mass Media to Meet Society’s Need for Localism and Diversity (“Market Failures Study”).¹⁶² The Political Discourse Study recognizes the important role that television plays in the political process, both as a source of news and information for the public and as the dominant medium for public influence. It concludes that the pressures of commercialism in the media damage both journalism and democratic discourse.¹⁶³ The Market Failures Study takes issue with the validity of the Commission’s conclusion over 20 years ago in deregulating broadcasting that market forces in an increasingly competitive market would encourage broadcasters to satisfy policymakers’ localism goals. CFA/CU conclude that deregulated markets will not provide society with the responsive diverse local broadcast matter that democracy needs to thrive. Accordingly, they call for an aggressive policy to promote localism and diversity that does not conflict with constitutional First Amendment principles.¹⁶⁴

63. Another study submitted for the record is the Lear Center Local News Archive’s “Local News Coverage of the 2004 Campaign: An Analysis of Nightly Broadcasts in 11 Markets.”¹⁶⁵ The Lear Center Study examined pre-election coverage of 44 network-affiliated television stations in 11 major markets airing every night between 5:00 and 11:30 p.m. from October 4 to November 1, 2004. The Lear analysis finds that almost two thirds of all news broadcasts contained at least one campaign related story. The analysis also finds that coverage of the presidential election dominated local station coverage. For example, the analysis finds that, although fifty-five percent of broadcasts contained a story regarding the presidential election, just eight percent contained a story about a local candidate race—including campaigns for U.S. House, state senate, mayor and other regional offices. The analysis also finds that eight times more coverage went to stories about accidental injuries, and 12 times more coverage to sports and weather, than to coverage of all local races combined.¹⁶⁶

64. Belo criticizes the Lear Center Study, contending that the Study captures only a limited segment of election-related programming and does not consider morning and daytime programming, which, according to Belo, constitute a significant portion of local stations’ newscasts.¹⁶⁷ Belo contends that, even for the periods it does analyze, the Study’s figures are inconsistent with the amount of political

¹⁶⁰ CFA/CU Comments (Nov. 1, 2004) at 1.

¹⁶¹ *Id.* at 2.

¹⁶² *Id.* at Att. A and B.

¹⁶³ *Id.* at 2, Att. A.

¹⁶⁴ *Id.* at Att. B 36-42.

¹⁶⁵ Comments of Martin Kaplan, Associate Dean, Annenberg School for Communication, University of Southern California (Feb. 7, 2005), submitting *Local News Coverage of the 2004 Campaigns, An Analysis of Nightly Broadcasts in 11 Markets*, report released by the Lear Center Local News Archive, a collaboration between the Annenberg School for Communication and the NewsLab of the Department of Political Science at the University of Wisconsin-Madison (the “Lear Center Study”), also available at <http://www.localnewsarchive.org/pdf/LCLNAFinal2004.pdf>.

¹⁶⁶ *Lear Center Study* at 3.

¹⁶⁷ Supplemental Comments of Belo Corp. in Response to the Lear Center Study (Apr. 19, 2005) (“Supplemental Belo Comments”) at 1-3.

programming revealed by Belo's internal analysis of its stations' political coverage. According to Belo, awards given to its station affiliates by the Lear Center and other professional recognition received by these stations also belie the findings of the Lear Center Study.¹⁶⁸ Given the "methodological shortcomings and other limitations" of the Study, and the extensive information in the record of this proceeding concerning broadcasters' attention to local concerns, Belo argues that the Study should not be accorded any decisional significance, let alone provide a basis for imposing on broadcasters mandatory quantitative content requirements relating to political coverage or any other subject.¹⁶⁹ Belo contends that such requirements would only increase the cost of complying with "one-size-fits-all governmental oversight" and minimize stations' flexibility to attract viewers and provide programming that is responsive to community interests and concerns.¹⁷⁰

65. The Campaign Legal Center and The Alliance for Better Campaigns ("Campaign Commenters") are nonpartisan, non-profit organizations dedicated to political broadcasting policy and revitalizing competition in our democratic process by ensuring that the public airways serve as a forum for open and vibrant political debate, particularly among candidates.¹⁷¹ They express 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.¹⁷² The Campaign Commenters recommend that the Commission adopt: (1) a policy requiring broadcast licensees to devote a minimum amount of air time to local civic and electoral affairs-discourse; and (2) measures that will strengthen disclosure requirements for stations,¹⁷³ including the obligation of broadcasters to post on their websites political public file information and standardized forms for stations to use when reporting political advertising buys and their local civic and public affairs-programming, including local electoral affairs programming.¹⁷⁴ In their Reply Comments, the Campaign Commenters question broadcasters' assertions that stations have satisfied their public interest obligations, including providing adequate local civic and political discourse,

¹⁶⁸ *Id.* at 2.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 5.

¹⁷¹ Campaign Comments at 1.

¹⁷² *Id.* at 1-4. Statement of Mary Klenz, Co-President of the League of Women Voters of North Carolina (Oct. 24, 2003) at Testimony of same (Charlotte Tr. 134-35); *see also* Testimony of Kathy Walker (Charlotte Tr. 75-76).

¹⁷³ Campaign Comments at 1. Martin Kaplan, Associate Dean of the Annenberg School for Communications, University of Southern California, similarly argues that the lack of political coverage and localism by stations (as evidenced by the results of an analysis of the Annenberg School of 10,000 news broadcasts that aired during the last seven weeks of the political campaign season in 2002) must be addressed by establishing standards of performance for local news and requiring stations to record their public affairs programming, including their news programming. In addition, he contends that stations' performance on the public interest obligation should be linked to the renewal of their licenses. Testimony of Martin Kaplan, Associate Dean of the Annenberg School for Communications, University of Southern California (delivered by Joseph Salzman, Associate Dean, Annenberg School, USC) (Monterey Tr. 62-67).

¹⁷⁴ Campaign Comments at 5-6. The Campaign Commenters also urge the Commission to remove the word "class" from its lowest unit charge regulation, which requires stations to charge "the lowest charge of the station for the same class and amount of time for the same period." *Id.* at 7. They argue that the current pricing structure allowing stations to have a lowest unit rate for every class of time they sell steers candidates towards the most expensive time. We note that the language quoted by the Campaign Commenters originates in a statute (47 U.S.C. § 315(b)) and, therefore, cannot be altered by the Commission. Mary Klenz, Co-President of The League of Women Voters of North Carolina, also expressed concern about the high cost of election campaigns which she argues is directly related to the cost of television advertising and declares it "unfair that broadcasters charge such high prices for political ads the closer it gets to election day." (Charlotte Tr. 134-35).

citing recent studies and submissions in this proceeding that conclude to the contrary.¹⁷⁵ They criticize the poll cited in the NAB's Comments which found that a total of 89 percent of voters think that broadcasters spend either the right amount of time or too much time covering elections. The Campaign Commenters argue that the question posed was about the amount of time, not the quality of the programming, and that less than half those polled described broadcasters' coverage as the most helpful source of information. They also note that the initial question did not differentiate among reporting on the presidential race (which received enormous attention in 2004) and Congressional, statewide or local races. They urge the Commission to study market conditions and reevaluate its conclusions that led to broadcast deregulation in the 1980s.¹⁷⁶

3. Issues for Commission Action

66. Many broadcasters take very seriously their responsibility to inform their viewers and listeners about political issues. We share the concern of many commenters and members of the public who testified at the field hearings, including those noted *supra*, however, that not all stations do as much as they can and should in this important area – and that even for those that make appropriate efforts, the record indicates that their audiences are poorly informed about what the stations air in this regard. Accordingly, we intend to modify our rules that implicate this area.

67. We agree with the Campaign Commenters that the first step in ensuring that broadcasters meet the needs of their audiences is to “strengthen disclosure requirements for stations.” Broadcasters, cable systems, and DBS operators have long been required to maintain political files.¹⁷⁷ In 2002, the Bipartisan Campaign Reform Act (the “BCRA”) amended these requirements.¹⁷⁸ In addition to maintaining a public record of requests to buy time made by or on behalf of a candidate¹⁷⁹ and the disposition of such requests, under the BCRA, such entities must include the same specific information about any broadcast or cablecast that communicates “a message relating to any political matter of national importance including (i) a legally qualified candidate; (ii) any election to Federal office; or (iii) a national legislative issue of public importance.”¹⁸⁰ Our rules also require that stations and cable and DBS operators place in their political file a record of any free time provided for use by or on behalf of candidates¹⁸¹ and a list of executive officers/board members of any entity paying for a broadcast or cablecast concerning a political matter or controversial issue of public importance.¹⁸²

68. As discussed *supra*, in the Enhanced Disclosure proceeding, for television licensees, the Commission has replaced the issues/programs lists that broadcasters now maintain in their public files with a standardized form. The new form requires each television licensee to report on its efforts to identify the programming needs of various segments of their communities, and to list their community-responsive programming by category. Included in these categories of programming is local electoral affairs programming, defined as candidate-centered discourse focusing on the local, state and United States Congressional races for offices to be elected by a constituency within the licensee's broadcast area. Such programming includes broadcasts of candidate debates, interviews or statements, as well as

¹⁷⁵ Reply Comments of The Alliance for Better Campaigns and The Campaign Legal Center (Jan. 3, 2005) at 4-7.

¹⁷⁶ *Id.* at 5-11.

¹⁷⁷ See 47 C.F.R. §§73.1943, 73.3526(e)(6), 73.3527(e)(5), 76.1701, 25.701(d).

¹⁷⁸ See 47 U.S.C. § 315(e).

¹⁷⁹ 47 U.S.C. § 315(e)(1)(A).

¹⁸⁰ 47 U.S.C. § 315(e)(1)(B).

¹⁸¹ 47 C.F.R. § 73.1943 (broadcast); 47 C.F.R. § 76.1701 (cable); 47 C.F.R. § 25.701(d) (DBS).

¹⁸² 47 C.F.R. § 73.1212(e).

substantive discussions of ballot measures that will be put up before the voters in a forthcoming election. Licensees must disclose the total average number of hours per week aired of such programming on each primary and non-primary channel. In addition, they must provide detailed information for each such program, including its title, dates and times of broadcast, length and whether it was locally produced.¹⁸³ These new disclosure requirements will be of particular use in allowing the public and the Commission to determine the amount of critical political programming television stations air. As noted *supra*, in our *Digital Audio FNPRM*, we have inquired as to whether radio licensees should also be subject to enhanced disclosure requirements.¹⁸⁴

D. UNDERSERVED AUDIENCES

1. Issues

69. The principle of localism requires broadcasters to take into account *all* significant groups within their communities when developing balanced, community-responsive programming, including those groups with specialized needs and interests.¹⁸⁵ While the Commission has observed that each broadcast station is not necessarily required to provide service to all such groups,¹⁸⁶ it has nonetheless recognized the concerns of some that programming – particularly network programming – often is not sufficiently culturally diverse.¹⁸⁷ Accordingly, in the *NOI*, the Commission sought public input on whether the agency should consider new ways, consistent with applicable constitutional standards, to ensure that broadcasters serve their communities, especially traditionally underserved audiences.¹⁸⁸

2. Public Comments

70. Several commenters and participants at the Commission's localism field hearings expressed concern over the amount of programming being provided to various audiences. For example, the Reverend Jesse Jackson argues that media consolidation and low levels of minority ownership of broadcast stations are responsible for a "community crisis" concerning coverage of issues important to minorities.¹⁸⁹ The American Farm Bureau Federation, an organization with more than 5.5 million member farming families, cites what it characterizes as the elimination or curtailment of farm news by radio stations resulting from media consolidation and a decline in advertising dollars.¹⁹⁰ The United States Conference of Catholic Bishops asserts that local broadcasters display little interest in carrying the

¹⁸³ See *Enhanced Disclosure Order*.

¹⁸⁴ See *supra* note 37.

¹⁸⁵ See *NOI*, 19 FCC Rcd at 12434 ¶ 24.

¹⁸⁶ See *Radio Deregulation Order*, 84 F.C.C.2d at 997 ¶ 66 ("What is important is that broadcasters present programming relevant to public issues both of the community at large or, in the appropriate circumstances, relevant primarily to the more specialized interests of its own listenership. It is not necessary that each station attempt to provide service to all segments of the community where alternative radio sources are available.").

¹⁸⁷ See *DTV Public Interest NOI*, 14 FCC Rcd at 21646-47 ¶ 32.

¹⁸⁸ *NOI*, 19 FCC Rcd at 12435 ¶ 26.

¹⁸⁹ Testimony of the Reverend Jesse Jackson (Washington, D.C. Tr. 40-42); see also Comments of Tri State "Like It Is" Support Coalition (Jan. 17, 2006) (providing copies of over 1,000 letters protesting cancellation of public affairs program oriented to people of color); Testimony of Lisa Fager Bedakio, President and Co-Founder, Industry Ears (Washington, D.C. Tr. 29-31); Testimony of Wade Henderson, President, Leadership Conference on Civil Rights (Washington, D.C. Tr. 35-37).

¹⁹⁰ Comments of The American Farm Bureau Federation (Aug. 31, 2004) at 1-3; see also Comments of Illinois Farm Bureau (Aug. 31, 2004) at 1-2; Comments of Nebraska Farm Bureau (Aug. 30, 2004) at 1-2; Comments of Ohio Farm Bureau Federation (Aug. 27, 2004) at 1-2.

programs and PSAs produced by the Catholic dioceses and only do so at an increasingly high cost.¹⁹¹ Others decry what they view as a lack of programming addressing the needs and interests of children,¹⁹² low-income individuals,¹⁹³ the blind,¹⁹⁴ and people of color, including Asian-Americans,¹⁹⁵ Hispanics,¹⁹⁶ and Native Americans.¹⁹⁷ Entravision Holdings, LLC, a Spanish-language broadcaster, suggests that, in order to promote coverage of issues important to minority communities, the Commission should assert itself in the area of "must-carry of television stations on cable systems."¹⁹⁸

71. Those communities that may be underserved in the current analog environment stand to benefit greatly from the transition to digital programming. The technical constraints of analog broadcasting limit a broadcaster's ability to offer programming that reflects that diversity among the people living in the communities served by that licensee. By contrast, as the Commission has noted elsewhere, broadcasters could use the flexibility of digital technology to better serve the needs of underserved communities in a number of ways, such as "narrowcasting" to those communities on different programming streams or even taking advantage of enhanced audio capabilities to air different soundtracks in different languages simultaneously.¹⁹⁹ The record here suggests that some broadcasters would like to move in this direction.²⁰⁰ The record in other proceedings also indicates that commercial broadcasters are interested in developing "niche" programming to respond to the interests and needs of particular segments of their communities.²⁰¹

¹⁹¹ Comments of United States Conference of Catholic Bishops (Nov. 1, 2004) at 1-3.

¹⁹² Testimony of Patti Miller, Director of Children & the Media Program, Children NOW, Oakland, California (delivered by Seeta Gangadharan) (Monterey Tr. 186-88).

¹⁹³ Comments of T.J. Johnson for Poor Magazine.org and Poor News Network (July 20, 2004) at 1.

¹⁹⁴ Testimony of Mary Lee O'Daniel (Charlotte Tr. 66-67)

¹⁹⁵ Comments of Rancho Palos Verdes Broadcasters, Inc. (Nov. 1, 2004) at 1-3; Testimony of Tran Lin (Monterey Tr. 169-71).

¹⁹⁶ Testimony of Blanca Zarazua, Chair, Hispanic Chamber of Commerce of Monterey County (Monterey Tr. 44-50); Testimony of Louise Rocha-McCarthy (Portland Tr. 167-69); Testimony of Unidentified Audience Member (San Antonio Tr. 147-48).

¹⁹⁷ Testimony of Hazel Bonner, Charmaine White Face and Randy Ross (Rapid City Tr. 180-82, 212, and 266-67, respectively).

¹⁹⁸ Comments of Entravision Holdings, LLC (Nov. 1, 2004) at 4.

¹⁹⁹ *DTV Public Interest NOI*, 14 FCC Rcd at 21646-47 ¶ 32.

²⁰⁰ For example, WNYE-TV, New York, N.Y., plans to broadcast a dedicated foreign language channel, featuring programming in at least 12 languages, "complete with local news, international news and cultural programming of various countries." APTS Comments at 9. In a number of presentations submitted along with the APTS Comments, noncommercial broadcasters discussed their plans to offer "[c]ustomized TV channels for niche audiences." See WHYY Presentation at 17 (attached to APTS Comments).

²⁰¹ For example, broadcasters have advised the Commission that they are formulating plans to introduce "language training, employment updates, and immigration information in Spanish." The NAB and the Association for Maximum Service Television, Inc. Petition for Reconsideration in CS Docket No. 98-120 (Apr. 21, 2005) at 23. Other licensees see possibilities in health outreach programs directed to specific underserved populations. ABC Television Affiliates Association, CBS Television Network Affiliates Association, NBC Television Affiliates, ABC Owned Television Affiliates, NBC and Telemundo Stations, Petition for Reconsideration in CS Docket No. 98-120 (Apr. 21, 2005) ("Network Affiliates Petition") at 10. With multicasting, both commercial and noncommercial radio and television broadcasters can serve several distinct communities while still ensuring that public safety information, such as AMBER alerts, reaches as many people as possible in an affected area. Indeed, broadcasters report that they

3. Issues for Commission Action

72. Although we are encouraged by those broadcasters that are developing programming designed to serve the needs of the underserved segments of their communities, particularly those that are taking advantage of the flexibility inherent in digital television technology to provide multiple streams of programming to serve niche audiences, we believe that more needs to be done.

73. *Community Advisory Boards.* As discussed above, we tentatively conclude that licensees should convene and consult with permanent advisory boards made up of leaders from the community of each broadcast station.²⁰² In addition to informing broadcasters of issues of importance to their communities in general, such advisory boards should include representatives of all segments of the community, to ensure that those community elements have a continuing opportunity to communicate their group's perceived needs and interests to their local broadcast station management. 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. As discussed in paragraphs 26-28 of this Report, we seek comment on a number of issues arising from this proposal, including under what circumstances a licensee with formal groups in place should be deemed to have satisfied this requirement.

74. *Ownership Diversity.* We will also explore ways to increase participation in the broadcasting industry by Eligible Entities ("EEs"), comprised of new entrants and small businesses, including minority- and women-owned businesses. Increasing the number of stations licensed to such entities would add new and independent voices to the broadcast medium, which "for decades now . . . has been an essential part of the national discourse on subjects across the whole broad spectrum of speech, thought, and expression."²⁰³ It would further the "long-established regulatory goal[] in the field of television broadcasting" of "increasing the number of outlets for community self-expression...."²⁰⁴ We also expect that entry as broadcast licensees by EEs will not only increase diversity, it will also reduce the concentration of economic power among station owners.²⁰⁵

75. Thus, in its *Ownership Diversity Report and Order and Third Further Notice of Proposed Rulemaking* adopted on December 18, 2007,²⁰⁶ the Commission took a number of actions and sought comment on others designed to make it easier for EEs to gain access to financing and spectrum opportunities. Actions taken by the Commission to assist EEs included the extension of station construction deadlines, adjustment of the Equity Debt Plus ownership attribution standard and modification of the distress sale policy. The Commission also proposed a number of new rules and policies, including reaffirmation of its commitment to bar race or gender discrimination in broadcast transactions, a zero tolerance policy with regard to ownership fraud, and the requirement that broadcasters

currently are developing multicasting and "datacasting" capabilities to accomplish that public safety objective. APTS Comments at 12-13; Network Affiliates Petition at 21.

²⁰² See *supra*, paras. 25-26.

²⁰³ See *Turner Broadcasting Sys. v. FCC*, 520 U.S. 180, 194 (1997) ("*Turner II*").

²⁰⁴ *United States v. Midwest Video Corp.*, 406 U.S. 649, 654 (1972).

²⁰⁵ See *FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775, 780 (1978). Cf. 47 U.S.C. § 307(b) ("In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall 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.").

²⁰⁶ *Promoting Diversification of Ownership in the Broadcasting Services* (MB Docket No. 07-294), Report and Order and Third Further Notice of Proposed Rulemaking (adopted Dec. 18, 2007) ("*Diversity Order*").

seeking renewal of their licenses certify that their advertising sales contracts do not discriminate on the basis of race or gender.

76. In addition, in the *Diversity Order*, the Commission sought to facilitate the availability of funding to EEs that seek to acquire broadcast properties by encouraging local and regional banks to engage in such lending, providing incentives to licensees to finance or incubate EEs, considering requests to extend divestiture deadlines in mergers in which participants have actively solicited bids for divested properties from EEs, and creating a guidebook that focuses on what companies can do to promote diversity. The *Diversity Order* also sought comment on improving the process by which the Commission collects data regarding the gender, race and ethnicity of its broadcast licensees. Moreover, as proposed by the Commission's Advisory Committee for Diversity in the Digital Age ("Diversity Committee"), the *Diversity Order* committed that Commission staff will attempt to organize access-to-capital conferences to provide minority and women entrepreneurs, small businesses, and other EEs with the information necessary for them to be aware of emerging ownership opportunities in the communications industry. Commission staff will facilitate the development of such conferences to be conducted by members of the communications industry whenever a significant ownership-related transaction is proposed to the Commission.²⁰⁷ These conferences will encourage and facilitate communications companies that engage in transactions and license transfers to include small businesses, minorities and women entrepreneurs, and other EEs during negotiations on assets and properties identified for divestiture. By implementing these and other suggestions of the Diversity Committee, the Commission can, and will, have a significant impact on increasing diversity and localism in broadcasting, while furthering its mission of enhancing the ability of minorities and women to participate in telecommunications and related industries.

77. *Enhanced Disclosure.* As discussed *supra*, in the Enhanced Disclosure proceeding, for television licensees, the Commission has replaced the issues/programs lists that broadcasters now maintain in their public files with a standardized form. This new form requires each such licensee to report on its efforts to identify the programming needs of various segments of their communities, and to provide detailed information about its community responsive programming by category. Included in these categories of programming is that for underserved communities, defined as material aimed to serve the needs of demographic segments of the community to which little or no programming is directed. Licensees must provide detailed information for each such program, including its title, dates and times of broadcast, length and whether it was locally-produced.²⁰⁸ These new disclosure requirements will be of particular use in allowing the public and the Commission to determine the amount of such programming each television station air. 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.²⁰⁹

78. *Commercial Leased Access.* Another means for ensuring that all segments of the community have an opportunity to be heard is to enhance independent entities' access to their local cable systems. On November 27, 2007, we adopted a Report and Order revising our leased access rules to facilitate the ability of independent programmers to be carried and thereby to distribute programming of local interest.²¹⁰ The Commission adopted the Report and Order in response to comments from leased

²⁰⁷ See Letter from Chairman Kevin J. Martin to the Hon. Henry Rivera, Chairman of the Advisory Committee on Diversity for Communications in the Digital Age (Sept. 27, 2007), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-276984A1.pdf.

²⁰⁸ See *Enhanced Disclosure Order*.

²⁰⁹ See *supra*, note 37.

²¹⁰ *Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Report and Order (MB Docket No. 07-42) (adopted Nov. 27, 2007) ("*Leased Access Order*").

access programmers regarding slow response times to information requests and excessive rates and fees. The Commission's action will facilitate the use of leased access channels by adopting more specific leased access customer service standards for programmers and increased enforcement of those standards, faster cable operator response times to information requests from programmers and more appropriate leased access rates. It also will expedite the leased access complaint process and improve the discovery process related to leased access disputes.²¹¹

79. The commercial leased access requirements are set forth in Section 612 of the Communications Act.²¹² They require a cable operator to set aside channel capacity for commercial use by video programmers unaffiliated with the operator. The statutory framework for commercial leased access was first established by the Cable Communications Policy Act of 1984.²¹³ Leased access is a valuable tool that gives programmers the ability to distribute diverse, locally-originated programming to viewers in the community that may not otherwise benefit from local culture, news, and information through current television sources. An effective and affordable process by which local programmers can access cable systems to provide programming of local interest is essential for many local programmers to distribute their programming to non-majority and/or underserved community groups.

80. Because programmer access to cable systems is essential to ensuring that diverse voices in the community have an opportunity to be heard, we intend that our amendment of the leased access rules will encourage increased diverse and local programming on cable systems.

E. DISASTER WARNINGS

1. Issues

81. We noted in the *NOI* that providing emergency information is a fundamental area in which broadcasters use their stations to serve their communities of license.²¹⁴ The Commission's role in ensuring that broadcasters fulfill this obligation is set forth in Section 1 of the Communications Act, which declares that the Congress created the Commission "for the purpose of promoting safety of life and property through the use of wire and radio communications..."²¹⁵ The Commission has adopted the Emergency Alert System ("EAS"), which "provides the President with the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency," and, in addition, "may be used to provide the heads of State and local government, or their designated representatives, with a means of emergency communication with the public in their State or Local Area."²¹⁶ The Commission also requires TV broadcast stations that provide emergency information beyond compliance with EAS standards to make the critical details of that

²¹¹ See *id.*

²¹² See 47 U.S.C. § 532. The Commission adopted leased access rules in its *Report and Order and Further Notice of Proposed Rule Making*, 8 FCC Rcd 5631 (1993); *Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 16933 (1996); and *Second Report and Order and Second Order on Reconsideration of the First Report and Order*, 12 FCC Rcd 5267 (1997).

²¹³ Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984), 47 U.S.C. § 521 *et seq.*

²¹⁴ See *NOI*, 19 FCC Rcd at 14235 ¶ 27.

²¹⁵ 47 U.S.C. § 151.

²¹⁶ 47 C.F.R. § 11.1. Part 11 of the Commission's rules "describe the required technical standards and operational procedures of the EAS for AM, FM, and TV broadcast stations, digital broadcast stations, analog cable systems, digital cable systems, wireline video systems, wireless cable systems, Direct Broadcast Satellite (DBS) services, Satellite Digital Audio Radio Service (SDARS), and other participating entities." *Id.*

information accessible to people with hearing and visual disabilities.²¹⁷

82. Due to the critical and fundamental role of emergency communications as a component of broadcasters' local public service obligations, the *NOI* sought comment on broadcaster performance in this area. The Commission called for input on whether it should require that licensees make their facilities available to local emergency managers and, if so, what the nature and scope of any such requirement would be. The Commission also sought comment on whether voluntary arrangements with local officials to provide emergency information to viewers and listeners were sufficient, or whether the Commission should impose uniform requirements and, if so, what those requirements should be.²¹⁸ The Commission further sought comment on how digital technology could be used to enhance warnings, and to what extent broadcasters were making use of such technology.²¹⁹

2. Public Comments

83. The record reveals the importance that the public places on receiving timely emergency information in a time of crisis. Many commenters noted how invaluable local broadcast stations are in disseminating emergency information to the public. One described the important role local radio played in providing news updates and information on escape routes, survival tips, and recovery strategies in New Orleans in the aftermath of Hurricane Katrina.²²⁰ Another stated that, with the help of local broadcasters, the State of Texas was able to turn a local tragedy into a triumph of technology and cooperation by creating the nation's first Amber Alert using EAS, and that local broadcasters' cooperation and leadership on public safety matters were much appreciated.²²¹ Another commenter stated that, without local broadcasters in North Carolina, there would be no Amber Alert system.²²² Witnesses at the Rapid City hearing discussed the arrangement there between broadcasters and the local government that provides local officials expedited access to local stations in times of emergency.²²³ The commenter noted that local broadcasters have made their studios available to emergency management for the purpose of recording public service announcements ("PSAs"), and have helped with the distribution of the PSAs to other outlets in the area.²²⁴

84. Other commenters indicated that there was still some work left to do to make the broadcast of emergency information easier and more effective. One commenter stated that emergency services management relies on local media to get its information to the public, but that local broadcast

²¹⁷ 47 C.F.R. § 79.2(b).

²¹⁸ *NOI*, 19 FCC Rcd at 12435-36 ¶28.

²¹⁹ *Id.* at 12435-36 ¶ 29.

²²⁰ Comments of United Radio Broadcasters of New Orleans (Dec. 8, 2005) at 2. The commenter noted how local radio stations worked together to give New Orleans and the surrounding community the "information, hope, and reassurance when it was needed most desperately by local residents." *Id.*

²²¹ Testimony of Jay Kimbrough, Director of Homeland Security for the State of Texas (San Antonio Tr. 17).

²²² Testimony of Bob Forcello (Charlotte Tr. 109).

²²³ Statement of Park Owens, Director of Emergency Management, Rapid City and Pennington County, South Dakota (Oct. 20, 2006); Testimony of same (Rapid City Tr. 57-59); Testimony of Rapid City, South Dakota Mayor Jim Shaw (Rapid City Tr. 107).

²²⁴ *Id.* At the Washington, D.C. localism hearing, the NAB offered testimony describing the efforts of local television stations in the wake of the wildfires that recently plagued much of California. See Testimony of Marcellus Alexander, Executive Vice President for Television, National Association of Broadcasters (Washington, D.C. Tr. 23-27).

stations are getting more automated.²²⁵ As a result, such management has an increasingly difficult time getting emergency information to the public late at night or early in the morning because many stations are controlled from a remote location.²²⁶ The commenter also lamented the fact that there is no mechanism in place for local emergency management services to be informed of call station changes, licensee changes, points of contact changes, and that emergency management officials need more interface with the media on public service announcements.²²⁷ Another noted that broadcasters did a reasonable job providing information related to storm warnings and Amber Alerts, but was concerned about stations that were unattended because repeating or updating the warning from EAS at an unattended station would depend on how the automatic alert function on the EAS decoder was set.²²⁸ Another commenter opposed permitting local and state emergency managers unfettered access to broadcast station facilities.²²⁹ Another urges the Commission to ensure that physical plant and staffing policies allow emergency officials access to stations, yet allow broadcasters to continue the critical journalistic role that stations play, particularly in times of emergency.²³⁰

85. Based on the foregoing criticisms, several commenters offered proposals for how the Commission could improve the efficiency and effectiveness of the distribution of emergency information to the public through local broadcasters. These proposals included taking action on the outstanding EAS Further Notice of Proposed Rulemaking²³¹ and reducing the ability of broadcasters to control their programming from a remote location.²³²

3. Issues for Commission Action

86. *Emergency Alert System Rulemaking.* The record in this proceeding reaffirms the importance the public places on timely and accurate emergency information on broadcast stations. We intend to take action on the pending *EAS FNPRM*. Specifically, as we have previously stated, we are prepared to address the issues in that proceeding within six months.²³³ Comments received in that proceeding will be considered to resolve those issues.

87. *Remote Radio Station Operation.* Commenters also expressed concerns regarding the prevalence of automated radio broadcast operations, which allow the operation of stations without a local presence, and the perceived negative impact that they have on licensees' ability to serve local needs. As we previously indicated, in the Digital Audio proceeding, we are looking into whether we should require a physical presence at a broadcasting facility during all hours of operation.²³⁴ While the issue as it pertains to radio will be resolved in that proceeding, as discussed in paragraph 29 *supra*, we seek comment here on

²²⁵ Testimony of Harry B. Robins, Emergency Services Manager for Monterey County (Monterey Tr. 130-31).

²²⁶ *Id.* at 131.

²²⁷ *Id.* at 132.

²²⁸ Comments of Thomas C. Smith (Nov. 2, 2004) at 3-4.

²²⁹ Comments of Washington State Association of Broadcasters (Oct. 28, 2004) at 20-21.

²³⁰ NFCB Reply Comments at 16.

²³¹ *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief, Second Report & Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 13275 (2007) ("EAS FNPRM").*

²³² Testimony of Harry B. Robins, Emergency Services Manager for Monterey County (Monterey Tr. 131).

²³³ *EAS NPRM* at 13295 ¶ 41.

²³⁴ *See supra*, paras. 28-29.

whether such a requirement should also be imposed on television licensees.

F. NETWORK AFFILIATION RULES

1. Issues

88. As noted in the *NOI*, the relationship between television networks and their affiliated stations carries implications regarding the ability of those licensees to promote and preserve localism.²³⁵ Several existing Commission rules govern the network-affiliate relationship, the general goal of which is to ensure that local stations remain ultimately responsible for programming decisions, notwithstanding their affiliation with a national programming network. Two mandates in particular are noteworthy in this context. First, under the “right to reject” rule, licensees are barred from becoming parties to a network affiliation agreement that “prevents or hinders the station from: (1) [r]ejecting or refusing network programs which the station reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest, or (2) [s]ubstituting a program which, in the station’s opinion, is of greater local or national importance.”²³⁶ Second, the “time option” rule effectively prohibits any affiliation agreement term that “provides for optioning of the station’s time to the network organization, or which has the same restraining effect as time optioning,” meaning a term that “prevents or hinders the station from scheduling programs before the network agrees to utilize the time during which such programs are scheduled, or which requires the station to clear time already scheduled when the network organization seeks to utilize the time.”²³⁷

89. The meaning and scope of the network affiliation rules have been matters of dispute between the major broadcast networks and independently owned affiliates in recent years. Disagreements first came to the Commission’s attention in 2001, when the Network Affiliated Stations Alliance (“NASA”) filed a Petition for Inquiry into Network Practices,²³⁸ asking whether certain alleged practices of the top four television networks²³⁹ involving their affiliates were consistent with the Commission’s network rules, the Communications Act, and the public interest. NASA shortly thereafter filed a Motion asking the Commission to issue a declaratory ruling “as to specified affiliation agreement provisions whose lawfulness – disputed by the networks and NASA – turns on the proper interpretation of the Communications Act and Commission rules.”²⁴⁰ In response, the networks argued, *inter alia*, that (1) NASA sought, in essence, an amendment of the right-to-reject rule to give affiliates the “absolute” power to avoid their contractual obligations; (2) the evidence does not support NASA’s argument that major networks have asserted excessive control over affiliates’ programming decisions; and (3) the affiliation agreements contain language that expressly acknowledges that affiliate stations have a right to reject.²⁴¹ In January 2005, NASA filed an update to the record in which it stated that each network had reformed its

²³⁵ See *NOI*, 19 FCC Rcd at 12436 ¶ 30.

²³⁶ 47 C.F.R. § 73.658(e).

²³⁷ *Id.* § 73.658(d).

²³⁸ Petition for Inquiry Into Network Practices filed by Network Affiliated Stations Alliance (Mar. 8, 2001).

²³⁹ Those networks are: ABC, CBS, NBC and FOX.

²⁴⁰ Motion for Declaratory Ruling filed by Network Affiliated Stations Alliance (June 22, 2001) (the “NASA Motion”). In that Motion, NASA alleged that the Networks: (1) assert excessive control over affiliates’ programming decisions; (2) assert excessive control over affiliates’ digital spectrum; and (3) use their affiliation to interfere with or manipulate station sales in a manner inconsistent with section 310(d) of the Act. *Id.* at 11.

²⁴¹ See, *NOI*, 19 FCC Rcd at 12436, n. 73, and pleadings filed by various networks in the NASA proceeding cited therein.

contracts to address the central issues raised by the affiliates.²⁴² NASA also renewed its request for Commission action, however, seeking to clarify the meaning of the existing network/affiliate rules, consistent with the reformed affiliation agreements. In addition, NASA urged the Commission to provide other guidance that would help prevent similar disputes from arising in the future.²⁴³ The proceeding remains pending.

90. In the *NOI*, issued in the midst of this dispute, the Commission expressed its concern over some licensees' claims that the networks have hindered affiliated stations' ability to preempt Network shows for local programming. The Commission expressed concern about allegations that affiliates are hindered in their ability to refuse to broadcast network programming that is indecent or otherwise deemed to be unsuitable for the station's local community.²⁴⁴

2. Public Comments

91. A relatively small number of commenters explicitly discussed the network-affiliate relationship or the relevant Commission rules; a larger number – generally members of the public – voiced concern about network-supplied programming generally.²⁴⁵ Of those who addressed the network affiliation rules, several stated that affiliation agreements undercut the ability of individual station licensees to exercise their discretion to program their stations to meet local needs and problems. For example, a group owner testified at the Monterey hearing that the NASA Motion highlighted the “true realities” of the network-affiliate relationships, including the contractual disincentives that make affiliates reluctant to preempt network programming.²⁴⁶ He called upon the Commission to act on the NASA Motion and thereby help to prevent local stations from becoming passive conduits of national network fare, thereby disserving their local viewers.²⁴⁷ Similarly, the director of the local chapter of the Parents Television Council testified at the Commission's San Antonio localism hearing that local broadcasters appear to have subordinated their obligation to serve the public interest in favor of yielding entirely to the will of the national networks.²⁴⁸ He commented that some affiliates have indicated that they cannot view in advance network programs and others are afraid to preempt network programs for fear of non-renewal of their affiliation agreements. He urged the Commission to grant the NASA Motion in order to better empower affiliates to preempt programming that they find objectionable or otherwise not in the interest of their local audiences.²⁴⁹

92. Capitol Broadcasting Company, Inc. (“Capitol”), which advocates adoption of a number

²⁴² Third Update of Record and Continued Request That Commission Issue Declaratory Ruling on Basic Principles filed by Network Affiliated Stations Alliance (Jan. 19, 2005).

²⁴³ *Id.*

²⁴⁴ *NOI*, 19 FCC Rod at 12437 ¶ 32.

²⁴⁵ See, e.g., Comments of William Yeager (Nov. 1, 2004) at 1 (“make it easier for network television stations to preempt network programming. This will provide the biggest boost to localism on television.”). Another commenter praised the preemption of objectionable network programming by certain affiliated stations. Statement of John Rustin, North Carolina Family Policy Council (Oct. 22, 2003) at 1.

²⁴⁶ Testimony of Harry Pappas, President and CEO, Pappas Telecasting Companies (Monterey Tr. 97-99).

²⁴⁷ *Id.* at 97-98.

²⁴⁸ Testimony of Ray Rossman, Director of the San Antonio Chapter of the Parent's Television Council (San Antonio Tr. 55-60).

²⁴⁹ *Id.* at 58.

of behavioral rules concerning local programming,²⁵⁰ called for the establishment of the right of affiliates to review network programming before airtime in order to determine whether the material serves the licensee's community.²⁵¹ Capitol states that, if network affiliation agreements do not grant pre-airtime review of programming as a contractual right, the Commission should adopt rules to support such a right.

93. Other commenters, however, state that existing network-affiliate relationships pose no impediments to the ability of licensees to control their own programming decisions and thereby serve the needs and interests of their viewers. For example, the Walt Disney Company, parent of the ABC Network, states that its affiliates have never been prevented or hindered from preempting network shows in accordance with the right-to-reject rule.²⁵² It cites to the record in the NASA proceeding, including listings of affiliate preemptions filed with the Commission, as support for its contention that "there simply is no basis for the Commission to express any concern over NASA's unsubstantiated and unproven claims."²⁵³ Several broadcasters noted specific examples of their preemptions of network programming in order to air material they deemed more important for their audiences, including emergency information.²⁵⁴

3. Issues for Commission Action

94. We agree with commenters' concern over the relationship between broadcast networks and the independently owned stations affiliated with them because of the adverse impact that some reported practices may have on the ability of licensees to fulfill their localism obligations. We believe that it is critical to maintain a balance in the network-affiliate relationship that affords local broadcasters ultimate power over programming decisions without risking undue financial hardship or implicit threats of unanticipated disaffiliation, so that they retain unfettered discretion to select what they air, including network-provided programming. For that reason, we reiterate here that the Commission will act promptly to enforce its network affiliation rules whenever complaints are filed. Those rules include, but are not limited to, the right-to-reject rule, 47 C.F.R. § 73.658(e), and that imposing restraints on time optioning, 47 C.F.R. § 73.658(d).

95. As many commenters urge, we intend to resolve the proper scope and meaning of these rules in the content of the pending NASA Motion. Although NASA has revised its requests to the Commission over time to reflect the laudatory reformation of certain network affiliation agreements, the affiliates continue to urge that we reaffirm key principles underlying the existing rules and adopt additional guidance that should assist in preventing future disputes.

96. Finally, we agree with many commenters and seek comment on whether it would be useful for licensees, in fulfilling their localism obligations, to be able to review network programming

²⁵⁰ Capitol Comments at 5 (urging, e.g., adoption of a required minimum number of hours of local programming, including public affairs material).

²⁵¹ *Id.* at 5; see also Testimony of Jim Goodmon, President and CEO, Capitol Broadcasting Company, Inc. (Charlotte Tr. 144-45).

²⁵² Disney Comments (Nov. 1, 2004) at 19-20.

²⁵³ *Id.* at 20.

²⁵⁴ See, e.g., Comments of Rosetta Rolan, WAVY-TV, Portsmouth, Virginia (Nov. 1, 2004) at 2 (preempting for coverage of Hurricane Isabel); Comments of Joseph P. McNamara, WBNG-TV, Binghamton, New York (Oct. 21, 2004) at 2 (preempting for programming of more local interest); Comments of WBRZ, Baton Rouge, Louisiana (Nov. 16, 2004) at 4 (preempting for local political events, parades, charitable fundraising, and crime safety programs); Comments of WISC-TV, Madison, Wisconsin (Nov. 23, 2004) at 2 (preempting for political debates and University of Wisconsin sporting events); Testimony of Michael Ward, General Manager, WNCN-TV, Raleigh-Durham, North Carolina (Charlotte Tr. 140) (preempting for mayoral debates).

sufficiently in advance of airtime to determine whether the programming is unsatisfactory, unsuitable or contrary to the public interest.²⁵⁵ Our record to date provides little information as to whether network affiliation agreements currently afford licensees the right to review in advance network programming, or whether current practices allow for such meaningful review. Therefore, although we do not seek comment here on the matters raised in the NASA Motion, we do seek comment here on this limited issue of affiliate review of network programming. Has the matter of affiliate preview of network programming already been addressed by existing affiliation agreement terms? To the degree that such private contractual arrangements have not addressed this issue, we seek input on whether the Commission should establish rules requiring such a right. How long in advance would affiliates need to receive program recordings in order to have time for a meaningful review and preemption? What difficulties would this pose for networks? By definition, live events cannot be previewed. Are there any other types of programs that should be exempted from the requirement? We note that the right to reject rule is stated as a restriction on licensees entering into contracts that restrict their right to reject programming. Should our rules similarly prohibit an affiliate from waiving its right to advance review, consistent with its nondelegable responsibility for the programming that it airs? Proponents of a right-to-advance-review mandate should also discuss the statutory basis for the Commission's authority to act on this matter.

G. PAYOLA / SPONSORSHIP IDENTIFICATION

1. Issues

97. *Sponsorship Identification.* As discussed in the NOI, the Commission's sponsorship identification rules are designed to alert listeners and viewers of a broadcast station to the fact that they are hearing or watching programming for which valuable consideration has been provided by ensuring that the station discloses that fact.²⁵⁶ As the Commission stated in *United States Postal Service*, the sponsorship identification requirement is "based on the principle that the public has the right to know whether the broadcast material has been paid for and by whom."²⁵⁷ These provisions are found in Sections 317 and 507 of the Communications Act.²⁵⁸ Section 507 requires those persons who have provided, accepted, or agreed to provide or accept consideration for the airing of certain program material to report that fact to the station licensee before the involved matter is broadcast.²⁵⁹ In turn, Section 317 requires the licensee to announce, at the time of broadcast, that consideration has been provided for matter contained in the program, and to disclose the identity of the person furnishing the money or other valuable consideration.²⁶⁰ Section 73.1212 of the Commission's rules implements the requirements of Section 317 for broadcasters.²⁶¹

98. *Payola/Pay-for-Play.* As an outgrowth of the sponsorship identification rules, the Commission has defined "payola" as "the unreported payment to, or acceptance by, employees of broadcast stations, program producers and program suppliers of any money, services or valuable

²⁵⁵ See 47 C.F.R. §73.658(e)(1).

²⁵⁶ NOI, 19 FCC Rcd at 12437 ¶ 33.

²⁵⁷ *United States Postal Service*, FCC 77-645, 41 RR 2d 877, 878 (1977) (citing *Sponsorship Identification*, 40 FCC 2.(1950)).

²⁵⁸ 47 U.S.C. §§ 317, 508.

²⁵⁹ 47 U.S.C. § 508.

²⁶⁰ 47 U.S.C. § 317(a)(1).

²⁶¹ 47 C.F.R. § 73.1212. Particular requirements are imposed for the airing of political programming or that involving the discussion of a controversial issue of public importance. See 47 U.S.C. § 317(a)(2); 47 C.F.R. § 73.1212(d)

consideration to achieve airplay for any programming.”²⁶² The Commission observed in the *NOI* that some commenters had expressed the opinion that payola practices are particularly common with regard to the airplay of music, so-called “pay-for-play.” The Commission noted that the activity may involve “independent promoters” acting as a liaison between the radio stations and the record labels, so that the labels themselves do not make the payments to the stations. In the typical case, a promoter pays radio stations for the exclusive right to promote music to them, and charges record labels an upfront fee to market songs to radio stations, as well as additional fees for songs that stations add to their playlists that the promoter recommended. In other words, record labels pay promoters to market their music, and for music that stations actually play, and promoters pay stations to promote music to them, thus enabling the promoters to influence the songs that are included on the stations’ playlists. It was suggested that radio stations that have consolidated with concert promoters may tie airplay to concert performances, by refusing to give airplay to artists who do not appear at concerts sponsored by the stations. The Commission observed that these types of arrangements ultimately influence who chooses what the public hears on the radio and what station listeners may actually hear.²⁶³

99. The Commission observed in the *NOI* that such practices may be inconsistent with localism when they cause stations to air programming based on their financial interests, at the expense of their communities’ needs and interests.²⁶⁴ The *NOI* sought comment on the various types of these practices today, and how frequently they occur. The Commission asked if these practices comply with the disclosure requirements of the Communications Act and our sponsorship identification regulations and if the existing rules are deficient in addressing the current practices. The Commission also sought comment on whether we should improve our enforcement process, by making it easier for complainants to file and for us to act on complaints, or otherwise. The *NOI* inquired if the Commission currently has the authority to regulate in this area, pursuant to its general Title III public interest authority over broadcasters and, if so, whether it should exercise that authority. The Commission also asked if the current disclosure requirements are sufficient to ensure that listeners understand the nature of the programming they hear.²⁶⁵

100. *Other Sponsorship Identification.* The provision of consideration for broadcast material involving the sponsorship identification rules is not limited to arrangements for the playing of music over radio stations. As noted *supra*, the rules are invoked whenever consideration is provided or promised for the airing of particular program matter. For example, the *NOI* observed that some television stations appear to have aired interviews with guests who pay for their appearances. In such cases, the station reportedly disclosed the payment at the end of the program in small type that ran for only a matter of seconds. The Commission asked for comment on a number of issues regarding the application and adequacy of the Commission’s sponsorship rules in these circumstances.²⁶⁶

101. *Voice-Tracking.* The *NOI* also sought comment on voice-tracking, a practice by which stations import popular out-of-town personalities from bigger markets to smaller ones, customizing their programming to make it appear as if the personalities are actually local residents. The Commission observed that, by centralizing talent and creating name recognition, the practice would appear to enable stations both to decrease costs and increase ratings and thus revenue. The Commission observed that one commenter stated that the practice has potential adverse consequences for localism, in that, when a media

²⁶² *Commission Warns Licensees About Payola and Undisclosed Promotion*, Public Notice, 4 FCC Rcd 7708 (1988).

²⁶³ *NOI*, 19 FCC Rcd at 12437-38 ¶ 34.

²⁶⁴ *Id.* at 12437 ¶ 33.

²⁶⁵ *Id.* at 12438 ¶ 35.

²⁶⁶ *Id.* at 12439 ¶ 36.

company uses voice-tracking as a strategy to eliminate live broadcasts and local employees altogether, the station's connection to the local community may be hurt. Noting the agency does not have rules that directly address this practice, the *NOI* sought comment on what steps are necessary to preserve localism in this context, what our statutory authority is to adopt such regulations, and what particular practices should be defined as inconsistent with a broadcaster's programming obligations.²⁶⁷

102. *National Playlists.* The *NOI* also discussed the possible adverse effect on localism of national music playlists developed by large corporate radio licensees on the access of local talent to airtime. It was argued that, absent such access, local artists are stifled and localism accordingly suffers. The *NOI* sought comment on the prevalence of national playlists and their effect on localism. Specifically, the Commission inquired as to the extent that the use of such playlists prevents local stations from making independent decisions about airplay, thereby diminishing the diversity and types of music heard on the radio, including that performed by local artists. The *NOI* asked what steps, if any, the Commission should take in this area to foster localism.²⁶⁸

2. Public Comments

103. *Payola/Pay-For-Play.* The American Federation of Television and Radio Artists and the American Federation of Musicians characterize pay-for-play as stations shutting local artists out of airplay, depriving audiences of emerging local artists and ultimately squelching innovation in American music.²⁶⁹ A number of commenters also express concern about the prevalence of payola practices, and some urge that the Commission adopt additional rules in this area.²⁷⁰ To the contrary, a number of station licensees and industry organizations state that, because concerns about payola are not warranted, additional regulation is not necessary.²⁷¹ One long-time broadcast technician indicated that the rules appear clear: when one airs something for payment, the payment must be disclosed.²⁷² The Future of Music Coalition urges the Commission to be more vigilant in enforcing the rules.²⁷³

104. *Other Sponsorship Identification.* The Commission did not receive a great number of comments regarding the operation of the sponsorship identification rules in matters other than music airplay. Brian Wallace supports strict and rigorous enforcement of these requirements. He indicates that sponsorship identification is important because it helps viewers identify the source of the information. In

²⁶⁷ *Id.* at 12440 ¶ 38.

²⁶⁸ *Id.* ¶ 39.

²⁶⁹ AFTRA/AFM Comments at 17-18; *see also* Comments of the National Academy of Recording Arts and Sciences (Nov. 1, 2004) ("NARAS Comments") at 5, Attachment 2 (statements of music industry participants, including musicians, composers, entertainment attorneys, producers and others, regarding station practices).

²⁷⁰ *See, e.g., id.* at 24-25; Reply Comments of American Federation of Musicians, American Federation of Television and Radio Artists, Future of Music Coalition, The Recording Academy and Recording Arts Coalition (Jan. 3, 2005) at 12; NARAS Comments at 3-4. At the Charlotte, North Carolina Localism hearing, recording artist Tift Merritt indicated that "it's absolutely naive to think that pay for play doesn't go on. There are elaborate ways of independent promotion, that this completely happens. . . I've heard of people getting a bill from a radio station when they are played." Testimony of Tift Merritt (Charlotte Tr. 51-52); *see also* Testimony of Manny Garcia, Academy of Tejano Artists and Musicians (San Antonio Tr. 194-96); Testimony of Anthony Quintree ("payola does exist") (Charlotte Tr. 121).

²⁷¹ *See, e.g.,* Clear Channel Comments at 31-32; NAB Comments at 53; Named State Broadcasters Associations Comments at 31-32.

²⁷² Comments of Thomas C. Smith (Nov. 2, 2004) at 4; *see also* Comments of The Cromwell Group, Inc. (d/b/a Cromwell Radio Group) (Nov. 1, 2004) at 4-5; Disney Comments at 19.

²⁷³ Comments of Future of Music Coalition (Nov. 1, 2004) at 5.

his view, if programs receive compensation for promoting something, disclosure of the arrangement should be made during the segment in question.²⁷⁴

105. *National Playlists.* A number of commenters stated that the use of national playlists by stations reduces the amount of airplay of local musicians.²⁷⁵ *The Future of Music Coalition* urges that the Commission require basic data from broadcasters indicating what songs they are playing and how they determine what makes their playlists.²⁷⁶ Others say that, with ownership consolidation, the radio industry has become much less responsive to local musicians and programming increasingly homogenized.²⁷⁷ Several other musicians related experiencing difficulty in getting their music played over local stations.²⁷⁸ However, other witnesses praised the airplay of the music of local artists by area stations.²⁷⁹ The statement of a local singer was submitted at the Portland hearing noting the continued willingness of local broadcasters to allow him to perform his songs on their stations.²⁸⁰ Clear Channel indicated that it has no national playlists, that programming decisions are made at the local level by individual station managers, program directors and air talent using sophisticated research techniques.²⁸¹ A representative of Citadel Broadcasting similarly testified at the Portland hearing, stating that its stations' music programming decisions are made at the local level, with the goal of each station to serve its local community.²⁸² The Cromwell Group indicated that, while some of its stations have programs of local music, ultimately, a station must play whatever music its listeners want to hear.²⁸³ The NAB claims that radio stations generally devote at least a portion of their programming to promoting local artists.²⁸⁴

²⁷⁴ Comments of Brian Wallace (Aug. 18, 2004) at 4-5 ("We as the public have a right to know who is renting OUR airwaves from the people that are licensed to use it."); *see also* AFTRA/AFM Comments at 17-18.

²⁷⁵ Comments of Jack E. Rooney (Nov. 1, 2004) at 2-3; Comments of Richard Crandall (Mar. 16, 2004) at 1-2; Statement of Ray Benson, founder, "Asleep at the Wheel" and Board Member, Texas Chapter of The Recording Academy (Oct. 20, 2006); Testimony of same (San Antonio Tr. 113-21); Testimony of Matthew Gonzalez (San Antonio Tr. 211-13); AFTRA/AFM Comments at 15-17 (adverse impact on local news coverage, ability of stations to provide emergency information, timeliness and local orientation of music programming); NARAS Comments at 3.

²⁷⁶ Comments of The Future of Music Coalition (Nov. 1, 2004) at 5-6.

²⁷⁷ Testimony of "Davey D" (Monterey Tr. 113-22); Testimony of Ray Hair, President, Dallas-Fort Worth Professional Musicians Association (San Antonio Tr. 129-36).

²⁷⁸ Comments of Robert Peckman (Nov. 1, 2004); Comments of Douglas R. Stevens (Nov. 1, 2004); Testimony of Tift Merritt (Charlotte Tr. 37-41); Testimony of Anthony Quintee (Charlotte Tr. 121); Testimony of Jake Delily (Charlotte Tr. 119); Testimony of Mike Reardon (Rapid City Tr. 276-77); Statement of Ray Benson, founder, "Asleep at the Wheel" and Board Member, Texas Chapter of The Recording Academy (Oct. 20, 2006); Testimony of same (San Antonio Tr. 113-21); Testimony of Manny Garcia, Academy of Tejano Artists and Musicians (San Antonio Tr. 194-96); Comments of Michael Keegan (Nov. 1, 2004); Testimony of T.C. Smythe (San Antonio Tr. 156). Some witnesses testified that community radio is necessary to achieve music diversity. *See, e.g.*, Testimony of Leslie Shull (Monterey Tr. 178-79).

²⁷⁹ *See, e.g.*, Testimony of Barb Evenson (Rapid City Tr. 148-50).

²⁸⁰ Testimony of Lara Seaver of the Portland Radio Group, reading statement of local musician Don Campbell (Portland Tr. 159-60); *see also* Testimony of Spencer Albee (Portland Tr. 3-8); Testimony of Charlie Gaylord (Portland Tr. 137-39)

²⁸¹ Clear Channel Comments at 30.

²⁸² Testimony of Tim Moore, Citadel Broadcasting (Portland Tr. 153-54); Testimony of Herb Ivy, Citadel Broadcasting (Portland Tr. 64-66).

²⁸³ Comments of The Cromwell Group (Nov. 1, 2004)

²⁸⁴ NAB Comments at 58.

106. *Voice-Tracking.* With regard to voice-tracking, some commenters also expressed concern about the practice,²⁸⁵ while others indicated that no new regulations are necessary,²⁸⁶ some questioning the Commission's authority to do so.²⁸⁷ John Connolly of the American Federation of Radio and Television Artists testified at the Monterey hearing that voice-tracking "corrodes local service in many radio markets.... 70 percent of Clear Channel radio's broadcasts are voice-tracked from distant locations."²⁸⁸ Another commenter indicated that the practice should be closely examined to the extent that it compromises local programming.²⁸⁹ The NAB states that the use of voice-tracking has no discernable negative impact on localism, and allows stations to produce higher quality programming at lower cost.²⁹⁰

3. Issues for Commission Action

107. *Sponsorship Identification/Payola.* We agree with the many commenters who have expressed concern with reported practices throughout the broadcast industry that appear to violate our sponsorship identification rules. We also agree that we need to continue vigilant enforcement of our regulations, as well as impose strict penalties for violations of the rules.

108. We note that, particularly since the release of the *NOI*, the Commission has been aggressive in investigating all payola complaints that it has received that demonstrate that a question exists of whether such violations have occurred and sanctioning licensees found to have engaged in illegal conduct. For example, as a result of its investigation of allegations of payola/pay-for-play violations by a number of broadcasters, on April 13, 2007, the Commission released consent decrees that it entered into with four of the nation's largest radio group owners, CBS Radio, Inc., Citadel Broadcasting Corporation, Clear Channel Communications, Inc. and Entercom Communications Corp., calling for them to make payments to the U.S. Treasury of \$12,500,000, in the aggregate. These decrees also called for each company to institute a compliance plan containing numerous business reforms and compliance measures designed to prevent future violations, plans that, among other things, restricted the activities of independent promoters.²⁹¹ The Enforcement Bureau has a number of similar ongoing investigations and we will continue to aggressively proceed and take action, where appropriate.

109. The Commission has also acted when presented with other types of violations of the sponsorship identification rules. On April 13, 2005, the Commission issued a Public Notice reminding broadcast licensees of the critical role that broadcasters play in providing information to the audiences that they serve and reminding them and others of their obligations under the sponsorship identification rules in connection with the airing of video news releases ("VNRs"). Therein, the Commission expressed its intention to investigate any situation in which it appears that these rules have been violated and to

²⁸⁵ NFCB Reply Comments at 19-20; AFTRA/AFM Comments at 15-17; Comments of Thomas C. Smith (Nov. 2, 2004) at 4; Comments of Bonnie Hutcheon (Aug. 23, 2004).

²⁸⁶ Reply Comments of Barnstable Broadcasting, Inc. (Jan. 3, 2005) at 2-3; Clear Channel Comments at 32.

²⁸⁷ Reply Comments of the Arizona Broadcasters Association (Jan. 3, 2005) at 13-14.

²⁸⁸ Testimony of John Connolly, American Federation of Radio and Television Artists (Monterey Tr. 106).

²⁸⁹ Comments of James F. Evans (Oct. 21, 2004).

²⁹⁰ NAB Comments at 53-55; see also Named State Broadcasters Associations Comments at 32; Comments of Randal J. Miller, President, Miller Communications, Inc. (July 12, 2004) at 3.

²⁹¹ See *CBS Radio, Inc.*, Order, 22 FCC Rcd 7026 (2007); *Citadel Broadcasting Corp.*, Order, 22 FCC Rcd 7045 (2007); *Clear Channel Communications, Inc.*, Order, 22 FCC Rcd 7064 (2007); *Entercom Communications Corp.*, Order, 22 FCC Rcd 7121 (2007).

order appropriate sanctions.²⁹² Since then, the Enforcement Bureau has so proceeded, aggressively investigating numerous complaints of wrongdoing and taking the required action. For example, in September 2007, the Enforcement Bureau issued two notices of apparent liability for forfeiture against *Comcast Corporation for its airing of a number of video news releases without the requisite announcements*.²⁹³ On October 18, 2007, the Commission issued a notice of apparent liability against *Sonshine Family Television, Inc. and Sinclair Broadcast Group, Inc.*²⁹⁴ for similar violations. Other investigations are currently underway.

110. Particularly as a result of our experience in these and other enforcement proceedings, and in light of the record here, we believe that our sponsorship identification rules are sufficient for our regulatory purposes and do not believe that we need to revise them, as proposed by some commenters, because they are sufficiently broad to cover the practices that they describe in the record. However, in the *VNR Notice*, the Commission sought public comment on the nature of practices by broadcasters that might invoke operation of the sponsorship identification rules.²⁹⁵ The Commission has received numerous filings, and the Media Bureau is in the process of reviewing that record and considering whether additional action is appropriate. Although that proceeding inquired only about the airing of VNRs, if necessary, we can consider calling for additional comments from the public on a broader set of issues. We intend to consider a notice of proposed rulemaking to seek comment on current trends in embedded advertising and the efficacy of the current sponsorship identification regulations with regard to such forms of advertising.

111. *Voice-Tracking*. With regard to the concerns raised about the use by stations of voice-tracking, we seek comment here on the prevalence of voice-tracking and whether the Commission can and should take steps to limit the practice, require disclosure, or otherwise address it. We believe that such practices may diminish the presence of licensees in the communities and thus hinder their ability to assess the needs and interests of their local communities. As discussed above, we have sought comment in the Digital Audio Broadcasting proceeding on whether we should require that stations maintain a physical presence at radio broadcasting facilities during all hours of operation and seek comment in this proceeding on whether such a requirement should also apply to television licensees.²⁹⁶

112. *National Playlists*. Finally, we do not believe that the record supports our prohibiting the use of national music playlists by licensees, nor do we believe that we should affirmatively require stations to give airplay to local artists. However, we agree with those commenters who express concern about the lack of access to the airwaves by local musicians. For this reason, we seek comment on whether we should require licensees to provide us data regarding their airing of the music and other performances of local artists and how they compile their stations' playlists, which we would use in our consideration of the renewal applications of the stations to which they relate, in evaluating the overall station performance under localism. We seek comment on the appropriate form for these disclosures and ask commenters to state what information should be supplied.

²⁹² *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases, and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators*, Public Notice, 20 FCC Rcd 8593 (2005) ("*VNR Notice*").

²⁹³ *Comcast Corporation*, Notice of Apparent Liability for Forfeiture, DA 07-4005 (rel. Sept. 21, 2007); *Comcast Corporation*, Notice of Apparent Liability for Forfeiture, DA 07-4075 (rel. Sept. 26, 2007) (responses pending).

²⁹⁴ *Sonshine Family Television, Inc. and Sinclair Broadcast Group, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 07-152 (rel. Oct. 18, 2007) (responses pending).

²⁹⁵ *VNR Notice*, 20 FCC Rcd at 8596-97.

²⁹⁶ See *supra*, para. 29.

H. LICENSE RENEWAL PROCEDURES

1. Issues

113. The *NOI* noted that the license renewal process is “perhaps the most significant mechanism available to the Commission and the public to review the performance of broadcasters and to ensure that licensees have served their local communities.”²⁹⁷ The Commission’s process for evaluating license renewal applications has changed greatly over the past 30 years. Most significantly, as part of the 1996 Telecommunications Act, Congress eliminated the Commission’s authority to accept new station applications to compete with renewal filings and consider such mutually exclusive applications in comparative hearings, and increased the maximum term for a broadcast license to eight years.²⁹⁸

114. In response to the criticism expressed by some that the Commission does not examine thoroughly enough whether a licensee has served the public interest in deciding whether to renew its station license, the *NOI* called for comment on a number of questions relating to our license renewal system and how it might be improved. Specifically, the *NOI* asked commenters to address whether new procedures are needed to strengthen our license renewal process; whether the Commission should conduct audits of stations’ issues/programs lists and public files; how we might make the license renewal process more effective; what the benefits and burdens of any proposals for change might be; and to generally address the boundaries of our authority to adopt such measures (particularly in light of the 1996 Telecommunications Act) and what the scope of our evaluation should be. The Commission also solicited suggestions for improving the involvement of broadcast stations in the community and asked commenters to address whether the current eight-year license renewal term is appropriate, or if the agency should adopt more frequent review of a station’s record of performance.²⁹⁹

2. Public Comments

115. The Commission received a number of comments addressing its license renewal procedures and responding to our request for suggestions on improving that process. Broadcasters and broadcaster organizations generally expressed their opposition to any modification of the procedures, several maintaining that, in the wake of the 1996 Telecommunications Act’s revision of the renewal procedures, the Commission lacks the authority to do so.³⁰⁰ However, other commenters, including many members of the public, expressed at least some dissatisfaction with the current license renewal system. Many requested more stringent renewal standards, better public disclosure of how to participate in the renewal process, or both. In addition, a number of members of the public participating in the localism field hearings expressed a general sense that our license renewal process should be strengthened to promote greater accountability to the public on the part of broadcasters.³⁰¹ The streamlined license renewal procedures that the Commission adopted in the 1980s elicited particular criticism from some commenters. For example, one stated that the license renewal process should “involve more than a returned postcard.”³⁰² Similarly, at the Commission’s hearing in Monterey, a panelist offered comments criticizing the current license renewal system and stating that stations should be held accountable for their

²⁹⁷ *NOI*, 19 FCC Rcd at 12440 ¶ 40.

²⁹⁸ See 47 U.S.C. § 307(c).

²⁹⁹ *NOI*, 19 FCC Rcd at 12441 ¶ 42.

³⁰⁰ See, e.g., NAB Comments at 68; Named State Broadcasters Associations Comments at 32-33.

³⁰¹ See, e.g., Testimony of Jeff Perlstein, Executive Director, Media Alliance (Monterey Tr. 64); Testimony of Tony Acoŝta (Monterey Tr. 229); Testimony of Kathy Bissi (Monterey Tr. 230-31).

³⁰² Comments of John P. Valentine (Oct. 18, 2004) at 1.

records of public service at renewal time.³⁰³

116. In response to our questions in the *NOI* about whether the length of time between renewals should be shortened or periodic mid-term reviews of a station's public service should be imposed, broadcasters generally advocated no change.³⁰⁴ However, others urged more frequent review of licensee performance. *One filer commented that eight years is too great a period between renewals.* "Reviews that are spanned too far apart cannot adequately monitor the current status of any broadcasting entity." He advocated shorter licensing terms and more frequent Commission review of licensee performance.³⁰⁵

117. In addition to general criticisms and calls for improvements to the license renewal process, several commenters suggested specific measures for the Commission to consider. Several argued that the Commission should take steps to improve public awareness of a licensee's record of service to local needs by requiring enhanced disclosure by broadcasters. The American Federation of Television and Radio Artists and the American Federation of Musicians urged that Commission should adopt a standardized form that would require licensees to disclose the types and quantity of local programming aired during the license period. They also recommended that broadcasters' public files should be made available on the Internet.³⁰⁶ The Campaign Legal Center and the Alliance for Better Campaigns likewise argued in favor of adoption of a standardized form for stations to use in reporting their records of local programming service,³⁰⁷ and advocated the use of a form similar to the standard form proposed by the Public Interest, Public Airwaves Coalition in the Commission's Enhanced Disclosure proceeding.³⁰⁸ Ronda Orchard suggested that a "mandate requiring that public hearings on service and community needs assessment [should] be conducted and published for comment, criticism and resolution."³⁰⁹

118. The National Federation of Community Broadcasters commented that "local and community-responsive programming should be considered when determining renewals of licenses," and suggested that the Commission should adopt a point system regime similar to the point system currently used to award noncommercial educational FM and television permits between mutually exclusive applicants.³¹⁰ Commenter Sam Brown proposed a similar point system for assessing a licensee's overall commitment to localism.³¹¹

119. In addition to the commenters proposing formalized localism point systems, several others suggested that the Commission adopt specific standards for service to local needs and that a station's license should not be renewed if the licensee fails to meet those standards. In addition to their

³⁰³ Statement of Martin Kaplan, Associate Dean, Annenberg School for Communication, University of Southern California (July 21, 2004) at 3; Testimony of same (delivered by Joseph Salzman, Associate Dean, Annenberg School for Communication, University of Southern California) (Monterey Tr. 62-68).

³⁰⁴ See, e.g., NAB Comments at 63-64; Named State Broadcasters Associations Comments at 32-34.

³⁰⁵ Comments of Brian Wallace (Aug. 18, 2004) at 5; see also Testimony of Andrew Schwartzman, President and CEO, Media Access Project (Washington, D.C. Tr. 43).

³⁰⁶ AFTRA/AFM Comments at 25-26.

³⁰⁷ Campaign Comments at 6; Reply Comments of the Campaign Legal Center and the Alliance for Better Campaigns at 16-19.

³⁰⁸ *Enhanced Disclosure NPRM*, 15 FCC Rcd 19816 (2000).

³⁰⁹ Comments of Ronda Orchard (Sept. 20, 2004) at 3.

³¹⁰ National Federation of Community Broadcasters Comments at 16-17.

³¹¹ Comments of Sam Brown (Nov. 1, 2004) at 4.

recommendation that the Commission adopt a standard form for enhanced disclosure of a station's service of local needs, the Campaign Legal Center and the Alliance for Better Campaigns argued that the agency should amend its license renewal procedures to include processing guidelines taking into account the station's record of performance.³¹² Specifically, they proposed processing guidelines that would allow expedited license renewals for stations that air a minimum of three hours per week of local civic/electoral affairs programming, at least half of which aired in or near prime time.³¹³ The Annenberg School for Communication at the University of Southern California argued that the Commission should require broadcasters to provide access to a station's public inspection file online and in a standard format so that the public may evaluate the extent to which stations are serving their local communities.³¹⁴ It stated that adoption of such a measure would allow quantitative measurement of a station's record of localism. It also recommended that broadcasters be required to include in their online public files archives of selected audio and video programming excerpts. The Brennan Center for Justice, *et al.* argued that the Commission should "conduct rigorous review of licensee performance in all aspects of diversity and localism" and, if a station is found deficient, its license should be revoked and reassigned to community interest media organizations.³¹⁵

120. Not all of the comments received by the Commission argued in favor of imposing additional requirements on broadcasters. Commenter Thomas G. Smith, who identifies himself as a technician employed in the broadcast industry for the past 35 years, described the current license system as "realistic," but suggested that the Commission articulate and hold licensees to a specific standard of conduct. He also urged that the Commission offer aid to broadcasters to assist them in meeting their public service obligations because "[p]ublic file and renewal standards can be confusing and can cost stations money in fines and possibly their license[s]." He suggested that the Commission help broadcasters meet their obligations with increased communication to licensees and training seminars conducted by the Commission or through industry trade groups. He further argued that disruption of service to the public that would occur as a result of a station losing its license may be as harmful a result as having "a station that does not meet or barely meets its obligations" remain on the air.³¹⁶

3. Issues for Commission Action

121. *Shortened License Terms.* We are not persuaded by some commenters' suggestions that the Commission shorten broadcast license terms to some period less than the eight years that Congress authorized in the Telecommunications Act of 1996.³¹⁷ Although we agree that many of the issues that

³¹² Reply Comments of the Campaign Legal Center and the Alliance for Better Campaigns (Jan. 3, 2005) at 19-22.

³¹³ *Id.* at 19-20. As noted in the *NOI*, until the deregulation of radio and television in the 1980s, the Commission authorized the staff to act, by delegated authority, on renewal applications for stations that had aired at least minimum amounts of specified programming, expressed as percentages of their overall programming. Applications for stations that failed to meet these thresholds were considered, on a less streamlined basis, by the full Commission. At the time that these guidelines were eliminated, they were: eight percent non-entertainment programming (including news; public affairs, and other non-entertainment programming) for AM stations; six percent of such programming for FM stations; and, for TV stations, ten percent non-entertainment programming, five percent local programming and five percent informational (news plus public affairs) programming. *NOI*, 19 FCC Rcd at 12430 ¶12, n.34.

³¹⁴ Annenberg Comments at 2-7.

³¹⁵ Brennan Center Comments at 35.

³¹⁶ Comments of Thomas C. Smith, (Nov. 1, 2004) at 5.

³¹⁷ See Pub. L. No. 104-104, § 203, 110 Stat. 56, 112 (1996); see, e.g. Testimony of Andrew Schwartzman (Washington, D.C. Tr. 43).

commenters have raised in this proceeding merit Commission action, we believe that the behavioral rules proposed in this Report or adopted or under consideration in the other dockets noted herein will be sufficiently effective in addressing those concerns.

122. *Enhanced Disclosure.* We agree with some commenters that there is an apparent disconnect between broadcasters' localism efforts and community awareness of those efforts. We further note that, because we concluded in the *Enhanced Disclosure Order* that our current requirements are not sufficient, we adopted a standardized form to provide information on how stations serve the public interest.³¹⁸ These new requirements, discussed in further detail at paragraphs 20-23 of this Report, will help educate the public about existing local programming and assist in our renewal proceedings.

123. *Increased Public Involvement in Renewal Proceedings.* We agree that, as we note at paragraph 15 of this Report, the record of this proceeding indicates that many members of the public are unaware of the mechanisms that are already available to them in terms of participation in the license renewal process. We find the observation of Thomas G. Smith that the Commission's "public file and renewal standards can be confusing" is a point well taken, particularly with respect to members of the general public who may be unfamiliar with broadcast industry practices and may find parsing Commission regulations on the subject a daunting task. Accordingly, as also described in paragraphs 18-19 above, the Commission directs the Media Bureau to update its "The Public and Broadcasting" publication to provide more straightforward guidance to the public on how individuals can directly participate in the license renewal process, and will establish a Commission point of contact at which members of the public can seek information about our processes.

124. *Renewal Application Processing Guidelines.* We believe that the recommendations set forth by the Campaign Commenters, USC Annenberg and the Brennan Center for Justice, *et al.* concerning the potential adoption of specific guidelines for broadcasters to follow may have merit and deserve further exploration. Accordingly, as stated in paragraph 40 *supra*, we tentatively conclude that we should reintroduce specific procedural guidelines for the processing of renewal applications for stations based on their localism programming performance. We seek comment on this proposal. Specifically, should these guidelines be expressed as hours of programming per week or, as in the past, percentages of overall programming? Should the guidelines cover particular types of programming, such as local news, political, public affairs and entertainment, or simply generally reflect locally-oriented programming? What should the categories and amounts or percentages be? Should we adopt processing guidelines regarding specific types of locally-oriented programming to be aired at particular times of the day? Should the Commission create other renewal processing guidelines that give processing priority to stations that meet certain measurable standards? How should we define local programming? Must it be locally produced? We seek comment on these questions and invite comment on any related issues that commenters feel the Commission should consider in connection with the possible adoption of specific localism processing guidelines for broadcast renewal applications.

I. ADDITIONAL SPECTRUM ALLOCATIONS

1. Issues

125. In the *NOI*, the Commission noted that, in order to enhance the availability of community-responsive programming, it created new broadcasting services, including, in 2000, the low power FM ("LPFM") service. It observed that LPFM stations are smaller noncommercial stations that may broadcast at a maximum power of 100 watts, which corresponds to a coverage area of approximately a 3.5 mile radius from the transmitter. The *NOI* stated that, during the first two years that LPFM licenses were available for application, eligibility for licenses was limited to local entities. In addition, to similarly enhance the localism of the service, in the case of mutually exclusive applications for LPFM

³¹⁸ See *Enhanced Disclosure Order*.