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Federal Communications Commission
Office of the Secretary

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

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

To: Marlene Dortch, Secretary
Federal Communications Commission
Attn: Full Commission

COMMENTS OF LAUREN A. COLBY AND JOHN C. TRENT

Lauren A. Colby and John C. Trent hereby submit the following comments on the FCC's proposals in this proceeding. In support thereof, it is alleged:

1. Lauren A. Colby began his legal career as an attorney/advisor at the Federal Communications Commission, where he served from 1955 to 1957. Thereafter, he served five years as an associate at a Washington, DC law firm. He began his own law practice in 1962. He has, therefore, had a total of 53 years of law practice, and during that time, he has owned two small market radio stations. Mr. Trent received his law degree from George Mason University and admitted to the Virginia Bar in 1990. While in law school he served as a law clerk in the telecommunications group at Wilmer, Cutler and Pickering in Washington, DC. He became an associate with the communications law firm of Putbren & Hunsaker in 1990, and was made a full partner in the law firm of Putbren, Hunsaker & Trent in 1996. Mr. Trent has also served as an adjunct law professor at George Mason University teaching Telecommunications Law. Since 1990 Mr. Trent has served as a communications attorney, with special emphasis of radio broadcasting. We are, therefore, qualified to comment on the FCC's proposals with respect to radio broadcasting. These comments are restricted to radio; there is no intention to comment on any of the FCC's

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proposals regarding television.

2. The radio broadcasting industry is simply a part of the advertising industry. In any given radio market, a figure can be obtained for total retail sales. A certain fixed percentage of that figure represents the money that merchants will spend on advertising. That amount cannot be expanded without increasing the prices that customers must pay for goods. It is fixed.

3. In the past, a radio broadcaster starting a new station would hire disk jockeys to play records and entertain the listeners, and salesmen to sell the resulting product to advertisers. The salesmen were, and still are, the heroes of the industry. That is because almost nobody ever walks into a radio station and asks to buy time; it must be sold, by skilled salesmen.

4. In the past, radio stations competed primarily with newspapers for their share of the advertising pie. In recent years, however, that has all changed. Today, cable television systems offer local merchants television advertising at very little more than radio stations must charge for audio advertising. Furthermore, the Internet, which is also supported by advertising, has begun to compete vigorously for the dollars previously available to print media and radio and television. Finally, the industry has been hit with a substantial decline in available listeners. While terrestrial radio broadcasters once had the automobile audience to themselves, they must now share that market with the satellite broadcasters: XM and Sirius.

5. These developments have had a devastating impact on radio revenues. Even the largest radio chain, Clear Channel, has been affected. Writing in the February 13, 2008 issue of the *Wall Street Journal*, Sarah McBride reported as follows:

“While Clear Channel is continuing the program, it appears that less has turned out to be less. When it was launched, radio revenue at Clear Channel was \$3.75 billion, but it has never reached that level again. Revenue for 2007, to be announced today, is

expected to come in around \$3.52 billion, says RBC Capital Markets analyst David Bank. That would be a drop from 2006, though it's partly because of some small market radio-station sales."

6. Thus, we have an industry with its back to the wall. It lacks the resources to withstand additional, heavy-handed government regulation. Yet, there are at least three proposals in this proceeding which fall within that category. One of these proposals (see, Paragraph 29) contemplates a requirement that all licensees maintain a physical presence at their studios, during all times when the station is in operation. Another, at Paragraph 25, would require each licensee to establish a Community Advisory Board and meet with that Board at quarterly intervals. The third, at Paragraph 41, would revoke the current rule that allows a broadcaster to locate its main studio anywhere within 25 miles of the community of license, and require, instead, each broadcaster to main a studio within the community, itself. As will be demonstrated, each of these proposals is anachronistic, and none are needed in order to achieve the FCC's localism objectives. Those objectives will be achieved, automatically, by developing market forces; government intervention is not needed.

7. Modern radio is based upon the concept of format. In each market, there are stations with all news and talk formats, and different types of music formats. It makes no sense, whatsoever, to require stations with music format to broadcast news and talk programs, whether recommended by a Community Advisory Board or not. There is a very simple reason for this: namely, that nobody will listen to these programs. The minute that a classical music lover's classical music is interrupted with a public affairs program, he will turn off the radio or try to find another classical music station (perhaps, unfortunately, on the Internet). The minute that a listener to Spanish music is confronted with a news or public affairs program, he, too, will either turn off the radio or try to find another station broadcasting Spanish music.

8. Already, in almost every market, there are stations specializing in news and talk. Very soon, there will be many more. That's because, with the advent of digital broadcasting, each FM station will be able to provide 4 different formats to listeners, in place of the single format that the station presently provides. Simple market forces will dictate that many of these new formats will be news and talk, broadcasting the very sorts of local public affairs programming that the Commission seeks to encourage in this proceeding.

9. Attempts to force radio stations to maintain local live people on their premises at times when the radio station offices are not open will not succeed, simply because most stations cannot afford to do so. They will either avoid the requirement by signing off the air as early as possible at night, so that they do not need to maintain a nighttime attendant, or by simply not complying. News and talk stations will have a fulltime attendant on duty, whether the Commission says so or not. That is because their listeners expect the station to have somebody on duty at all times to report the latest news. Consequently, a live attendant is needed to generate the ratings that make the station profitable. No government intervention is needed.

10. The same is true for the proposed changes to the Main Studio Rule. If an attempt is made to go back to the prior requirements of that Rule, many studios will be created which are studios in name only. The Commission's inspectors will be kept busy, investigating these studios and issuing fines and forfeitures, but the objectives of this Commission proceeding will not be advanced.

11. The proposal for Community Advisory Boards is essentially the same as the "ascertainment" policies, which were pursued by the Commission in earlier years. Those policies required broadcasters to consult with community leaders and develop programming (presumably public affairs programming), responsive to community needs. Ascertainment was based upon the

notion that “one size fits all”, that every radio station should be like every other radio station and should broadcast a mix of news, public affairs, and educational programming. That presumption made sense in 1939, when there were only 540 radio stations in the United States. It makes no sense, at all, today. Now, with over 10,000 radio stations and still more stations to be created by digital radio, the broadcasting business is predicated upon the provision of the widely-varied number of program formats, in each market. Some of those formats, like news and talk, are readily compatible with news and public affairs programming. Others, like specialized music formats, are not. It makes no sense to try to fit every radio station into the same mold – to try to force each and every radio station to carry a certain amount of government-mandated talk programming. Yet, that was the presumption behind “ascertainment” and remains the assumption behind the Community Advisory Boards. It won’t work.

12. What will work, and work very well, is the free market. There is public demand for news and talk programming, including local news and talk. Consequently, in every radio market, there are stations specializing in that kind of programming, and there will be so more, once digital radio is implemented and four programming extremes are available on FM where formerly, there was only one.

13. The news directors and reporters for news-talk stations are in constant touch with mayors, city councilmen, and other elected officials in order to obtain the latest news. Thus, every news-talk station already has a Community Advisory Board. Every news-talk station is always in constant touch with the needs of the community, as expressed through elected and non-elected officials. News-talk stations do not have to be forced to do that; they do that as a matter of course, because their listeners expect them to do that.

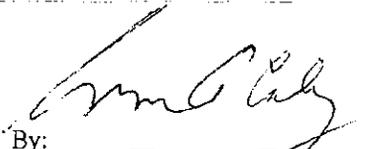
14. In today’s environment, where there are so many different radio formats in every

market, localism is good business. There is a public appetite for local news and public affairs programming. However, it is unreasonable to expect every radio station to satisfy the same public demand. Stations broadcasting classical music or Hispanic music are not in a position to broadcast news and public affairs programs and should not be required to do so. They do not need to because there are plenty of stations that specialize in doing so and find it to be good business to do so.

Respectfully submitted,

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